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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**FORM S-3**

REGISTRATION STATEMENT  
UNDER THE SECURITIES ACT OF 1933

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**FIRST BUSEY CORPORATION**

(Exact name of registrant as specified in its charter)

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<b>Nevada</b> (State or other jurisdiction of incorporation or organization)	<b>37-1078406</b> (I.R.S. Employer Identification Number)
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**100 W. University Avenue  
Champaign, Illinois 61820  
(217) 365-4516**  
(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

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**Van A. Dukeman  
President and Chief Executive Officer  
First Busey Corporation  
100 W. University Avenue  
Champaign, Illinois 61820  
(217) 365-4516**  
(Name, address, including zip code and telephone number, including area code, of agent for service)

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**Copies to:  
Robert M. Fleetwood  
Zack S. Christensen  
Barack Ferrazzano Kirschbaum & Nagelberg LLP  
200 West Madison Street, Suite 3900  
Chicago, Illinois 60606  
(312) 984-3100**

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**Approximate date of commencement of proposed sale to the public:** From time to time after the effective date of this registration statement.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, as amended (the "Securities Act"), other than securities offered only in connection with dividend or interest reinvestment plans, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Securities and Exchange Act of 1934, as amended (the "Exchange Act"). (Check one):

Large accelerated filer

Accelerated filer

Non-accelerated filer   
(Do not check if a

Smaller reporting company



CALCULATION OF REGISTRATION FEE

Title of each Class of Securities to be Registered	Amount to be Registered(1)(3)	Proposed Maximum Offering Price Per Share(2)	Proposed Maximum Aggregate Offering Price(2)(3)	Amount of Registration Fee (2)(3)(10)
<b>Primary Offering:</b>				
Common Stock, \$0.001 par value per share(4)				
Preferred Stock, \$0.001 par value per share(4)				
Debt Securities(5)				
Warrants(6)				
Subscription Rights(7)				
Units				
Depository Shares(8)				
Total for securities to be offered by Registrant:	\$175,000,000		\$175,000,000	\$8,728
<b>Secondary Offering(9):</b>				
Common Stock, \$0.001 par value per share	9,825,000	\$4.55(10)	\$44,703,750	\$3,188
<b>Total Primary and Secondary Offering</b>			<b>\$219,703,750</b>	<b>\$11,916</b>

- (1) There are being registered an indeterminate number of securities as shall have an aggregate offering price not to exceed \$175,000,000. In addition, up to 9,825,000 shares of common stock may be sold from time to time pursuant to this registration statement by the selling stockholders named herein. This registration statement shall also cover any additional securities to be offered or issued from share splits, share dividends, recapitalizations or similar transactions.
- (2) With respect to the primary offering, this fee is calculated in accordance with Rule 457(o). The proposed maximum offering price per security will be determined from time to time by the registrant in connection with the issuance of the securities registered by this registration statement. The proposed maximum aggregate offering price has been estimated solely for the purpose of calculating the registration fee. With respect to the primary offering, in no event will the aggregate maximum offering price of all securities issued under this registration statement exceed \$175,000,000, and the amount registered is not specified as to each class of securities to be registered hereunder pursuant to General Instruction II.D to Form S-3 under the Securities Act of 1933.
- (3) Pursuant to Rule 429 under the Securities Act, the \$175,000,000 of securities registered hereunder includes \$67,200,000 of securities registered pursuant to Registration Statement No. 333-161490, which was initially filed on August 21, 2009, and declared effective on September 4, 2009, that have not yet been issued and sold by the registrant described therein and in the prospectus contained herein, for which a filing fee of \$3,750 was previously paid. Pursuant to Rule 457(p) of the Securities Act, the amount of this unused filing fee has been applied against the filing fee due in connection with this registration statement. A filing fee of \$8,728 for the primary offering is paid herewith (which equals the total registration fee of \$12,478 for the primary offering less the \$3,750 that was previously paid) plus a filing fee of \$3,188 for the secondary offering for a total filing fee of \$11,916.
- (4) Shares of preferred stock or common stock may be issued in primary offerings, upon conversion of debt securities or preferred stock registered hereby or upon the exercise of warrants or subscription rights to purchase preferred stock or common stock.
- (5) The debt securities to be offered hereunder will consist of one or more series of senior debt securities, subordinated debt securities or junior subordinated debt securities, or any thereof, as more fully described herein.
- (6) Warrants exercisable for common stock, preferred stock, depository shares or debt securities.
- (7) Rights evidencing the right to purchase common stock, preferred stock, depository shares or debt securities.
- (8) The depository shares registered hereunder will be evidenced by depository receipts issued pursuant to a deposit agreement. If the registrant elects to offer to the public fractional interests in shares of preferred stock, then depository receipts will be distributed to those persons purchasing the fractional interests and the shares will be issued to the depository under the deposit agreement.
- (9) With respect to the secondary offering and subject to note (1), this registration statement covers 9,825,000 shares of common stock of First Busey Corporation that may be sold by the selling stockholders named herein from time to time pursuant to this registration statement.
- (10) With respect to the shares of common stock to be offered for resale by the selling stockholders in the secondary offering, the proposed maximum aggregate offering price has been estimated solely for the purpose of calculating the registration fee, pursuant to Rule 457(c) of the rules and regulations under the Securities Act, based on the average of the high and low prices reported for the shares of common stock as reported on the Nasdaq Global Select Market as of May 26, 2010.

**STATEMENT PURSUANT TO RULE 429**

Pursuant to the provisions of Rule 429 under the Securities Act, the prospectus contained in this registration statement also relates to the securities of up to a maximum aggregate initial offering price of \$67,200,000 registered but not sold under First Busey Corporation's registration statement on Form S-3 (Registration No. 333-161490), which was declared effective on September 4, 2009 (the "September Registration Statement"). These securities are being carried forward in connection with this registration statement. This registration statement also constitutes a post-effective amendment to the September Registration Statement. Such post-effective amendment shall hereafter become effective concurrently with the effectiveness of this registration statement and in accordance with Section 8(c) of, and Rule 429 under, the Securities Act.

\* \* \*

**The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act or until the Registration Statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.**

The information in this prospectus is not complete and may be changed. These securities may not be sold until the registration statement containing this prospectus filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

**SUBJECT TO COMPLETION DATED MAY 28, 2010**

**PROSPECTUS**

**\$175,000,000**



**FIRST BUSEY CORPORATION**

**Common Stock  
Preferred Stock  
Debt Securities  
Warrants  
Subscription Rights  
Units  
Depositary Shares**

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**9,825,000 Shares of Common Stock  
offered by the Selling Stockholders**

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We may offer and sell, from time to time, in one or more offerings, together or separately, any combination of the securities described in this prospectus. The aggregate initial offering price of the securities that we offer will not exceed \$175,000,000. In addition, from time to time, the selling stockholders identified in this prospectus under the heading "Selling Stockholders" may sell up to 9,825,000 shares of our common stock. We will not receive any of the proceeds from the sale of our shares of common stock by any of the selling stockholders.

We or the selling stockholders may offer and sell these securities to or through one or more underwriters, dealers and agents, or directly to purchasers, on a continuous or delayed basis. If an offering of securities involves any underwriters, dealers or agents, then the prospectus supplement will name the underwriters, dealers or agents and will provide information regarding any fee, commission or discount arrangements made with those underwriters, dealers or agents.

This prospectus describes some of the general terms that may apply to these securities and the general manner in which they may be offered. The specific terms of any securities to be offered, and the specific manner in which they may be offered, will be described in one or more supplements to this prospectus. This prospectus may not be used to sell securities unless accompanied by a prospectus supplement. Before investing, you should carefully read this prospectus and any related prospectus supplement.

Our common stock is listed on the Nasdaq Global Select Market under the ticker symbol "BUSE." Our principal executive offices are located at 100 W. University Avenue, Champaign, Illinois 61820 and our telephone number is (217) 365-4516.

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**Investing in our securities involves risks. You should refer to the risk factors included in the applicable prospectus supplement and certain of our periodic reports and other information that we file with the Securities and Exchange Commission and carefully consider that information before buying our securities.**

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**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.**

**These securities are not savings accounts, deposits or other obligations of any bank and are not insured or guaranteed by the Federal Deposit Insurance Corporation or any other governmental agency.**

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The date of this prospectus is \_\_\_\_\_, 2010.

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**TABLE OF CONTENTS**

<a href="#">ABOUT THIS PROSPECTUS</a>	<a href="#">1</a>
<a href="#">FIRST BUSEY CORPORATION</a>	<a href="#">1</a>
<a href="#">RISK FACTORS</a>	<a href="#">2</a>
<a href="#">USE OF PROCEEDS</a>	<a href="#">3</a>
<a href="#">RATIO OF EARNINGS TO FIXED CHARGES AND PREFERRED STOCK DIVIDENDS</a>	<a href="#">3</a>
<a href="#">DESCRIPTION OF CAPITAL STOCK</a>	<a href="#">4</a>
<a href="#">DESCRIPTION OF DEBT SECURITIES</a>	<a href="#">12</a>
<a href="#">DESCRIPTION OF WARRANTS</a>	<a href="#">21</a>
<a href="#">DESCRIPTION OF SUBSCRIPTION RIGHTS</a>	<a href="#">22</a>
<a href="#">DESCRIPTION OF UNITS</a>	<a href="#">23</a>
<a href="#">DESCRIPTION OF DEPOSITARY SHARES</a>	<a href="#">23</a>
<a href="#">SELLING STOCKHOLDERS</a>	<a href="#">26</a>
<a href="#">PLAN OF DISTRIBUTION</a>	<a href="#">27</a>
<a href="#">SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS</a>	<a href="#">29</a>
<a href="#">WHERE YOU CAN FIND ADDITIONAL INFORMATION</a>	<a href="#">30</a>
<a href="#">DOCUMENTS INCORPORATED BY REFERENCE</a>	<a href="#">30</a>
<a href="#">LEGAL MATTERS</a>	<a href="#">31</a>
<a href="#">EXPERTS</a>	<a href="#">31</a>

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## ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement that we have filed with the Securities and Exchange Commission, which we refer to as the SEC, using a shelf registration process on Form S-3. Under the shelf registration rules, using this prospectus, together with a prospectus supplement, we may sell from time to time, in one or more offerings, on a continuous or delayed basis, the securities described in this prospectus for an aggregate initial offering price of up to \$175,000,000. In addition, from time to time, the stockholders who received shares upon the exchange of the Series A Mandatory Convertible Preferred Stock, as described in this prospectus under the heading "Selling Stockholders," may sell up to 9,825,000 shares of our common stock. The registration statement that contains this prospectus (including the exhibits to the registration statement) contains additional information about us and the securities we are offering under this prospectus. You can read that registration statement at the SEC website at <http://www.sec.gov> or at the SEC office mentioned under the heading "Where You Can Find Additional Information."

This prospectus provides you with a general description of the securities we or the selling stockholders may offer. Each time we or the selling stockholders sell any of these securities, we or the selling stockholders, as applicable, will provide one or more prospectus supplements containing specific information about the terms of that offering. The prospectus supplements may also add, update or change information contained in this prospectus. If information in the prospectus supplement is inconsistent with the information in this prospectus, then the information in the prospectus supplement will apply and will supersede the information in this prospectus. You should carefully read both this prospectus and any prospectus supplement together with additional information described under the heading "Where You Can Find Additional Information" before you invest.

You should rely only on the information contained or incorporated by reference in this prospectus and any prospectus supplement. Neither we or the selling stockholders have authorized anyone to provide you with different or additional information. If anyone provides you with different or additional information, you should not rely on it.

You should not assume that the information in this prospectus or any accompanying prospectus supplement or any document incorporated by reference is accurate as of any date other than the date of that document.

Neither we, the selling stockholders nor anyone acting on either of our behalves is making an offer to sell these securities in any jurisdiction where the offer or sale is not permitted.

In this prospectus, the terms "First Busey," "Company," "we," "us" and "our" refer to First Busey Corporation and its consolidated subsidiaries, collectively, unless the context requires otherwise. References in this prospectus to "Busey Bank" mean Busey Bank, an Illinois state-chartered bank with its main office in Champaign, Illinois. Busey Bank is our wholly-owned banking subsidiary.

## FIRST BUSEY CORPORATION

We are a \$3.7 billion financial holding company headquartered in Champaign, Illinois. We conduct a broad range of financial services through our banking and non-banking subsidiaries. Our principal banking subsidiary is Busey Bank, which has locations in Illinois, Florida and Indiana. We conduct the business of banking and related services through Busey Bank, fiduciary and wealth management services through Busey Wealth Management, Inc. and retail payment processing through FirsTech, Inc. On July 31, 2007, we completed a merger of equals transaction with Main Street Trust, Inc. In connection with that merger, in November 2007, we combined Main Street Bank & Trust, Main Street's banking subsidiary, with Busey Bank and we combined Main Street Bank & Trust's trust department with Busey Trust Company, a subsidiary of Busey Wealth Management. As of March 31, 2010, we had total assets of \$3.7 billion, total deposits of \$3.1 billion and total stockholders' equity of \$328.7 million.

Busey Bank, which was organized in 1868, is an Illinois state-chartered bank with its main office in Champaign, Illinois, and had total assets of \$3.7 billion as of March 31, 2010. Busey Bank has 43 locations, including 34 in central and east-central Illinois, eight in southwest Florida and one in Indianapolis, Indiana. On August 28, 2009, we merged our other banking subsidiary, Busey Bank, N.A., a national bank formed in 1999 with its main office in Fort Myers, Florida, that had total assets of \$420.1 million as of June 30, 2009, with and into Busey Bank. Following the merger, Busey Bank continued operating the eight Florida locations formerly operated by Busey Bank, N.A.

Busey Bank offers a full range of banking services, including commercial, agricultural and real estate loans, and retail banking services, including accepting customary types of demand and savings deposits, making individual, consumer, installment, first mortgage and second mortgage loans, offering money transfers, safe deposit services, IRA, Keogh and other fiduciary services, automated banking and automated fund transfers. Busey Bank's principal sources of income are interest and fees on loans and investments and service fees. Its principal expenses are interest paid on deposits and general operating expenses. Busey Bank's primary markets are downstate Illinois, southwest Florida and central Indiana.

Busey Wealth Management, which is headquartered in Champaign, Illinois, provides asset management, brokerage and fiduciary services to individuals, businesses and foundations. It oversaw approximately \$3.5 billion in assets as of March 31, 2010. For individuals, Busey Wealth Management provides financial planning, investment management, retirement planning, brokerage and trust and estate advisory services. For businesses, it provides investment management, business succession planning and employee retirement plan services. For foundations, it provides services such as investment management, investment strategy consulting and fiduciary services.

FirsTech, which has offices in Decatur, Illinois and Clayton, Missouri, offers the following pay processing solutions: walk-in payments processing for payments delivered by customers to retail pay agents; online bill payment solutions for payments made by customers on a billing company's website; customer service payments for payments accepted over the telephone; direct debit services; electronic concentration of payments delivered by the Automated Clearing House network; money management software and credit card networks; and lockbox remittance processing of payments delivered by mail. FirsTech had 3,500 agent locations in 32 states as of March 31, 2010.

Our principal executive offices are located at 100 W. University Ave., Champaign, Illinois 61820, and our telephone number is (217) 365-4516.

We maintain an Internet website at [www.busey.com](http://www.busey.com). Neither this website nor the information on this website is included or incorporated in, or is a part of, this prospectus.

Additional information about us is included in our filings with the SEC, which are incorporated by reference into this prospectus. See "Where You Can Find Additional Information" and "Documents Incorporated by Reference" in this prospectus.

## **RISK FACTORS**

An investment in our securities involves a high degree of risk. Before making an investment decision, you should carefully read and consider the risk factors incorporated by reference in this prospectus, as well as those contained in any applicable prospectus supplement, as the same may be updated from time to time by our future filings with the SEC under the Securities Exchange Act of 1934, as amended, or the Exchange Act. You should also refer to other information contained in or incorporated by reference in this prospectus and any applicable prospectus supplement, including our financial statements and the related notes incorporated by reference herein. Additional risks and uncertainties not known to us at this time or that we currently deem immaterial may also materially and adversely affect our business and operations.

## USE OF PROCEEDS

Unless the applicable prospectus supplement states otherwise, we will use the net proceeds we receive from the sale of the securities for general corporate purposes, which may include, among other things, investments in or advances to our subsidiaries, working capital, capital expenditures, stock repurchases, debt repayment or the financing of possible acquisitions. The prospectus supplement relating to a particular offering of securities by us will identify the use of proceeds for that offering. Until we use the net proceeds from an offering, we may place the net proceeds in temporary investments or deposit them in a bank.

We will not receive any proceeds from any sale of common stock by the selling stockholders. We will pay the fees and expenses incurred in effecting the registration of the shares of common stock covered by this prospectus, including, without limitation, all registration and filing fees, fees and expenses of our counsel and accountants and reasonable and documented fees and expenses of the selling stockholders' counsel. The selling stockholders will pay any underwriting or broker discounts and commissions incurred by the selling stockholders in selling shares of our common stock.

## RATIO OF EARNINGS TO FIXED CHARGES AND PREFERRED STOCK DIVIDENDS

The following table reflects our ratio of earnings to fixed charges and our ratio of earnings to fixed charges and preferred stock dividends for each of the years in the five-year period ended December 31, 2009, as well as for the three-month period ended March 31, 2010. No shares of our preferred stock were outstanding during the years ended December 31, 2008, 2007, 2006 and 2005, and we did not pay preferred stock dividends during these periods. Consequently, the ratios of earnings to fixed charges and preferred stock dividends for these years are the same as the ratios of earnings to fixed charges.

	For the three months ended March 31, 2010	For the years ended December 31,				
		2009	2008	2007	2006	2005
<b>Ratio of earnings to fixed charges:</b>						
Excluding interest on deposits	4.10	—(1)	—(5)	3.74	3.94	4.50
Including interest on deposits	1.46	—(2)	0.45	1.44	1.62	1.88
<b>Ratio of earnings to fixed charges and preferred stock dividends:</b>						
Excluding interest on deposits	2.78	—(3)	—(5)	3.74	3.94	4.50
Including interest on deposits	1.42	—(4)	0.45	1.44	1.62	1.88

- (1) The earnings coverage ratio, excluding interest on deposits, for the year ended December 31, 2009, was inadequate to cover the fixed charges. The coverage deficiency for the period was \$388.8 million.
- (2) The earnings coverage ratio, including interest on deposits, for the year ended December 31, 2009, was inadequate to cover the fixed charges. The coverage deficiency for the period was \$328.7 million.
- (3) The earnings coverage ratio, including preferred stock dividends and excluding interest on deposits, for the year ended December 31, 2009, was inadequate to cover the fixed charges. The coverage deficiency for the period was \$384.0 million.
- (4) The earnings coverage ratio, including preferred stock dividends and including interest on deposits, for the year ended December 31, 2009, was inadequate to cover the fixed charges. The coverage deficiency for the period was \$323.9 million.



- (5) The earnings coverage ratio, excluding interest on deposits, for the year ended December 31, 2008, was inadequate to cover the fixed charges. The coverage deficiency for the period was \$37.6 million.

For purposes of computing the ratios of earnings to fixed charges:

- earnings represent income from continuing operations before income taxes, plus fixed charges;
- fixed charges, excluding interest on deposits, include interest expense (other than on deposits), the portion of net rental expense deemed to be equivalent to interest on long-term debt, discount amortization and preferred stock dividends; and
- fixed charges, including interest on deposits, include all interest expense, the portion of net rental expense deemed to be equivalent to interest on long-term debt, discount amortization and preferred stock dividends.

## DESCRIPTION OF CAPITAL STOCK

### General

We have the authority to issue 200,000,000 shares of common stock, par value \$0.001 per share, and 1,000,000 shares of preferred stock, par value \$0.001 per share. As of March 31, 2010, we had 66,360,892 shares of common stock outstanding. Additionally, as of March 31, 2010, 100,000 shares of preferred stock have been designated Fixed Rate Cumulative Perpetual Preferred Stock, Series T, which we refer to as our Series T Preferred Stock, all of which are issued and outstanding.

The following description of the material terms of our capital stock and of our articles of incorporation and bylaws is only a summary. You should refer to our articles of incorporation and bylaws, which are included as exhibits to the registration statement of which this prospectus is a part, for their complete terms.

### Common Stock

**General.** Under our articles of incorporation, as amended, we have the authority to issue 200,000,000 shares of our common stock, par value \$0.001 per share, of which 66,360,892 shares were outstanding as of March 31, 2010. As of March 31, 2010, there were 1,584,555 shares of our common stock underlying options that have been issued pursuant to our equity incentive plans. Additionally, we have reserved 4,500,000 shares of our common stock for future issuance under our equity incentive and employee stock purchase plans. Additionally, we have reserved 573,833 shares of our common stock underlying the warrants that are currently held by the U.S. Treasury and issued in connection with our participation in the Capital Purchase Program. Our common stock is listed for trading on the NASDAQ Global Select Market under the symbol "BUSE."

Each share of our common stock has the same relative rights and is identical in all respects to every other share of our common stock. Our shares of common stock are neither redeemable nor convertible, and the holders thereof have no preemptive or subscription rights to purchase any of our securities.

**Voting Rights.** Each outstanding share of our common stock is entitled to one vote on all matters submitted to a vote of stockholders. There is no cumulative voting in the election of directors.

**Liquidation Rights.** Upon our liquidation, dissolution or winding up, the holders of our common stock are entitled to receive, *pro rata*, our assets which are legally available for distribution, after payment of all debts and other liabilities and subject to the prior rights of any holders of preferred stock then outstanding, including the holders of shares of our Series T Preferred Stock.

**Dividends Payable on Shares of Common Stock.** In general, the holders of outstanding shares of our common stock are entitled to receive dividends out of assets legally available therefor at such times and in such amounts as our board of directors may from time to time determine. The ability of our board of directors to declare and pay dividends on our common stock may be affected by both general corporate law considerations and policies of the Board of Governors of the Federal Reserve, which we refer to herein as the Federal Reserve, applicable to bank holding companies. As a Nevada corporation, we are subject to the limitations of Nevada law, which allows us to pay dividends unless, after such dividend, we would not be able to pay our debts as they become due in the usual course of business or our total assets would be less than the sum of our total liabilities plus any amount that would be needed if we were to be dissolved at the time of the dividend payment. As a bank holding company, our ability to declare and pay dividends is subject to the guidelines of the Federal Reserve regarding capital adequacy and dividends. The Federal Reserve guidelines generally require us to review the effects of the cash payment of dividends on our common stock and other Tier 1 capital instruments (*i.e.*, perpetual preferred stock and trust preferred securities) in light of our earnings, capital adequacy and financial condition. In addition, as a matter of policy, the Federal Reserve has indicated that bank holding companies should not pay dividends on common stock (or make distributions on trust preferred securities) using funds from the Capital Purchase Program. As a general matter, the Federal Reserve indicates that the board of directors of a bank holding company should eliminate, defer or significantly reduce the dividends if: (i) the company's net income available to stockholders for the past four quarters, net of dividends previously paid during that period, is not sufficient to fully fund the dividends; (ii) the prospective rate of earnings retention is inconsistent with the company's capital needs and overall current and prospective financial condition; or (iii) the company will not meet, or is in danger of not meeting, its minimum regulatory capital adequacy ratios. The Federal Reserve also possesses enforcement powers over bank holding companies and their non-bank subsidiaries to prevent or remedy actions that represent unsafe or unsound practices or violations of applicable statutes and regulations. Among these powers is the ability to proscribe the payment of dividends by banks and bank holding companies.

