

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY**

HAROLD J. JOSEPH, JR., on behalf of himself)
and all others similarly situated,)
)
Plaintiff,)
)
v.)
)
COMMERCE BANK, N.A.)
)
Serve: Registered Agent, Officer, or Director)
1000 Walnut Street)
Kansas City, MO 64106)
)
And)
)
COMMERCE BANCSHARES, INC., d/b/a)
COMMERCE BANK, N.A.)
)
Serve: Commerce Bank of Kansas City, N.A.)
1000 Walnut Street)
Kansas City, MO 64106)
)
Defendants.)
)
_____)

Case No. 1016cv-16599

JURY TRIAL DEMANDED

10 JUN 14 2 10 PM '11

AMENDED CLASS ACTION PETITION

1. Plaintiff Harold J. Joseph, Jr. ("Plaintiff"), on behalf of himself and all persons similarly situated, by and through his attorneys, alleges as follows.

INTRODUCTION

2. Plaintiff Harold J. Joseph, Jr. brings this action on behalf of himself and a class all similarly situated Missouri citizens against Defendants Commerce Bank, N.A. and Commerce Bancshares, Inc. d/b/a Commerce Bank, N.A. (collectively "Commerce" or "the Bank" or "Defendant"), arising out of Commerce's unfair, deceptive, unconscionable, and bad faith assessment and collection of overdraft fees.

3. Commerce issues debit cards to its checking account customers, including Plaintiff. These debit cards allow Commerce's customers to have electronic access to their checking accounts for purchases, payments, withdrawals, and for other electronic debit transactions.

4. Commerce could simply and instantaneously decline a debit transaction when a customer has insufficient funds to complete the transaction, or warn the customer that an overdraft fee will be assessed if the transaction is completed. Instead, Commerce routinely allows such transactions to proceed without adequate disclosure or notice to customers like Plaintiff, and then charges the customer an overdraft fee of \$33 (recently reduced from \$35), even when the customer's purchase is much smaller than the amount of the overdraft fee. As with Plaintiff Harold J. Joseph, Jr., Commerce's overdraft fees often cost a customer hundreds of dollars in a matter of days or hours, even when the customer actually is overdrawn by only a few dollars or not at all. As described in detail herein, Commerce achieves this result by systematically and unfairly manipulating its customers' transaction histories to maximize the number of overdraft fees assessed against a customer.

5. This deceptive scheme of charging exorbitant overdraft fees without adequate disclosure or notice to customers is intentionally designed to maximize overdraft fee revenue for Commerce. And it is extraordinarily profitable. On information and belief, banks generate more than \$27 billion in overdraft fees annually.

6. Plaintiff, on behalf of himself and the class, seeks damages, restitution, and injunctive relief for Commerce's violations of the Missouri Merchandising Practices Act, Mo. Rev. Stat. §§ 407.010 *et seq.* (Count I), breaches of contract and violations of the implied covenant of good faith and fair dealing (Count II), and for unjust enrichment (Count III).

7. Plaintiff, and other Commerce customers who are citizens of Missouri at the filing of this Class Action Petition, have been injured by Commerce's unlawful practices, including but not limited to: (a) re-ordering electronic debit transactions from the highest dollar amount to lowest dollar amount, and across multiple days, so as to deplete the customer's available funds as quickly as possible and thereby maximize the number of overdraft fees collected by Commerce; (b) charging overdraft fees for purchases when Commerce did not have to pay out more funds than were in the customer's checking account; (c) failing to adequately disclose its overdraft policies; and (d); providing false and misleading account balance information at the point of sale and on the Bank's website and automated telephone system.

PARTIES

8. Plaintiff Harold J. Joseph, Jr. is a citizen of Missouri who resides and banks in St. Louis County, Missouri.

9. Defendant Commerce Bank, N.A. is a national bank with its headquarters and principal place of business located in Kansas City, Jackson County, Missouri. It conducts business throughout Missouri, including in Jackson County, Missouri. Defendant Commerce Bank, N.A. is controlled by and a subsidiary of Defendant Commerce Bancshares, Inc., a Missouri corporation with its principal place of business in Kansas City, Jackson County, Missouri. Defendants are citizens of Missouri.

JURISDICTION AND VENUE

10. This Court has personal jurisdiction over Commerce because Commerce conducts business and maintains its headquarters and numerous bank branches in Missouri.

11. Venue is proper in this Court pursuant to Mo. Rev. Stat. § 508.010.2(1) and Mo. Rev. Stat. § 407.025(1), because Commerce resides in Kansas City, Jackson County, Missouri.

12. This case is not removable to federal court because Plaintiff, all putative class members, and Defendants are citizens of Missouri at the time of this Petition. In addition, neither Plaintiff nor any member of the class asserts any federal question.

FACTUAL BACKGROUND AND GENERAL ALLEGATIONS

A. Commerce's Misleading, Unconscionable, Deceptive and Incomplete Disclosures in its Deposit Agreement

13. Plaintiff Harold J. Joseph, Jr. has had checking accounts with Commerce since approximately 1989.

14. Commerce provides checking account customers with a pamphlet entitled "Deposit Accounts" which contains provisions related to, among other things, a deposit agreement and funds availability. That pamphlet, which is referred to herein as the "Deposit Agreement" is attached hereto as Exhibit A. On information and belief, this Deposit Agreement covers all deposit accounts with Commerce maintained by Missouri citizens, including Plaintiff. Such standardized agreements are drafted and imposed by Commerce, which is the party of vastly superior bargaining strength, and thus constitute agreements of adhesion.

15. Within the 27 pages of fine print of this pamphlet is the following relevant provision:

Insufficient Funds/Overdrafts. We are not obligated to pay an item presented if your account does not contain sufficient available funds. The presentment of an item for which there are insufficient funds (NSF) in the account will result in a service charge regardless of whether we, at our option, pay or dishonor the item. In addition, if payment is not received for any deposited item, the amount of the item will be charged back to your account and may create an overdraft for which you will be charged a fee. We are not required to give you prior notice of an NSF check. You agree to deposit, or pay on demand, sufficient funds to cover the amount of any overdraft together with any overdraft fees and to reimburse us for any costs we incur in collecting the overdraft from you including, without limitation, attorneys' fees and the costs of litigation to the extent permitted by law. Our payment of any item or other debit that causes an overdraft on one or more occasions does not obligate us to allow such overdrafts on any future occasion. You should not rely on us to honor an overdraft.

16. Further, the Deposit Agreement provides:

Determination of Account Balance. Your account may be debited on the day an item is presented by electronic or other means, or at an earlier time based on notification received by us that an item drawn on your account has been deposited for collection in another financial institution. We may determine the amount of available funds in your account for the purpose of deciding whether to return an item for insufficient funds at any time between the receipt of such presentment or notice and the time we return the item or send notice in lieu of return. We only need to make one such determination.

