

BARNES & NOBLE INC

FORM 8-K (Current report filing)

Filed 09/29/17 for the Period Ending 09/28/17

Address	122 FIFTH AVE NEW YORK, NY, 10011
Telephone	2126333300
CIK	0000890491
Symbol	BKS
SIC Code	5940 - Retail-Miscellaneous Shopping Goods Stores
Industry	Other Specialty Retailers
Sector	Consumer Cyclical
Fiscal Year	05/29

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

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d)
of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): September 29, 2017 (September 28, 2017)

BARNES & NOBLE, INC.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

1-12302
(Commission
File Number)

06-1196501
(IRS Employer
Identification No.)

122 Fifth Avenue, New York, New York
(Address of principal executive offices)

10011
(Zip Code)

Registrant's telephone number, including area code: (212) 633-3300

Not Applicable
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

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

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

On September 6, 2017, Barnes & Noble, Inc. (the “Company”) announced that the Company and Mary Amicucci, the Company’s Chief Merchandising Officer, mutually agreed that Ms. Amicucci would be leaving the Company on September 29, 2017 (the “Separation Date”).

In connection therewith, the Company and Ms. Amicucci have entered into a General Release and Waiver, dated September 28, 2017 (the “Release Agreement”), pursuant to which Ms. Amicucci has released the Company and its subsidiaries from all claims relating to her employment and termination of employment.

Pursuant to the Release Agreement, and in consideration of her release of claims thereunder, Ms. Amicucci will receive (A) cash severance of \$656,250, payable over 65 weeks (such period, the “Separation Period”) and (B) continued medical coverage until the end of the Separation Period pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, at the subsidized employee premium rate. Ms. Amicucci will also be provided with outplacement services for three months.

Under the terms of the Release Agreement, Ms. Amicucci has agreed not to, during the Separation Period, (i) recruit or hire or offer to employ or retain any person who is (or, during the one-year period prior to the Separation Date, was) employed by or retained by the Company or any of its affiliates or (ii) become employed, retained by or perform services for certain specified competitors of the Company and the affiliates of such competitors. Ms. Amicucci is also bound by a perpetual confidentiality covenant and a covenant pursuant to which Ms. Amicucci has agreed not to disparage the Company, its subsidiaries or any related persons.

A copy of the Release Agreement is attached hereto as Exhibit 10.1.

Item 9.01 Financial Statements and Exhibits

(d) Exhibit

Exhibit No.	Description of Exhibit
10.1	Release Agreement with Mary Amicucci

SIGNATURES

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

BARNES & NOBLE, INC.,

Date: September 29, 2017

By: /s/ Bradley A. Feuer

Name: Bradley A. Feuer

Title: Vice President, General Counsel & Corporate Secretary

GENERAL RELEASE AND WAIVER

1. **Termination Date.** **Mary Amicucci** (“Employee”) acknowledges and agrees that Employee’s employment with **Barnes & Noble, Inc.** (the “Company”) has ended effective **September 29, 2017** (the “Separation Date”). This General Release and Waiver (the “Release”) is made and entered into by and between Employee, on his/her behalf and on behalf of his/her heirs, executors, administrators, agents, representatives, successors and assigns (collectively, “Releasors”) and the Company, its parents, affiliates and subsidiaries, and each of their current and former officers, directors, shareholders, trustees, agents, representatives, attorneys and employees, and the heirs, executors, receivers, administrators, agents, representatives, successors and assigns of all of the foregoing individually and in their business capacities, and their employee benefit plans and programs and their administrators and fiduciaries (collectively, “Releasees”).

2. (a) **Separation Payment.** Employee agrees that, after Employee’s delivery to the Company of this fully executed and notarized Release as set forth below and the expiration of the Revocation Period (defined below), Employee shall accept from the Company, and on behalf of the Company and each Releasee the gross amount of **\$656,250** payable over **65 weeks** in accordance with the Company’s normal pay practices (“Separation Period”), less lawful deductions and withholdings. This amount plus the employer’s subsidized COBRA payment in section 2(c) below constitute the “Separation Payment.”