Most of our revenues available for the payment of dividends derive from amounts paid to us by the Bank. There are various statutory limitations that limit the ability of the Bank to pay dividends to us. Busey Bank is a state-chartered bank and is subject to the laws and regulations of the Illinois Department of Financial and Professional Regulation and to the regulations of the Federal Deposit Insurance Corporation. If a bank's primary banking regulator determines that the bank is engaged or is about to engage in an unsafe or unsound banking practice, the regulator may require, after notice and hearing, that the bank cease and desist from such practice. Depending on the financial condition of the bank, an unsafe or unsound practice could include the payment of dividends. In particular, the federal banking agencies have indicated that paying dividends that deplete a bank's capital base to an inadequate level would be an unsafe and unsound banking practice.

Under the Illinois Banking Act, Busey Bank generally may not pay dividends in excess of its net profits. Furthermore, under the Federal Deposit Insurance Corporation Improvement Act of 1991, a bank may not pay a dividend if the payment would cause it to become undercapitalized or if it is already undercapitalized. The federal agencies also have issued policy statements that provide that bank holding companies and insured banks generally should pay dividends only out of current operating earnings.

In addition, the dividend rights of holders of our common stock are qualified and subject to the dividend rights of holders of our Series T Preferred Stock described below under the caption "Description of Series T Preferred Stock—Priority of Dividends and Payments Upon Liquidation." In addition, the securities purchase agreement pursuant to which the U.S. Treasury purchased shares of our Series T Preferred Stock contains limitations on the payment of dividends on our common stock from and after March 6, 2009 (including with respect to the payment of cash dividends in excess of

\$0.20 per share, which is the amount of the last quarterly cash dividend declared by us prior to October 14, 2008). Prior to the earlier of (i) March 6, 2012 and (ii) the date on which all shares of Series T Preferred Stock have been redeemed in whole or the U.S. Treasury has transferred the Series T Preferred Stock to unaffiliated third parties, we may not declare or pay any dividend or make any distribution on our common stock other than regular quarterly cash dividends not exceeding \$0.20 per share and dividends payable solely in common stock, without the consent of the U.S. Treasury.

Furthermore, as of March 31, 2010, we had outstanding \$55.0 million of junior subordinated debentures issued to unconsolidated statutory trusts in connection with the issuance by the trusts of preferred securities. The terms of the junior subordinated debentures and the related trust preferred securities provide that we may defer interest on such instruments for up to 20 consecutive quarters. As of March 31, 2010, we were current on the interest payable pursuant to the junior subordinated debentures and the related trust preferred securities. However, if we elect in the future to defer interest on such instruments, our ability to pay dividends on our common stock also will be subject to the prior payment of all accrued but unpaid interest on the junior subordinated debentures and the related trust preferred securities.

**Anti-Takeover Provisions.** Our articles of incorporation, as amended, and our by-laws may have the effect of discouraging, delaying or preventing a change in control or an unsolicited acquisition proposal that a stockholder might consider favorable, including a proposal that might result in the payment of a premium over the market price for the shares held by stockholders. These provisions are summarized in the following paragraphs.

*Authorized Shares of Capital Stock.* Authorized but unissued shares of our common stock and preferred stock under our articles of incorporation could (within the limits imposed by applicable law and NASDAQ Marketplace Rules) be issued in one or more transactions that could make a change of control of us more difficult, and therefore more unlikely. The additional authorized shares could be used to discourage persons from attempting to gain control of us by diluting the voting power of shares then outstanding or increasing the voting power of persons who would support the board of directors in a potential takeover situation, including by preventing or delaying a proposed business combination that is opposed by the board of directors although perceived to be desirable by some stockholders.

*Limitations on Right to Call Special Meetings; Stockholder Proposal Notice Requirements.* Under our by-laws, a special meeting of our stockholders may be called only by: (i) the Chairman of our board of directors, our Chief Executive Officer or our President after receiving the written request of a majority of our board of directors; or (ii) by stockholders owning more than 50% of the total voting power of the outstanding stock entitled to vote generally in the election of our directors. Additionally, our by-laws require that stockholder proposals meet certain advanced notice and minimum informational requirements. These provisions could have the effect of delaying until the next annual stockholders meeting stockholder actions which are favored by the holders of a majority of our outstanding voting securities.

*State Anti-Takeover Laws.* Although under our articles of incorporation we have opted not to be governed by Nevada's anti-takeover law known as the "Combination with Interested Stockholders Statute," we may become subject to this provision in the future. In addition, the Nevada General Corporation Law contains a "Control Share Acquisition Statute," which does not currently apply to us.

The Combination with Interested Stockholders Statute prevents "interested stockholders" and an applicable Nevada corporation from entering into a "combination" unless certain conditions are met. A combination means any merger or consolidation with an "interested stockholder," or any sale, lease, exchange, mortgage, pledge, transfer or other disposition, in one transaction or a series of transactions, with an "interested stockholder" having: (a) an aggregate market value equal to 5% or more of the aggregate market value of the assets of the corporation; (b) an aggregate market value equal to 5% or

more of the aggregate market value of all outstanding shares of the corporation; or (c) representing 10% or more of the earning power or net income of the corporation. An "interested stockholder" means the beneficial owner of 10% or more of the voting shares of a corporation, or an affiliate or associate thereof. A corporation may not engage in a "combination" within three years after the interested stockholder acquires his shares unless the combination or purchase is approved by the board of directors or a majority of the voting power held by disinterested stockholders, or outside three years after the interested stockholder acquires his shares if the consideration to be paid by the interested stockholder is at least equal to the highest of: (a) the highest price per share paid by the interested stockholder within the three years immediately preceding the date of the announcement of the combination or in the transaction in which he became an interested stockholder, whichever is higher; (b) the market value per common share on the date of announcement of the combination or the date the interested stockholder acquired the shares, whichever is higher; or (c) if higher for the holders of preferred stock, the highest liquidation value of the preferred stock.

The Control Share Acquisition Statute prohibits an acquiror, under certain circumstances, from voting shares of a target corporation's stock after crossing certain threshold ownership percentages, unless the acquiror obtains the approval of the target corporation's stockholders. The Control Share Acquisition Statute specifies three thresholds: one-fifth or more but less than one-third, one-third or more but less than a majority and a majority or more, of the voting power of the corporation in the election of directors. Once an acquiror crosses one of the above thresholds, those shares acquired in such offer or acquisition and those shares acquired within the preceding ninety days become "Control Shares" and such Control Shares are deprived of the right to vote until disinterested stockholders restore the right. The Control Shares Acquisition Statute also provides that in the event Control Shares are accorded full voting rights and the acquiring person has acquired a majority or more of all voting power, all other stockholders who do not vote in favor of authorizing voting rights to the Control Shares are entitled to demand payment for the fair value of their shares. The board of directors is to notify the stockholders after such an event has occurred that they have the right to receive the fair value of their shares in accordance with statutory procedures established generally for dissenters' rights. The Control Share Acquisition Statute currently does not apply to us because we do not have 100 or more stockholders of record who are residents of the State of Nevada.

### **Preferred Stock**

**General.** We may issue up to 1,000,000 shares of preferred stock, \$0.001 par value per share, from time to time in one or more series. Our board of directors, without further approval of the stockholders, has the authority to fix the dividend rights and terms, conversion rights, voting rights, redemption rights and terms, liquidation preferences, sinking funds and any other rights, preferences, privileges and restrictions applicable to each series of preferred stock. The issuance of preferred stock, while providing flexibility in connection with possible acquisitions and other corporate purposes, could, among other things, adversely affect the voting power of the holders of our common stock.

A prospectus supplement and any other offering materials relating to any series of preferred stock issued under the registration statement of which this prospectus is a part will specify the terms of the series, including:

- the maximum number of shares in the series and the designation of the series;
- the terms on which dividends, if any, will be paid;
- the terms on which the shares may be redeemed, if at all;
- the liquidation preference, if any;
- the terms of any retirement or sinking fund for the purchase or redemption of the shares of the series;

- the terms and conditions, if any, on which the shares of the series will be convertible into, or exchangeable for, shares of any other class or classes of common or preferred stock;
- the voting rights, if any, of the shares of the series; and
- any or all other preferences and relative, participating, operational or other special rights or qualifications, limitations or restrictions of the shares.

The description of preferred stock above and the description of the terms of a particular series of preferred stock contained in a prospectus supplement and other offering materials, if any, are not complete. You should refer to the certificate of designations with respect to a series of preferred stock for complete information concerning the terms of that series. A copy of the certificate of designations for each series of preferred stock will be filed with the SEC as an exhibit to the registration statement of which this prospectus is a part or as an exhibit to a filing incorporated by reference in the registration statement.

**Series T Preferred Stock.** On March 6, 2009, pursuant to the Capital Purchase Program, we issued to the U.S. Treasury 100,000 shares of Series T Preferred Stock having a liquidation amount per share equal to \$1,000 for a total price of \$100 million. The Series T Preferred Stock has preferential dividend and liquidation rights over our common stock. The Series T Preferred Stock pays cumulative dividends at a rate of 5% per year for the first five years and thereafter at a rate of 9% per year. The Series T Preferred Stock is non-voting, except in limited circumstances. Prior to March 6, 2012, unless we have redeemed all of the Series T Preferred Stock or the U.S. Treasury has transferred all of the Series T Preferred Stock to third parties, the consent of the U.S. Treasury will be required for us to, among other things, repurchase or otherwise acquire any of our shares of common stock or trust preferred securities, subject to certain limited exceptions. In addition, so long as any shares of our Series T Preferred Stock are outstanding, we may not repurchase or otherwise acquire any of our outstanding common stock unless we are current in our dividend payments on our outstanding Series T Preferred Stock. The terms of the Series T Preferred Stock provide that we may not redeem the Series T Preferred Stock without regulatory approval. The U.S. Treasury has indicated that we are permitted to redeem the shares of Series T Preferred Stock at any time, without penalty or the need to raise additional capital, subject to the U.S. Treasury's consultation with the Federal Reserve Board.

**Dividends Payable on Shares of Series T Preferred Stock.** Holders of shares of Series T Preferred Stock are entitled to receive if, as and when declared by our board of directors or a duly authorized committee of the board, out of assets legally available for payment, cumulative cash dividends at a rate per annum of 5% per share on a liquidation preference of \$1,000 per share of Series T Preferred Stock with respect to each dividend period up to, but excluding, March 7, 2014. From and after March 7, 2014, holders of shares of Series T Preferred Stock are entitled to receive cumulative cash dividends at a rate per annum of 9% per share on a liquidation preference of \$1,000 per share of Series T Preferred Stock with respect to each dividend period thereafter.

Dividends are payable quarterly in arrears on each February 15, May 15, August 15 and November 15, each a dividend payment date, starting with May 15, 2009. If any dividend payment date is not a business day, then the next business day will be the applicable dividend payment date, and no additional dividends will accrue as a result of the postponement of the dividend payment date. Dividends payable during any dividend period are computed on the basis of a 360-day year consisting of twelve 30-day months. Dividends payable with respect to the Series T Preferred Stock are payable to holders of record of shares of Series T Preferred Stock on the date that is 15 calendar days immediately preceding the applicable dividend payment date or such other record date as the board of directors or any duly authorized committee of the board determines, so long as such record date is not more than 60 nor less than 10 days prior to the applicable dividend payment date.

If we determine not to pay any dividend or a full dividend with respect to the Series T Preferred Stock, we must provide written notice to the holders of shares of Series T Preferred Stock prior to the applicable dividend payment date. Unpaid dividends on the Series T Preferred Stock will compound. We are subject to various regulatory policies and requirements relating to the payment of dividends, including requirements to maintain adequate capital above regulatory minimums. The Federal Reserve is authorized to determine, under certain circumstances relating to the financial condition of a bank holding company, such as us, that the payment of dividends would be an unsafe or unsound practice and to prohibit payment thereof. See Item 1 of our annual report on Form 10-K for the year ended December 31, 2009 under the captions "Supervision, Regulation and Other Factors—First Busey—*Dividend Payments*" and "—the Bank—*Dividend Payments*" for statutory and regulatory restrictions on our ability to pay dividends.

*Priority of Dividends and Payments Upon Liquidation.* With respect to the payment of dividends and the amounts to be paid upon liquidation, the Series T Preferred Stock will rank:

- senior to our common stock and all other equity securities designated as ranking junior to the Series T Preferred Stock; and
- at least equally with all other equity securities designated as ranking on a parity with the Series T Preferred Stock, or parity stock, with respect to the payment of dividends and distribution of assets upon our liquidation, dissolution or winding-up.

So long as any shares of Series T Preferred Stock remain outstanding, unless all accrued and unpaid dividends for all prior dividend periods have been paid or are contemporaneously declared and paid in full, we may not pay or declare any dividends on our common stock or other junior stock, other than a dividend payable solely in common stock. We and our subsidiaries also may not purchase, redeem or otherwise acquire for consideration any shares of our common stock or other junior stock unless we have paid in full all accrued dividends on the Series T Preferred Stock for all prior dividend periods, other than:

- purchases, redemptions or other acquisitions of our common stock or other junior stock in connection with the administration of our employee benefit plans in the ordinary course of business pursuant to a publicly announced repurchase plan up to the increase in diluted shares outstanding resulting from the grant, vesting or exercise of equity-based compensation;
- purchases or other acquisitions by any of our broker-dealer subsidiaries, of which we currently have none, solely for the purpose of market-making, stabilization or customer facilitation transactions in junior stock or parity stock in the ordinary course of its business;
- purchases or other acquisitions by any of our broker-dealer subsidiaries, of which we currently have none, for resale pursuant to an offering by us of our stock that is underwritten by the related broker-dealer subsidiary;
- any dividends or distributions of rights or junior stock in connection with any stockholders' rights plan or any redemption or repurchases of rights pursuant to any stockholders' rights plan;
- acquisition of record ownership of junior stock or parity stock for the beneficial ownership of any other person who is not us or a subsidiary of us, including as trustee or custodian; and
- the exchange or conversion of junior stock for or into other junior stock or of parity stock for or into other parity stock or junior stock, but only to the extent that such acquisition is required pursuant to binding contractual agreements entered into before March 6, 2009 or any subsequent agreement for the accelerated exercise, settlement or exchange thereof for common stock.

On any dividend payment date for which full dividends are not paid, or declared and funds set aside therefor, on the Series T Preferred Stock and any other parity stock, all dividends paid or

declared for payment on that dividend payment date (or, with respect to parity stock with a different dividend payment date, on the applicable dividend date therefor falling within the dividend period and related to the dividend payment date for the Series T Preferred Stock), with respect to the Series T Preferred Stock and any other parity stock must be declared ratably among the holders of any such shares who have the right to receive dividends, in proportion to the respective amounts of the undeclared and unpaid dividends relating to the dividend period.

Subject to the foregoing, such dividends (payable in cash, stock or otherwise) as may be determined by our board of directors (or a duly authorized committee of the board) may be declared and paid on our common stock and any other stock ranking equally with or junior to the Series T Preferred Stock from time to time out of any funds legally available for such payment, and the Series T Preferred Stock will not be entitled to participate in any such dividend.

*Redemption.* As permitted under the provisions of the American Recovery and Reinvestment Act of 2009, which we refer to herein as ARRA, as implemented by guidance issued by the U.S. Treasury, prior to March 6, 2012, we may redeem the Series T Preferred Stock at any time, from any source of funds and without being subject to any waiting period; provided, that any such redemption may only come after consultation with the U.S. Treasury and Federal Reserve and must consist of at least 25% of the issue price of the Series T Preferred Stock, which for us represents \$25,000,000. In considering any redemption request, the U.S. Treasury and Federal Reserve have stated that they will use the existing supervisory procedures for approving redemption requests for capital instruments, which generally will take into account the contribution of the U.S. Treasury's investment amount to our overall soundness, capital adequacy and ability to lend. In any redemption, the redemption price will be an amount equal to the per share liquidation amount plus accrued and unpaid dividends to but excluding the date of redemption. After March 6, 2012, the Series T Preferred Stock may be redeemed at any time, subject to the approval of the Federal Reserve, in whole or in part, subject to notice as described below.

The Series T Preferred Stock will not be subject to any mandatory redemption, sinking fund or similar provisions. Holders of shares of Series T Preferred Stock have no right to require the redemption or repurchase of the Series T Preferred Stock.

If we seek to redeem fewer than all of the outstanding shares of Series T Preferred Stock, we will select the shares we will redeem either *pro rata* from the holders of record of shares of Series T Preferred Stock in proportion to the number of shares held by those holders or in such other manner as our board of directors or a committee thereof may determine to be fair and equitable. We will mail notice of any redemption of Series T Preferred Stock by first class mail, postage prepaid, addressed to the holders of record of the shares of Series T Preferred Stock to be redeemed at their respective last addresses appearing on our books. This mailing will be at least 30 days and not more than 60 days before the date fixed for redemption. Any notice mailed or otherwise given as described in this paragraph will be conclusively presumed to have been duly given, whether or not the holder receives the notice, and failure duly to give the notice by mail or otherwise, or any defect in the notice or in the mailing or provision of the notice, to any holder of Series T Preferred Stock designated for redemption will not affect the redemption of any other Series T Preferred Stock. Each notice of redemption will set forth the applicable redemption date, the redemption price, the place of redemption and the number of shares of Series T Preferred Stock we will redeem (and, if less than all shares of Series T Preferred Stock held by the applicable holder, the number of shares we will redeem from the holder).

Shares of Series T Preferred Stock that we redeem, repurchase or otherwise acquire will revert to authorized but unissued shares of our preferred stock.

*Liquidation Rights.* If we voluntarily or involuntarily liquidate, dissolve or wind up our affairs, holders of Series T Preferred Stock will be entitled to receive an amount per share, referred to as the total liquidation amount, equal to the fixed liquidation preference of \$1,000 per share, plus any accrued and unpaid dividends, whether or not declared, to the date of payment.

Holders of the Series T Preferred Stock will be entitled to receive the total liquidation amount out of our assets that are available for distribution to stockholders, after payment or provision for payment of our debts and other liabilities but before any distribution of assets is made to holders of our common stock or any other shares ranking, as to that distribution, junior to the Series T Preferred Stock.

If our assets are not sufficient to pay the total liquidation amount in full to all holders of Series T Preferred Stock and all holders of any shares of outstanding parity stock, the amounts paid to the holders of Series T Preferred Stock and other shares of parity stock will be paid *pro rata* in accordance with the respective total liquidation amount for those holders. If the total liquidation amount per share of Series T Preferred Stock has been paid in full to all holders of Series T Preferred Stock and other shares of parity stock, the holders of our common stock or any other shares ranking, as to such distribution, junior to the Series T Preferred Stock will be entitled to receive all of our remaining assets according to their respective rights and preferences.

For purposes of the liquidation rights, neither the sale, conveyance, exchange or transfer of all or substantially all of our property and assets, nor the consolidation or merger by us with or into any other corporation or by another corporation with or into us, will constitute a liquidation, dissolution or winding-up of our affairs.

*Voting Rights.* Except as indicated below or otherwise required by law, the holders of Series T Preferred Stock will not have any voting rights.

If the dividends on the Series T Preferred Stock have not been paid for an aggregate of six quarterly dividend periods or more (whether or not consecutive) the authorized number of directors then constituting our board of directors will be increased by two. Holders of Series T Preferred Stock, together with the holders of any outstanding parity stock with like voting rights, referred to as voting parity stock, voting as a single class, will be entitled to elect two additional members of our board of directors, referred to as the preferred stock directors, at the next annual meeting (or at a special meeting called for the purpose of electing the preferred stock directors prior to the next annual meeting) and at each subsequent annual meeting until all accrued and unpaid dividends for all past dividend periods have been paid in full. The election of any preferred stock director is subject to the qualification that the election would not cause us to violate the corporate governance requirement of the NASDAQ Global Select Market (or any other exchange on which our securities may be listed) that listed companies must have a majority of independent directors.

Upon the termination of the right of the holders of Series T Preferred Stock and voting parity stock to vote for preferred stock directors, as described above, the preferred stock directors will immediately cease to be qualified as directors, their term of office will terminate immediately and the number of authorized directors of the Company will be reduced by the number of preferred stock directors that the holders of Series T Preferred Stock and voting parity stock had been entitled to elect. The holders of a majority of shares of Series T Preferred Stock and voting parity stock, voting as a class, may remove any preferred stock director, with or without cause, and the holders of a majority of the shares Series T Preferred Stock and voting parity stock, voting as a class, may fill any vacancy created by the removal of a preferred stock director. If the office of a preferred stock director becomes vacant for any other reason, the remaining preferred stock director may choose a successor to fill such vacancy for the remainder of the unexpired term.

So long as any shares of Series T Preferred Stock are outstanding, in addition to any other vote or consent of stockholders required by law or by our articles of incorporation, the vote or consent of the holders of at least 66<sup>2</sup>/<sub>3</sub>% of the shares of Series T Preferred Stock at the time outstanding, voting



separately as a single class, given in person or by proxy, either in writing without a meeting or by vote at any meeting called for the purpose, shall be necessary for effecting or validating:

- any amendment or alteration of our articles of incorporation to authorize or create or increase the authorized amount of, or any issuance of, any shares of, or any securities convertible into or exchangeable or exercisable for shares of, any class or series of capital stock ranking senior to the Series T Preferred Stock with respect to payment of dividends and/or distribution of assets upon our liquidation, dissolution or winding up;
- any amendment, alteration or repeal of any provision of the certificate of designations for the Series T Preferred Stock so as to adversely affect the rights, preferences, privileges or voting powers of the Series T Preferred Stock; or
- any consummation of a binding share exchange or reclassification involving the Series T Preferred Stock or of a merger or consolidation of us with another entity, unless the shares of Series T Preferred Stock remain outstanding following any such transaction or, if we are not the surviving entity, are converted into or exchanged for preference securities and such remaining outstanding shares of Series T Preferred Stock or preference securities have rights, references, privileges and voting powers that are not materially less favorable than the rights, preferences, privileges or voting powers of the Series T Preferred Stock, taken as a whole.

To the extent of the voting rights of the Series T Preferred Stock, each holder of Series T Preferred Stock will have one vote for each \$1,000 of liquidation preference to which such holder's shares of Series T Preferred Stock are entitled.

The foregoing voting provisions will not apply if, at or prior to the time when the vote or consent would otherwise be required, all outstanding shares of Series T Preferred Stock have been redeemed or called for redemption upon proper notice and sufficient funds have been set aside by us for the benefit of the holders of Series T Preferred Stock to effect the redemption.

## DESCRIPTION OF DEBT SECURITIES

### General

The debt securities will be:

- our direct unsecured general obligations;
- either senior debt securities, subordinated debt securities or junior subordinated debt securities; and
- issued under separate indentures among us and a trustee which will be named in a prospectus supplement and a supplemental indenture.

We may issue debt securities in one or more series.

If we offer senior debt securities, we will issue them under a senior indenture. If we issue subordinated debt securities or junior subordinated debentures, we will issue them under a subordinated indenture. A form of each indenture will be filed with the SEC as an exhibit to the registration statement of which this prospectus is a part or as an exhibit to a filing incorporated by reference in the registration statement. We have not restated the contemplated terms of either indenture in its entirety in this description. Investors in any debt securities we may issue should read the relevant indenture because it, and not this description, will control their rights as holders of the debt securities. Capitalized terms used in the summary have the meanings specified in the indentures.