17. Under the heading “Checks, Visa Check Card Transactions and other Debits”, on page 14 of the 27-page fine-print Deposit Agreement, Commerce states:

The law permits us to and you agree that we may pay checks or other items drawn upon or debits to your account in any order determined by us, even if paying a particular item or debit results in an insufficient available balance in your account to pay one or more items or debits that otherwise could have been paid out of your account. In general, we pay checks or other items drawn upon or debits to your account in order from the highest to the lowest, after posting credits and bank initiated transactions, including fees. This policy is based on the fact that larger items typically include payments for rent, home loans and auto loans, where the consequences for a dishonored payment are much more severe.

Point-of-Sale Transactions. The use of your Commerce Visa® Check Card (“Check Card”) to purchase goods and services constitutes a simultaneous withdrawal from and/or demand upon your checking account, even though the transaction may not actually be posted to your account until a later date. When we approve a non-PIN transaction (which may or may not require your signature), we may immediately reduce the available balance in your account by the authorization amount requested by the merchant even though we have not received the transaction electronically for payment. This authorization amount will not be available to you until our receipt of the transaction OR no more than three business days after the transaction date, whichever first occurs. If funds are not available for checks, other items or debits, you may be subject to overdraft or insufficient funds fees. Transactions with your Check Card will be posted to your account in the order and with the same legal effect as checks or other debits drawn on your account.

We encourage you to keep careful records and practice good account management. This practice will help you avoid writing checks or authorizing debits, such as online bill payments or recurring preauthorized debts, without sufficient available funds and incurring the resulting fees. . . .

18. The provision “When we approve a non-PIN transaction (which may or may not require your signature), we may immediately reduce the available balance in your account by the authorization amount requested by the merchant even though we have not received the

transaction electronically for payment[]” conflicts directly with the provision discussed in Paragraph 16, *supra*. In that provision, the Bank states: “Your account may be debited on the day an item is presented by electronic or other means, or at an earlier time based on notification received by us that an item drawn on your account has been deposited for collection in another financial institution.” The latter provision clearly states that an account is not debited until an item has been deposited for collection in another financial institution. As discussed in Section B, *infra*, a non-PIN transaction is not “deposited for collection in another financial institution” until the time of settlement. As such, the provision in Paragraph 16 directly states that an account will not be debited until the time of settlement. Again, this conflicts with the purported disclosures in Paragraph 17, *supra*.

19. Because Commerce’s policies for making overdraft decisions are misleadingly left vague and obfuscatory in the Deposit Agreement, Plaintiff and the class members can have no idea how Commerce will assess overdraft fees.

20. The Deposit Agreement does not set forth the dollar amount of fees that will be charged for purported overdrafts.

21. Through the Deposit Agreement, Commerce misleads its customers regarding its reordering practices. Instead of informing its customers that Commerce systematically and automatically reorders debits from highest to lowest, Commerce states that it may pay checks or debits “in any order determined by us” but that “*in general*” it pays debits from highest to lowest.

22. Commerce makes no mention of a right to opt-out of overdraft coverage in its Deposit Agreement and otherwise does not provide a customer with the right to opt out or hides from customers their right to opt-out of Commerce’s “overdraft protection” scheme.

23. The Deposit Agreement does not grant Commerce the right to manipulate and abuse checking account transactions for the sole purpose of achieving the most overdraft fees on a consumer's account.

24. Commerce through its Deposit Agreement unfairly deceives and misleads customers by failing to adequately disclose and explain to Plaintiff and its other customers that Commerce: (a) engages in a systematic and automatic policy of re-ordering electronic debit transactions from the highest dollar amount to lowest dollar amount, and across multiple days, so as to deplete the customer's available funds as quickly as possible while maximizing the number of overdraft fees; (b) charges overdraft fees even in situations where Commerce in fact did not pay out more funds than were in the customer's checking account; and (c) fails to provide accurate account balance information on the Bank's website, on its automated telephone system or at the point of sale.

B. Commerce Charges Overdraft Fees For Purchases Even When It Did Not Have to Pay Out More Funds Than Were in the Customer's Checking Account

25. A debit card can be used to make a purchase in two ways: an "ACH" transaction in which a customer enters his or her PIN number at the point of sale; or an "offline signature" transaction. In the former, the money is debited from the account nearly instantaneously. On the other hand, the "offline signature" transaction occurs in two parts: first, authorization for the purchase amount is obtained by the merchant. When a merchant swipes a customer's debit card, the credit card terminal connects, via an intermediary, to the customer's bank, which verifies that the customer's account is valid and that sufficient funds are available to cover the transaction's cost. At this step, the bank holds the funds, but does not yet transfer the funds to the merchant. At some later time, the settlement process begins, wherein the funds are transferred from the customer's accounts to the merchant's accounts. This process is not instantaneous: it can take as long as several days for funds to be deposited in the merchant's account. The actual charge is

not put through until the merchant submits its batch of transactions and the banking system transfers the funds. While the merchant has obtained an authorization from the individual's bank by swiping the card through its credit card terminal, the actual balance with the bank *does not change until settlement*, because the merchant has not actually collected the funds in question. The transaction is not actually "settled" (that is, money between the bank and the merchant changes hands) until the merchant submits the transaction to the bank some time after the customer's purchase.

26. On information and belief, Commerce uses this gap between authorization and settlement to its advantage to create an overdraft that never actually occurs and is strictly theoretical. The Bank retroactively constructs a picture of what the account balance *would have been had all transactions settled immediately, even when there are funds in the account to cover the purchases at the time of settlement*. That is, on information and belief, Commerce makes overdraft fee determinations neither at the time of settlement, nor even at the time of authorization. Rather, at the time of settlement the Bank charges overdraft fees as if it had settled the transactions immediately. This is a fiction. Because the time between authorization and settlement is often one in which customers make deposits to their accounts to cover debits, Commerce's policy is designed to charge more customers overdraft fees. These overdrafts are "theoretical" because due to the gap between authorization and settlement, the customer's account never actually was overdrawn for the purchase at issue, and overdraft fees are charged without cause ("Theoretical Overdraft"). Such Theoretical Overdrafts, further, are hidden on account statements issued by the Bank, which may show overdraft fees even where the account balance is never shown to be negative.