(b) **Final Compensation.** Employee acknowledges and agrees that (i) the Separation Payment is adequate consideration for all the terms of this Release and does not include any benefit, monetary or otherwise, which was earned or accrued or to which Employee was already entitled without signing this Release: and (ii) any monetary or other benefits which, prior to the execution of this Release, Employee may have earned or accrued or to which Employee may have been entitled, have been paid or will be paid in accordance with the Benefits Attachment attached hereto and incorporated herein by reference. Employee also acknowledges that, prior to or contemporaneous with Employee’s execution of this Release, Employee received all wages and other payments, including accrued vacation pay and bonuses if any, that were owed to Employee from the Company or any Releasee. Employee understands that he/she will receive any payment for wages owed to him/her upon termination regardless of whether he/she signs this Release.

(c) **COBRA.** Employee, on behalf of Employee and Employee’s spouse and dependents, as applicable, may elect to continue medical and dental benefits pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended (“COBRA”), (a “COBRA Election”). If Employee makes a timely and proper COBRA Election, the Company will subsidize the premium rate for medical and dental coverage for the Separation Period in the same manner as if Employee were an active employee of the Company. At the end of such period, if Employee and/or Employee’s spouse and dependents, as applicable, remain on COBRA, Employee will be responsible for paying the full monthly COBRA premiums.

(d) **Outplacement.** The Company will provide transition services through RiseSmart for three months.

(e) **Medicare.** Employee affirms and warrants that Employee has informed the Company Benefits Department in writing if Employee (i) is a Medicare beneficiary; (ii) is currently receiving, has received in the past, or is eligible for benefits from Medicare; or (iii) has applied for or sought benefits from Medicare. Employee agrees to indemnify and hold the Company harmless for any penalties or liability, including interest, that may be asserted against the Company pursuant to Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007, 42 U.S.C. § 1395y(b)(8), as a result of the payments and benefits described in section 2 of this Release.

THIS SECTION PROVIDES A COMPLETE RELEASE AND WAIVER OF ALL EXISTING AND POTENTIAL CLAIMS YOU MAY HAVE AGAINST EVERY RELEASEE AS SET FORTH BELOW. BEFORE YOU SIGN THIS RELEASE, YOU MUST READ THIS SECTION CAREFULLY, AND MAKE SURE THAT YOU UNDERSTAND IT FULLY.

3. (a) **General Release.** In consideration of Employee’s receipt and acceptance of the Separation Payment from the Company on behalf of the Company and each Releasee, Employee on Employee’s behalf and on behalf of each Releasor, hereby irrevocably and generally releases the Company and each Releasee, and hereby waives and/or settles, except as expressly provided in this Release, any and all

claims, actions, causes of action, suits, debts, dues, sums of money, accounts, controversies, agreements, promises, damages, judgments, executions, contracts, losses, expenses, obligations, or any liability of any nature, kind and description, whether in law, equity or otherwise, whether or not now known or ascertained, which currently do or may exist prior to the execution of this Release (collectively "Claims"). Such Claims include, but are not limited to, the following: (i) claims arising from or relating to Employee's employment with the Company, including, but not limited to, claims for unpaid wages, front pay, back pay, bonuses, incentive pay, vacation pay, benefits, attorneys' fees, breach or interference with contract (express or implied, written or oral), breach of the covenant of good faith and fair dealing, fraud, defamation, violation of public policy, infliction of emotional distress, misrepresentation, fraud, slander, libel, discrimination, retaliation, negligent retention/supervision, tortuous or harassing conduct, infliction of negligent or intentional emotional distress, assault/battery, wrongful dismissal, or termination of employment, damages including without limitation punitive or compensatory damages, attorneys' fees, expenses, costs, injunctive or equitable relief; and (ii) claims arising under any applicable foreign, federal, state, local or other statutes, orders, laws, ordinances, regulations or the like, or case law, including, but not limited to, the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Civil Rights Acts of 1866 and 1871, **the Age Discrimination In Employment Act of 1967, as amended ("ADEA") (Including, but not limited to, the Older Workers Benefit Protection Act ("OWBPA"))**, the Americans with Disabilities Act of 1990, the Family Medical Leave Act of 1993, the Employee Retirement Income Security Act of 1974 ("ERISA"), the Immigration Reform and Control Act, the Fair Credit Reporting Act, the Genetic Information Nondiscrimination Act, the Worker Adjustment and Retraining Notification Act, the Vietnam Era Veterans' Readjustment Assistance Act, the Equal Pay Act, the New York Labor Law, the New York State Executive Law, the New York Administrative Code, the New Jersey Law Against Discrimination, the New Jersey Conscientious Employee Protection Act, the Massachusetts Wage Payment Statute, G.L. c. 149, §§ 148, 148A, 148B, 149, 150, 150A-150C, 151, 152, 152A, et seq., the Massachusetts Wage and Hour laws, G.L. c. 151§1A et seq., Minnesota Human Rights Act, West Virginia Human Rights Act, and all amendments of each of the foregoing laws.