Because we are a holding company, our right and, accordingly, the right of our creditors and stockholders, including the holders of the securities offered by this prospectus and any prospectus supplement, to participate in any distribution of assets of any of our subsidiaries upon its liquidation,

reorganization or similar proceeding is subject to the prior claims of creditors of that subsidiary, except to the extent that our claims as a creditor of the subsidiary may be recognized.

### **Specific Terms of Each Series of Debt Securities in the Prospectus Supplement**

A prospectus supplement relating to any series of debt securities being offered will describe the specific terms of the debt securities being offered. These terms will include some or all of the following, as applicable:

- the issuer of the debt securities;
- the co-issuers of the debt securities, if any;
- the guarantors of the debt securities, if any;
- whether the debt securities are senior or subordinated debt securities and, if subordinated debt securities, whether or not they are junior to any other subordinated debt securities;
- the title of the debt securities;
- the total principal amount of the debt securities;
- the process to authenticate and deliver the debt securities and the application of the proceeds thereof;
- the assets, if any, that are pledged as security for the payment of the debt securities;
- the terms of any release, or the release and substitution of, any assets pledged as security for the payment of the debt securities;
- whether we will issue the debt securities in individual certificates to each holder in registered form, or in the form of temporary or permanent global securities held by a depository on behalf of holders;
- the prices at which we will issue the debt securities;
- the portion of the principal amount that will be payable if the maturity of the debt securities is accelerated;
- the currency or currency unit in which the debt securities will be payable, if not U.S. dollars;
- the dates on which the principal of the debt securities will be payable;
- the interest rate that the debt securities will bear and the interest payment dates for the debt securities;
- any conversion or exchange provisions;
- any optional redemption provisions;
- any sinking fund or other provisions that would obligate us to repurchase or otherwise redeem the debt securities;
- whether the debt securities will be convertible into shares of common stock, shares of preferred stock or depositary shares and, if so, the terms and conditions of any such conversion, and, if convertible into shares of preferred stock or depositary shares, the terms of such preferred stock or depositary shares
- any changes to or additional events of default or covenants; and
- any other terms of the debt securities.

We may offer and sell debt securities, including original issue discount debt securities, at a substantial discount below their principal amount. The relevant prospectus supplement will describe certain U.S. federal income tax and any other considerations applicable to those securities. In addition, the prospectus supplement may describe certain U.S. federal income tax or other considerations applicable to any debt securities that are denominated in a currency other than U.S. dollars.

## **Guarantees**

If specified in the prospectus supplement relating to a series of debt securities, subsidiaries of ours that are specified in the prospectus supplement may unconditionally guarantee to each holder and the trustee, on a joint and several basis (but subject, with respect to the Bank, to obtaining any required regulatory approvals), the full and prompt payment of principal of, premium, if any, and interest on the debt securities of that series when and as the same become due and payable, whether at maturity, upon redemption or repurchase, by declaration of acceleration or otherwise. If a series of debt securities is guaranteed, such series may be guaranteed by all subsidiaries other than subsidiaries without material assets. The prospectus supplement will describe any limitation on the maximum amount of any particular guarantee and the conditions under which guarantees may be released.

The guarantees will be general obligations of the guarantors. Guarantees of subordinated debt securities will be subordinated to the senior indebtedness of the guarantors on the same basis as the subordinated debt securities are subordinated to the senior indebtedness of the issuer. "Senior indebtedness" will be defined in a supplemental indenture or authorizing resolutions respecting any issuance of a series of subordinated debt securities, and the definition will be set forth in the prospectus supplement.

## **Consolidation, Merger or Asset Sale**

Each indenture will, in general, allow us to consolidate or merge with or into another domestic entity. It will also allow us to sell, lease, transfer or otherwise dispose of all or substantially all of our assets to another domestic entity. If this happens, the remaining or acquiring entity must assume all of our responsibilities and liabilities under the indenture including the payment of all amounts due on the debt securities and performance of applicable indenture covenants.

However, each indenture will impose requirements with respect to any consolidation or merger with or into an entity, or any sale, lease, transfer or other disposition of all or substantially all of our assets, including:

- the remaining or acquiring entity must be organized under the laws of the United States, any state or the District of Columbia;
- the remaining or acquiring entity must assume our obligations under the indenture; and
- immediately after giving effect to the transaction, no event of default may exist.

The remaining or acquiring entity will be substituted for us in the indenture with the same effect as if it had been an original party to the indenture, and we will be relieved from any further obligations under the indenture.

## **No Protection in the Event of a Change of Control**

Unless otherwise set forth in the prospectus supplement, the debt securities will not contain any provisions that protect the holders of the debt securities in the event of a change of control of us or in the event of a highly leveraged transaction, whether or not such transaction results in a change of control of us.

## **Modification of Indentures**

We may supplement or amend an indenture if the holders of a majority in aggregate principal amount of the outstanding debt securities of all series issued under the indenture affected by the supplement or amendment consent to it. Further, the holders of a majority in aggregate principal amount of the outstanding debt securities of any series may waive past defaults under the indenture and compliance by us with our covenants with respect to the debt securities of that series only. Those

holders may not, however, waive any default in any payment on any debt security of that series or compliance with a provision that cannot be supplemented or amended without the consent of each holder affected. Without the consent of each outstanding debt security affected, no modification of an indenture or waiver may:

- reduce the principal amount of debt securities whose holders must consent to an amendment, supplement or waiver;
- reduce the principal of or change the fixed maturity of any debt security;
- reduce or waive the premium payable upon redemption or alter or waive the provisions with respect to the redemption of the debt securities (except as may be permitted in the case of a particular series of debt securities);
- reduce the rate of or change the time for payment of interest on any debt security;
- waive an event of default in the payment of principal of or premium, if any, or interest on the debt securities (except a rescission of acceleration of the debt securities by the holders of at least a majority in aggregate principal amount of the debt securities and a waiver of the payment default that resulted from such acceleration);
- except as otherwise permitted under the indenture, release any lien or encumbrance that may have been granted with respect to the debt securities;
- make any debt security payable in currency other than that stated in the debt securities;
- in the case of any subordinated debt security, make any change in the subordination provisions that adversely affects the rights of any holder under those provisions;
- make any change in the provisions of the indenture relating to waivers of past defaults or the rights of holders of debt securities to receive payments of principal of or premium, if any, or interest on the debt securities;
- waive a redemption payment with respect to any debt security (except as may be permitted in the case of a particular series of debt securities);
- except as otherwise permitted in the indenture, release any guarantor from its obligations under its guarantee or the indenture or change any guarantee in any manner that would adversely affect the rights of holders; or
- make any change in the preceding amendment, supplement and waiver provisions (except to increase any percentage set forth therein).

We may supplement or amend an indenture without the consent of any holders of the debt securities in certain circumstances, including:

- to establish the form of terms of any series of debt securities;
- to cure any ambiguity, defect or inconsistency;
- to provide for uncertificated notes in addition to or in place of certified notes;
- to provide for the assumption of our or a guarantor's obligations to holders of debt securities in the case of a merger or consolidation or disposition of all or substantially all of our or a guarantor's assets;
- in the case of any subordinated debt security, to make any change in the subordination provisions that limits or terminates the benefits applicable to any holder of senior indebtedness of us, any co-issuer or guarantor, as applicable;

- to add or release co-issuers pursuant to the terms of the indenture;
- to add or release guarantors pursuant to the terms of the indenture;
- to make any changes that would provide any additional rights or benefits to the holders of debt securities or that do not, taken as a whole, materially adversely affect the rights under the indenture of any holder of debt securities;
- to comply with requirements of the SEC in order to effect or maintain the qualification of the indenture under the Trust Indenture Act;
- to evidence or provide for the acceptance of appointment under the indenture of a successor trustee;
- to add any additional events of default; or
- to secure the debt securities and/or the guarantees.

#### **Events of Default and Remedies**

Unless otherwise indicated in the prospectus supplement, an "event of default," when used in an indenture, will mean any of the following with respect to the debt securities of any series:

- failure to pay when due the principal of or any premium on any debt security of that series;
- failure to pay, within 90 days of the due date, interest on any debt security of that series;
- failure to pay when due any sinking fund payment with respect to any debt securities of that series;
- failure to comply with the requirements described under "—Consolidation, Merger or Asset Sale";
- failure to perform any other covenant in the indenture and such non-performance continues for the time period set forth in the indenture;
- certain events of bankruptcy, insolvency or reorganization; or
- any other event of default provided under the terms of the debt securities of that series.

An event of default for a particular series of debt securities will not necessarily constitute an event of default for any other series of debt securities issued under an indenture. The trustee may withhold notice to the holders of debt securities of any default (except in the payment of principal, premium, if any, or interest) if it considers such withholding of notice to be in the best interests of the holders.

Other than its duties in case of a default, a trustee is not obligated to exercise any of its rights or powers under either indenture at the request, order or direction of any holders, unless the holders offer the trustee reasonable security or indemnity. If they provide this reasonable security or indemnification, the holders of a majority in aggregate principal amount of any series of debt securities may direct the time, method and place of conducting any proceeding or any remedy available to the trustee, or exercising any power conferred upon the trustee, for that series of debt securities.

#### **No Limit on Amount of Debt Securities**

The indenture will not limit the amount of debt securities that we may issue, unless we indicate otherwise in a prospectus supplement. The indenture will allow us to issue debt securities of any series up to the aggregate principal amount that we authorize.

## **Registration of Notes**

We will issue debt securities of a series only in registered form, without coupons, unless otherwise indicated in the prospectus supplement.

## **Minimum Denominations**

Unless the prospectus supplement states otherwise, the debt securities will be issued only in principal amounts in integral multiples of \$1,000.

## **No Personal Liability**

None of the past, present or future incorporators, directors, officers, employees, stockholders, managers, members or trustees of us, any co-issuer or any guarantor will have any liability for the obligations of our company, any co-issuer or any guarantors under the indenture or the debt securities or for any claim based on such obligations or their creation. Each holder of debt securities by accepting a debt security waives and releases all such liability. The waiver and release are part of the consideration for the issuance of the debt securities. The waiver may not be effective with respect to claims arising under federal securities laws, however, and it is the view of the SEC that such a waiver is against public policy.

## **Payment and Transfer**

The trustee initially will act as paying agent and registrar under each indenture. The issuers may change the paying agent or registrar without prior notice to the holders of debt securities, and the issuers or any of their subsidiaries may act as paying agent or registrar.

If a holder of debt securities has given wire transfer instructions to the issuers, the issuers will make all payments on the debt securities in accordance with those instructions. All other payments on the debt securities will be made at the corporate trust office of the trustee, unless we elect to make interest payments by check mailed to the holders at their addresses set forth in the debt security register.

The trustee and any paying agent will repay to us upon request any funds held by them for payments on the debt securities that remain unclaimed for two years after the date upon which that payment has become due. After payment to us, holders entitled to the money must look to us for payment as general creditors.

## **Exchange, Registration and Transfer**

Debt securities of any series may be exchangeable for other debt securities of the same series, the same total principal amount and the same terms but in different authorized denominations in accordance with the indenture. Holders may present debt securities for exchange or registration of transfer at the office of the registrar. The registrar will effect the transfer or exchange when it is satisfied with the documents of title and identity of the person making the request. We will not charge a service fee for any registration of transfer or exchange of the debt securities. We may, however, require the payment of any tax or other governmental charge payable for that registration.

Unless the prospectus supplement and the indenture state otherwise, we will not be required:

- to issue, register the transfer of, or exchange debt securities of a series either during a period beginning 15 business days prior to the selection of debt securities of that series for redemption and ending on the close of business on the day of mailing of the relevant notice of redemption or repurchase, or between a record date and the next succeeding interest payment date; or

- to register the transfer of or exchange any debt security called for redemption or repurchase, except the unredeemed portion of any debt security we are redeeming or repurchasing in part.

### **Provisions Relating only to Senior Debt Securities**

Senior debt securities will rank equally in right of payment with all of our other senior and unsubordinated debt. Any senior debt securities will be effectively subordinated, however, to all of our secured debt to the extent of the value of the collateral for that debt. We will disclose the amount of our secured debt in the prospectus supplement with respect to the issuance of any senior debt securities.

### **Provisions Relating only to the Subordinated Debt Securities**

**Subordination.** The subordinated debt securities will be subordinate to all of our existing and future senior debt. "Senior debt" includes senior debt securities and means:

- any of our indebtedness for borrowed or purchased money, whether or not evidenced by bonds, debentures, notes or other written instruments;
- our obligations under letters of credit;
- any of our indebtedness or other obligations with respect to commodity contracts, interest rate and currency swap agreements, cap, floor and collar agreements, currency spot and forward contracts, and other similar agreements or arrangements designed to protect against fluctuations in currency exchange or interest rates; and
- any guarantees, endorsements (other than by endorsement of negotiable instruments for collection in the ordinary course of business) or other similar contingent obligations in respect of obligations of others of a type described above, whether or not such obligation is classified as a liability on a balance sheet prepared in accordance with generally accepted accounting principles,

in each case whether outstanding on the date of execution of the subordinated indenture or thereafter incurred, other than obligations expressly on a parity with or junior to the subordinated debt securities.

Our junior subordinated debt securities will rank junior to the subordinated debt securities.

If certain events in bankruptcy, insolvency or reorganization occur, we will first pay all senior debt, including any interest accrued after the events occur, in full before we make any payment or distribution, whether in cash, securities or other property, on account of the principal of or interest on the subordinated debt securities. In such an event, we will pay or deliver directly to the holders of senior debt any payment or distribution otherwise payable or deliverable to holders of the subordinated debt securities. We will make the payments to the holders of senior debt according to priorities existing among those holders until we have paid all senior debt, including accrued interest, in full.

If such events in bankruptcy, insolvency or reorganization occur, after we have paid in full all amounts owed on senior debt, the holders of subordinated debt securities, together with the holders of any of our other obligations ranking equal with those subordinated debt securities, will be entitled to receive from our remaining assets any principal, premium or interest due at that time on the subordinated debt securities and such other obligations before we make any payment or other distribution on account of any of our capital stock or obligations ranking junior to those subordinated debt securities.

If we violate the subordinated indenture by making a payment or distribution to holders of the subordinated debt securities before we have paid all of the senior debt in full, then such holders of the subordinated debt securities will be deemed to have received the payments or distributions in trust for the benefit of, and will have to pay or transfer the payments or distributions to, the holders of the

senior debt outstanding at the time. The payment or transfer to the holders of the senior debt will be made according to the priorities existing among those holders.

Because of the subordination, if we become insolvent, holders of senior debt may receive more, ratably, and holders of the subordinated debt securities having a claim pursuant to those securities may receive less, ratably, than our other creditors.

**No Limitation on Amount of Senior Debt.** The subordinated indenture will not limit the amount of senior debt that we, any co-issuer or any guarantor may incur, unless otherwise indicated in the prospectus supplement.

### **Book Entry, Delivery and Form**

The debt securities of a particular series may be issued in whole or in part in the form of one or more global certificates that will be deposited with the trustee as custodian for The Depository Trust Company, New York, New York, or DTC. This means that we would not issue certificates to each holder. Instead, one or more global debt securities would be issued to DTC, which would keep a computerized record of its participants (for example, your broker) whose clients have purchased the debt securities. The participant would then keep a record of its clients who purchased the debt securities. Unless it is exchanged in whole or in part for a certificated debt security, a global debt security may not be transferred, except that DTC, its nominees and their successors may transfer a global debt security as a whole to one another.

Beneficial interests in global debt securities will be shown on, and transfers of global debt securities will be made only through, records maintained by DTC and its participants.

DTC has provided us the following information: DTC is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the United States Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code and a "clearing agency" registered under the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds securities that its participants, which are referred to as direct participants, deposit with DTC. DTC also records the settlement among direct participants of securities transactions, such as transfers and pledges, in deposited securities through computerized records for direct participants' accounts. This eliminates the need to exchange certificates. Direct participants include securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations.

DTC's book entry system is also used by other organizations such as securities brokers and dealers, banks and trust companies that work through a direct participant. The rules that apply to DTC and its participants are on file with the SEC.

We will wire all payments on global debt securities to DTC's nominee. We and the trustee will treat DTC's nominee as the owner of the global debt securities for all purposes. Accordingly, we, the trustee and any paying agent will have no direct responsibility or liability to pay amounts due on the global debt securities to owners of beneficial interests in the global debt securities.

It is DTC's current practice, upon receipt of any payment on global debt securities, to credit direct participants' accounts on the payment date according to their respective holdings of beneficial interests in the global debt securities as shown on DTC's records. In addition, it is DTC's current practice to assign any consenting or voting rights to direct participants whose accounts are credited with debt securities on a record date, by using an omnibus proxy. Payments by participants to owners of beneficial interests in the global debt securities, and voting by participants, will be governed by the customary practices between the participants and owners of beneficial interests, as is the case with debt securities held for the account of customers registered in "street name." However, payments will be the responsibility of the participants and not of DTC, the trustee or us.



Debt securities represented by a global debt security will be exchangeable for certificated debt securities with the same terms in authorized denominations only if:

- DTC notifies us that it is unwilling or unable to continue as depository or if DTC ceases to be a clearing agency registered under applicable law and, in either event, a successor depository is not appointed by us within 90 days; or
- we determine not to require all of the debt securities of a series to be represented by a global debt security.

#### **Satisfaction and Discharge; Defeasance**

Each indenture will be discharged and will cease to be of further effect as to all outstanding debt securities of any series issued thereunder, when:

- either:
  - all outstanding debt securities of that series that have been authenticated (except lost, stolen or destroyed debt securities that have been replaced or paid and debt securities for whose payment money has theretofore been deposited in trust and thereafter repaid to us) have been delivered to the trustee for cancellation; or
  - all outstanding debt securities of that series that have not been delivered to the trustee for cancellation have become due and payable by reason of the giving of a notice of redemption or otherwise or will become due and payable at their stated maturity within one year or are to be called for redemption within one year under arrangements satisfactory to the trustee and in any case we have irrevocably deposited or caused to be irrevocably deposited with the trustee as trust funds cash in U.S. dollars, non-callable U.S. government obligations or a combination thereof, in such amounts as will be sufficient, without consideration of any reinvestment of interest, to pay and discharge the entire indebtedness of such debt securities not delivered to the trustee for cancellation, with respect to principal, premium, if any, and accrued interest to the date of such deposit (in the case of debt securities that have been due and payable) or the stated maturity or redemption date;
- we have paid or caused to be paid all other sums payable by us under the indenture; and
- we have delivered an officers' certificate and an opinion of counsel to the trustee stating that all conditions precedent to satisfaction and discharge have been satisfied.

The debt securities of a particular series will be subject to legal or covenant defeasance to the extent, and upon the terms and conditions, set forth in the prospectus supplement.

#### **Governing Law**

Unless the prospectus supplement and the indenture state otherwise, each indenture and all of the debt securities will be governed by the laws of the State of New York.

#### **The Trustee**

We will enter into the indenture with a trustee that is qualified to act under the Trust Indenture Act of 1939, as amended, and with any other trustees chosen by us and appointed in a supplemental indenture for a particular series of debt securities.

**Resignation or Removal of Trustee.** If the trustee has or acquires a conflicting interest within the meaning of the Trust Indenture Act, the trustee must either eliminate its conflicting interest or resign, to the extent and in the manner provided by, and subject to the provisions of, the Trust Indenture Act

and the applicable indenture. Any resignation will require the appointment of a successor trustee under the applicable indenture in accordance with the terms and conditions of such indenture.

The trustee may resign or be removed by us with respect to one or more series of debt securities and a successor trustee may be appointed to act with respect to any such series. The holders of a majority in aggregate principal amount of the debt securities of any series may remove the trustee with respect to the debt securities of such series.

**Limitations on Trustee if It Is Our Creditor.** Each indenture will contain limitations on the right of the trustee, if it becomes a creditor of an issuer or a guarantor, to obtain payment of claims, or to realize on property it may receive in respect of any such claim as security or otherwise.

**Annual Trustee Report to Holders of Debt Securities.** The trustee is required to submit an annual report to the holders of the debt securities regarding, among other things, the trustee's eligibility to serve as such, the priority of the trustee's claims regarding advances made by it, and any action taken by the trustee materially affecting the debt securities.

**Certificates and Opinions to Be Furnished to Trustee.** Each indenture will provide that, in addition to other certificates or opinions that may be specifically required by other provisions of an indenture, every application by us for action by the trustee must be accompanied by a certificate from one or more of our officers and an opinion of counsel (who may be our counsel) stating that, in the opinion of the signers, all conditions precedent to such action have been complied with by us.

## DESCRIPTION OF WARRANTS

The following describes some of the general terms and provisions of warrants we may issue. Warrants may be issued independently or together with any other securities offered by any prospectus supplement and other offering materials, if any, and may be attached to or separate from those securities. Warrants may be issued under warrant agreements to be entered into between us and a warrant agent or may be represented by individual warrant certificates, all as specified in the applicable prospectus supplement and other offering materials, if any. The warrant agent, if any, for any series of warrants will act solely as our agent and will not assume any obligation or relationship of agency or trust for or with any holders or beneficial owners of warrants.

A prospectus supplement and any other offering materials relating to any warrants we may issue will specify the terms of the warrants, including:

- the title and aggregate number of the warrants;
- the price or prices at which the warrants will be issued;
- the title, amount and terms of the securities purchasable upon exercise of the warrants;
- the title, amount and terms of the securities offered with the warrants and the number of warrants issued with each such security;
- the date, if any, on and after which the warrants and the related securities will be separately transferable;
- the price at which the related securities may be purchased upon exercise of the warrants;
- the exercise period for the warrants;
- the minimum or maximum number of warrants which may be exercised at any one time;
- any applicable anti-dilution, redemption or call provisions;
- any applicable book-entry provisions; and

- any other terms of the warrants.

In connection with the sale of Series T Preferred Stock to the U.S. Treasury described in "Description of Capital Stock—Series T Preferred Stock," we also issued to the U.S. Treasury a warrant to purchase shares of our common stock, which we refer to herein as the Treasury Warrant. As of March 31, 2010, the Treasury Warrant provides the U.S. Treasury to purchase up to 573,833 shares of our common stock. The Treasury Warrant has a 10-year term and is currently exercisable, with an exercise price, subject to anti-dilution adjustments, equal to \$13.07 per share. The Treasury Warrant, and all rights under such warrant, are freely transferable by the U.S. Treasury. The U.S. Treasury has agreed not to exercise voting power with respect to any common shares issued upon exercise of the Treasury Warrant.

Under the provisions of ARRA, as implemented by guidance issued by the U.S. Treasury, if we redeem 100% of the Series T Preferred Stock prior to March 6, 2012, we may repurchase the Treasury Warrant from the U.S. Treasury for its appraised fair market value, which will be determined pursuant to a procedure established by the U.S. Treasury. If we do not repurchase the Treasury Warrant for its appraised fair market value, the U.S. Treasury will retain the Treasury Warrant and may liquidate the Treasury Warrant, including by selling to third-party investors in an auction process.

## DESCRIPTION OF SUBSCRIPTION RIGHTS

This section describes the general terms of the subscription rights to purchase common stock or other securities that we may offer to stockholders using this prospectus. The following description is only a summary and does not purport to be complete. You must look at the applicable forms of subscription agent agreement and subscription certificate for a full understanding of all terms of any series of subscription rights. The forms of the subscription agent agreement and the subscription certificate will be filed with the SEC as an exhibit to the registration statement of which this prospectus is a part or as an exhibit to a filing incorporated by reference in the registration statement. See "Where You Can Find Additional Information" for information on how to obtain copies.