27. The Bank's use of Theoretical Overdrafts unlawfully caused financial losses to Plaintiff and improper gains to the Bank. For example, on April 16, 2009, a Thursday, Plaintiff

ended the day with an account balance of -\$39.26.¹ On Friday, April 17, Plaintiff made deposits in the amount of \$387.16. Plaintiff had debits which settled on that day (April 17) in the amounts of \$15.60, \$6, and \$1, the latter two which were bank service charges. He also was charged two overdraft fees in the amount of \$70. In all, Plaintiff ended April 17 with an account balance of at least \$255.30. Between the end of the business day on Friday, April 17 and Monday, April 20, Plaintiff made eight debits, in the amounts (as re-ordered by Commerce) of \$95.55, \$25, \$20.15, \$20, \$16.02, \$15.90, \$14.99, and \$14.11, for a total of \$221.72. On April 21, Plaintiff was charged *seven* Overdraft fees of \$35 each, *even though he had a sufficient positive balance to cover all of those transactions at the time the overdraft fees were assessed.* These charges were incurred because the Bank manipulated the purchases and debits in the following manner in order to cause Theoretical Overdrafts:

- a. On April 16, Plaintiff's account balance ended the day at -\$39.26.
- b. On April 17, Plaintiff made deposits in the amount of \$387.16. Plaintiff also had debits in the amounts of \$15.60, \$6, and \$1, plus two Overdraft Fees in the total amount of \$70.
- c. Plaintiff ended April 17, a Friday, with an account balance of at least \$255.30.
- d. Between the end of the business day on April 17 and Monday, April 20, Plaintiff made 8 purchases and debits in the amount of \$221.72.
- e. Those purchases settled on April 20, leaving Plaintiff with an ending balance of at least \$33.58.
- f. Nonetheless, on April 21 the Bank charged Plaintiff seven overdraft fees in the total amount of \$245.
- g. Upon information and belief, Commerce retroactively constructed a fictionalized account balance on April 20, deducting all "pending" transactions from Plaintiff's account even before settlement, in order to charge

¹ The purported insufficiency was due to an ATM withdrawal in the amount of \$100 and a fuel purchase in the amount of \$20.01, the latter which was purchased a full two days before the ATM withdrawal. Nonetheless, the Bank reordered these two transactions on April 16, debiting the largest transaction first. Such reordering caused the imposition of two overdraft fees instead of one on April 17.

overdraft fees on April 21, even though Plaintiff had a positive account balance at that time.

- h. Moreover, Commerce knew Plaintiff had deposited funds in his account well in excess of the amount actually needed by the Bank for settlement of the purchases.
- i. Upon information and belief, and contrary to what expressly appears on Plaintiff's bank statement and on Commerce's website, the Bank did not apply Plaintiff's April 17 deposits in the amount of \$387.16 until after it paid purchases made over the weekend. As such, it considered Plaintiff overdrafted based on purchases made after the close of business on Friday, *even though it knew both that the Plaintiff had funds available to settle such transactions and that such transactions could not in fact settle until April 20.*
- j. At no point did the Bank "lend" Plaintiff money or otherwise provide funds for a purchase not fully covered by Plaintiff's current account balance. In sum, Commerce charges overdraft fees for purchases even when it suffers no harm, makes no extension of credit, and endures no loss of its own funds.

28. In all, Commerce charged Plaintiff \$245 in fees for purchases totaling \$221.72, even though Plaintiff had a sufficient positive balance to pay for all of those purchases at the time Commerce assessed the overdraft fees.

29. Such machinations are not explained on Commerce's periodic statements, online account statements, or transaction histories. Commerce simply debits the overdraft fee without any explanation as to how the customer came to be charged that fee. As shown by Plaintiff's account statement, the date of the overdraft fee does not necessarily correspond to the date of the transaction, even though Commerce uses the date of the transaction to determine whether an account has gone into overdraft. As such, Commerce hinders its customers' efforts to prevent future overdraft fees. This charging of an overdraft fee when in fact an account has not been over-drafted is deceptive and contrary to Commerce's Deposit Agreement.

C. Commerce Re-orders Electronic Debit Transactions From the Highest Purchase Amount to Lowest Purchase Amount

30. As experienced by Plaintiff Harold J. Joseph, Jr., Commerce manipulates and reorders debits from highest to lowest during given periods of time. On information and belief,

the Bank reorders transactions for no reason having to do with the soundness of the banking system or operational efficiency, but only to maximize overdraft fees it can charge.

31. Commerce misleads and deceives its customers regarding its reordering practices by stating only that it generally orders debits from highest to lowest.

32. In fact, on information and belief, the Bank automatically and systematically reorders all debit transactions from highest to lowest, and the Bank groups together debit card transactions that occurred on subsequent days with transactions that occurred on earlier days, and reorders them so that higher debits that occurred on subsequent days are posted to its customers' accounts before lower debits that occurred on earlier days, contrary to customers' reasonable expectations.

33. Transactions involving debit cards used by Commerce customers, including the withdrawal of cash from ATM machines and point of sale transactions with vendors, are processed electronically. As a result, on information and belief, Commerce is notified instantaneously when a transaction occurs. Notwithstanding the instantaneous nature of these electronic debit card transactions, Commerce fails to post charges in the order in which they are authorized or received. Instead of processing such transactions in chronological order, Commerce processes them starting with the largest debit and ending with the smallest debit. On information and belief, Commerce follows this policy to maximize the number of overdraft fees charged to customers.

34. Commerce's practices ensure that smaller charges will result in multiple overdraft fees. On information and belief, the Bank's policy is specifically designed to maximize the generation of overdraft fees by triggering overdraft fees for account charges that would not otherwise result in such fees.

35. As a result, Plaintiff and members of the putative class have been assessed overdraft fees for transactions that occurred when they actually had sufficient funds in their accounts to cover those transactions.

36. For example, transactions made by Plaintiff over a weekend from December 4, 2009 through December 7, 2009 were improperly reordered from high to low, causing *six* separate overdraft fees. Plaintiff disputes that any overdraft fees were properly charged during this time period, since all were charged due to the Theoretical Overdraft policy described above. Even assuming, however, it was lawful for Commerce to apply its Theoretical Overdraft policy—which Plaintiff disputes—Commerce’s improper high-to-low reordering of those transactions greatly increased the numbers and total amount of overdraft fees. On December 4, a Friday, Plaintiff ended the day with an account balance of at least \$110.37.² Between the end of the business day on Friday, December 4 and the beginning of Monday, December 7, Plaintiff made seven debits. Six of those debits, in the amounts (as re-ordered by Commerce) of \$125.20, \$44.63, \$37, \$32.61, \$11.18, and \$8.34, settled on December 7. Three checks also cleared on December 7, in the amounts of \$200, \$125, and \$20. On December 8, Plaintiff was charged six overdraft fees of \$35 each. These charges were incurred because Commerce manipulated the purchases and debits in the following manner in order to increase the number of overdraft fees:

- a. On December 4, Plaintiff’s account balance ended the day with a balance of at least \$110.27.
- b. Between the end of December 4 and the beginning of December 7, Plaintiff made seven debits. Six of those debits, in the amounts (as re-ordered by Commerce) of \$125.20, \$44.63, \$37, \$32.61, \$11.18, and \$8.34, settled on December 7.
- c. Plaintiff had sufficient funds to cover at least four of those transactions.

² Plaintiff made a deposit in the amount of \$446.22 on December 3, which, upon information and belief, and contrary to what is indicated on Plaintiff’s bank statement, the Bank did not apply until December 7 or later.