(b) Exclusion from General Release. Employee and the Company acknowledge that nothing in this Release shall be deemed a release or waiver by Employee of Claims Employee may have against Releasees for or based on (i) any benefit entitlements vested as of the Separation Date, pursuant to the written terms of any applicable employee benefit plan governed by ERISA; (ii) workers' compensation (but claims for retaliation for exercising workers' compensation rights are waived); (iii) unemployment insurance benefits; (iv) vested benefits under the Company's 401(k) plan; and (v) any claims that, under applicable law, are not waivable.

(c) Governmental Agencies. **Nothing in or about this Release prohibits Employee from: (i) filing and, as provided for under Section 21F of the Securities Exchange Act of 1934, maintaining the confidentiality of a claim with a government agency that is responsible for enforcing a law; (ii) providing Confidential Information (as defined in Paragraph 8(a)) to the extent required by law or legal process or permitted by Section 21F of the Securities Exchange Act of 1934; (iii) cooperating, participating or assisting in any government or regulatory entity investigation or proceeding; or (iv) receiving an award for information provided to any government agency that is responsible for enforcing the law.**

(d) Collective/Class Action Waiver. If any claim is not subject to release, to the extent permitted by law, Employee waives any right or ability to be a class or collective action representative or to otherwise participate in any putative or certified class, collective or multi-party action or proceeding based on such a claim in which any Releasee is a party.

4. No Pending Claims. Employee represents and warrants that Employee has not filed, caused to be filed, is presently a party to or commenced any complaints, grievances, charges, claims, actions or proceedings of any kind against any Releasee with any federal, state or local court or any administrative, regulatory or arbitration agency or body. Notwithstanding the above, Employee agrees that he/she shall dismiss any of the foregoing that have been filed. Except for Employee's right to bring a proceeding pursuant to the OWBPA to challenge the validity of the release of claims pursuant to the ADEA, and otherwise as provided herein or permitted by law, Employee agrees not to commence, maintain, prosecute or participate as a party in any action or proceeding in any court or arbitration forum against the Company or any other Releasee with respect to any act, omission, transaction or occurrence up to and including the date of the execution of this Release. Employee further agrees not to instigate, encourage, assist or participate in any court action or arbitration proceeding commenced by any other person (except a government agency) against the Company, or any other Releasee. In the event any government

agency seeks to obtain any relief on behalf of Employee with regard to any claim released and waived by section 3(a) of this Release, Employee covenants not to accept, recover or receive any monetary relief or award that may arise out of or in connection with any such proceeding.

5. Affirmations. Employee affirms that Employee has been paid and/or has received all compensation, wages, bonuses, commissions, and/or benefits which are due and payable as of the date Employee signs this Release. Employee also affirms that Employee has been granted any leave to which Employee was entitled under the Family and Medical Leave Act or related state or local leave or disability accommodation laws. In addition, Employee affirms that Employee has no known workplace injuries or occupational diseases. Employee further affirms that Employee has not been retaliated against for reporting any allegations of wrongdoing by the Company or its officers, including any allegations of corporate fraud.

6. Nonadmission. This Release and any payments or benefits made hereunder are not intended to be, shall not be construed as, and are not an admission or concession by any Releasee of any liability, wrongdoing or illegal or actionable acts or omissions. Employee hereby affirms that no Releasee has made any written or oral statements, suggestions or representations, either directly or impliedly, of any liability, wrongdoing or illegal or actionable acts or omissions by any Releasee.

7. Employment Inquiries. Employee shall direct all requests and inquiries concerning Employee's possible employment by prospective employers to the HR Service Center at 1-800-799-5335 which will comply with the Company's neutral reference policy.