Subscription rights may be issued independently or together with any other security and may or may not be transferable. As part of any subscription rights offering, we may enter into a standby underwriting or other arrangement under which the underwriters or any other person would purchase any securities that are not purchased in such subscription rights offering. If we issue subscription rights, they will be governed by a separate subscription agent agreement that we will sign with a bank or trust company, as rights agent, that will be named in the applicable prospectus supplement. The rights agent will act solely as our agent and will not assume any obligation to any holders of subscription rights certificates or beneficial owners of subscription rights.

The prospectus supplement relating to any subscription rights we offer will describe the specific terms of the offering and the subscription rights, including the record date for stockholders entitled to the subscription rights distribution, the number of subscription rights issued and the number of shares of common stock that may be purchased upon exercise of the subscription rights, the exercise price of the subscription rights, the date on which the subscription rights will become effective and the date on which the subscription rights will expire, and any applicable U.S. federal income tax considerations.

In general, a subscription right entitles the holder to purchase for cash a specific number of shares of common stock or other securities at a specified exercise price. The rights are normally issued to stockholders as of a specific record date, may be exercised only for a limited period of time and become void following the expiration of such period. If we determine to issue subscription rights, we will accompany this prospectus with a prospectus supplement that will describe, among other things:

- the record date for stockholders entitled to receive the subscription rights;

- the number of shares of common stock or other securities that may be purchased upon exercise of each subscription right;
- the exercise price of the subscription rights;
- whether the subscription rights are transferable;
- the period during which the subscription rights may be exercised and when they will expire;
- the steps required to exercise the subscription rights;
- whether the subscription rights include "oversubscription rights" so that the holder may purchase more securities if other holders do not purchase their full allotments; and
- whether we intend to sell the shares of common stock or other securities that are not purchased in the subscription rights offering to an underwriter or other purchaser under a contractual "standby" commitment or other arrangement.

If fewer than all of the subscription rights issued in any rights offering are exercised, we may offer any unsubscribed securities directly to persons other than stockholders, to or through agents, underwriters or dealers or through a combination of such methods, including pursuant to standby arrangements, as described in the applicable prospectus supplement.

After the close of business on the expiration date, all unexercised subscription rights will become void.

### **DESCRIPTION OF UNITS**

As specified in the applicable prospectus supplement, we may issue units consisting of one or more debt securities, shares of common stock, shares of preferred stock or warrants or any combination of such securities, including guarantees of any securities.

A prospectus supplement and any other offering materials relating to any units issued under the registration statement of which this prospectus is a part will specify the terms of the units, including:

- the terms of the units and of any of the debt securities, common stock, preferred stock, warrants and guarantees comprising the units, including whether and under what circumstances the securities comprising the units may be traded separately;
- a description of the terms of any unit agreement governing the units; and
- a description of the provisions for the payment, settlement, transfer or exchange of the units.

### **DESCRIPTION OF DEPOSITARY SHARES**

This section outlines some of the provisions of the deposit agreement to govern any depositary shares, the depositary shares themselves and the depositary receipts. This information may not be complete in all respects and is qualified entirely by reference to the relevant deposit agreement and depositary receipt with respect to the depositary shares relating to any particular series of preferred stock. A copy of the deposit agreement and form of depositary receipt relating to any depositary shares we issue will be filed with the SEC as an exhibit to the registration statement of which this prospectus is a part or as an exhibit to a filing incorporated by reference in the registration statement. The specific terms of any depositary shares we may offer will be described in the applicable prospectus supplement. If so described in the applicable prospectus supplement, the terms of that series of depositary shares may differ from the general description of terms presented below.

## General

We may offer fractional interests in shares of our preferred stock, rather than full shares of preferred stock. If we do, we will provide for the issuance by a depositary to the public of receipts for depositary shares, each of which will represent a fractional interest in a share of a particular series of preferred stock.

The shares of any series of preferred stock underlying the depositary shares will be deposited under a separate deposit agreement between us and a bank or trust company having its principal office in the United States and having a combined capital and surplus of such amount as may be set forth in the applicable prospectus supplement, which we refer to in this section as the depositary. We will name the depositary in the applicable prospectus supplement. Subject to the terms of the deposit agreement, each owner of a depositary share will have a fractional interest in all the rights and preferences of the preferred stock underlying the depositary share. Those rights include any dividend, voting, redemption, conversion and liquidation rights.

The depositary shares will be evidenced by depositary receipts issued under the deposit agreement. If you purchase fractional interests in shares of the related series of preferred stock, you will receive depositary receipts as described in the applicable prospectus supplement.

Unless we specify otherwise in the applicable prospectus supplement, you will not be entitled to receive the whole shares of preferred stock underlying the depositary shares.

## Specific Terms of Depositary Shares

**Dividends.** The depositary will distribute all cash dividends or other cash distributions in respect of the preferred stock underlying the depositary shares to each record holder of depositary shares based on the number of the depositary shares owned by that holder on the relevant record date. The depositary will distribute only that amount which can be distributed without attributing to any holder of depositary shares a fraction of one cent, and any balance not so distributed will be added to and treated as part of the next sum received by the depositary for distribution to record holders of depositary shares.

If there is a distribution other than in cash, the depositary will distribute property to the entitled record holders of depositary shares, unless the depositary determines that it is not feasible to make that distribution. In that case the depositary may, with our approval, adopt the method it deems equitable and practicable for making that distribution, including any sale of property and distribution of the net proceeds from this sale to the concerned holders.

The deposit agreement will also contain provisions relating to how any subscription or similar rights offered by us to holders of the preferred stock will be made available to the holders of depositary shares.

**Conversion or Exchange Rights.** If any series of preferred stock underlying the depositary shares is subject to conversion or exchange, the applicable prospectus supplement will describe the rights or obligations of each record holder of depositary receipts to convert or exchange the depositary shares.

**Redemption.** If the series of the preferred stock underlying the depositary shares is subject to redemption, all or a part of the depositary shares will be redeemed from the redemption proceeds of that series of the preferred stock held by the depositary. The redemption price per depositary share will bear the same relationship to the redemption price per share of preferred stock that the depositary share bears to the underlying preferred stock. Whenever we redeem preferred stock held by the depositary, the depositary will redeem, as of the same redemption date, the number of depositary shares representing the preferred stock redeemed. If less than all the depositary shares are to be

redeemed, the depositary shares to be redeemed will be selected by lot or *pro rata* as determined by the depositary.

After the date fixed for redemption, the depositary shares called for redemption will no longer be outstanding. When the depositary shares are no longer outstanding, all rights of the holders will cease, except the right to receive money or other property that the holders of the depositary shares were entitled to receive upon the redemption. Payments will be made when holders surrender their depositary receipts to the depositary.

**Voting Rights.** When the depositary receives notice of any meeting at which the holders of the preferred stock may vote, the depositary will mail information about the meeting contained in the notice, and any accompanying proxy materials, to the record holders of the depositary shares relating to the preferred stock. Each record holder of such depositary shares on the record date, which will be the same date as the record date for the preferred stock, will be entitled to instruct the depositary as to how the preferred stock underlying the holder's depositary shares should be voted.

**Taxation.** Owners of depositary shares will be treated for U.S. federal income tax purposes as if they were owners of the preferred stock represented by the depositary shares. If necessary, the applicable prospectus supplement will provide a description of U.S. federal income tax consequences relating to the purchase and ownership of the depositary shares and the preferred stock represented by the depositary shares.

**Amendment and Termination of the Deposit Agreement.** The form of depositary receipt evidencing the depositary shares and any provision of the deposit agreement may be amended by agreement between us and the depositary at any time. However, certain amendments as specified in the applicable prospectus supplement will not be effective unless approved by the record holders of at least a majority of the depositary shares then-outstanding. A deposit agreement may be terminated by us or the depositary only if:

- all outstanding depositary shares relating to the deposit agreement have been redeemed; or
- there has been a final distribution on the preferred stock of the relevant series in connection with our liquidation, dissolution or winding up of our business and the distribution has been distributed to the holders of the related depositary shares.

**Charges of Depositary.** We will pay all transfer and other taxes and governmental charges arising solely from the existence of the depositary arrangements. We will pay associated charges of the depositary for the initial deposit of the preferred stock and any redemption of the preferred stock. Holders of depositary shares will pay transfer and other taxes and governmental charges and any other charges that are stated to be their responsibility in the deposit agreement.

**Resignation and Removal of Depositary.** The depositary may resign at any time by delivering notice to us. We may also remove the depositary at any time. Resignations or removals will take effect when a successor depositary is appointed and it accepts the appointment.

## SELLING STOCKHOLDERS

We are registering for resale pursuant to this prospectus 9,825,000 shares of our common stock held by the selling stockholders identified below. Such shares were acquired by the selling stockholders upon conversion of shares of our Series A Mandatory Convertible Cumulative Preferred Stock, \$0.001 par value per share (the "Series A Convertible Preferred Stock"), in the private placement transaction described below.

On September 21, 2009, we entered into a stock purchase agreement with all the members of our board of directors, various executive officers and a small group of existing stockholders, each of whom qualified as an accredited investor. The stock purchase agreement provided for the investors' purchase of a new series of our mandatory convertible preferred stock offered in a private placement (the "Private Offering"). In the Private Offering, we raised a total of \$39.3 million of capital. The investors in the Private Offering purchased, in the aggregate, 393 shares of Series A Mandatory Convertible Cumulative Preferred Stock, at a purchase price and liquidation preference of \$100,000 per share. The Private Offering was conducted as a private placement transaction exempt from registration pursuant to Section 4(2) under the Securities Act of 1933, as amended, and Regulation D promulgated thereunder.

The stock purchase agreement was entered into in conjunction with the commencement of a separate public offering of up to 18,000,000 shares of our common stock (the "Public Offering"), plus an additional 2,700,000 shares that could be purchased by the underwriters pursuant to an option that we granted to them. Pursuant to the stock purchase agreement, the closing of the investors' purchase of the shares of Series A Convertible Preferred Stock was, among other things, subject to the closing of the Public Offering.

The stock purchase agreement and the terms of the Series A Convertible Preferred Stock provided that each share of Series A Convertible Preferred Stock would be automatically converted into shares of our common stock at the price at which we sold shares of our common stock in the Public Offering upon receipt of stockholder approval of an amendment to our articles of incorporation to increase the number of authorized shares of our common stock from 60 million to 100 million and stockholder approval to issue shares of our common stock to our directors and executive officers upon conversion of the Series A Convertible Preferred Stock, as required by Nasdaq's listing rules.

On September 30, 2009, we closed the Public Offering, pursuant to which we sold 20,700,000 shares of our common stock at \$4.00 per share, for aggregate gross proceeds of \$82.8 million. On October 29, 2009, we closed the Private Offering, pursuant to which we sold 393 shares of Series A Convertible Preferred Stock. On December 2, 2009, we held a special meeting of our stockholders at which they approved an amendment to our articles of incorporation to increase the number of authorized shares of our common stock from 60 million to 100 million (which has subsequently been increased to 200 million shares) and approved the issuance of 9,825,000 shares of our common stock upon conversion of the 393 shares of Series A Convertible Preferred Stock that were issued in the Private Offering. The 9,825,000 shares of our common stock issued upon conversion of the 393 shares of Series A Convertible Preferred Stock reflected a \$4.00 per share conversion price (\$100,000, divided by \$4.00, multiplied by 393 shares), which was equal to the price at which shares of our common stock were sold in the Public Offering. As a result of the stockholder vote, on December 3, 2009, we issued 9,825,000 shares of our common stock to the investors in the Private Offering in exchange for all 393 shares of Series A Convertible Preferred Stock held by them.

Pursuant to the stock purchase agreement and a related registration rights agreement, we granted to the investors in the Private Offering registration rights with respect to the shares of our common stock issuable upon conversion of the Series A Convertible Preferred Stock. Thus, the registration statement, of which this prospectus is a part, that we filed with the SEC registers for resale the shares of our common stock issued to the investors on December 3, 2009, by the selling stockholders.

## PLAN OF DISTRIBUTION

We or the selling stockholders may sell the securities offered by this prospectus to one or more underwriters or dealers for resale, through agents, directly to purchasers or through a combination of any such methods of sale. The name of any such underwriter, dealer or agent involved in the offer and sale of the securities, the amounts underwritten and the nature of its obligation to take the securities will be stated in the applicable prospectus supplement. We and the selling stockholders have reserved the right to sell the securities directly to investors on our own in those jurisdictions where we are authorized to do so. The sale of the securities may be effected in transactions: on any national or international securities exchange or quotation service on which the securities may be listed or quoted at the time of sale; in the over-the-counter market; in transactions otherwise than on such exchanges or in the over-the-counter market; or through the writing of options.

We may issue the securities as a dividend or distribution or in a subscription rights offering to our existing security holders. In some cases, we, the selling stockholders or dealers acting with either of us or on either of our behalves may also purchase securities and re-offer them to the public by one or more of the methods described above. This prospectus may be used in connection with any offering of our securities through any of these methods or other methods described in the applicable prospectus supplement.

We, the selling stockholders or agents and underwriters on either of our behalves may offer and sell the securities at a fixed price or prices that may be changed, at market prices prevailing at the time of sale, at prices related to such prevailing market prices or at negotiated prices.

We or the selling stockholders may solicit offers to purchase securities directly from the public from time to time. We or the selling stockholders also may designate agents from time to time to solicit offers to purchase securities from the public on either of our respective behalves. If required, the prospectus supplement relating to any particular offering of securities will name any agents designated to solicit offers, and will include information about any commissions they may be paid in that offering.

We or the selling stockholders may sell securities from time to time to one or more underwriters, who would purchase the securities as principal for resale to the public, either on a firm-commitment or best-efforts basis. If we or the selling stockholders use underwriters to sell securities, we or the selling stockholders may enter into an underwriting agreement with the underwriters at the time of the sale and will name them in the applicable prospectus supplement. In connection with the sale of the securities, underwriters may be deemed to have received compensation from us or the selling stockholders in the form of underwriting discounts or commissions and may also receive commissions from purchasers of the securities for whom they may act as agents. Any underwriting compensation paid by us or the selling stockholders to underwriters or agents in connection with the offering of the securities, and any discounts, concessions or commissions allowed by underwriters to participating dealers, will be set forth in the applicable prospectus supplement to the extent required by applicable law. Underwriters may sell the securities to or through dealers, and such dealers may receive compensation in the form of discounts, concessions or commissions from the underwriters or commissions (which may be changed from time to time) from the purchasers for whom they may act as agents.

The selling stockholders, dealers and agents participating in the distribution of the securities may be deemed to be underwriters, and any discounts and commissions received by them and any profit realized by them on resale of the securities may be deemed to be underwriting discounts and commissions under the Securities Act. Additionally, because the selling stockholders may be deemed to be "underwriters" within the meaning of Section 2(11) of the Securities Act, the selling stockholders may be subject to the prospectus delivery requirements of Section 5(b)(2) of the Securities Act. Any selling stockholder who is a "broker dealer" will be deemed to be an "underwriter" within the meaning of Section 2(11) of the Securities Act, unless such selling stockholder purchased its shares in the



ordinary course of business, and at the time of its purchase of the shares to be resold, did not have any view to or arrangements or understandings, directly or indirectly, with any person to distribute the shares.

If so indicated in the prospectus supplement, we or the selling stockholders will authorize underwriters, dealers or agents to solicit offers from certain specified institutions to purchase offered securities from us or the selling stockholders at the public offering price set forth in the prospectus supplement pursuant to delayed delivery contracts providing for payment and delivery on a specified date in the future. Such contracts will be subject to any conditions set forth in the applicable prospectus supplement, and the prospectus supplement will set forth the commission payable for solicitation of such contracts. The underwriters and other persons soliciting such contracts will have no responsibility for the validity or performance of any such contracts.

If we offer securities in a subscription rights offering to our existing security holders, we may enter into a standby underwriting agreement with dealers, acting as standby underwriters. We may pay the standby underwriters a commitment fee for the securities they commit to purchase on a standby basis. If we do not enter into a standby underwriting arrangement, we may retain a dealer-manager to manage a subscription rights offering for us.

Underwriters, dealers and agents may be entitled, under agreements entered into with us or the selling stockholders, to indemnification against and contribution towards certain civil liabilities, including any liabilities under the Securities Act.

To facilitate the offering of securities, certain persons participating in the offering may engage in transactions that stabilize, maintain, or otherwise affect the price of the securities. These may include over-allotment, stabilization, syndicate short covering transactions and penalty bids. Over-allotment involves sales in excess of the offering size, which creates a short position. Stabilizing transactions involve bids to purchase the underlying security so long as the stabilizing bids do not exceed a specified maximum. Syndicate short covering transactions involve purchases of securities in the open market after the distribution has been completed in order to cover syndicate short positions. Penalty bids permit the underwriters to reclaim selling concessions from dealers when the securities originally sold by the dealers are purchased in covering transactions to cover syndicate short positions. These activities may stabilize, maintain or otherwise affect the market price of the securities. As a result, these transactions may cause the price of the securities sold in an offering to be higher than it would otherwise be in the open market. These transactions may be effected on an exchange or automated quotation system, if the securities are listed on that exchange or admitted for trading on that automated quotation system, or in the over-the-counter market or otherwise. These transactions, if commenced, may be discontinued by the underwriters at any time.

The amount of expenses expected to be incurred by us or the selling stockholders in connection with any issuance of securities will be set forth in the applicable prospectus supplement.

Under Rule 15c6-1 of the Exchange Act, trades in the secondary market generally are required to settle in three business days, unless the parties to any such trade expressly agree otherwise. Your prospectus supplement may provide that the original issue date for your securities may be more than three scheduled business days after the trade date for your securities. Accordingly, in such a case, if you wish to trade securities on any date prior to the third business day before the original issue date for your securities, you will be required, by virtue of the fact that your securities initially are expected to settle in more than three scheduled business days after the trade date for your securities, to specify alternative settlement arrangements to prevent a failed settlement.

Underwriters and agents and their affiliates may be customers of, engage in transactions with, or perform services for us, our subsidiaries or the selling stockholders in the ordinary course of their businesses. In connection with the distribution of the securities offered under this prospectus, we or the selling stockholders may enter into swap or other hedging transactions with, or arranged by, underwriters or agents or their affiliates. These underwriters or agents or their affiliates may receive compensation, trading gain or other benefits from these transactions.

## **SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS**

Certain statements contained in or incorporated by reference into this prospectus that are not historical facts may constitute forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. We intend such forward-looking statements to be covered by the safe harbor provisions for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995, and we are including this statement for purposes of invoking these safe harbor provisions. These statements, which are based on certain assumptions and describe our future plans, strategies and expectations, can generally be identified by the use of the words "may," "will," "should," "could," "would," "plan," "potential," "estimate," "project," "believe," "intend," "anticipate," "expect," "target" and similar expressions. These forward-looking statements include statements relating to our projected growth, anticipated future financial performance, management's long-term performance goals, as well as statements relating to the anticipated effects on results of operations and financial condition from expected developments or events, our business and growth strategies and any other statements that are not historical facts.

These forward-looking statements are subject to significant risks, assumptions and uncertainties, and could be affected by many factors. Factors that could have a material adverse effect on our financial condition, results of operations and future prospects can be found in the "Risk Factors" section of a prospectus supplement issued in connection with the issuance of securities and in our most recent Annual Report on Form 10-K and elsewhere in our periodic and current reports filed with the SEC.

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

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

## WHERE YOU CAN FIND ADDITIONAL INFORMATION

We are subject to the information requirements of the Exchange Act, which means we are required to file annual, quarterly and current reports, proxy statements and other information with the SEC. Our SEC filings are available to the public over the internet at the SEC's website at <http://www.sec.gov>. You may also read and copy any document we file with the SEC at its Public Reference Room at 100 F Street, N.E., Room 1580, Washington, D.C. 20549. You may also obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330.

## DOCUMENTS INCORPORATED BY REFERENCE

The SEC allows us to "incorporate by reference" into this prospectus the information we file with the SEC. This permits us to disclose important information to you by referring to these separately filed documents. The information incorporated by reference is an important part of this prospectus, and the information we file subsequently with the SEC will automatically update the information in this prospectus. This historical and future information that is incorporated by reference in this prospectus is considered to be part of this prospectus and can be obtained at the locations described above under the heading "Where You Can Find Additional Information." The information included elsewhere in this prospectus and the following documents incorporated by reference in this prospectus is considered to be part of this prospectus:

- Our Annual Report on Form 10-K for the fiscal year ended December 31, 2009, filed with the SEC on March 16, 2010, including the portions of our Definitive Proxy Statement on Schedule 14A filed on April 19, 2010 that are incorporated therein;
- Our Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 2010, filed with the SEC on May 13, 2010;
- Our Current Reports on Form 8-K filed with the SEC on January 26, 2010 (except for the information furnished under Item 2.02 thereof), January 28, 2010, and March 1, 2010, April 21, 2010 (except for the information furnished under Item 2.02 thereof), and May 21, 2010; and
- Any future filings made with the SEC under Sections 13(a), 13(c), 14 or 15(d) under the Exchange Act, after the date of this document, excluding any document or portion thereof that has been furnished to and deemed not to be filed with the SEC.

Any statement contained in this prospectus or in a document incorporated or deemed to be incorporated by reference into this prospectus shall be deemed to be modified or superseded for purposes of this prospectus to the extent that a statement contained in any subsequently filed document which also is, or is deemed to be, incorporated by reference in this prospectus modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this prospectus.

We will provide you with a copy of any information that we incorporate by reference into the registration statement on Form S-3 or this prospectus, at no cost, by writing or calling us. Requests for such materials should be directed to:

First Busey Corporation  
Attention: Corporate Secretary  
100 W. University Ave.  
Champaign, Illinois 61820  
Telephone number: (217) 365-4516

## **LEGAL MATTERS**

Unless otherwise indicated in the applicable prospectus supplements, certain legal matters in connection with any offering of securities made by this prospectus will be passed upon for us by our special counsel in the State of Nevada, Lewis and Roca LLP. If the securities are being distributed in an underwritten offering, certain legal matters will be passed upon for the underwriters by counsel identified in the related prospectus supplement.

## **EXPERTS**

The consolidated financial statements of First Busey Corporation and subsidiaries as of December 31, 2009 and 2008, and for each of the years in the three-year period ended December 31, 2009, and the effectiveness of First Busey Corporation's internal control over financial reporting as of December 31, 2009, have been incorporated in this prospectus by reference to First Busey's Annual Report on Form 10-K for the year ended December 31, 2009 in reliance on the report of McGladrey & Pullen LLP, an independent registered public accounting firm, given on the authority of said firm as experts in auditing and accounting.

**PART II****INFORMATION NOT REQUIRED IN PROSPECTUS****Item 14. Other Expenses of Issuance and Distribution.**

The following is an estimate, subject to future contingencies, of the expenses to be incurred by us in connection with the issuance and distribution of the securities being registered. We will pay all of these expenses. All expenses other than the SEC registration fee are estimated pursuant to the instruction to Item 511 of Regulation S-K.

	<u>Approximate Amount</u>
SEC Registration Fee	\$ 11,916
Accounting Fees and Expenses	6,000
Legal Fees and Expenses	25,000
Miscellaneous	10,000
Total	<u>\$ 52,916</u>

The selling stockholders will not bear any of the expenses set forth above.