- d. Nonetheless, on December 8 the Bank charged Plaintiff six overdraft fees in the total amount of \$210.
- e. The Bank reordered all transactions – even those that occurred 3 or more days later – and posted the highest dollar charges first, causing the smaller charges to incur overdraft fees.
- f. Had the Bank not reordered the transactions, Plaintiff would have been charged fewer overdraft fees.

37. Upon information and belief, had the Bank posted transactions in either a low-to-high order, or the order in which the transactions actually occurred, the Plaintiff would have been charged significantly fewer overdraft fees in both instances.

D. Commerce Does Not Disclose its Practice of Charging Overdraft Fees on Overdraft Fees

38. Upon information and belief, the Bank charges overdraft fees prior to other purchases. As such, the Bank in effect charges overdraft fees on overdraft fees, an entirely unconscionable and predatory practice. Plaintiff was charged overdraft fees for a “negative balance” made exclusively of previously charged overdraft fees.

39. For example, on May 11, 2010, Plaintiff’s account balance ended the day at \$125.92. On the next day, May 12, Plaintiff made a \$50 deposit, leaving him with an account balance of \$175.92. Also on May 12, Plaintiff was debited for five purchases in the amounts (as reordered by Commerce) of \$95.85, \$35.39, \$20.00, \$7.55 and \$6.53, leaving Plaintiff with a balance of \$10.60.

40. On May 13, Plaintiff received a credit of \$66.00 resulting in a balance of \$76.60. Plaintiff was then improperly charged three overdraft fees of \$33 each for the prior day’s purchases all charged due to the Theoretical Overdraft policy described above resulting in a balance of due solely to overdraft charges on Theoretical Overdrafts of -\$22.40. Plaintiff was then debited for one purchase of \$6.58.

41. On May 14, Plaintiff made a deposit of \$400 resulting in a balance of \$371.02 but was still charged an overdraft fee of \$33 for the prior day's transaction.

42. Commerce charged Plaintiff the additional overdraft fee for the purchase because it considered him to have a "negative balance" made entirely of previously charged overdraft fees—*themselves improperly charged*.

43. Commerce uses such policies to exponentially increase the financial calamity it imposes on its customers. This charging of overdraft fees on overdraft fees is unfair and inadequately disclosed in the Deposit Agreement.

E. Commerce Does Not Alert Customers That Overdraft Purchases Will Incur an Overdraft Fee and Otherwise Provides False and Misleading Account Balance Information to Deceive Customers into Incurring Unlimited Overdrafts

44. When Plaintiff made purchases with his debit card, Commerce did not provide him access to accurate electronic balance information.

45. In some instances, Commerce informs its customers, either explicitly or by omission, that they have a positive account balance when, according to Commerce's own information and policies, they have a negative account balance. On information and belief, with respect to Plaintiff's transactions discussed in this Petition, Commerce's online account information and automated telephone system did not warn Plaintiff that he had overdrawn, or was going to overdraw, his checking account with further purchases and did not provide Plaintiff with sufficient information to determine if additional transactions would result in overdraft fees under Commerce's policies.

46. Even when Commerce has actual knowledge of outstanding transactions which it believes to have created a negative balance in a customer's account, the Bank encourages the customer to incur more overdraft fees by approving further debit card purchases and other electronic transactions without warning to the customer.

47. Commerce's failure to disclose overdraft fees at the point of sale causes customers to repeatedly overdraft their accounts.

F. Commerce's Statements are Misleading and Impair Customers' Ability to Determine if an Overdraft Actually Occurred.

48. Commerce's monthly bank statements group transactions into five or more categories with each transaction showing two applicable dates: a transaction date and a date paid. The monthly statements do not provide a running account balance using either date.

49. Commerce's online account activity statements provide a running account balance only for "posted" transactions.

50. Neither the monthly account statements nor the online activity statements provide a reasonable method for customers to follow the daily activity in their accounts as used by Commerce for applying fees. As a result, Customer's cannot easily determine why an overdraft fee was charged or what transaction the charge relates to. Commerce's failure to provide a running account summary prevents its customers from determining the cause of overdraft fees and deceptively and misleadingly hides its unfair overdraft policies and procedures including its use of Theoretical Overdrafts.

CLASS ACTION ALLEGATIONS

51. Plaintiff brings Counts II and III of this class action pursuant to Missouri Rule of Civil Procedure 52.08 on behalf of himself and the following class of similarly situated persons:

All Missouri citizens at the time of the filing of this action who, within the applicable statute of limitations preceding the filing of this action to the date of class certification maintained a checking account with Commerce and incurred an overdraft fee (the "Class").

52. Plaintiff bring Count I of this class action pursuant to Missouri Rule of Civil Procedure 52.08 and Mo. Rev. Stat. § 407.025(3) on behalf of himself and the following subclass of similarly situated persons:

All Missouri citizens at the time of the filing of this action who, within the applicable statute of limitations preceding the filing of this action to the date of class certification maintained a checking account with Commerce for personal, family, or household use, and incurred an overdraft fee (the “Consumer Sub-Class”).

53. Plaintiff reserves the right to modify or amend the definition of the proposed Class and Consumer Sub-Class.

54. Excluded from the Class and Consumer Sub-Class are Defendant, including any parent, subsidiary, affiliate or controlled person of Defendant; Defendant’s officers, directors, agents or employees; the judicial officers assigned to this litigation; and members of their staffs and immediate families. Also excluded from the Class and Consumer Sub-Class are all persons who are not citizens of the state of Missouri at the time this class action is commenced by the filing of this Class Action Petition.

55. The proposed Class and Consumer Sub-Class meet all requirements for class certification. The Class and Consumer Sub-Class satisfy the numerosity standards. The Class and Consumer Sub-Class each are believed to number in the thousands of persons. As a result, joinder of all class members in a single action is impracticable. On information and belief, class members can be identified by Commerce’s banking records. Class members may be informed of the pendency of this action by published and broadcast notice.

56. There are questions of fact and law common to the Class and Consumer Sub-Class which predominate over any questions affecting only individual members. The questions of law and fact common to the Class and Consumer Sub-Class arising from Commerce’s actions include, without limitation, whether Commerce:

- a. re-orders electronic debit transactions from the highest dollar amount to lowest dollar amount so as to deplete the customer’s available funds as quickly as possible while maximizing the number of overdraft fees;
- b. charges overdraft fees when it did not have to pay out more funds than were in the customer’s checking account;

- c. provides false and misleading account balance information on Commerce's website, automated telephone system, monthly statements and at the point of sale;
- d. does not clearly disclose and/or refuses to allow its customers to opt out of its "overdraft protection" program;
- e. does not obtain affirmative consent from its customers prior to processing transactions that will result in overdraft fees;
- f. does not alert its customers that a debit card transaction will trigger an overdraft fee, and does not provide its customers with an opportunity to cancel such transactions;
- g. breaches its contract with the Plaintiff and the other members of the putative Class and Consumer Sub-Class;
- h. breaches its covenant of good faith and fair dealing with Plaintiff and the other members of the putative Class and Consumer Sub-Class through its overdraft policies and practices;
- i. requires its customers to enter into standardized Deposit Agreements which include unconscionable provisions;
- j. is unjustly enriched through its overdraft policies and practices;
- k. violates the Missouri Merchandising Practices Act through its overdraft policies and practices; and
- l. continues to commit wrongdoing through its overdraft policies and practices.

