

UNITED STATES OF AMERICA  
BEFORE THE  
BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM  
WASHINGTON, D.C.

Written Agreement by and between

Docket No. 13-012-WA/RB-HC1  
13-012-WA/RB-HC2

COMMERCE BANK AND TRUST  
HOLDING COMPANY EMPLOYEE  
STOCK OWNERSHIP PLAN  
Topeka, Kansas

COMMERCE BANK AND TRUST  
HOLDING COMPANY  
Topeka, Kansas

and

FEDERAL RESERVE BANK OF KANSAS  
CITY  
Kansas City, Missouri

WHEREAS, Commerce Bank And Trust Holding Company Employee Stock Ownership Plan, Topeka, Kansas (“ESOP”), a registered bank holding company, owns and controls Commerce Bank And Trust Holding Company (“CBTHC”), a registered bank holding company that directly owns and controls CoreFirst Bank & Trust, Topeka, Kansas (the “Bank”), a state-chartered nonmember bank, and various nonbank subsidiaries;

WHEREAS, it is the common goal of ESOP, CBTHC, and the Federal Reserve Bank of Kansas City (the “Reserve Bank”) to maintain the financial soundness of ESOP and CBTHC so that ESOP and CBTHC may serve as a source of strength to the Bank;

WHEREAS, ESOP, CBTHC and the Reserve Bank have mutually agreed to enter into this Written Agreement (the “Agreement”); and

WHEREAS, on May 23, 2013, ESOP’s Administrator and CBTHC’s board of directors, at duly constituted meetings, adopted resolutions authorizing and directing Jerry Anderson and Duane Fager to enter into this Agreement on behalf of ESOP and CBTHC, respectively, and consenting to compliance with each and every applicable provision of this Agreement by ESOP, CBTHC, and their institution-affiliated parties, as defined in sections 3(u) and 8(b)(3) of the Federal Deposit Insurance Act, as amended (the “FDI Act”) (12 U.S.C. §§ 1813(u) and 1818(b)(3)).

NOW, THEREFORE, ESOP, CBTHC, and the Reserve Bank agree as follows:

**Source of Strength**

1. ESOP’s Administrator and the board of directors of CBTHC shall take appropriate steps to fully utilize ESOP’s and CBTHC’s financial and managerial resources, pursuant to section 38A of the FDI Act (12 U.S.C. § 1831o-1) and section 225.4(a) of Regulation Y of the Board of Governors of the Federal Reserve System (the “Board of Governors”) (12 C.F.R. § 225.4(a)), to serve as a source of strength to the Bank, including, but not limited to, taking steps to ensure that the Bank complies with any supervisory action taken by the Bank’s federal or state regulator.

**Dividends and Distributions**

2. (a) CBTHC shall not declare or pay any dividends without the prior written approval of the Reserve Bank and the Director of the Division of Banking Supervision and Regulation (the “Director”) of the Board of Governors.

(b) ESOP and CBTHC shall not directly or indirectly take dividends or any other form of payment representing a reduction in capital from the Bank without the prior written approval of the Reserve Bank.

(c) CBTHC and its nonbank subsidiaries shall not make any distributions of interest, principal, or other sums on subordinated debentures or trust preferred securities without the prior written approval of the Reserve Bank and the Director.

(d) All requests for prior approval shall be received by the Reserve Bank at least 30 days prior to the proposed dividend declaration date, proposed distribution on subordinated debentures, and required notice of deferral on trust preferred securities. All requests shall contain, at a minimum, current and projected information on CBTHC's capital, earnings, and cash flow; the Bank's capital, asset quality, earnings, and allowance for loan and lease losses; and identification of the sources of funds for the proposed payment or distribution. For requests to declare or pay dividends, CBTHC must also demonstrate that the requested declaration or payment of dividends is consistent with the Board of Governors' Policy Statement on the Payment of Cash Dividends by State Member Banks and Bank Holding Companies, dated November 14, 1985 (Federal Reserve Regulatory Service, 4-877 at page 4-323).

### **Debt and Stock Redemption**

3. (a) ESOP, CBTHC, and CBTHC's nonbank subsidiaries shall not, directly or indirectly, incur, increase, or guarantee any debt without the prior written approval of the Reserve Bank. All requests for prior written approval shall contain, but not be limited to, a statement regarding the purpose of the debt, the terms of the debt, the planned source(s) for debt repayment, and an analysis of the cash flow resources available to meet such debt repayment.

(b) CBTHC and its nonbank subsidiaries shall not, directly or indirectly, purchase or redeem any shares of their respective stock without the prior written approval of the Reserve Bank.