**Item 15. Indemnification of Directors and Officers.**

Subsection 1 of Section 78.7502 of the Nevada Revised Statutes Annotated, or the Nevada RSA, empowers a corporation to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, except an action by or in the right of the corporation, by reason of the fact that such person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with the action, suit or proceeding if that person acted in good faith and in a manner that he or she reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent, does not, of itself, create a presumption that the person did not act in good faith and in a manner that he or she reasonably believed to be in or not opposed to the best interests of the corporation, or that, with respect to any criminal action or proceeding, he or she had reasonable cause to believe that his or her conduct was unlawful.

Subsection 2 of Section 78.7502 of the Nevada RSA empowers a corporation to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that such person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses, including amounts paid in settlement and attorneys' fees actually and reasonably incurred by such person in connection with the defense or settlement of the action or suit if he or she acted in good faith and in a manner that he or she reasonably believed to be in or not opposed to the best interests of the corporation. Indemnification may not be made for any claim, issue or matter as to which such a person has been adjudged by a court of competent jurisdiction, after exhaustion of all appeals therefrom, to be liable to the corporation or for amounts paid in settlement to the corporation, unless and only to the extent that the court in which the action or suit was brought or other court of competent jurisdiction

determines upon application that in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for such expenses as the court deems proper.

Section 78.7502 of the Nevada RSA further provides that to the extent a director, officer, employee or agent of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections 1 and 2 of Section 78.7502, or in defense of any claim, issue or matter therein, a corporation shall indemnify him or her against expenses, including attorneys' fees, actually and reasonably incurred by such person in connection with the defense.

Section 78.751 of the Nevada RSA provides that any discretionary indemnification under Section 78.7502, unless ordered by a court or advanced, may be made by a corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances. The determination must be made: (a) by the stockholders; (b) by the board of directors by majority vote of a quorum consisting of directors who were not parties to the action, suit or proceeding; (c) if a majority vote of a quorum consisting of directors who were not parties to the action, suit or proceeding so orders, by independent legal counsel in a written opinion; or (d) if a quorum consisting of directors who were not parties to the action, suit or proceeding cannot be obtained, by independent legal counsel in a written opinion.

Section 78.751 of the Nevada RSA further provides that the indemnification provided for by Section 78.7502 shall not be deemed exclusive or exclude any other rights to which the indemnified party may be entitled and that the scope of indemnification shall continue as to directors, officers, employees or agents who have ceased to hold such positions, and to their heirs, executors and administrators. Section 78.752 of the Nevada RSA empowers a corporation to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person or incurred by him or her in any such capacity or arising out of his or her status as such whether or not the corporation would have the power to indemnify such person against such liabilities under Section 78.7502.

Article Tenth of our articles of incorporation provides that no director or officer shall be personally liable to the us or our stockholders for monetary damages for breach of fiduciary duty as a director or officer, except for liability (i) for acts or omissions that involve intentional misconduct, fraud or a knowing violation of law or (ii) for the payment of distributions in violation of Section 78.300 of the Nevada RSA.

Our bylaws provide that we shall have the power to indemnify and hold harmless any current or former director, officer, agent or employee of the Company to the fullest extent legally permissible under the Nevada RSA from time to time against all expenses, liability and loss (including attorneys' fees, judgments, fines and amounts paid or to be paid in settlement) reasonably incurred or suffered by him in connection therewith. Consistent with the power conferred to corporations under Section 78.751 of the Nevada RSA, our bylaws further provide that our board of directors may in its discretion cause the expenses of officers and directors incurred in defending a civil or criminal action, suit or proceeding to be paid by us as they are incurred and in advance of the final disposition of the action, suit or proceeding upon receipt of an undertaking by or on behalf of the director or officer to repay the amount if it is ultimately determined by a court of competent jurisdiction that he is not entitled to be indemnified by the corporation.

**Item 16. Exhibits.**

<u>Exhibit Number</u>	<u>Description</u>
1.1*	Form of Underwriting Agreement.
3.1	Articles of Incorporation of First Busey Corporation, together with: (i) the Certificate of Amendment to Articles of Incorporation, dated July 31, 2007; (ii) the Certificate of Designation for Fixed Rate Cumulative Perpetual Preferred Stock, Series T, dated March 4, 2009; (iii) the Certificate of Designation for Convertible Cumulative Preferred Stock, Series A, dated October 26, 2009; and (iv) the Certificate of Amendment to Articles of Incorporation, dated May 21, 2010.
3.2	First Busey Corporation Amended and Restated By-Laws (filed as Exhibit 3.1 to First Busey's Form 8-K dated November 18, 2008, filed with the SEC on November 24, 2008, and incorporated herein by reference).
3.3*	Form of Certificate of Designations for issuance of Preferred Stock, \$0.001 par value per share.
4.1	Form of Stock Certificate for Fixed Rate Cumulative Perpetual Preferred Stock, Series T (filed as Exhibit 4.1 to First Busey's Form 8-K dated March 4, 2009, filed with the Commission on March 9, 2009 (Commission File No. 0-15950), and incorporated herein by reference).
4.2	Warrant to Purchase Common Stock, dated March 6, 2009 (filed as Exhibit 4.2 to First Busey's Form 8-K dated March 4, 2009, filed with the Commission on March 9, 2009 (Commission File No. 0-15950), and incorporated herein by reference).
4.3*	Form of senior indenture.
4.4*	Form of subordinated indenture.
4.5*	Form of senior debt security.
4.6*	Form of subordinated debt security.
4.7*	Form of debt warrant agreement (including debt warrant certificate).
4.8*	Form of preferred stock warrant agreement (including preferred stock warrant certificate).
4.9*	Form of common stock warrant agreement (including common stock warrant certificate).
4.10*	Form of subscription certificate.
4.11*	Form of subscription agent agreement.
4.12*	Form of unit agreement (including unit certificate).
4.13*	Form of depositary agreement (including depositary receipt).
5.1	Opinion of Lewis & Roca LLP (including consent).
8.1*	Form of tax opinion of Barack Ferrazzano Kirschbaum & Nagelberg LLP.
12.1	Computation of Ratios of Earnings to Fixed Charges and Preferred Stock Dividends for Three-Month Period Ended March 31, 2010 and for the Years Ended December 31, 2009, 2008, 2007, 2006 and 2005.
23.1	Consent of McGladrey & Pullen LLP.
23.2	Consent of Lewis & Roca LLP (included in Exhibit 5.1).
24.1	Power of Attorney (included in the signature page to the registration statement).
25.1*	Form T-1 Statement of Eligibility and Qualification under the Trust Indenture Act of 1939 of the trustee under the senior indenture and subordinated indenture.

\* To be filed by amendment or by report filed under the Securities Exchange Act of 1934, as amended, and incorporated herein by reference.

**Item 17. Undertakings.**

The undersigned Registrant hereby undertakes:

(a)

(1) to file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

- (i) to include any prospectus required by Section 10(a)(3) of the Securities Act of 1933, as amended;
- (ii) to reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the SEC pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and
- (iii) to include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

*provided, however*, that paragraphs (i), (ii) and (iii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the SEC by the Registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934, as amended, that are incorporated by reference in the registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, as amended, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(4) That, for the purpose of determining liability under the Securities Act of 1933, as amended, to any purchaser:

(A) Each prospectus filed by the Registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and

(B) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5) or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii) or (x) for the purpose of providing the information required by Section 10(a) of the Securities Act of 1933, as amended, shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of



the registration statement relating to the securities in the registration statement to which the prospectus relates, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof. *Provided, however,* that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date.

(5) That, for the purpose of determining liability of the Registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities: The undersigned Registrant undertakes that in a primary offering of securities of the undersigned Registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned Registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

- (i) Any preliminary prospectus or prospectus of the undersigned Registrant relating to the offering required to be filed pursuant to Rule 424;
- (ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned Registrant or used or referred to by the undersigned Registrant;
- (iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned Registrant or its securities provided by or on behalf of the undersigned Registrant; and
- (iv) Any other communication that is an offer in the offering made by the undersigned Registrant to the purchaser.

(b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, as amended, each filing of the Registrant's annual report pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934, as amended), that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act of 1933, as amended, may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act of 1933, as amended, and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933, as amended, and will be governed by the final adjudication of such issue.

(d) The undersigned Registrant hereby undertakes to file an application for the purpose of determining the eligibility of the trustee to act under subsection (a) of section 310 of the Trust Indenture Act ("Act") in accordance with the rules and regulations prescribed by the Commission under section 305(b)2 of the Act.

## SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Champaign, State of Illinois, on May 28, 2010.

### FIRST BUSEY CORPORATION

By: /s/ VAN A. DUKEMAN

\_\_\_\_\_  
Van A. Dukeman  
President and Chief Executive Officer

By: /s/ DAVID B. WHITE

\_\_\_\_\_  
David B. White  
Executive Vice President and  
Chief Financial Officer

### POWER OF ATTORNEY

Pursuant to the requirements of the Securities Act, this Registration Statement has been signed by the following persons in their respective capacities and on the respective dates indicated opposite their names. Each person whose signature appears below hereby authorizes each of Van A. Dukeman and David B. White, each with full power of substitution, to execute in the name and on behalf of such person any post-effective amendment to this Registration Statement and to file the same, with exhibits thereto, and other documents in connection therewith, making such changes in this Registration Statement as the registrant deems appropriate, and appoints each of Van A. Dukeman and David B. White, each with full power of substitution, attorney-in-fact to sign any amendment and any post-effective amendment to this Registration Statement and to file the same, with exhibits thereto, and other documents in connection therewith.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed below by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
/s/ VAN A. DUKEMAN _____ Van A. Dukeman	Director; President and Chief Executive Officer (principal executive officer)	May 28, 2010
/s/ DAVID B. WHITE _____ David B. White	Executive Vice President and Chief Financial Officer (principal financial officer and principal accounting officer)	May 28, 2010
/s/ JOSEPH M. AMBROSE _____ Joseph M. Ambrose	Director	May 28, 2010
/s/ DAVID J. DOWNEY _____ David J. Downey	Director	May 28, 2010

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ DAVID L. IKENBERRY</u> David L. Ikenberry	Director	May 28, 2010
<u>/s/ E. PHILLIPS KNOX</u> E. Phillips Knox	Director	May 28, 2010
<u>/s/ V.B. LEISTER, JR.</u> V.B. Leister, Jr.	Director	May 28, 2010
<u>/s/ GREGORY B. LYKINS</u> Gregory B. Lykins	Director	May 28, 2010
<u>/s/ AUGUST C. MEYER, JR.</u> August C. Meyer, Jr.	Director	May 28, 2010
<u>/s/ DOUGLAS C. MILLS</u> Douglas C. Mills	Director	May 28, 2010
<u>/s/ GEORGE T. SHAPLAND</u> George T. Shapland	Director	May 28, 2010

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4.12*	Form of unit agreement (including unit certificate).
4.13*	Form of depositary agreement (including depositary receipt).
5.1	Opinion of Lewis & Roca LLP (including consent)
8.1*	Form of tax opinion of Barack Ferrazzano Kirschbaum & Nagelberg LLP.
12.1	Computation of Ratios of Earnings to Fixed Charges and Preferred Stock Dividends for Three-Month Period Ended March 31, 2010 and for the Years Ended December 31, 2009, 2008, 2007, 2006 and 2005
23.1	Consent of McGladrey & Pullen LLP
23.2	Consent of Lewis & Roca LLP (included in Exhibit 5.1)

**Exhibit  
Number**

**Description**

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24.1 Power of Attorney (included in the signature page to the registration statement)

25.1\* Form T-1 Statement of Eligibility and Qualification under the Trust Indenture Act of 1939 of the trustee under the senior indenture and subordinated indenture.

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\* To be filed by amendment or by report filed under the Securities Exchange Act of 1934, as amended, and incorporated herein by reference.



**AMENDED AND RESTATED ARTICLES OF INCORPORATION**

**OF**

**FIRST BUSEY CORPORATION**

*First.* The name of the corporation (hereinafter called the Corporation) is:

**FIRST BUSEY CORPORATION**

*Second.* The address of the Corporation's Registered Office in the State of Nevada is 3800 Howard Hughes Parkway, 7<sup>th</sup> Floor, Las Vegas, Nevada, County of Clark, 89109. The name of the Corporation's Registered Agent at such address is Kummer, Kaempfer, Bonner and Renshaw.

*Third.* The nature of the business purposes of the corporation is as follows: To engage in any lawful act or activity for which Corporations may be organized under the Nevada Revised Statutes.

*Fourth.*

A. *Classes and Number of Shares.* The total number of shares of all classes of stock the Corporation shall have authority to issue is 41,000,000 shares. The classes and the aggregate number of shares of stock of each class which the Corporation shall have authority to issue are as follows

1. 40,000,000 shares of Common Stock, \$.001 per value per share.
2. 1,000,000 shares of Preferred Stock, \$.001 par value per share.

B. *Powers and Rights of Common Stock.*

1. *Voting Rights and Powers.* With respect to all matters upon which stockholders are entitled to vote or to which stockholders are entitled to give consent, the holders of the outstanding shares of the common Stock shall be entitled to cast thereon (1) vote in person or by proxy for each share of the common Stock standing in his name.

2. *Dividends and Distributions.*

a. *Cash Dividends.* When cash dividends may be declared by the Board of Directors, and for purposes of calculating the cash dividend to be paid on shares of the Common Stock, the amount of the cash dividend declared and payable on shares of the Common Stock, determined in accordance with this provision, may be rounded up to the next highest half cent or fraction thereof.

b. *Other Dividends and Distributions.* Each share of the Common Stock shall be equal in respect of rights to dividends (other than cash) and distributions, when and as declared, in the form of stock or other property of the Corporation, except that in the case of dividends or other distributions

1

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payable in stock of the Corporation, including distributions pursuant to stock split-ups or divisions, only shares of the Common Stock shall be distributed with respect to the Common Stock.

3. *Other Rights.* Except as otherwise required by the Nevada Revised Statutes, or as otherwise provided in the Articles of Incorporation, each share of the common Stock shall have identical powers, preferences and rights, including rights in liquidation.

4. *Issuance of the Common Stock.* The Board of Directors of the Corporation may from time to time authorize by resolution the issuance of any or all of the authorized but unissued shares of the Common Stock for such purposes, in such amounts, to such persons, corporations or entities, for such consideration, all as the Board of Directors at its discretion may determine and without any vote or other action by the stockholders, except as otherwise required by law. The Board of Directors may issue shares of the Common Stock in the form of a distribution or distributions pursuant to a stock dividend or split-up of the shares of the common Stock only to the then holders of the outstanding shares of the Common Stock.

C. *Powers and Rights of Preferred Stock.*

1. Shares of Preferred Stock may be issued in one or more series at such time or times and for such consideration as the Board of Directors may determine. Each such series shall be given a distinguishing designation. All shares of any one series shall have preferences, limitations and relative rights identical with those of other shares of the same series and except to the extent otherwise provided in the description of such series, with those of other shares of Preferred Stock.

2. Authority is hereby expressly granted to the Board of Directors to fix from time to time, by resolution or resolutions providing for the establishment and/or issuance of any series of Preferred Stock, the designation of such series and the preferences, limitations and relative rights of the shares of such series, including the following:

a. The distinctive designation and number of shares comprising such series, which number may) except as otherwise provided by the Board of Directors in creating such series) be increased or decreased (but not below the number of shares then outstanding) from time to time by action of the Board of Directors;

b. The voting rights, if any which shares of the series shall have, which may be special, conditional, limited or otherwise;

c. The rate of dividends, if any, on the shares of the series, whether dividends shall be non-cumulative, cumulative to the extent earned, partially cumulative or cumulative (and, if cumulative, from which date to dates), whether dividends shall be payable in cash, property or rights, or in shares of the Corporation's capital stock, and the relative rights of priority, if any, of payment of dividends

2

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on shares of the series over shares of any other series or over the Common Stock;

d. Whether the shares of the series shall be redeemable and, if so, the terms and conditions of such redemption, including the date or dates upon or after which they shall be redeemable, the event or events upon or after which they shall be redeemable, whether they shall be redeemable at the option of the Corporation, the stockholder or another person, the amount per share payable in case of redemption (which amount may vary under different conditions and at different redemption dates), whether such amount shall be a designated amount or an amount determined in accordance with a designated formula or by reference to extrinsic date or events and whether such amount shall be paid in cash, indebtedness, securities or other property or rights, including securities of any other corporation;

e. Whether that series shall have a sinking fund for the redemption or purchase of shares of that series and, if so, the terms of the amounts payable into such sinking fund;

f. The rights to which the holders of the shares of the series shall be entitled in the event of voluntary or involuntary dissolution or liquidation of the Corporation, and the relative rights of priority, if any, of payment of shares of that series over shares of any other series or over the Common Stock in any such event;

g. Whether the shares of the series shall be convertible into or exchangeable for cash, shares of stock of any other class or any other series, indebtedness, or other property or rights, including securities of another corporation, and, if so, the terms and conditions of such conversion or exchange, including the rate or rates of conversion or exchange, and whether such rate shall be a designated amount or an amount determined in accordance with a designated formula or by reference to extrinsic date or events, the date or dates upon or after which they shall be convertible or exchangeable, the during for which they shall be convertible or exchangeable, the event or events upon or after which they shall be convertible or exchangeable, and whether they shall be convertible or exchangeable at the option of the Corporation, the stockholder or another person, and the method (if any) of adjusting the rate of conversion or exchange in the event of a stock split, sock dividend, combination of shares or similar event;

h. Whether the issuance of any additional shares of such series, or of any shares of any other series, shall be subject to restrictions as to issuance, or as to the powers, preferences or rights of any such other series; and

i. Any other preferences, privileges and powers and relative, participating, optional or other special rights and qualifications, limitations or

3

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restrictions of such series, as the Board of Directors may deem advisable and as shall not inconsistent with the provisions of this Article and the full extent now or hereafter permitted by the law of the State of Nevada.

*Fifth.* The number of directors shall be fixed by, or in the manner provided in, the By-laws.

*Sixth.* The Corporation shall have perpetual existence.

*Seventh.* The stockholders, officers, or directors of the Corporation shall not be personally liable for the payment of the Corporation's debts except as they may be liable by reason of their own conduct or acts.

*Eighth.* The Board of Directors is expressly authorized and empowered to make, alter and repeal the By-Laws of the Corporation, subject to the power of the stockholders of the Corporation, to alter or repeal any By-Laws of the Corporation.

*Ninth.* The Corporation reserves the right at any time and from time to time to amend, alter, change or repeal any provision contained in the Articles of Incorporation and add or insert any other provision authorized by the laws of the State of Nevada in the manner now or hereafter prescribed by law. All rights, preferences or privileges of whatever nature conferred upon stockholders, directors or any other persons whomsoever by and pursuant to these Articles of Incorporation in its present form or as hereafter amended are granted subject to the rights now reserved in this Article.

*Tenth.* No director or officer shall be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty, provided that this Section shall not eliminate or limit the liability of a director or officer for (i) acts or omissions which involve intentional misconduct, fraud or a knowing violation of law or (ii) the payment of distributions in violation of Section 78.300 of the Nevada Revised Statutes.

*Eleventh.* Meetings of stockholders may be held within or without the State of Nevada, as the By-Laws of the Corporation may provide. The books of the Corporation may be kept outside the State of Nevada at such place or places as may be designated from time to time by the Board of Directors or in the By-Laws of the Corporation, except as otherwise required by the Nevada Revised Statutes. Election of directors need not be by written ballot unless the By-Laws of the Corporation so provide.

*Twelfth.* The Corporation expressly elects not to be governed by Sections 78.411-78.444, inclusive, of the Nevada Revised Statutes, as the same may be amended or supplemented from time to time

*Thirteenth.* The corporation shall, to the fullest extent permitted by Section 78,751 of the Nevada Revised Statutes, as the same may be amended or supplemented from time to time, indemnify any and all persons whom it shall have power to indemnify under said section from and against any and all of the



of any other rights to which those indemnified may be entitled under any By-Laws, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in this or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

**CERTIFICATE OF AMENDMENT TO ARTICLES OF INCORPORATION**

**OF**

**FIRST BUSEY CORPORATION**

**(JULY 31, 2007)**

PARAGRAPH A OF ARTICLE FOURTH of the Articles of Incorporation of the Corporation is hereby amended in its entirety to read as follows:

*Fourth.*

A. *Classes and Number of Shares.* The total number of shares of all classes of stock the Corporation shall have authority to issue is 61,000,000 shares. The classes and the aggregate number of shares of stock of each class which the Corporation shall have authority to issue are as follows:

1. 60,000,000 shares of Common Stock, \$0.001 par value per share.
2. 1,000,000 shares of Preferred Stock, \$0.001 par value per share.



**ROSS MILLER**  
Secretary of State  
204 North Carson Street, Ste 1  
Carson City, Nevada 89701-4299  
(775) 684 5708  
Website: [www.nvsos.gov](http://www.nvsos.gov)

**Certificate of Designation**  
(PURSUANT TO NRS 78.1955)

**USE BLACK INK ONLY - DO NOT HIGHLIGHT**

**ABOVE SPACE IS FOR OFFICE USE ONLY**

**Certificate of Designation For**  
**Nevada Profit Corporations**  
**(Pursuant to NRS 78.1955)**

1. Name of corporation:

**First Busey Corporation**

2. By resolution of the board of directors pursuant to a provision in the articles of incorporation this certificate establishes the following regarding the voting powers, designations, preferences, limitations, restrictions and relative rights of the following class or series of stock.

**A series of Preferred Stock, \$0.001 par value per share, of First Busey Corporation (the "Corporation") be and hereby is created, and that the designation and number of shares of such series, and the voting and other powers, preferences and relative, participating, optional or other rights, and the qualifications, limitations and restrictions thereof, of the shares of such series, are as follows:**

3. Effective date of filing: (optional)

(must not be later than 90 days after the certificate is filed)

4. Signature: (required)

X /s/ Van A. Dukeman

\_\_\_\_\_  
**Signature of Officer**

**Filing Fee: \$175.00**

**IMPORTANT:** Failure to include any of the above information and submit with the proper fees may cause this filing to be rejected.

**EXHIBIT A  
TO THE  
CERTIFICATE OF DESIGNATION**

**FIXED RATE CUMULATIVE PERPETUAL PREFERRED STOCK, SERIES T  
OF  
FIRST BUSEY CORPORATION**

A series of Preferred Stock, \$0.001 par value per share, of First Busey Corporation (the "Corporation") be and hereby is created, and that the designation and number of shares of such series, and the voting and other powers, preferences and relative, participating, optional or other rights, and the qualifications, limitations and restrictions thereof, of the shares of such series, are as follows:

Part 1. Designation and Number of Shares. There is hereby created out of the authorized and unissued shares of preferred stock of the Corporation a series of preferred stock designated as the "Fixed Rate Cumulative Perpetual Preferred Stock, Series T" (the "Designated Preferred Stock"). The authorized number of shares of Designated Preferred Stock shall be 100,000.

Part 2. Standard Provisions. The Standard Provisions contained in Annex A attached hereto are incorporated herein by reference in their entirety and shall be deemed to be a part of this Certificate of Designation to the same extent as if such provisions had been set forth in full herein.