57. The questions set forth above predominate over any questions affecting only individual persons, and a class action is superior with respect to considerations of consistency, economy, efficiency, fairness and equity to other available methods for the fair and efficient adjudication of this controversy.

58. A class action is the appropriate method for the fair and efficient adjudication of this controversy. The presentation of separate actions by individual class members could create a risk of inconsistent and varying adjudications, establish incompatible standards of conduct for

Defendant, and/or substantially impair or impede the ability of class members to protect their interests.

59. Commerce has acted or refused to act on grounds generally applicable to the Class and Consumer Sub-Class.

60. Plaintiff is an adequate representative of the Class and Consumer Sub-Class because he is a member of the Class and Consumer Sub-Class and his interests do not conflict with the interests of the members of the class he seeks to represent. The interests of the members of the Class and Consumer Sub-Class will be fairly and adequately protected by Plaintiff and his undersigned counsel, who have extensive experience prosecuting complex class action litigation.

61. Plaintiff's claims are typical of the claims of the Class and Consumer Sub-Class because they arise out of the same conduct, policies, and practices of Commerce with respect to overdraft fees, and the same or substantially similar unconscionable provisions of Commerce's Deposit Agreements and other related documents. Plaintiff has suffered the harm alleged and has no interests antagonistic to the interests of any other putative class member.

62. Maintenance of this action as a class action is a fair and efficient method for the adjudication of this controversy. It would be impracticable and undesirable for each class member who suffered harm to bring a separate action. In addition, the maintenance of separate actions would place a substantial and unnecessary burden on the courts and could result in inconsistent adjudications, while a single class action can determine, with judicial economy, the rights of all class members.

63. Notice can be provided to Class and Consumer Sub-Class members by using techniques and forms of notice similar to those customarily used in other class actions.

CLAIMS FOR RELIEF

COUNT I

VIOLATION OF THE MISSOURI MERCHANDISING PRACTICES ACT
(On behalf of the Consumer Sub-Class)

64. Plaintiff repeats and realleges the preceding and subsequent paragraphs as though set forth herein.

65. Plaintiff and Consumer Sub-Class members are persons who purchased merchandise (including but not limited to banking services) from Commerce primarily for personal, family or household purposes within the meaning of the Missouri Merchandising Practices Act, Mo. Rev. Stat. §§ 407.010 *et seq.*

66. The acts and practices engaged in by Commerce, and described herein, constitute unlawful, unfair, and/or fraudulent business practices in violation of the Missouri Merchandising Practices Act, Mo. Rev. Stat. §§ 407.010 *et seq.*

67. Commerce engaged in unlawful practices including deception, fraud, misrepresentation, unfair practice, and/or concealment, suppression, or omission of material facts in connection with its sale of merchandise in violation of Mo. Rev. Stat. § 407.020. These unlawful practices include, but are not limited to, the following policies and practices of Commerce, and its deception in failing to adequately inform consumers thereof:

- a. Re-ordering electronic debit transactions from the highest dollar amount to lowest dollar amount so as to deplete the customer's available funds as quickly as possible while maximizing the number of overdraft fees.
- b. Charging overdraft fees when Commerce did not have to pay out more funds than were in the customer's checking account;
- c. Charging overdraft fees on overdraft fees;
- d. Providing false and misleading transaction and account balance information on the Bank's website, automated telephone system, monthly statements and at the point of sale;

e. Failing to disclose or provide customers with an opportunity to opt out of Commerce's overdraft protection scheme.

68. The above practices and policies are not adequately represented in Commerce's Deposit Agreement. Such terms are deceptive in that consumers are not sufficiently informed of the true practices of the Defendant.

69. Commerce's policies and practices as alleged herein offend the public policy of the State of Missouri, are unethical, oppressive, and unscrupulous, and cause substantial injury to consumers who are citizens of Missouri.

70. Through its policies and practices as alleged herein, Commerce has violated its duty of good faith to its customers in violation of the Missouri Merchandising Practices Act.

71. Through its policies and practices as alleged herein, Commerce has engaged in unconscionable acts and practices and used unconscionable contracts and contract terms.

72. Commerce's policies and practices as alleged herein are unconscionable because Commerce has taken advantage of an unequal bargaining position and obtained a contract or term which results in a gross disparity of values exchanged.

73. As a result of Commerce's employment of these unlawful acts and practices, Plaintiff and putative Consumer Sub-Class members suffered an ascertainable loss of money or property in the form of unlawful overdraft fees assessed by Commerce.

74. Plaintiff and putative Consumer Sub-Class members are thus entitled to all relief available under the Missouri Merchandising Practices Act.

COUNT II

BREACH OF CONTRACT, INCLUDING BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

(On behalf of the Class)

75. Plaintiff repeats and realleges the preceding and subsequent paragraphs as though set forth herein.

76. A covenant of good faith and fair dealing is implied in all contracts in Missouri, including Plaintiff's and Class members' Deposit Agreements with Commerce.

77. The covenant of good faith and fair dealing prevents one party to a contract from exercising a judgment conferred by the express terms of agreement in such a manner as to evade the spirit of the transaction or so as to deny the other party the expected benefit of the contract. When a contract provides a single party with discretion, that discretion is not unlimited; it must not be exercised to deprive the other party of the benefit of the contractual relationship or evade the spirit of the bargain. Commerce exercises judgment and discretion to choose whether to impose overdraft fees by posting transactions in any order it wishes, by unilaterally deciding whether to honor requested transactions when customers have insufficient funds, or by unilaterally determining when customers have insufficient funds.

78. Because the occurrence, amount, and frequency of overdraft fees are set unilaterally by Commerce, it has an obligation to impose overdraft fees on consumers' bank accounts in good faith. Commerce has breached this obligation by, among other things, intentionally delaying and rearranging the posting of transactions to accounts in a manner which maximizes the amount of overdraft fees. Commerce thereby evades the spirit of its agreements with customers, including Plaintiff.

79. Further, the good faith obligation requires that a contracting party not prevent or hinder performance by the other party. Through posting inaccurate and misleading information about Plaintiff's and Class members' transactions and account balances, Commerce prevents or hinders its customers' performance of the banking relationship and deprives customers of the opportunity to avoid excessive overdraft fees.

80. Individual contractual clauses in Commerce's Deposit Agreement, themselves vague and misleading, combine to exert a further breach of the covenant of good faith and fair

dealing. No lay person would read the Deposit Agreement to permit the imposition of overdraft fees in the manner employed by Commerce, as alleged herein.