8. (a) Confidential Information and Materials. Employee hereby acknowledges that during Employee's employment, Employee may have acquired proprietary, private and/or otherwise confidential information ("Confidential Information," as defined and described in this paragraph). Confidential Information shall mean all non-public information in any form or media that the Employee received, obtained or had access to during the course of or by virtue of his/her employment with the Company, including, but not limited to, information which constitutes, relates or refers to (i) the Company or any Releasee; (ii) any current or former employee of the Company or any Releasee; (iii) any person or entity with whom or which the Company or any Releasee transacted business during Employee's employment; (iv) any person or entity with respect to whom or which the Company or any Releasee acquired any non-public information; (v) any aspect of the operation of the business of the Company or any Releasee, including without limitation, all financial, operational and statistical information; (vi) any information or documents provided or produced in any litigation or other legal proceedings; (vii) any information protected or governed by any other confidentiality agreement or stipulation; and (viii) any information protected or governed by the attorney-client privilege, work-product doctrine or any similar privilege or immunity.

(b) Nondisclosure. Employee hereby represents and agrees that upon execution of this Release (i) Employee has returned to the Company, and has not retained any copies of, all documents, records or materials of any kind in any form or media, which contain, relate to or refer to any Confidential Information ("Confidential Materials"); and (ii) Employee has not disclosed any Confidential Information or Confidential Materials to any person or entity outside the scope of Employee's job with the Company without the express authorization of an authorized officer of the Company. Employee further agrees that in consideration of the Company's agreement to deliver the Separation Payment pursuant to the terms of this Release, Employee and/or any Releaser shall not disclose or use for any purpose any Confidential Information or Confidential Materials, in any manner directly or indirectly, except as may be required by law, permitted pursuant to written authorization by the Company, or otherwise provided herein.

Employee further represents that Employee has not, and agrees that Employee shall not, disclose orally or in writing, directly or indirectly, to any person (other than to the members of Employee's immediate family, Employee's attorney, financial advisor, and accountant, each of whom shall be directed by Employee not to disclose such information), except as required by law: (i) the underlying facts leading up to or the existence or terms of this Release; and (ii) the amount of any payments or benefits made hereunder.

(c) Subpoenas/Request for Information. In the event that Employee and/or any Releaser receives a subpoena or any other written or oral request for any Confidential Information, Confidential Materials or any other information concerning the Company or any Releasee, Employee shall, within two (2) business days of the service or receipt of such subpoena or other request (i) notify the Company, c/o

Michelle Smith, Vice President, Human Resources or her successor in writing, by email at msmith@bn.com and (ii) provide a copy of such subpoena or other request if in writing, and/or disclose the nature of the request for information if oral.

(d) Return of Company Property. Employee also represents and agrees that upon the execution of this Release, Employee has returned to the Company all property of the Company, including without limitation, any keys to the offices or properties of the Company, and Company identification cards, computers, Blackberries, cellular telephones or other equipment. Employee affirms that Employee is in possession of all of Employee's property that Employee had at the Company's premises and that the Company is not in possession of any of Employee's property.

(e) Enforceability. Employee acknowledges that the scope of the promises and covenants in this Release is reasonable in light of its narrow focus and the legitimate interests of the Company to be protected. Employee agrees that if any part of Employee's foregoing covenants or the duration thereof is deemed too restrictive by a court of competent jurisdiction, the court may alter the covenants and/or duration to make the same reasonable under the circumstances, and Employee acknowledges that Employee shall be bound thereby. If any promises or covenants contained in the foregoing paragraphs are determined to be illegal, invalid or unenforceable, then, in the Company's sole discretion and to the extent permitted by law, it can decide whether to invalidate the remainder of the Release, including whether to continue to pay Employee any remaining portion of the Separation Payment or other benefits, and/or require Employee to repay any or all of the Separation Payment received.

9. Nondisparagement. Employee represents and agrees that he/she shall not make any oral, written or electronic negative, disparaging or adverse statements or representations of or concerning the Company or any Releasee. Employee further represents and agrees that Employee has not and will not engage in any conduct or take any actions whatsoever to cause or influence any person or entity, including, but not limited to, any past, present or prospective employee of the Company, to initiate oral, written or electronic negative, disparaging or adverse statements or representations of or concerning the Company or any Releasee.

10. Restrictive Covenants. In further consideration of the Company's agreement to pay the Separation Payment pursuant to the terms of this Release, Employee agrees that, during the Separation Period, Employee will not, without the prior written consent of the Company:

(a) Solicit, recruit, employ or retain, or induce or cause any other person or entity to solicit, recruit, employ or retain, any person who is employed or retained by the Company or any of its subsidiaries or affiliates, or who was employed or retained by the Company or any of its subsidiaries or affiliates at any time within one year prior to the Separation Date.