Part 3. Definitions. The following terms are used in this Certificate of Designation (including the Standard Provisions in Annex A hereto) as defined below:

- (a) "Common Stock" means the common stock, par value \$0.001 per share, of the Corporation.
- (b) "Dividend Payment Date" means May 15, August 15, November 15 and February 15 of each year.
- (c) "Junior Stock" means the Common Stock and any other class or series of stock of the Corporation the terms of which expressly provide that it ranks junior to Designated Preferred Stock as to dividend rights and/or as to rights on liquidation, dissolution or winding up of the Corporation.
- (d) "Liquidation Amount" means \$1,000 per share of Designated Preferred Stock.
- (e) "Minimum Amount" means \$25,000,000.
- (f) "Parity Stock" means any class or series of stock of the Corporation (other than Designated Preferred Stock) the terms of which do not expressly provide that such class or series will rank senior or junior to Designated Preferred Stock as to dividend rights and/or as to rights on liquidation, dissolution or winding up of the Corporation (in each case without regard to whether dividends accrue cumulatively or non-cumulatively).

- (g) "Signing Date" means the Original Issue Date.

Part 4. Certain Voting Matters. Holders of shares of Designated Preferred Stock will be entitled to one vote for each such share on any matter on which holders of Designated Preferred Stock are entitled to vote, including any action by written consent.

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**STANDARD PROVISIONS**

Section 1. General Matters. Each share of Designated Preferred Stock shall be identical in all respects to every other share of Designated Preferred Stock. The Designated Preferred Stock shall be perpetual, subject to the provisions of Section 5 of these Standard Provisions that form a part of the Certificate of Designations. The Designated Preferred Stock shall rank equally with Parity Stock and shall rank senior to Junior Stock with respect to the payment of dividends and the distribution of assets in the event of any dissolution, liquidation or winding up of the Corporation.

Section 2. Standard Definitions. As used herein with respect to Designated Preferred Stock:

- (a) "Applicable Dividend Rate" means (i) during the period from the Original Issue Date to, but excluding, the first day of the first Dividend Period commencing on or after the fifth anniversary of the Original Issue Date, 5% per annum and (ii) from and after the first day of the first Dividend Period commencing on or after the fifth anniversary of the Original Issue Date, 9% per annum.
- (b) "Appropriate Federal Banking Agency" means the "appropriate Federal banking agency" with respect to the Corporation as defined in Section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. Section 1813(q)), or any successor provision.

(c) “Business Combination” means a merger, consolidation, statutory share exchange or similar transaction that requires the approval of the Corporation’s stockholders.

(d) “Business Day” means any day except Saturday, Sunday and any day on which banking institutions in the State of New York generally are authorized or required by law or other governmental actions to close.

(e) “Bylaws” means the bylaws of the Corporation, as they may be amended from time to time.

(f) “Certificate of Designations” means the Certificate of Designations or comparable instrument relating to the Designated Preferred Stock, of which these Standard Provisions form a part, as it may be amended from time to time.

(g) “Charter” means the Corporation’s certificate or articles of incorporation, articles of association, or similar organizational document.

(h) “Dividend Period” has the meaning set forth in Section 3(a).

(i) “Dividend Record Date” has the meaning set forth in Section 3(a).

(j) “Liquidation Preference” has the meaning set forth in Section 4(a).

A-1

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(k) “Original Issue Date” means the date on which shares of Designated Preferred Stock are first issued.

(l) “Preferred Director” has the meaning set forth in Section 7(b).

(m) “Preferred Stock” means any and all series of preferred stock of the Corporation, including the Designated Preferred Stock.

(n) “Qualified Equity Offering” means the sale and issuance for cash by the Corporation to persons other than the Corporation or any of its subsidiaries after the Original Issue Date of shares of perpetual Preferred Stock, Common Stock or any combination of such stock, that, in each case, qualify as and may be included in Tier 1 capital of the Corporation at the time of issuance under the applicable risk-based capital guidelines of the Corporation’s Appropriate Federal Banking Agency (other than any such sales and issuances made pursuant to agreements or arrangements entered into, or pursuant to financing plans which were publicly announced, on or prior to October 13, 2008).

(o) “Share Dilution Amount” has the meaning set forth in Section 3(b).

(p) “Standard Provisions” mean these Standard Provisions that form a part of the Certificate of Designations relating to the Designated Preferred Stock.

(q) “Successor Preferred Stock” has the meaning set forth in Section 5(a).

(r) “Voting Parity Stock” means, with regard to any matter as to which the holders of Designated Preferred Stock are entitled to vote as specified in Sections 7(a) and 7(b) of these Standard Provisions that form a part of the Certificate of Designations, any and all series of Parity Stock upon which like voting rights have been conferred and are exercisable with respect to such matter.

### Section 3. Dividends.

(a) Rate. Holders of Designated Preferred Stock shall be entitled to receive, on each share of Designated Preferred Stock if, as and when declared by the Board of Directors or any duly authorized committee of the Board of Directors, but only out of assets legally available therefor, cumulative cash dividends with respect to each Dividend Period (as defined below) at a rate per annum equal to the Applicable Dividend Rate on (i) the Liquidation Amount per share of Designated Preferred Stock and (ii) the amount of accrued and unpaid dividends for any prior Dividend Period on such share of Designated Preferred Stock, if any. Such dividends shall begin to accrue and be cumulative from the Original Issue Date, shall compound on each subsequent Dividend Payment Date (i.e., no dividends shall accrue on other dividends unless and until the first Dividend Payment Date for such other dividends has passed without such other dividends having been paid on such date) and shall be payable quarterly in arrears on each Dividend Payment Date, commencing with the first such Dividend Payment Date to occur at least 20 calendar days after the Original Issue Date. In the event that any Dividend Payment Date would otherwise fall on a day that is not a Business Day, the dividend payment due on that date will be postponed to the next day that is a Business Day and no additional dividends will accrue as a result of that postponement. The period from and including any Dividend Payment Date to, but

A-2

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excluding, the next Dividend Payment Date is a “Dividend Period”, provided that the initial Dividend Period shall be the period from and including the Original Issue Date to, but excluding, the next Dividend Payment Date.

Dividends that are payable on Designated Preferred Stock in respect of any Dividend Period shall be computed on the basis of a 360-day year consisting of twelve 30-day months. The amount of dividends payable on Designated Preferred Stock on any date prior to the end of a Dividend Period, and for the initial Dividend Period, shall be computed on the basis of a 360-day year consisting of twelve 30-day months, and actual days elapsed over a 30-day month.

Dividends that are payable on Designated Preferred Stock on any Dividend Payment Date will be payable to holders of record of Designated Preferred Stock as they appear on the stock register of the Corporation on the applicable record date, which shall be the 15th calendar day immediately preceding such Dividend Payment Date or such other record date fixed by the Board of Directors or any duly authorized committee of the Board of Directors

that is not more than 60 nor less than 10 days prior to such Dividend Payment Date (each, a “Dividend Record Date”). Any such day that is a Dividend Record Date shall be a Dividend Record Date whether or not such day is a Business Day.

Holders of Designated Preferred Stock shall not be entitled to any dividends, whether payable in cash, securities or other property, other than dividends (if any) declared and payable on Designated Preferred Stock as specified in this Section 3 (subject to the other provisions of the Certificate of Designations).

(b) Priority of Dividends. So long as any share of Designated Preferred Stock remains outstanding, no dividend or distribution shall be declared or paid on the Common Stock or any other shares of Junior Stock (other than dividends payable solely in shares of Common Stock) or Parity Stock, subject to the immediately following paragraph in the case of Parity Stock, and no Common Stock, Junior Stock or Parity Stock shall be, directly or indirectly, purchased, redeemed or otherwise acquired for consideration by the Corporation or any of its subsidiaries unless all accrued and unpaid dividends for all past Dividend Periods, including the latest completed Dividend Period (including, if applicable as provided in Section 3(a) above, dividends on such amount), on all outstanding shares of Designated Preferred Stock have been or are contemporaneously declared and paid in full (or have been declared and a sum sufficient for the payment thereof has been set aside for the benefit of the holders of shares of Designated Preferred Stock on the applicable record date). The foregoing limitation shall not apply to (i) redemptions, purchases or other acquisitions of shares of Common Stock or other Junior Stock in connection with the administration of any employee benefit plan in the ordinary course of business (including purchases to offset the Share Dilution Amount (as defined below) pursuant to a publicly announced repurchase plan) and consistent with past practice, provided that any purchases to offset the Share Dilution Amount shall in no event exceed the Share Dilution Amount; (ii) purchases or other acquisitions by a broker-dealer subsidiary of the Corporation solely for the purpose of market-making, stabilization or customer facilitation transactions in Junior Stock or Parity Stock in the ordinary course of its business; (iii) purchases by a broker-dealer subsidiary of the Corporation of capital stock of the Corporation for resale pursuant to an offering by the Corporation of such capital stock underwritten by such broker-dealer subsidiary; (iv) any dividends or distributions of rights or Junior Stock in connection with a stockholders’

A-3

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rights plan or any redemption or repurchase of rights pursuant to any stockholders’ rights plan; (v) the acquisition by the Corporation or any of its subsidiaries of record ownership in Junior Stock or Parity Stock for the beneficial ownership of any other persons (other than the Corporation or any of its subsidiaries), including as trustees or custodians; and (vi) the exchange or conversion of Junior Stock for or into other Junior Stock or of Parity Stock for or into other Parity Stock (with the same or lesser aggregate liquidation amount) or Junior Stock, in each case, solely to the extent required pursuant to binding contractual agreements entered into prior to the Signing Date or any subsequent agreement for the accelerated exercise, settlement or exchange thereof for Common Stock. “Share Dilution Amount” means the increase in the number of diluted shares outstanding (determined in accordance with generally accepted accounting principles in the United States, and as measured from the date of the Corporation’s consolidated financial statements most recently filed with the Securities and Exchange Commission prior to the Original Issue Date) resulting from the grant, vesting or exercise of equity-based compensation to employees and equitably adjusted for any stock split, stock dividend, reverse stock split, reclassification or similar transaction.

When dividends are not paid (or declared and a sum sufficient for payment thereof set aside for the benefit of the holders thereof on the applicable record date) on any Dividend Payment Date (or, in the case of Parity Stock having dividend payment dates different from the Dividend Payment Dates, on a dividend payment date falling within a Dividend Period related to such Dividend Payment Date) in full upon Designated Preferred Stock and any shares of Parity Stock, all dividends declared on Designated Preferred Stock and all such Parity Stock and payable on such Dividend Payment Date (or, in the case of Parity Stock having dividend payment dates different from the Dividend Payment Dates, on a dividend payment date falling within the Dividend Period related to such Dividend Payment Date) shall be declared pro rata so that the respective amounts of such dividends declared shall bear the same ratio to each other as all accrued and unpaid dividends per share on the shares of Designated Preferred Stock (including, if applicable as provided in Section 3(a) above, dividends on such amount) and all Parity Stock payable on such Dividend Payment Date (or, in the case of Parity Stock having dividend payment dates different from the Dividend Payment Dates, on a dividend payment date falling within the Dividend Period related to such Dividend Payment Date) (subject to their having been declared by the Board of Directors or a duly authorized committee of the Board of Directors out of legally available funds and including, in the case of Parity Stock that bears cumulative dividends, all accrued but unpaid dividends) bear to each other. If the Board of Directors or a duly authorized committee of the Board of Directors determines not to pay any dividend or a full dividend on a Dividend Payment Date, the Corporation will provide written notice to the holders of Designated Preferred Stock prior to such Dividend Payment Date. Subject to the foregoing, and not otherwise, such dividends (payable in cash, securities or other property) as may be determined by the Board of Directors or any duly authorized committee of the Board of Directors may be declared and paid on any securities, including Common Stock and other Junior Stock, from time to time out of any funds legally available for such payment, and holders of Designated Preferred Stock shall not be entitled to participate in any such dividends.

#### Section 4. Liquidation Rights.

(a) Voluntary or Involuntary Liquidation. In the event of any liquidation, dissolution or winding up of the affairs of the Corporation, whether voluntary or involuntary, holders of

A-4

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Designated Preferred Stock shall be entitled to receive for each share of Designated Preferred Stock, out of the assets of the Corporation or proceeds thereof (whether capital or surplus) available for distribution to stockholders of the Corporation, subject to the rights of any creditors of the Corporation, before any distribution of such assets or proceeds is made to or set aside for the holders of Common Stock and any other stock of the Corporation ranking junior to Designated Preferred Stock as to such distribution, payment in full in an amount equal to the sum of (i) the Liquidation Amount per share and (ii) the amount of any accrued and unpaid dividends (including, if applicable as provided in Section 3(a) above, dividends on such amount), whether or not declared, to the date of payment (such amounts collectively, the “Liquidation Preference”).

(b) Partial Payment. If in any distribution described in Section 4(a) above the assets of the Corporation or proceeds thereof are not sufficient to pay in full the amounts payable with respect to all outstanding shares of Designated Preferred Stock and the corresponding amounts payable with respect of any other stock of the Corporation ranking equally with Designated Preferred Stock as to such distribution, holders of Designated Preferred Stock and the holders of such other stock shall share ratably in any such distribution in proportion to the full respective distributions to which they are entitled.

(c) Residual Distributions. If the Liquidation Preference has been paid in full to all holders of Designated Preferred Stock and the corresponding amounts payable with respect of any other stock of the Corporation ranking equally with Designated Preferred Stock as to such distribution has been paid in full, the holders of other stock of the Corporation shall be entitled to receive all remaining assets of the Corporation (or proceeds thereof) according to their respective rights and preferences.

(d) Merger, Consolidation and Sale of Assets Not Liquidation. For purposes of this Section 4, the merger or consolidation of the Corporation with any other corporation or other entity, including a merger or consolidation in which the holders of Designated Preferred Stock receive cash, securities or other property for their shares, or the sale, lease or exchange (for cash, securities or other property) of all or substantially all of the assets of the Corporation, shall not constitute a liquidation, dissolution or winding up of the Corporation.

#### Section 5. Redemption.

(a) Optional Redemption. Except as provided below, the Designated Preferred Stock may not be redeemed prior to the first Dividend Payment Date falling on or after the third anniversary of the Original Issue Date. On or after the first Dividend Payment Date falling on or after the third anniversary of the Original Issue Date, the Corporation, at its option, subject to the approval of the Appropriate Federal Banking Agency, may redeem, in whole or in part, at any time and from time to time, out of funds legally available therefor, the shares of Designated Preferred Stock at the time outstanding, upon notice given as provided in Section 5(c) below, at a redemption price equal to the sum of (i) the Liquidation Amount per share and (ii) except as otherwise provided below, any accrued and unpaid dividends (including, if applicable as provided in Section 3(a) above, dividends on such amount) (regardless of whether any dividends are actually declared) to, but excluding, the date fixed for redemption.

A-5

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Notwithstanding the foregoing, prior to the first Dividend Payment Date falling on or after the third anniversary of the Original Issue Date, the Corporation, at its option, subject to the approval of the Appropriate Federal Banking Agency, may redeem, in whole or in part, at any time and from time to time, the shares of Designated Preferred Stock at the time outstanding, upon notice given as provided in Section 5(c) below, at a redemption price equal to the sum of (i) the Liquidation Amount per share and (ii) except as otherwise provided below, any accrued and unpaid dividends (including, if applicable as provided in Section 3(a) above, dividends on such amount) (regardless of whether any dividends are actually declared) to, but excluding, the date fixed for redemption; provided that (x) the Corporation (or any successor by Business Combination) has received aggregate gross proceeds of not less than the Minimum Amount (plus the "Minimum Amount" as defined in the relevant certificate of designations for each other outstanding series of preferred stock of such successor that was originally issued to the United States Department of the Treasury (the "Successor Preferred Stock") in connection with the Troubled Asset Relief Program Capital Purchase Program) from one or more Qualified Equity Offerings (including Qualified Equity Offerings of such successor), and (y) the aggregate redemption price of the Designated Preferred Stock (and any Successor Preferred Stock) redeemed pursuant to this paragraph may not exceed the aggregate net cash proceeds received by the Corporation (or any successor by Business Combination) from such Qualified Equity Offerings (including Qualified Equity Offerings of such successor).

The redemption price for any shares of Designated Preferred Stock shall be payable on the redemption date to the holder of such shares against surrender of the certificate(s) evidencing such shares to the Corporation or its agent. Any declared but unpaid dividends payable on a redemption date that occurs subsequent to the Dividend Record Date for a Dividend Period shall not be paid to the holder entitled to receive the redemption price on the redemption date, but rather shall be paid to the holder of record of the redeemed shares on such Dividend Record Date relating to the Dividend Payment Date as provided in Section 3 above.

(b) No Sinking Fund. The Designated Preferred Stock will not be subject to any mandatory redemption, sinking fund or other similar provisions. Holders of Designated Preferred Stock will have no right to require redemption or repurchase of any shares of Designated Preferred Stock.

(c) Notice of Redemption. Notice of every redemption of shares of Designated Preferred Stock shall be given by first class mail, postage prepaid, addressed to the holders of record of the shares to be redeemed at their respective last addresses appearing on the books of the Corporation. Such mailing shall be at least 30 days and not more than 60 days before the date fixed for redemption. Any notice mailed as provided in this Subsection shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Designated Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Designated Preferred Stock. Notwithstanding the foregoing, if shares of Designated Preferred Stock are issued in book-entry form through The Depository Trust Company or any other similar facility, notice of redemption may be given to the holders of Designated Preferred Stock at such time and in any manner permitted by such facility. Each notice of redemption given to a holder shall state: (1) the redemption date; (2) the number of shares of Designated Preferred Stock to be redeemed and, if

A-6

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less than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (3) the redemption price; and (4) the place or places where certificates for such shares are to be surrendered for payment of the redemption price.

(d) Partial Redemption. In case of any redemption of part of the shares of Designated Preferred Stock at the time outstanding, the shares to be redeemed shall be selected either pro rata or in such other manner as the Board of Directors or a duly authorized committee thereof may determine to be fair and equitable. Subject to the provisions hereof, the Board of Directors or a duly authorized committee thereof shall have full power and authority to prescribe the terms and conditions upon which shares of Designated Preferred Stock shall be redeemed from time to time. If fewer than all the shares represented by any certificate are redeemed, a new certificate shall be issued representing the unredeemed shares without charge to the holder thereof.

(e) Effectiveness of Redemption. If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been deposited by the Corporation, in trust for the pro rata benefit of the holders of the shares called for redemption, with a bank or trust company doing business in the Borough of Manhattan, The City of New York, and having a capital and surplus of at least \$500 million and selected by the Board of Directors, so as to be and continue to be available solely therefor, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date dividends shall cease to accrue on all shares so called for redemption, all shares so called for redemption shall no longer be deemed outstanding and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption from such bank or trust company, without interest. Any funds unclaimed at the end of three years from the redemption date shall, to the extent permitted by law, be released to the

Corporation, after which time the holders of the shares so called for redemption shall look only to the Corporation for payment of the redemption price of such shares.

(f) Status of Redeemed Shares. Shares of Designated Preferred Stock that are redeemed, repurchased or otherwise acquired by the Corporation shall revert to authorized but unissued shares of Preferred Stock (provided that any such cancelled shares of Designated Preferred Stock may be reissued only as shares of any series of Preferred Stock other than Designated Preferred Stock).

Section 6. Conversion. Holders of Designated Preferred Stock shares shall have no right to exchange or convert such shares into any other securities.

Section 7. Voting Rights.

(a) General. The holders of Designated Preferred Stock shall not have any voting rights except as set forth below or as otherwise from time to time required by law.

(b) Preferred Stock Directors. Whenever, at any time or times, dividends payable on the shares of Designated Preferred Stock have not been paid for an aggregate of six quarterly Dividend Periods or more, whether or not consecutive, the authorized number of directors of the Corporation shall automatically be increased by two and the holders of the Designated Preferred

A-7

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Stock shall have the right, with holders of shares of any one or more other classes or series of Voting Parity Stock outstanding at the time, voting together as a class, to elect two directors (hereinafter the “Preferred Directors” and each a “Preferred Director”) to fill such newly created directorships at the Corporation’s next annual meeting of stockholders (or at a special meeting called for that purpose prior to such next annual meeting) and at each subsequent annual meeting of stockholders until all accrued and unpaid dividends for all past Dividend Periods, including the latest completed Dividend Period (including, if applicable as provided in Section 3(a) above, dividends on such amount), on all outstanding shares of Designated Preferred Stock have been declared and paid in full at which time such right shall terminate with respect to the Designated Preferred Stock, except as herein or by law expressly provided, subject to reversion in the event of each and every subsequent default of the character above mentioned; provided that it shall be a qualification for election for any Preferred Director that the election of such Preferred Director shall not cause the Corporation to violate any corporate governance requirements of any securities exchange or other trading facility on which securities of the Corporation may then be listed or traded that listed or traded companies must have a majority of independent directors. Upon any termination of the right of the holders of shares of Designated Preferred Stock and Voting Parity Stock as a class to vote for directors as provided above, the Preferred Directors shall cease to be qualified as directors, the term of office of all Preferred Directors then in office shall terminate immediately and the authorized number of directors shall be reduced by the number of Preferred Directors elected pursuant hereto. Any Preferred Director may be removed at any time, with or without cause, and any vacancy created thereby may be filled, only by the affirmative vote of the holders a majority of the shares of Designated Preferred Stock at the time outstanding voting separately as a class together with the holders of shares of Voting Parity Stock, to the extent the voting rights of such holders described above are then exercisable. If the office of any Preferred Director becomes vacant for any reason other than removal from office as aforesaid, the remaining Preferred Director may choose a successor who shall hold office for the unexpired term in respect of which such vacancy occurred.

(c) Class Voting Rights as to Particular Matters. So long as any shares of Designated Preferred Stock are outstanding, in addition to any other vote or consent of stockholders required by law or by the Charter, the vote or consent of the holders of at least 66 2/3% of the shares of Designated Preferred Stock at the time outstanding, voting as a separate class, given in person or by proxy, either in writing without a meeting or by vote at any meeting called for the purpose, shall be necessary for effecting or validating:

(i) Authorization of Senior Stock. Any amendment or alteration of the Certificate of Designations for the Designated Preferred Stock or the Charter to authorize or create or increase the authorized amount of, or any issuance of, any shares of, or any securities convertible into or exchangeable or exercisable for shares of, any class or series of capital stock of the Corporation ranking senior to Designated Preferred Stock with respect to either or both the payment of dividends and/or the distribution of assets on any liquidation, dissolution or winding up of the Corporation;

(ii) Amendment of Designated Preferred Stock. Any amendment, alteration or repeal of any provision of the Certificate of Designations for the Designated Preferred Stock or the Charter (including, unless no vote on such merger or consolidation is required by Section 7(c) (iii) below, any amendment, alteration or repeal by means of a

A-8

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merger, consolidation or otherwise) so as to adversely affect the rights, preferences, privileges or voting powers of the Designated Preferred Stock; or

(iii) Share Exchanges, Reclassifications, Mergers and Consolidations. Any consummation of a binding share exchange or reclassification involving the Designated Preferred Stock, or of a merger or consolidation of the Corporation with another corporation or other entity, unless in each case (x) the shares of Designated Preferred Stock remain outstanding or, in the case of any such merger or consolidation with respect to which the Corporation is not the surviving or resulting entity, are converted into or exchanged for preference securities of the surviving or resulting entity or its ultimate parent, and (y) such shares remaining outstanding or such preference securities, as the case may be, have such rights, preferences, privileges and voting powers, and limitations and restrictions thereof, taken as a whole, as are not materially less favorable to the holders thereof than the rights, preferences, privileges and voting powers, and limitations and restrictions thereof, of Designated Preferred Stock immediately prior to such consummation, taken as a whole;

*provided, however,* that for all purposes of this Section 7(c), any increase in the amount of the authorized Preferred Stock, including any increase in the authorized amount of Designated Preferred Stock necessary to satisfy preemptive or similar rights granted by the Corporation to other persons prior to the Signing Date, or the creation and issuance, or an increase in the authorized or issued amount, whether pursuant to preemptive or similar rights or otherwise, of any other series of Preferred Stock, or any securities convertible into or exchangeable or exercisable for any other series of Preferred Stock, ranking equally with and/or junior to Designated Preferred Stock with respect to the payment of dividends (whether such dividends are cumulative or non-cumulative) and the

distribution of assets upon liquidation, dissolution or winding up of the Corporation will not be deemed to adversely affect the rights, preferences, privileges or voting powers, and shall not require the affirmative vote or consent of, the holders of outstanding shares of the Designated Preferred Stock.