81. Commerce has breached the covenant of good faith and fair dealing in the Deposit Agreement through its overdraft fee policies and practices as alleged herein.

82. Commerce breaches its contractual duty to charge overdraft fees only when an overdraft occurs through its policy of charging Plaintiff and other customers overdraft fees even when Commerce did not have to pay out more funds than were in the customer's checking account.

83. Plaintiff and members of the putative Class have performed all, or substantially all, of the obligations imposed on them under the Deposit Agreement.

84. Plaintiff and members of the putative Class have sustained damages as a result of Commerce's breaches as alleged herein.

COUNT III

UNJUST ENRICHMENT **(On behalf of the Class)**

85. Plaintiff repeats and realleges the preceding and subsequent paragraphs as though set forth herein.

86. Commerce has been, and continues to be, unjustly enriched as a result of its wrongful conduct alleged herein to the detriment of Plaintiff and the Class.

87. Commerce has been enriched by a benefit in the form of improper overdraft fees.

88. Commerce's enrichment in the form of improper overdraft fees was at the expense of Plaintiff and the Class.

89. It would be unjust to allow Commerce to retain the benefit.

90. Plaintiff and the Class are entitled to disgorgement and restitution of all wrongfully-obtained gains received by Commerce as a result of its wrongful conduct alleged herein.

91. Plaintiff and members of the Class have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and the putative Class and Consumer Sub-Class, requests that this Court enter judgment against Defendant and in favor of Plaintiff and award the following relief:

- (a) Certification of the proposed Class and Consumer Sub-Class;
- (b) Injunctive relief enjoining Commerce from charging overdraft fees, or causing overdraft fees to be charged, under their current policies and from engaging in the wrongful, deceptive, unfair, and unconscionable practices alleged herein;
- (c) Damages in an amount to be determined at trial, including actual and punitive damages;
- (d) Disgorgement and restitution of all overdraft fees paid to Commerce by Plaintiff and the putative Class as a result of the wrongs alleged herein;
- (f) Pre- and post- judgment interest at the maximum rate permitted by applicable law;
- (g) Attorneys' fees, costs, and expenses as available under the law.

JURY DEMAND

Plaintiff Harold J. Joseph, Jr., on behalf of himself and the putative Class and Consumer Sub-Class, demands a trial by jury on all issues that may be tried to a jury.

Dated: June 4, 2010

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ATTORNEYS FOR PLAINTIFF

EXHIBIT A

ask listen solve

Deposit Accounts

Deposit Agreement

Privacy Policy

Funds Availability

Electronic Fund Transfers

Substitute Check Disclosures



commercebank.com

call click come by



Commerce Bank

Member FDIC

CONTENTS

	Page		Page
Deposit Agreement	3	6. Items Returned	13
I. General Provisions	3	7. Return of Direct Deposits	13
A. Legal Effect of Agreement	3	8. Foreign Currency	13
B. Subject of Agreement	3	D. Withdrawals	14
C. Effect of State and Federal Laws and Regulations	3	1. Federal Limitations on Withdrawals	14
D. Governing Law/Jurisdiction	3	2. Checks and Other Withdrawals	14
E. Liability	4	3. Telephone Transfers	15
F. Indemnification/Limitation of Liability	4	4. Insufficient Funds/Overdrafts	15
G. Monitoring and Recording Telephone Calls/Videotaping	4	5. Determination of Account Balance	15
H. Waiver of Rights by Bank	4	6. Fraud Detection; Return of Items or Debits	15
I. Customer's Waiver of Notice	4	7. Automated Processing of Items	15
J. Claims and Disputes Concerning Ownership or Authority With Respect to Your Account	4	8. Facsimile Signatures	15
K. Amendment of Agreement	5	9. Multiple Signers	16
L. Termination of Agreement/Closing Account	5	10. Stale-Dated Items	16
M. Privacy Policy	5	11. Postdated Items	16
N. FDIC Insurance	7	12. Restrictive Legends	16
O. Fair and Accurate Credit Transaction Act of 2003	7	13. Stop Payment Orders	16
II. Ownership of Accounts	7	14. Check Cashing Requirements	17
A. Important Information About Procedures for Opening a New Account	7	E. Wire and ACH Transactions	17
B. Account Ownership and Eligibility	7	1. Governing Laws and Rules	17
C. Individual Personal Accounts	8	2. Notice	17
D. Joint Personal Accounts	8	3. Final Payment/Reversal of Erroneous Credit Entries	17
E. Transfers to Minors Accounts	8	4. Use of Account Numbers	17
F. Payable On Death Accounts	8	5. Cancellation or Amendment of Wire Transfer Orders	18
G. Agency and Fiduciary Accounts (Including Powers of Attorney)	8	6. Compensation	18
H. Business and Other Non-Personal Accounts	9	F. Setoff and Security Interest	18
III. General Rules Governing Deposit Accounts	10	G. Legal Actions Affecting your Account	18
A. Customer Responsibilities	10	H. Inactive Accounts /Unclaimed Property	18
1. Prompt Review of Account Statements	10	I. Assignments	19
2. Claim of Loss	10	J. Personal Interest Checking and Personal and Business Non-Interest Checking/Account Procedures	19
3. Check Orders	10	Funds Availability Policy	19
4. Check Safekeeping	10	Federal Electronic Fund Transfer Act Disclosure ATM Card Agreement	20
5. Customer Information	11	Notice of ATM/Night Deposit Facility User Precautions	23
6. Change of Address	11	Substitute Check Policy Disclosure	26
7. Notices	11		
B. Joint Accounts	11		
C. Deposits	12		
1. Items Deposited	12		
2. Authorization to Pay Overdrafts and Deduct Fees from Government Benefit Check and Direct Deposit	12		
3. Verification of Deposits	12		
4. Endorsements	13		
5. Encoding and Endorsing	13		

**Deposit Agreement
Including
Privacy Policy, Funds Availability,
Electronic Fund Transfers
and Substitute Check Disclosures**

I. GENERAL PROVISIONS

A. Legal Effect of Agreement. When you open or maintain a deposit account with Commerce Bank ("account"), you are agreeing to the terms of this Agreement. It is a legally binding contract. "Account" means checking, savings, money market accounts or certificates of deposit, whether evidenced by a certificate or in book entry form. In this Agreement, the words "we," "us," and "our" mean Commerce Bank and the words "you" or "your" mean the holder(s) of the account ("account holder(s)") identified on the signature card or other account documents and anyone else with the authority to deposit, withdraw, or exercise control over the funds in the account. For purposes of this Agreement, "business day" means any day except Saturdays, Sundays and federal holidays. Read this information carefully and keep it with your other account records.