(b) Become employed or retained by any of the following entities or any of their parents, subsidiaries or affiliates: Books-A-Million and Amazon.com.

11. No Future Employment. Employee hereby waives any right to, and agrees not to seek reinstatement or employment of any kind with the Company, its parents, subsidiaries, or any entity that controls or is under common control with any of the foregoing entities. "Control", for this purpose means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities, by contract or otherwise. The existence of this Release shall be a valid, non-discriminatory basis for any Releasee to reject any such application or, in the event Employee obtains such employment or other relationship with any Releasee, for that Releasee to terminate such employment or other relationship.

12. Breach of Release. The covenants, representations and acknowledgments made by Employee in this Release shall survive the execution of the Release and the delivery of any installment of the Separation Payment. The Company or any Releasee shall be excused and released from any obligation to make any part of the Separation Payment or provide any other benefits contained in the Release to the extent permitted by law in the event that (i) Employee has made a material misstatement in or commits any material breach of the terms, conditions or covenants in this Release (in which case Employee or Releasor shall also be liable for any damages suffered by the Company or any Releasee by reason of such breach or misstatement, including, but not limited to, attorneys' fees); (ii) any part of this Release is determined to be illegal, Invalid or unenforceable; or (iii) Employee or Releasor claims in any forum that the Release is illegal, invalid or unenforceable. Employee understands and acknowledges that if he/she breaches this Release, Employee's release and waiver of claims contained in this Release remain in full force and effect.

13. Liquidated Damages. Employee and the Company agree that it would be impossible or extremely difficult to ascertain the amount of actual damages caused by Employee's breach of the confidentiality and nondisparagement provisions in this Release. Therefore, Employee agrees to pay the Company liquidated damages equal to 50% of the separation payment for a breach of those sections. Employee and the Company further acknowledge that these liquidated damages are not intended to be a penalty, but are instead the parties' estimate of damages to be incurred by the Company in the event of Employee's breach and that the damages are reasonable in light of and proportionate to the anticipated harm caused by the related breach. The Company's election to seek an award of these liquidated damages shall not in any way limit its right to seek injunctive relief in addition to liquidated damages or to seek other remedies for breach of other provisions of this Release.

14. Entire Agreement. This Release constitutes the sole and complete understanding and agreement between the Releasee and Releasers with respect to the matters set forth herein and there are no other agreements or understandings, whether written or oral and whether made contemporaneously or otherwise (other than any confidentiality, non-competition, and/or other restrictive covenant agreement that previously may have been entered into, the terms of which will survive execution of this Release). No term, condition, covenant, representation or acknowledgment contained in this Release may be amended unless made in writing and signed by the Employee and the Company or its successors or assigns.

15. Governing Law. The validity, performance and enforceability of this Release shall be determined and governed by the laws of the State of New York, without regard to its conflict of law principles. The exclusive forum for any action concerning this Release or the transactions contemplated hereby shall be in a court of competent jurisdiction in New York County with respect to a state court, or the United States District Court for the Southern District of New York, with respect to a federal court. **EMPLOYEE HEREBY CONSENTS TO THE EXERCISE OF JURISDICTION OF THE COURT IN THE EXCLUSIVE FORUM SET FORTH IN THIS RELEASE AND WAIVES ANY RIGHT EMPLOYEE MAY HAVE TO CHALLENGE OR CONTEST THE REMOVAL AT ANYTIME BY THE COMPANY TO FEDERAL COURT OF ANY ACTION EMPLOYEE MAY BRING AGAINST IT IN STATE COURT. EMPLOYEE AND THE COMPANY MUTUALLY WAIVE THEIR RIGHT TO TRIAL BY JURY IN ANY ACTION CONCERNING THIS RELEASE OR EMPLOYEE'S EMPLOYMENT IN GENERAL.**

16. Interpretation of Terms. The rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Release. The language of all parts of this Release shall in all cases be construed as a whole, according to its plain meaning, and not strictly for or against any of the parties. The parties intend for this Release to be construed or limited in conformity with all applicable laws.

17. Severability. Should any provision of this Release be declared illegal or unenforceable by any court of competent jurisdiction and cannot be modified to be enforceable, excluding the general release language, such provision shall immediately become null and void, leaving the remainder of this Release in full force and effect.