(d) Changes after Provision for Redemption. No vote or consent of the holders of Designated Preferred Stock shall be required pursuant to Section 7(c) above if, at or prior to the time when any such vote or consent would otherwise be required pursuant to such Section, all outstanding shares of the Designated Preferred Stock shall have been redeemed, or shall have been called for redemption upon proper notice and sufficient funds shall have been deposited in trust for such redemption, in each case pursuant to Section 5 above.

(e) Procedures for Voting and Consents. The rules and procedures for calling and conducting any meeting of the holders of Designated Preferred Stock (including, without limitation, the fixing of a record date in connection therewith), the solicitation and use of proxies at such a meeting, the obtaining of written consents and any other aspect or matter with regard to such a meeting or such consents shall be governed by any rules of the Board of Directors or any duly authorized committee of the Board of Directors, in its discretion, may adopt from time to time, which rules and procedures shall conform to the requirements of the Charter, the Bylaws, and applicable law and the rules of any national securities exchange or other trading facility on which Designated Preferred Stock is listed or traded at the time.

A-9

Section 8. Record Holders. To the fullest extent permitted by applicable law, the Corporation and the transfer agent for Designated Preferred Stock may deem and treat the record holder of any share of Designated Preferred Stock as the true and lawful owner thereof for all purposes, and neither the Corporation nor such transfer agent shall be affected by any notice to the contrary.

Section 9. Notices. All notices or communications in respect of Designated Preferred Stock shall be sufficiently given if given in writing and delivered in person or by first class mail, postage prepaid, or if given in such other manner as may be permitted in this Certificate of Designations, in the Charter or Bylaws or by applicable law. Notwithstanding the foregoing, if shares of Designated Preferred Stock are issued in book-entry form through The Depository Trust Company or any similar facility, such notices may be given to the holders of Designated Preferred Stock in any manner permitted by such facility.

Section 10. No Preemptive Rights. No share of Designated Preferred Stock shall have any rights of preemption whatsoever as to any securities of the Corporation, or any warrants, rights or options issued or granted with respect thereto, regardless of how such securities, or such warrants, rights or options, may be designated, issued or granted.

Section 11. Replacement Certificates. The Corporation shall replace any mutilated certificate at the holder's expense upon surrender of that certificate to the Corporation. The Corporation shall replace certificates that become destroyed, stolen or lost at the holder's expense upon delivery to the Corporation of reasonably satisfactory evidence that the certificate has been destroyed, stolen or lost, together with any indemnity that may be reasonably required by the Corporation.

Section 12. Other Rights. The shares of Designated Preferred Stock shall not have any rights, preferences, privileges or voting powers or relative, participating, optional or other special rights, or qualifications, limitations or restrictions thereof, other than as set forth herein or in the Charter or as provided by applicable law.

A-10



**ROSS MILLER**  
**Secretary of State**  
**204 North Carson Street, Ste 1**  
**Carson City, Nevada 89701-4299**  
**(775) 684 5708**  
**Website: [www.nvsos.gov](http://www.nvsos.gov)**

**Certificate of Designation**  
**(PURSUANT TO NRS 78.1955)**

**USE BLACK INK ONLY - DO NOT HIGHLIGHT**

**ABOVE SPACE IS FOR OFFICE USE ONLY**

**Certificate of Designation For**  
**Nevada Profit Corporations**  
**(Pursuant to NRS 78.1955)**

1. Name of corporation:

**First Busey Corporation**

2. By resolution of the board of directors pursuant to a provision in the articles of incorporation this certificate establishes the following regarding the voting powers, designations, preferences, limitations, restrictions and relative rights of the following class or series of stock.

**A series of Preferred Stock, \$0.001 par value per share, of First Busey Corporation (the "Corporation") be and hereby is created, and that the designation and number of shares of such series, and the voting and other powers, preferences and relative, participating, optional or other rights, and the qualifications, limitations and restrictions thereof, of the shares of such series, are as set forth on Exhibit A attached hereto:**

3. Effective date of filing: (optional)

(must not be later than 90 days after the certificate is filed)

4. Signature: (required)

Filing Fee: \$175.00

**IMPORTANT:** Failure to include any of the above information and submit with the proper fees may cause this filing to be rejected.

*This form must be accompanied by appropriate fees.*

Nevada Secretary of State Stock Designation  
Revised: 7-1-08

**EXHIBIT A  
TO THE  
CERTIFICATE OF DESIGNATION**

**SERIES A CONVERTIBLE CUMULATIVE PREFERRED STOCK  
OF  
FIRST BUSEY CORPORATION**

Pursuant to the authority vested in the Board of Directors by the Amended and Restated Articles of Incorporation of the Corporation, the Board of Directors does hereby designate, create, authorize and provide for the issue of a series of preferred stock having \$0.001 par value per share, with a liquidation amount of \$100,000.00 per share, which shall be designated as Series A Convertible Cumulative Preferred Stock, Series A (the "Series A Preferred Stock") consisting of three hundred and ninety-three (393) shares having the following voting powers, preferences and relative, participating, optional and other special rights, and qualifications, limitations and restrictions thereof as follows:

**SERIES A CONVERTIBLE CUMULATIVE  
PREFERRED STOCK**

**Section I. Dividend Rights**

(a) From and after the date on which shares of the Series A Preferred Stock are first issued, holders of the Series A Preferred Stock (the "Holders") shall be entitled to receive, when, as and if declared by the Board of Directors, out of the funds legally available therefor, dividends in the amount determined as set forth in Section I(b), and no more.

(b) Commencing with the date of issuance, cumulative cash dividends shall be payable quarterly in arrears, when, as and if declared by the Board of Directors, on February 15, May 15, August 15 and November 15 of each year, or, if any such day is not a Business Day, the next Business Day, and on the Conversion Date (each, a "Dividend Payment Date") for each outstanding share of Series A Preferred Stock, payable at an annual rate on the liquidation amount of \$100,000 equal to 9.00% per annum. Dividends payable pursuant to this Section I(b), will be computed on the basis of actual days in any period, and upon a 360-day year consisting of twelve 30-day months. "Business Day" means any day except Saturday, Sunday and any day on which banking institutions in the State of Illinois generally are authorized or required by law or other governmental actions to close.

The cash dividends on the Series A Preferred Stock payable pursuant to Section I(a) are cumulative. Such dividends shall begin to accrue and be cumulative from the date of issuance, shall compound on each subsequent Dividend Payment Date and shall be payable in arrears on each Dividend Payment Date, commencing on the first such Dividend Date. In the event that any Dividend Payment Date would otherwise fall on a day that is not a Business Day, the dividend payment due on that date will be postponed to the next day that is a Business Day and no additional dividends will accrue as a result of that postponement. The period from and including any Dividend Payment Date to, but excluding, the next Dividend Date is a "Dividend Period," provided that the initial Dividend Period shall be the period from and including the date

of original issuance to, but excluding, the next Dividend Payment Date. The amount of dividends payable on Series A Preferred Stock on any date prior to the end of a Dividend Period, and for the initial Dividend Period, shall be computed on the basis of a 360-day year consisting of twelve 30-day months, and actual days elapsed over a 30-day month.

Dividends that are payable on Series A Preferred Stock on any Dividend Payment Date will be payable to Holders of record of Series A Preferred Stock as they appear on the stock register of the Corporation on the applicable record date, which shall be the 15th calendar day immediately preceding such Dividend Payment Date or such other record date fixed by the Board of Directors or any duly authorized committee of the Board of Directors that is not more than 60 nor less than 10 days prior to such Dividend Payment Date (each, a "Dividend Record Date"). Any such day that is a Dividend Record Date shall be a Dividend Record Date whether or not such day is a Business Day.

Holders of Series A Preferred Stock shall not be entitled to any dividends, whether payable in cash, securities or other property, other than dividends (if any) when, as and if declared by the Board of Directors on the date set by the Board of Directors for payment on Series A Preferred Stock as specified in this Section I (subject to the other provisions of the Certificate of Designations).

(c) So long as any shares of the Series A Preferred Stock are outstanding, the Corporation may not, at any time, (i) declare or pay dividends on, make distributions with respect to, or redeem, purchase or acquire, or make a liquidation payment with respect to, or pay or make available monies for a sinking fund for the redemption of, any Common Stock or other Junior Stock (as defined in Section II) of the Corporation, or (ii) redeem, purchase or acquire, or make a liquidation payment with respect to, or pay or make available monies for a sinking fund for the redemption of, any Parity Stock (otherwise than pursuant to pro rata offers to purchase all or any pro rata portion of the Series A Preferred Stock and such Parity Stock) unless in each case full dividends as provided in Section I(a) on all outstanding shares of the Series A Preferred Stock have been paid or (in the case of current dividends) declared and set aside for payment (except for (i) dividends or distributions paid in shares of, or options, warrants or rights to subscribe for or purchase



shares of, Common Stock or other Junior Stock of the Corporation, (ii) redemptions or purchases of any rights pursuant to a shareholder rights plan or by conversion or exchange of Junior Stock for or into other Junior Stock, or of Parity Stock for or into other Parity Stock or Junior Stock of the Corporation, (iii) purchases by the Corporation or its affiliates as a broker, dealer, advisor, fiduciary, trustee or comparable capacity in connection with transactions effected by or for the account of customers of the Corporation or customers of any of its subsidiaries or in connection with the distribution or trading of such capital stock and (iv) acquisitions of Common Stock in respect of exercises of employee equity awards and any related tax withholding). When dividends are not paid in full (or declared and a sum sufficient for such full payment is not so set apart) for any dividend period on the Series A Preferred Stock and any Parity Stock (as defined in Section II), dividends declared on the Series A Preferred Stock and Parity Stock (whether cumulative or non-cumulative) shall only be declared pro rata so that the amount of dividends declared per share on the Series A Preferred Stock and such Parity Stock shall in all cases bear to each other the same ratio that accrued dividends per share on the shares of the Series A Preferred Stock (but without, in the case of

any non-cumulative preferred stock, accumulation of unpaid dividends for prior dividend periods) and such Parity Stock bear to each other.

(d) No interest or sum of money in lieu of interest will be payable in respect of any dividend payment or payments on Series A Preferred Stock or on such Parity Stock that may be in arrears.

(e) If the Board of Directors determines not to declare any dividend or pay a full dividend previously declared with respect to a Dividend Period, the Corporation will provide written notice to the Holders prior to such date.

## **Section II. Ranking**

(a) The Series A Preferred Stock shall, with respect to dividend distributions and distributions upon the liquidation, winding-up and dissolution of the Corporation,

(i) rank senior and prior to Common Stock (including, if applicable and to the fullest extent permitted by law, any preferred stock purchase or similar rights issued with respect thereto pursuant to a shareholder rights plan) of the Corporation, and each other class or series of equity securities of the Corporation, whether currently issued or issued in the future, that does not by its terms rank pari passu or senior to the Series A Preferred Stock with respect to payment of dividends or rights upon liquidation, dissolution or winding up of the affairs of the Corporation (all of such equity securities, including the Common Stock, and options, warrants or rights to subscribe for or purchase shares of Common Stock or such other equity securities, are collectively referred to herein as the “Junior Stock”);

(ii) rank on a parity with each other class or series of equity securities of the Corporation, whether currently issued or issued in the future, that by its terms provides that it ranks pari passu with the Series A Preferred Stock with respect to payment of dividends or rights upon liquidation, dissolution or winding up of the affairs of the Corporation (all of such equity securities are collectively referred to herein as the “Parity Stock”), and

(iii) rank junior to each other class or series of equity securities of the Corporation, whether currently issued or issued in the future, that by its terms ranks senior to the Series A Preferred Stock with respect to payment of dividends or rights upon liquidation, dissolution or winding up of the affairs of the Corporation (all of such equity securities are collectively referred to herein as the “Senior Stock”).

(b) Shares of the Corporation’s series of preferred stock having \$0.001 par value per share, with a liquidation preference of \$1,000.00 per share, designated as the Fixed Rate Cumulative Perpetual Preferred Stock, Series T (the “Series T Preferred Stock”), shall be considered Parity Stock.

## **Section III. Mandatory Conversion**

(a) The initial conversion price as of the date of original issuance of the Series A Preferred Stock is \$4.00 (subject to adjustment from time to time as provided in Section III(d)) (the “Conversion Price”).

(b) Upon the terms and in the manner set forth in this Section III and subject to the provisions for adjustment contained herein, each share of the Series A Preferred Stock will automatically convert on the first Business Day following the receipt of Shareholder Approval (such date, the “Conversion Date”) into the right to receive (i) a number of fully-paid and non-assessable shares of Common Stock of the Corporation equal to (A) the sum of \$100,000.00 per share plus any accrued and unpaid dividends for any completed Dividend Payment Period, if any, divided by (B) the Conversion Price and (ii) the accrued and unpaid dividends for the Dividend Payment Period in which the conversion occurs. “Shareholder Approval” shall mean the occurrence of both (i) the approval of the conversion terms of the Series A Preferred Stock by a majority of the total votes cast on the proposal, whether presented at a special or annual meeting of shareholders of the Corporation and (ii) the approval of an amendment to the Corporation’s Amended and Restated Articles of Incorporation to increase the number of shares of Common Stock authorized thereunder from 60,000,000 to 100,000,000 by a majority of the votes entitled to be cast thereon, whether presented at a special or annual meeting of shareholders of the Corporation and the subsequent filing of such amendment with the Secretary of State of the State of Nevada.

(c) As promptly as practicable after the Conversion Date, the Corporation shall (i) provide notice of the conversion to each Holder stating the Conversion Date, the number of shares of Common Stock to be issued upon conversion of each share of Series A Preferred Stock held of record by such Holder and subject to conversion and the place or places where certificates representing shares of Series A Preferred Stock are to be surrendered for issuance of certificates representing shares of Common Stock and (ii) issue and deliver, in exchange for the certificates representing the shares of Series A Preferred Stock held by such Holder, to each Holder a certificate or certificates for the number of full shares of Common Stock to which such Holder is entitled and, as provided in Section III(f) hereof, a check for cash with respect to any fractional interest in a share of Common Stock in an amount determined by multiplying (A) the amount of such fraction by (B) the Conversion Price and (iii) deliver a check for cash with respect to the accrued and unpaid dividends for the Dividend Payment Period in which the conversion occurs. The Holder shall be deemed to have become a shareholder of record on the Conversion Date. Immediately upon conversion, the rights of the Holders as such with respect to the shares so converted shall cease and the persons entitled to receive the shares of Common Stock upon the conversion of such shares of Series A Preferred Stock shall be treated for all purposes as having become the record and beneficial owners of such shares of Common Stock.

(d) To protect against dilution, the Conversion Price is subject to equitable adjustment, without duplication, from time to time as follows:

(i) *Stock Dividends and Distributions and Subdivisions, Splits and Combinations of the Common Stock.* If the Corporation issues Common Stock as a dividend or distribution on the Common Stock to all holders of the Common Stock, or if the Corporation effects a share split or share combination of the Corporation's Common Stock, the Conversion Price will be adjusted based on the following formula:

4

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$$CR1 = CR0 \times (OS0 / OS1)$$

where:

**CR0**= the Conversion Price in effect immediately prior to the adjustment relating to such event.

**CR1**= the new Conversion Price in effect immediately after the adjustment relating to such event.

**OS0**= the number of shares of Common Stock outstanding immediately prior to such event.

**OS1**= the number of shares of Common Stock outstanding immediately after such event.

Any adjustment made pursuant to this paragraph will become effective on the date that is immediately after (i) the date fixed for the determination of holders of Common Stock entitled to receive such dividend or other distribution or (ii) the date on which such split or combination becomes effective, as applicable. If any dividend or distribution described in this paragraph is declared but not so paid or made, the Conversion Price will be readjusted to the Conversion Price that would then be in effect if such dividend or distribution had not been declared.

No adjustment to the Conversion Price shall be made if the Holders actually participate in the transaction that would otherwise give rise to such adjustment on an as-converted basis.

(e) If the Corporation, at any time or from time to time after the date of original issuance of the Series A Preferred Stock, shall declare or make, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in non-voting securities or other property of the Corporation other than shares of Common Stock or cash, then and in each such event provision shall be made so that the Holders of the outstanding shares of Series A Preferred Stock shall receive upon conversion thereof, in addition to the number of shares of Common Stock receivable thereupon, the amount of such other securities of the Corporation or such other property (or the value of such other property) that they would have received had the Series A Preferred Stock been converted into Common Stock on the date of such event and had such Holders thereafter, during the period from the date of such event to and including the conversion date, retained such securities or other property receivable by them during such period giving application to all adjustments called for during such period under these Certificate of Designations with respect to the rights of the Holders of the outstanding shares of Series A Preferred Stock; and, provided, further, however, that no such adjustment shall be made if the Holders of Series A Preferred Stock simultaneously receive a dividend or other distribution of such securities or other property in an amount equal to the amount of such securities or other property as they would have received if all outstanding shares of Series A Preferred Stock had been converted into Common Stock on the date of such event.

(f) No fractional shares of Common Stock or scrip shall be issued upon conversion of shares of Series A Preferred Stock. If more than one share of Series A Preferred Stock shall be surrendered for conversion at any one time by the same Holder, the number of full shares of

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Common Stock issuable upon conversion thereof shall be computed on the basis of the aggregate number of shares of Series A Preferred Stock so surrendered.

(g) Following the receipt of the Shareholder Approval, the Corporation shall at all times reserve and keep available, out of its authorized but unissued Common Stock, solely for the purpose of effecting the conversion of the Series A Preferred Stock, the full number of shares of Common Stock deliverable upon the conversion of all Series A Preferred Stock from time to time outstanding.

(h) All shares of Common Stock which may be issued upon conversion of the shares of Series A Preferred Stock will, upon issuance by the Corporation, be validly issued, fully paid and nonassessable.

(i) Upon conversion of any shares of the Series A Preferred Stock, the Holder thereof shall not be entitled to receive any unpaid dividends in respect of the shares so converted, provided that such Holder shall be entitled to receive any dividends on such shares of the Series A Preferred Stock declared prior to such conversion if such Holder held such shares on the record date fixed for the determination of Holders entitled to receive payment of such dividend.

(j) In the event (i) the Corporation declares a dividend (or any other distribution) on its Common Stock; (ii) the Corporation authorizes the granting to the holders of all or substantially all of its Common Stock of rights, options or warrants to subscribe for or purchase any share of any class or any other rights, options or warrants; (iii) of any reclassification or reorganization of the Common Stock of the Corporation (other than a subdivision or combination of its outstanding Common Stock, or a change in par value, or from par value to no par value, or from no par value to par value), or of any consolidation or merger to which the Corporation is a party and for which approval of any of the Corporation's shareholders is required, or of the sale or transfer of all or substantially all of the assets of the Corporation; (iv) of a tender offer or exchange offer made by the Corporation or any of its subsidiaries for any portion of the Corporation's Common Stock; or (v) of a voluntary or involuntary dissolution, liquidation or winding up of the Corporation, the Corporation shall, in each case, send or cause to be sent, by first-class mail, postage prepaid, to each Holder as such Holder appears in the records of the Corporation, as promptly as practicable but in any event at least ten (10) days prior to the applicable date hereinafter specified, a written notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution or rights, options or warrants, or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distribution or rights, options or warrants are to be determined, or (y) the

date on which such reclassification, consolidation, merger, sale, transfer, tender offer, exchange offer, dissolution, liquidation or winding up is expected to become effective or occur, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their Common Stock for securities or other property deliverable upon such reclassification, consolidation, merger, sale, transfer, tender offer, exchange offer, transfer, dissolution, liquidation or winding up. Notice as provided for above need not be provided by mail if the required information is included in a public filing made by the Corporation with the U.S. Securities and Exchange Commission on or prior to the commencement of the ten (10) day period referenced above.

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#### **Section IV. Voting**

(a) Except as otherwise required by law or the Corporation's Amended and Restated Articles of Incorporation, Holders of the Preferred Stock are not entitled to any voting rights.

(b) Whenever the approval or other action of Holders voting as a separate class is required by applicable law or by the Corporation's Amended and Restated Articles of Incorporation, each share of the Series A Preferred Stock shall be entitled to one vote, and the affirmative vote of a majority of such shares at a meeting at which a majority of such shares are present or represented shall be sufficient to constitute such approval or other action unless a higher percentage is required by applicable law or by the provisions of this Section IV.

(c) Unless a higher percentage is otherwise expressly required by applicable law, approval of holders of two-thirds (by aggregate liquidation preference) of the Series A Preferred Stock outstanding and all other preferred stock or securities having similar voting rights voting in proportion to the respective liquidation preferences, voting as a class, shall be required to amend the Amended and Restated Articles of Incorporation of the Corporation to authorize the issuance of any class or series of Senior Stock, reclassify the Series A Preferred Stock (other than as may be incident to a Reorganization Event which does not require a class vote under Section IV(d)) or to alter or abolish the liquidation preferences or any other preferential right of the Series A Preferred Stock, or otherwise to alter this Certificate of Designations in a manner adverse to the Holders.

(d) Unless a higher percentage is otherwise expressly required by applicable law, approval of holders of a majority (by aggregate Liquidation Preference) of the Series A Preferred Stock outstanding and all other preferred stock or securities having similar voting rights voting in proportion to the respective liquidation preferences, voting as a class, may and shall be required to approve any liquidation, dissolution or winding up of the Corporation or any merger or consolidation of the Corporation with or into any other entity unless (i) the Corporation is the surviving entity in such merger or consolidation and the Series A Preferred Stock remains outstanding or (ii) the Corporation is not the surviving entity in such merger or consolidation but the Series A Preferred Stock is not changed in such merger or consolidation into anything other than a class or series of preferred stock of the surviving or resulting entity, or the entity controlling such person, having such rights, preferences, privileges and voting powers, taken as a whole, as are not materially less favorable to the holders thereof than the rights, preferences, privileges and voting powers of the Series A Preferred Stock, taken as a whole.

#### **Section V. Liquidation**

(a) In the event of any liquidation, dissolution or winding up of the affairs of the Corporation, whether voluntary or involuntary, Holders of Series A Preferred Stock shall be entitled to receive for each share of Series A Preferred Stock, out of the assets of the Corporation or proceeds thereof (whether capital or surplus) available for distribution to stockholders of the Corporation, subject to the rights of any creditors of the Corporation, before any distribution of such assets or proceeds is made to or set aside for the holders of Common Stock and any other stock of the Corporation ranking junior to Series A Preferred Stock as to such distribution,

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payment in full in an amount equal to the sum of (i) \$100,000 per share and (ii) the amount of any accrued and unpaid dividends, whether or not declared, to the date of payment (such amounts collectively, the "Liquidation Preference").