B. Subject of Agreement. This Agreement includes the terms that apply to your account with us, or any one of our predecessors and replaces and supersedes any previous deposit agreements. It also contains important regulatory disclosures relating to the availability of deposited funds and electronic fund transfers. The types of accounts offered by us, service charges, other fees and terms are described in separate brochures that are part of this Agreement. Some accounts involve special rules, in addition to those in this Agreement. For example, accounts in an Individual Retirement Account are, in addition to this Agreement, subject to your Individual Retirement Account Custodial Agreement. A computer, ATM Card, bankcard with ATM access, and debit card may access accounts. These services are subject to additional agreements that address the unique characteristics of these services. Non-personal account holders may also be subject to our Treasury Services Agreement and related service agreements. If any of the terms of this Agreement conflict with the terms of any other specific service agreements with us, the terms of the specific service agreements will govern. The headings in this Agreement are for convenience or reference only and will not govern the interpretation of the provisions.

C. Effect of State and Federal Laws and Regulations. Much of our relationship with you is regulated by state and federal laws and regulations, including the laws of the United States, the Uniform Commercial Code, regulations of the Board of Governors of the Federal Reserve System, operating letters of the various Federal Reserve Banks, and regulations, rules and interpretations of regulatory agencies, clearinghouse associations and fund transfers systems (together referred to as "applicable law"). If any terms of this Agreement come into conflict with applicable law, those terms will be nullified to the extent that they are inconsistent, and the applicable law will govern. If any provision of this Agreement is declared to be invalid, unenforceable or illegal, that part will not affect the validity of the other provisions.

D. Governing Law/Jurisdiction. This Agreement will be governed by applicable federal law and, to the extent not preempted by applicable federal law, by the applicable law of the state in which the account was, or is considered, opened ("account domicile state"). Any account opened by mail, telephone or electronic means will be considered opened in Missouri, unless the first named account holder resides in a state in which we maintain a branch. In that event, the account will be considered opened in the state in which the first-named account holder resides. Any lawsuit regarding your account must be brought in a proper court in the account domicile state. You submit to the jurisdiction of the account domicile state.

E. Liability. You agree, for yourself (and the person or entity you represent if you act as a representative of another) to the terms of this Agreement and the schedule of charges. You authorize us to deduct these charges directly from the account balance as accrued. You will pay any additional reasonable charges for services you request which are not covered by this Agreement. Each of you also agrees to be jointly and severally (individually) liable for any account shortage resulting from charges or overdrafts, whether caused by you or another with access to your account. This liability is due immediately, and can be deducted directly from the account balance whenever sufficient funds are available. You have no right to defer payment of this liability, and you are liable regardless of whether you signed the item or benefited from the charge or overdraft.

F. Indemnification/Limitation of Liability. You agree to reimburse us for any losses, liabilities, expenses and, to the extent permitted by law, costs including reasonable attorneys' fees and collection agencies' fees, we incur with respect to the collection of overdrafts or otherwise in connection with your account. You agree to pay our attorneys' fees and costs, in addition to any obligations described above, in the event that we shall prevail in any legal proceeding arising out of your account or this Agreement. We will not be responsible for any loss to you caused by an event that is beyond our control, including, but not limited to, natural disasters, wars, riots, strikes, computer failure, or the loss of power, communication or transportation facilities.

G. Monitoring and Recording Telephone Calls/Videotaping. We may monitor or record phone calls for security reasons and to ensure that you receive courteous and efficient service. You consent in advance to any such monitoring or recording. We need not remind you of our monitoring or recording before each phone conversation. We may videotape any transactions on our premises. We may choose to monitor or record phone calls or videotape transactions in our sole discretion, unless required by law. Any such recordings and/or videotapes are our exclusive property.

H. Waiver of Rights by Bank. We reserve the right to waive or delay the enforcement of any of the terms of this Agreement with you with respect to any transaction or series of transactions. Any such waiver or delay will not affect our right to enforce any of our rights with respect to other customers, or to enforce any of our rights with respect to later transactions with you and is not sufficient to modify the terms and conditions of this Agreement. For example, our payment of overdrafts on your account does not waive our right to return items or other debits for insufficient funds. If a fee is waived because of a certain condition, for example, you are a minor, or because of your employment by a specified employer, or your membership in Senior Partners or your participation in a package account product or private banking, the fee may be assessed without notice upon termination of that condition.

I. Customer's Waiver of Notice. You waive any notice of non-payment, dishonor or protest regarding any items credited to or charged against your account. For example, if a check that you deposited is dishonored and returned to us, we are not required to notify you of the dishonor.

J. Claims and Disputes Concerning Ownership or Authority With Respect to Your Account. If another person or entity makes a claim against the funds in your account, or if we have reason to believe there is or may be a dispute over matters such as the ownership of the account or the authority to withdraw funds, we may, in our sole discretion, (1) continue to rely on current signature cards, resolutions, or other account documents, (2) honor the competing claim upon receipt of evidence we deem satisfactory to justify such action, (3) place a hold on all or part of the funds until the dispute is resolved to our satisfaction, or (4) pay the funds into an appropriate court of law for resolution pursuant to an interpleader action. You agree that we may withhold from funds subject to an interpleader action our costs, including reasonable attorneys' fees. We will not be liable for any items or debits that are dishonored as a consequence of holding or interpleading funds for these reasons.

K. Amendment of Agreement. Unless otherwise required by law, we may amend this Agreement by posting notices in our branches, sending you a notice or including a message on or with your bank statement. We may change the terms in our fee schedules without notice to you, unless required by law. Applicable law may change from time to time without notice to you unless required by law. Your continued use of your account after the effective date of any amendment or change, or after a reasonable time, not to exceed ten (10) calendar days, if no such date is stated, will constitute your acceptance of the terms of the amendment or change. We may amend the terms of the fee schedules or other terms applicable to a particular account, based upon the account relationship or other factors.

L. Termination of Agreement/Closing Account. We may terminate this Agreement and close any account and return the balance to you at any time, in our sole discretion, with or without prior notice. If your account reaches a zero balance, we reserve the right to consider the account closed. You may terminate this Agreement and close your account at any time upon notice to us. We may require, in our discretion, that such notice be given in writing or in person. If you close your account, you must terminate all banking services related to the account (for example, debit cards or internet banking) and preauthorized debits and credits (for example, bill payments, payroll or social security). A subsequent deposit or credit may re-open the account. Termination of this Agreement will not release you from any fees or other obligations incurred before the termination, those you incur in the process of closing your account or those you incur if the account reopens due to a subsequent deposit or credit or failure to terminate any banking service related to the account. Termination of this Agreement does not release you from liability on outstanding items. This Agreement will continue to govern matters relating to your account which arose before termination or which may arise later.

M. Privacy Policy. Protecting your privacy is important to Commerce and to our employees. We want you to understand what information we collect and how we use it. In order to provide our customers with a broad range of financial products and services as effectively and conveniently as possible, we use technology to manage and maintain customer information. This policy serves as a standard for all Commerce employees for collection, use, retention, and security of nonpublic personal information.

What Information We Collect

We collect and use different types of information to service your accounts and to offer you better products and services that best meet your changing needs.