18. Revocation. By executing this Release, Employee acknowledges and agrees that (i) Employee is hereby advised by the Company to consult with an attorney regarding the terms of and before executing this Release; (ii) the offer set forth in this Release remains open for twenty-one (21) calendar days, during which time the Employee may review, consult with Employee's counsel and consider whether to sign the Release; (iii) the Release is written in a manner understandable by Employee; and (iv) Employee has been advised that Employee has seven calendar (7) days following execution of this Release to revoke it ("Revocation Period"). Should Employee return the executed Release in less than twenty-one (21) calendar days, Employee agrees that he/she does so knowingly and voluntarily. This Release will not be effective or enforceable, and the Separation Payment shall not be paid or delivered by the Company, until Employee signs the Release and the Revocation Period has expired. If Employee elects to revoke the Release, revocation shall be made by delivering a written notice of revocation to:

Michelle Smith
Vice President, Human Resources
Barnes & Noble Inc.
122 Fifth Avenue
New York, NY 10011

19. Voluntary Agreement. Employee agrees and acknowledges that (i) Employee has had an adequate opportunity to review this Release and all of its terms, and to be represented by counsel; (ii) Employee understands all of the terms of this Release, which are fair, reasonable and are not the result of any fraud, duress, coercion, pressure or undue influence exercised by or on behalf of any Releasee; and (iii) Employee has agreed to and/or entered into this Release and all of the terms hereof, knowingly, freely and voluntarily.

20. Section 409A of the Code. It is intended that the provisions of this Release comply with Section 409A of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder (collectively, "Section 409A"), and all provisions of this Release shall be construed and interpreted in a manner consistent with the requirements for avoiding taxes or penalties under Section 409A.

(a) For purposes of Section 409A, each payment hereunder will be deemed to be a separate payment as permitted under Treasury Regulation Section 1.409A-2(b)(2)(iii).

(b) Except as specifically permitted by Section 409A or as otherwise specifically set forth in this Release, the benefits and reimbursements provided to Employee under this Release during any calendar year shall not affect the benefits and reimbursements to be provided to Employee in any other calendar year, and the right to such benefits and reimbursements cannot be liquidated or exchanged for any other benefit and shall be provided in accordance with Treas. Reg. Section 1.409A-3(i)(1)(iv) or any successor thereto. Further, reimbursement payments shall be made to Employee as soon as practicable following the date that the applicable expense is incurred, but in no event later than the last day of the calendar year following the calendar year in which the underlying expense is incurred.

(c) If, at the time of Employee's separation from service (within the meaning of Section 409A), (i) Employee shall be a "specified employee" (within the meaning of Section 409A and using the identification methodology selected by the Company from time to time) and (ii) the Company shall make a good faith determination that an amount payable under this Release or any other plan, policy, arrangement or agreement of or with the Company constitutes deferred compensation (within the meaning of Section 409A of the Code) the payment of which is required to be delayed pursuant to the six month delay rule set forth in Section 409A in order to avoid taxes or penalties under Section 409A, then the Company shall not pay any such amount on the otherwise scheduled payment date but shall instead accumulate such amount and pay it, without interest, on the earlier of the first day of the seventh month following such separation from service or Employee's death.

(d) In the event that either Employee or the Company determine that any provision of this Release does not comply with Section 409A, Employee and the Company shall work together in good faith to amend this Release or make any necessary corrections in order to comply with Section 409A. In any case, Employee shall be solely responsible and liable for the satisfaction of all taxes and penalties that may be imposed on Employee or for Employee's account in connection with this Release (including any taxes and penalties under Section 409A), and neither the Company nor any of its affiliates shall have any obligation to indemnify or otherwise hold Employee harmless from any or all of such taxes or penalties. The Company makes no representations concerning the tax consequences of this Release under Section 409A or any other Federal, state or local tax law.

ACKNOWLEDGED AND AGREED TO BY:



Mary Amicucci

STATE OF NEW JERSEY)

: SS.:

COUNTY OF HUDSON)

On the 28th day of September 2017 personally came Mary Amicucci and being known to me to be the individual described in, and who executed the foregoing General Release and Waiver, and duly acknowledged to me their signature above.



Notary Public

Quentin S. Blue
Notary Public
New Jersey
My Commission Expires 10-16-2019
No. 24503-84