(b) If in any distribution described in Section V(a) above the assets of the Corporation or proceeds thereof are not sufficient to pay in full the amounts payable with respect to all outstanding shares of Series A Preferred Stock and the corresponding amounts payable with respect of any other stock of the Corporation ranking equally with Series A Preferred Stock as to such distribution, Holders of Series A Preferred Stock and the holders of such other stock shall share ratably in any such distribution in proportion to the full respective distributions to which they are entitled.

(c) If the Liquidation Preference has been paid in full to all Holders of Series A Preferred Stock and the corresponding amounts payable with respect of any other stock of the Corporation ranking equally with Series A Preferred Stock as to such distribution has been paid in full, the holders of other stock of the Corporation shall be entitled to receive all remaining assets of the Corporation (or proceeds thereof) according to their respective rights and preferences.

(d) For purposes of this Section 4, the merger or consolidation of the Corporation with any other corporation or other entity, including a merger or consolidation in which the Holders of Series A Preferred Stock receive cash, securities or other property for their shares, or the sale, lease or exchange (for cash, securities or other property) of all or substantially all of the assets of the Corporation, shall not constitute a liquidation, dissolution or winding up of the Corporation.

(e) In the event of any voluntary or involuntary liquidation, dissolution, or winding up of the Corporation, the Corporation shall, within three (3) days after the date the Board of Directors approves such action, or at least twenty (20) days prior to any shareholders' meeting called to approve such action, or within twenty (20) days after the commencement of any involuntary proceeding, whichever is earlier, give each Holder of shares of Series A Preferred Stock initial written notice of the proposed action. Such initial written notice shall describe the material terms and conditions of such proposed action, including a description of the stock, cash, and property to be received by the Holders upon consummation of the proposed action and the date of delivery thereof. If any material change in the facts set forth in the initial notice shall occur, the Corporation shall promptly give written notice to each Holder of shares of Series A Preferred Stock of such material change. The Corporation shall not consummate any voluntary or involuntary liquidation, dissolution, or winding up of the Corporation before the expiration of thirty (30) days after the mailing of the initial notice or ten (10) days after the mailing of any subsequent written notice, whichever is later, provided that any such thirty-day or ten-day period may be shortened upon the written consent of the Holders of all of the outstanding shares of Series A Preferred Stock.

(f) In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation which will involve the distribution of assets other than cash, the Corporation shall promptly engage competent independent appraisers to determine the value of the assets to be distributed to the Holders. The Corporation shall, upon receipt of such appraiser's valuation,

give prompt written notice to each Holder of shares of Series A Preferred Stock of the appraiser's valuation.

#### **Section VI. Adjustments For Reorganization Events**

(a) Upon the occurrence of a Reorganization Event (as defined herein), each share of Series A Preferred Stock outstanding immediately prior to such Reorganization Event shall, without the consent of Holders, become convertible into the types and amounts of securities, cash, and other property that is or was receivable in such Reorganization Event by a Holder of the number of shares of Common Stock into which such share of Series A Preferred Stock was convertible (assuming that Conversion Date had occurred) immediately prior to such Reorganization Event in exchange for such shares of Common Stock (such securities, cash, and other property, the "Exchange Property"). The amount of Exchange Property receivable upon conversion of any Series A Preferred Stock in accordance with Section III hereof (and any subsection thereto) shall be determined based upon the Exchange Property delivered in respect of each share of Common Stock and the number of shares of Common Stock that would be received upon conversion of the Series A Preferred Stock but for the provisions of this Section VI. The Holders shall not have any separate class vote on any Reorganization Event, except as provided in Section IV(d) hereof. A "Reorganization Event" shall mean:

(i) any consolidation or merger of the Corporation with or into another person, in each case pursuant to which the Common Stock will be converted into cash, securities, or other property of the Corporation or another person;

(ii) any sale, transfer, lease, or conveyance to another person of all or substantially all of the consolidated assets of the Corporation and its subsidiaries, taken as a whole, in each case pursuant to which the Common Stock will be converted into cash, securities, or other property; or

(iii) any reclassification of the Common Stock into securities, including securities other than the Common Stock; or

(iv) any statutory exchange of the Corporation's securities for those of another person (other than in connection with a merger or acquisition);

(b) In the event that holders of the shares of the Common Stock have the opportunity to elect the form of consideration to be received in such Reorganization Event, the consideration that the Holders are entitled to receive upon conversion shall be deemed to be (i) the weighted average of the types and amounts of consideration received by the holders of shares of Common Stock that affirmatively make such an election or (ii) if no holders of shares of Common Stock affirmatively make such an election, the weighted average of the types and amounts of consideration actually received by such holders. On each Conversion Date following a Reorganization Event, the Conversion Price then in effect will be applied to the value on such Conversion Date of the securities, cash, or other property received per share of Common Stock, determined as set forth above.

(c) The Corporation (or any successor) shall, within 20 days of the occurrence of any Reorganization Event, provide written notice to the Holders of such occurrence of such event

and of the type and amount of the cash, securities or other property that constitutes the Exchange Property. Failure to deliver such notice shall not affect the operation of this Section VI.

#### **Section VII. Reports as to Adjustments**

Whenever the number of shares of Common Stock into which the shares of the Series A Preferred Stock are convertible is adjusted as provided in Section III, the Corporation shall promptly compute such adjustment and furnish to the Common Stock Conversion Agent and the Holders a certificate, signed by a principal financial officer of the Corporation, setting forth the number of shares of Common Stock into which each share of the Series A Preferred Stock is convertible as a result of such adjustment, a brief statement of the facts requiring such adjustment and the computation thereof and when such adjustment will become effective.

#### **Section VIII. Exclusion of Other Rights**

Except as specified in this Certificate of Designation or as may otherwise be required by law, the shares of Series A Preferred Stock shall not have any voting powers, preferences or relative, participating, optional or other special rights, other than those specifically set forth herein (as such Certificate of Designations may be amended from time to time) and in the Amended and Restated Articles of Incorporation. The shares of Series A Preferred Stock shall have no preemptive or subscription rights.

#### **Section IX. Severability of Provisions**

If any voting powers, preferences or relative, participating, optional or other special rights of the Series A Preferred Stock and qualifications, limitations and restrictions thereof set forth in this Certificate of Designations (as such resolution may be amended from time to time) is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other voting powers, preferences and relative, participating, optional and other special rights of Series A Preferred Stock and qualifications, limitations and restrictions thereof set forth in this Certificate of Designations (as so amended) which can be given effect without the invalid, unlawful or unenforceable voting powers, preferences or relative, participating, optional or other special rights of Series A Preferred Stock and qualifications, limitations and restrictions thereof shall, nevertheless, remain in full force and effect, and no voting powers, preferences or relative, participating, optional or other special rights of Series A Preferred Stock or qualifications, limitations and restrictions thereof herein set forth shall be deemed dependent upon any other such voting powers, preferences or relative, participating, optional or other special rights of Series A Preferred Stock or qualifications, limitations and restrictions thereof unless so expressed herein.

**Section X. Reissuance of Series A Preferred Stock**

Shares of Series A Preferred Stock that have been issued and reacquired in any manner, including shares purchased by the Corporation or exchanged or converted, shall (upon compliance with any applicable provisions of the laws of the state of Nevada) have the status of authorized but unissued shares of preferred stock of the Corporation undesignated as to series

10

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and may be designated or redesignated and issued or reissued, as the case may be, as part of any other series of preferred stock of the Corporation.

**Section XI. Mutilated or Missing Series A Preferred Stock Certificates**

If any of the Series A Preferred Stock certificates shall be mutilated, lost, stolen or destroyed, the Corporation shall issue, in exchange and in substitution for and upon cancellation of the mutilated Series A Preferred Stock certificate, or in lieu of and substitution for the Series A Preferred Stock certificate lost, stolen or destroyed, a new Series A Preferred Stock certificate of like tenor and representing an equivalent amount of shares of Series A Preferred Stock, but only upon receipt of evidence of such loss, theft or destruction of such Series A Preferred Stock certificate and indemnity, if requested, satisfactory to the Corporation and the Common Stock Conversion Agent.

**Section XII. Determinations**

The Corporation shall be solely responsible for making all calculations called for hereunder. Such calculations include, but are not limited to, the calculations under Section III hereof. The Corporation covenants to make all such calculations in good faith. Absent manifest error, such calculations shall be final and binding on all Holders of shares of the Series A Preferred Stock. The Corporation shall have the power to resolve any ambiguity and its action in so doing, as evidenced by a resolution of the Board of Directors shall be final and conclusive unless clearly inconsistent with the intent hereof.

**Section XIII. No Redemption**

The Corporation may not, at any time, redeem the outstanding shares of the Series A Preferred Stock.

**Section XIV. Notices**

All notices, requests and other communications to the Holder of Series A Preferred Stock shall be in writing (including facsimile transmission) and shall be given at the address of such Holder as shown on the books of the Corporation. A Holder of the outstanding share of Series A Preferred Stock may waive any notice required hereunder by a writing signed before or after the time required for notice or the action in question. Notice shall be deemed given on the earlier of the date received or three business days after the date such notice is mailed by first-class mail, postage prepaid.

**Section XV. Common Stock Conversion Agent**

The duly appointed Common Stock Conversion Agent for the Series A Preferred Stock (the "Common Stock Conversion Agent") shall be appointed at the discretion of the Corporation. The Common Stock Conversion Agent shall also act as registrar, redemption, conversion, transfer and dividend disbursing agent for the Series A Preferred Stock. The Corporation may, in its sole discretion, remove the Common Stock Conversion Agent in accordance with the agreement between the Corporation and the Common Stock Conversion Agent; provided that the Corporation shall appoint a successor agent who shall accept such appointment prior to the

11

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effectiveness of such removal. Upon any such appointment or removal, the Corporation shall send notice thereof by first-class mail, postage prepaid, to the Holders. The Corporation shall initially serve as the Common Stock Conversion Agent.

12

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**CERTIFICATE OF AMENDMENT TO ARTICLES OF INCORPORATION**

**OF**

**FIRST BUSEY CORPORATION**

**(DECEMBER 3, 2009)**

PARAGRAPH A OF ARTICLE FOURTH of the Articles of Incorporation of the Corporation is hereby amended in its entirety to read as follows:

*Fourth.*

A. *Classes and Number of Shares.* The total number of shares of all classes of stock the Corporation shall have authority to issue is 101,000,000 shares. The classes and the aggregate number of shares of stock of each class which the Corporation shall have authority to issue are as follows:

1. 100,000,000 shares of Common Stock, \$0.001 par value per share.
2. 1,000,000 shares of Preferred Stock, \$0.001 par value per share.

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**CERTIFICATE OF AMENDMENT TO ARTICLES OF INCORPORATION**

**OF**

**FIRST BUSEY CORPORATION**

**(MAY 21, 2010)**

PARAGRAPH A OF ARTICLE FOURTH of the Articles of Incorporation of the Corporation is hereby amended in its entirety to read as follows:

*Fourth.*

A. *Classes and Number of Shares.* The total number of shares of all classes of stock the Corporation shall have authority to issue is 201,000,000 shares. The classes and the aggregate number of shares of stock of each class which the Corporation shall have authority to issue are as follows:

1. 200,000,000 shares of Common Stock, \$0.001 par value per share.
  2. 1,000,000 shares of Preferred Stock, \$0.001 par value per share.
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## [LETTERHEAD OF LEWIS AND ROCA LLP]

May 28, 2010

First Busey Corporation  
 100 W. University Avenue  
 Champaign, Illinois 61820

Re: **Registration Statement on Form S-3 of First Busey Corporation**

Ladies and Gentlemen:

This opinion is being rendered to you in connection with the filing by First Busey Corporation, a Nevada Company (the "Company"), with the Securities and Exchange Commission (the "Commission") of a registration statement on Form S-3 (which, together with the prospectus and any prospectus supplement relating thereto shall hereinafter be referred to collectively as the "Registration Statement"), pursuant to the Securities Act of 1933, as amended (the "Act"). The Registration Statement relates to the registration and proposed issuance and sale from time to time pursuant to Rule 415 under the Securities Act of: (a) \$175,000,000 aggregate principal amount of (i) shares of common stock, \$0.001 par value per share, of the Company (the "Common Stock"), (ii) shares of preferred stock, \$0.001 par value per share, of the Company (the "Preferred Stock"), (iii) the Company's unsecured debt securities, whether senior or subordinated (the "Debt Securities"), (iv) warrants to purchase Common Stock, Preferred Stock, Debt Securities, or Depositary Shares (the "Warrants"), (v) the Company's units comprised of two or more of the Registered Securities in any combination (the "Units"), (vi) subscription rights for the purchase of Common Stock, Preferred Stock, Debt Securities, or Depositary Shares (the "Rights"), (vii) depositary shares representing Preferred Stock ("Depositary Shares," and, together with the Common Stock, the Preferred Stock, the Debt Securities, the Warrants, the Units and the Rights, the "Primary Securities"); and (b) up to 9,825,000 shares of Common Stock offered by the selling stockholders identified in the prospectus constituting a part of the Registration Statement (the "Secondary Securities" and, together with the Primary Securities, the "Registered Securities"). Pursuant to the provisions of Rule 429 under the Act, \$67,200,000 aggregate principal amount of the Primary Securities in the Registration Statement relate to securities registered but not sold under the Company's registration statement on Form S-3, declared effective on September 4, 2009. This opinion is being furnished in accordance with the requirements of Item 601(b)(5) of Regulation S-K under the Securities Act.

We have made such legal and factual investigations as we deemed necessary for purposes of this opinion. We have examined originals or copies, certified or otherwise identified to our satisfaction, of: (a) the Registration Statement; (b) the Company's Articles of Incorporation, as amended and currently in effect, including the Certificate of Designation for Fixed Rate Cumulative Perpetual Preferred Stock, Series T, dated March 4, 2009 and the Certificate of Designation for Convertible Cumulative Preferred Stock, Series A, dated October 26, 2009; (c) the Company's Bylaws, as amended and currently in effect; (d) the resolutions of the Board of Directors of the Company dated May 18, 2010; and (e) such statutes as were considered appropriate for purposes of the opinions hereafter expressed. In our investigation, we have assumed the legal capacity of all natural persons, the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the proper execution of all documents submitted to us as originals, the conformity to the original documents of all documents submitted to us as copies and the authenticity of the originals of such copies. As to matters of fact, we have relied upon representations of officers of the Company. In making our examination of documents executed by parties other than the Company, we have assumed that such parties had the power, corporate or otherwise, to enter into and perform all obligations thereunder and have also assumed the due authorization by all requisite action, corporate or other, and execution and delivery by such parties of such documents and the validity, binding effect and enforceability thereof on such parties.

Based upon the foregoing, but assuming no responsibility for the accuracy or the completeness of the data supplied by the Company and subject to the qualifications, assumptions and limitations set forth herein, it is our opinion that:

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(1) When, as and if (a) appropriate corporate action has been taken to authorize the issuance of Common Stock, (b) any legally required consents, approvals, authorizations and other orders of the Commission and any other regulatory authorities are obtained, (c) Common Stock shall have been duly issued and delivered by the Company against payment therefor in accordance with such corporate action, and (d) certificates representing shares of Common Stock have been duly executed by the duly authorized officers of the Company in accordance with applicable law, then, upon the happening of such events, such Common Stock will be validly issued, fully paid and non-assessable (provided that the consideration paid therefor is not less than the par value thereof).

(2) When, as and if (a) the appropriate corporate action has been taken by the Company to authorize the form, terms, execution and delivery of any series of Debt Securities, (b) such Debt Securities shall have been issued in the form and containing the terms set forth in the Registration Statement, the applicable indenture and such corporate action, (c) any legally required consents, approvals, authorizations and other orders of the Commission and any other regulatory authorities are obtained, and (d) the Debt Securities have been authenticated by the trustee, then, upon the happening of such events, such Debt Securities will constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms.

(3) When, as and if (a) appropriate corporate action has been taken to authorize the issuance of Preferred Stock, to fix the terms thereof and to authorize the execution and filing of a certificate of designation relating thereto with the Secretary of State of the State of Nevada, (b) such certificate of designation shall have been executed by duly authorized officers of the Company and so filed by the Company, all in accordance with the laws of the State of Nevada, (c) any legally required consents, approvals, authorizations and other orders of the Commission and any other regulatory authorities are obtained, (d) Preferred Stock with terms so fixed shall have been duly issued and delivered by the Company against payment therefor in accordance with such corporate action, and (e) certificates representing shares of Preferred Stock have been duly executed by the duly authorized officers of the Company in accordance with applicable law, then, upon the happening of such events, such Preferred Stock will be validly issued, fully paid and non-assessable (provided that the consideration paid therefor is not less than the par value thereof).

(4) When, as and if (a) the appropriate corporate action has been taken by the Company to authorize the form, terms, execution and delivery of a warrant agreement (including a form of certificate evidencing the Warrants) (a "Warrant Agreement"), (b) any legally required consents, approvals, authorizations and other orders of the Commission and any other regulatory authorities are obtained, and (c) Warrants with such terms are duly executed, attested, issued and delivered by duly authorized officers of the Company against payment in the manner provided for in the applicable Warrant Agreement

and such corporate action, then, upon the happening of such events, such Warrants will constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms.

(5) When, as and if (a) the appropriate corporate action has been taken by the Company to authorize the form, terms, execution and delivery of a unit agreement relating to Units (including a form of certificate evidencing the Units) (a "Unit Agreement"), (b) any legally required consents, approvals, authorizations and other orders of the Commission and any other regulatory authorities are obtained, and (c) the Units with such terms are duly executed, attested, issued and delivered by duly authorized officers of the Company against payment in the manner provided for in the Unit Agreement and such corporate action, then, upon the happening of such events, such Units will constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms.

(6) When, as and if (a) the appropriate corporate action has been taken by the Company to authorize the form, terms, issuance and delivery of any Rights, (b) any legally required consents, approvals, authorizations and other orders of the Commission and any other regulatory authorities are obtained, (c) a subscription agent agreement for the Rights has been duly authorized, executed and delivered by the Company and the rights agent and (d) the instruments representing such Rights have been duly authenticated by the rights agent and duly executed and delivered by the Company against payment therefor in accordance with the terms of such resolutions and the

2

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subscription agent agreement and as contemplated by the Registration Statement, such Rights will constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms.

(7) When, as and if (a) the appropriate corporate action has been taken by the Company to authorize the form, terms, execution and delivery of a depositary agreement relating to Depositary Shares (a "Depositary Agreement"), (b) any legally required consents, approvals, authorizations and other orders of the Commission and any other regulatory authorities are obtained, (c) the terms of the Depositary Shares and of their issuance and sale have been duly established in conformity with the applicable Deposit Agreements, (d) the Preferred Stock represented by the Depositary Shares has been duly delivered to the applicable depositaries and when the depositary receipts evidencing the Depositary Shares have been duly issued against deposit of the Preferred Stock in accordance with the applicable deposit agreements and issued and sold as contemplated by the Registration Statement, the depositary receipts evidencing the Depositary Shares will constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms.

Our opinions set forth above are subject to: (a) the effect of bankruptcy, insolvency, reorganization, fraudulent transfer, moratorium or other similar laws relating to or affecting the rights and remedies of creditors; and (b) the effect of general principles of equity, whether considered in a proceeding in equity or at law (including the possible unavailability of specific performance or injunctive relief), concepts of materiality, reasonableness, good faith and fair dealing, and the discretion of the court before which a proceeding is brought. We express no opinion as to waivers of broadly or vaguely stated rights.

We express no opinion concerning the laws of any jurisdiction other than the federal law of the United States of America and Nevada General Company Law. We express no opinion as to the laws of any other jurisdiction and no opinion regarding the statutes, administrative decisions, rules, regulations or requirements of any county, municipality, subdivision or local authority or any jurisdiction.

We express no opinion with respect to any specific legal issues other than those explicitly addressed herein. We assume no obligation to advise you of any change in the foregoing subsequent to the date of this opinion (even though the change may affect any legal conclusion stated in this opinion letter).

We hereby consent to the reference to our firm in the Registration Statement under the caption "Legal Matters" and to the inclusion of this opinion as an exhibit to the Registration Statement. Our consent to such reference does not constitute a consent under Section 7 of the Act and in consenting to such reference we have not certified any part of the Registration Statement and do not otherwise come within the categories of persons whose consent is required under Section 7 of the Act or under the rules and regulations of the Commission thereunder.

Very truly yours,

/s/ Lewis and Roca LLP

LEWIS AND ROCA LLP

3

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**Calculation of Ratio of Earnings to Fixed Charges**  
(Dollars in thousands)

	2010	Year Ended December 31,				
	Q1	2009	2008	2007	2006	2005
<b>Including Interest on Deposits</b>						
Earnings:						
Earnings before income taxes	5,386	(398,780)	(53,515)	44,410	43,589	39,894
Fixed charges from below	11,688	70,109	97,148	100,405	69,851	45,342
Earnings	17,074	(328,671)	43,633	144,815	113,440	85,236
Fixed Charges:						
Interest expense	11,688	70,109	97,148	100,405	69,851	45,342
Interest portion of net rental expense	—	—	—	—	—	—
Total interest expense	11,688	70,109	97,148	100,405	69,851	45,342
Ratio of Earnings to Fixed Charges	1.46	-4.69	0.45	1.44	1.62	1.88
<b>Excluding Interest on Deposits</b>						
Earnings:						
Earnings before income taxes	5,386	(398,780)	(53,515)	44,410	43,589	39,894
Fixed charges from below	1,737	10,030	15,940	16,208	14,805	11,404
Earnings	7,123	(388,750)	(37,575)	60,618	58,394	51,298
Fixed Charges:						
Interest expense	1,737	10,030	15,940	16,208	14,805	11,404
Interest portion of net rental expense	—	—	—	—	—	—
Total interest expense	1,737	10,030	15,940	16,208	14,805	11,404
Ratio of Earnings to Fixed Charges and Preference						
Dividends	4.10	-38.76	-2.36	3.74	3.94	4.50
Fixed Charges:						
Preference Dividends and Discount Amortization	—	—	—	—	—	—
Interest Expense - Total (Fixed Charges with Deposits)	11,688	70,109	97,148	100,405	69,851	45,342
Interest Expense - Deposits	9,951	60,079	81,208	84,197	55,046	33,938
Portion of rentals representative of interest factor	—	—	—	—	—	—
Fixed Charges without deposits	1,737	10,030	15,940	16,208	14,805	11,404

**Consent and Report of Independent Registered Public Accounting Firm**

To the Board of Directors and Stockholders  
First Busey Corporation  
Urbana, Illinois

We consent to the incorporation by reference in this Registration Statement on Form S-3 of First Busey Corporation of our reports dated March 16, 2010 relating to our audits of the consolidated financial statements and internal control over financial reporting, included in and incorporated by reference in the Annual Report on Form 10-K of First Busey Corporation for the year ended December 31, 2009.

We also consent to the reference to our firm under the caption "Experts" in the Prospectus, which is part of this Registration Statement.

/s/ McGladrey & Pullen, LLP  
Champaign, Illinois  
May 28, 2010

McGladrey & Pullen LLP is a member firm of RSM International -  
an affiliation of separate and independent legal entities.

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