### **Capital Plan**

4. Within 60 days of this Agreement, CBTHC shall submit to the Reserve Bank an acceptable written plan to maintain sufficient capital at CBTHC on a consolidated basis and to provide financial support to the Bank. The plan shall, at a minimum, address, consider, and include:

(a) The consolidated organization's and the Bank's current and future capital requirements, including compliance with the Capital Adequacy Guidelines for Bank Holding Companies: Risk-Based Measure and Tier 1 Leverage Measure, Appendices A and D of Regulation Y of the Board of Governors (12 C.F.R. Part 225, App. A and D) and the applicable capital adequacy guidelines for the Bank issued by the Bank's federal regulator;

(b) the adequacy of the Bank's capital, taking into account the volume of classified credits, its risk profile, the adequacy of the allowance for loan and lease losses, current and projected asset growth, and projected earnings;

(c) the source and availability of additional funds necessary to fulfill the consolidated organization's and the Bank's future capital requirements on a timely basis;

(d) supervisory requests for additional capital at the Bank or the requirements of any supervisory action imposed on the Bank by its federal or state regulator; and

(e) the requirements of section 38A of the FDI Act and section 225.4(a) of Regulation Y of the Board of Governors that CBTHC serve as a source of strength to the Bank.

5. CBTHC shall notify the Reserve Bank, in writing, no more than 45 days after the end of any quarter in which any of CBTHC's capital ratios fall below the approved plan's minimum ratios. Together with the notification, CBTHC shall submit an acceptable written plan that details the steps that CBTHC will take to increase CBTHC's capital ratios to or above the approved plan's minimums.

### **Cash Flow Projections**

6. Within 60 days of this Agreement, CBTHC shall submit to the Reserve Bank a written statement of its planned sources and uses of cash for debt service, operating expenses, and other purposes ("Cash Flow Projection") for 2013. CBTHC shall submit to the Reserve Bank a Cash Flow Projection for each calendar year subsequent to 2013 at least one month prior to the beginning of that calendar year.

### **Compliance with Laws and Regulations**

7. (a) In appointing any new director or senior executive officer, or changing the responsibilities of any senior executive officer so that the officer would assume a different senior executive officer position, CBTHC shall comply with the notice provisions of section 32 of the FDI Act (12 U.S.C. § 1831i) and Subpart H of Regulation Y of the Board of Governors (12 C.F.R. §§ 225.71 *et seq.*).

(b) CBTHC shall comply with the restrictions on indemnification and severance payments of section 18(k) of the FDI Act (12 U.S.C. § 1828(k)) and Part 359 of the Federal Deposit Insurance Corporation's regulations (12 C.F.R. Part 359).

## **Progress Reports**

8. Within 45 days after the end of each calendar quarter following the date of this Agreement, the board of directors shall submit to the Reserve Bank written progress reports detailing the form and manner of all actions taken to secure compliance with the provisions of this Agreement and the results thereof, and a parent company only balance sheet, income statement, and, as applicable, report of changes in stockholders' equity.

## **Approval and Implementation of Plan**

9. (a) CBTHC shall submit a written capital plan that is acceptable to the Reserve Bank within the applicable time period set forth in paragraph 4 of this Agreement.

(b) Within 10 days of approval by the Reserve Bank, CBTHC shall adopt the approved capital plan. Upon adoption, CBTHC shall promptly implement the approved plan, and thereafter fully comply with it.

(c) During the term of this Agreement, the approved capital plan shall not be amended or rescinded without the prior written approval of the Reserve Bank.

## **Communications**

10. All communications regarding this Agreement shall be sent to:

- (a) Mr. Todd A. Offenbacher  
Vice President  
Federal Reserve Bank of Kansas City  
1 Memorial Drive  
Kansas City, Missouri 64198
- (b) Jerry K. Anderson  
Administrator  
Commerce Bank And Trust Holding Company Employee  
Stock Ownership Plan  
3035 SW Topeka Boulevard  
Topeka, Kansas 66611

- (c) Mr. Duane Fager  
Chairman of the Board  
Commerce Bank and Trust Holding Company  
3035 SW Topeka Boulevard  
Topeka, Kansas 66611

**Miscellaneous**

11. Notwithstanding any provision of this Agreement, the Reserve Bank may, in its sole discretion, grant written extensions of time to CBTHC to comply with any provision of this Agreement.

12. The provisions of this Agreement shall be binding upon CBTHC and its institution-affiliated parties, in their capacities as such, and their successors and assigns.

13. Each provision of this Agreement shall remain effective and enforceable until stayed, modified, terminated, or suspended in writing by the Reserve Bank.

14. The provisions of this Agreement shall not bar, estop, or otherwise prevent the Board of Governors, the Reserve Bank, or any other federal or state agency from taking any other action affecting ESOP, CBTHC, the Bank, any nonbank subsidiary of CBTHC, or any of their current or former institution-affiliated parties and their successors and assigns.

15. Pursuant to section 50 of the FDI Act (12 U.S.C. § 1831aa), this Agreement is enforceable by the Board of Governors under section 8 of the FDI Act (12 U.S.C. § 1818).

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the 23<sup>rd</sup> day of May, 2013.

COMMERCE BANK AND TRUST  
HOLDING COMPANY EMPLOYEE  
STOCK OWNERSHIP PLAN

FEDERAL RESERVE BANK  
OF KANSAS CITY

By: /s/ Jerry K. Anderson  
Jerry K. Anderson  
Administrator

By: /s/ Todd A. Offenbacher  
Todd A. Offenbacher  
Vice President

COMMERCE BANK AND TRUST  
HOLDING COMPANY

By: /s/ Duane Fager  
Duane Fager  
Chairman