"Nonpublic personal information" is information about you and identified with you that we obtain in connection with providing a financial product or service to you. This is information, which is unobtainable from a public source. For example, nonpublic personal information includes information regarding your account balance, payment history, and overdraft history. We may collect "nonpublic personal information" about you from the following sources:

- Information we receive from you on applications or other loan and account forms;
- Information about your transactions with us, our Affiliates, or others; and
- Information we receive from third parties such as credit bureaus.

Rest assured, we do not sell your nonpublic personal information to others.

How We Protect Your Information

We restrict access to your nonpublic personal information to those employees who need to know that information to provide products or services to you. We maintain physical, electronic, and/or procedural

safeguards that comply with federal standards to guard your nonpublic personal information.

What Information We Disclose

We may disclose nonpublic personal information to companies that work for us and assist us in providing services to you. We may also disclose information as permitted or required by law. Disclosure of information in these circumstances is detailed below:

To service providers and for joint marketing:

We may disclose the following information to third parties that provide services that assist us in servicing your loan or account with us, to companies that perform marketing services on our behalf, or to other financial institutions with whom we have joint marketing agreements:

- Information we receive from you on applications or other forms, such as your name, address, social security number, assets, and income;
- Information about transactions with us, our Affiliates, or others, such as your account balance, payment history, parties to transactions, and credit card usage; and
- Information we receive from credit bureaus, such as your creditworthiness and your payment history.

We have strict confidentiality agreements with all outside companies to ensure that they protect your information, and never use it for other purposes.

To other non-affiliated third parties:

In addition, in certain circumstances we disclose nonpublic personal information about you to "nonaffiliated third parties" (i.e., third parties that are not members of our corporate family) as permitted by law. For example, we may disclose nonpublic personal information about you to third parties as necessary to process transactions that you have requested or authorized, to government entities in response to subpoenas, and to credit bureaus. We do not disclose any nonpublic personal information about you to any other nonaffiliated third parties, except as permitted by law.

Sharing With Affiliates

We are also permitted under law to share information about our experiences or transactions with you or your account (such as your account balance and your payment history with us) with our Affiliates. Our Affiliates include Commerce banks, mortgage bankers, broker/dealers and insurance agents. By sharing information about your accounts and relationships among our corporate family we can save you time and money and make it easier for you to do business with us.

Information about you we can share with affiliates - unless you tell us not to

Unless you tell us not to, we also may share the following information about you or your account with our Affiliates:

- Information we obtain from your application, such as your income or marital status;
- Information we obtain from a consumer report, such as your credit score or credit history;
- Information we obtain to verify representations made by you, such as your open lines of credit; and
- Information we obtain from a person regarding its employment, credit, or other relationship with you, such as your employment history.

How to tell us not to share this information with our affiliates:

If you prefer you may direct us not to share this information with our Affiliates. If this is your choice, call us toll free at 1-800-543-4845.

Note: Your direction in this paragraph covers certain information about you that we might otherwise share with our corporate family. We may share other information about you with our corporate family as permitted by law.

Who Our Affiliates Are

As used in this Privacy Policy Notice, "Commerce" means Commerce Bancshares, Inc. and the members of the Commerce corporate family. Examples of Affiliates include the following financial service providers:

Commerce Bank, N.A.
Commerce Trust Company, a division of Commerce Bank, N.A.
Commerce Brokerage Services, Inc.
Commerce Investment Advisors, Inc.
Commerce Mortgage Corp.
Commerce Insurance Services, Inc.
CBI Insurance Company
CBI Leasing, Inc.
Mid-America Financial Corp.

If You Cease To Be Our Customer

If you decide to close your account(s) or become an inactive customer, we will continue to adhere to the privacy policies and practices described in this notice.

N. FDIC Insurance. Funds in your account(s) with us are insured by the Federal Deposit Insurance Corporation (FDIC) and backed by the full faith and credit of the United States. The amount of insurance coverage you have depends on the number of accounts you have with us that are of different "ownership." An individual account is one unique form of "ownership"; a joint account, a pay-on-death account, and a self directed qualified retirement account (e.g., an IRA) are examples of some of the others. Deposit insurance for a person's self directed qualified retirement account is up to \$250,000. Deposit insurance for the other ownerships is at least \$100,000 per interest of the owner. If you want a more detailed explanation or additional information, you may ask a Commerce banker or contact the FDIC. You can also visit the FDIC website at www.fdic.gov and click on the Deposit Insurance link. The link includes detailed contact information as well as a deposit insurance estimator.

O. Fair and Accurate Credit Transaction Act of 2003. We may report information about your account to credit bureaus. Late payments, missed payments or other defaults on your account may be reflected in your credit report.

II. OWNERSHIP OF ACCOUNTS

A. Important Information About Procedures for Opening a New Account. To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account.

What this means for you: When you open an account, we will ask for your name, address, date of birth and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

B. Account Ownership and Eligibility. These rules apply to your account depending on the form of ownership and beneficiary designation, if any, specified on the account records. We reserve the

right to refuse some forms of ownership on any or all of our accounts. We make no representations as to the appropriateness or effect of the ownership and beneficiary designations, except as they determine to whom we pay the account funds. We may discontinue offering or change eligibility for any of the account types. In the event the signature card and/or other form of resolution or authorization is unavailable or incomplete, information from our deposit system or other records may be relied upon to determine the form of ownership of the account.

C. Individual Personal Accounts. You are the sole holder of the account. You may appoint an attorney-in-fact with respect to the account. Otherwise, you are the only person authorized to use the account.

D. Joint Personal Accounts. A personal account in the names of two or more persons is held in joint tenancy with right of survivorship and not as tenants in common. Upon the death of a joint holder, the survivor(s) agree to promptly notify us. The balance in the account belongs to the surviving account holder(s), subject to our right of set off and security interest in the account (or right to charge the account for any debt the deceased joint holder or any surviving joint holder may have owed us). Any accounts held by husband and wife are as tenants by the entirety if this form of ownership is recognized by the account domicile state. If two or more joint holders survive, the survivors hold the account as joint tenants with right of survivorship. Some of the other rules that govern joint accounts are described in Section III B of this Agreement.

E. Transfers To Minors Accounts. Accounts established under the Uniform Transfers To Minors Law, or corresponding state law, are governed by the applicable state law. We have no duty or agreement whatsoever to monitor or insure that the acts of the custodian (or successor custodian) are for the child's benefit. The child's SSN/TIN is used for the Backup Withholding Certification. Only one custodian and one minor are permitted on each account.

F. Payable On Death Accounts. An account with payable on death beneficiary(s) (POD Account) is governed by the applicable law of the account domicile state. Accounts in Missouri are established pursuant to section 362.471 R.S.Mo. and not under the Nonprobate Transfers Law of Missouri. If the POD Account has two or more joint holders living, the account will be treated as a joint account. If there is more than one account holder, upon the death of one of the joint holders, the balance in the account belongs to the surviving account holder(s), subject to our right of set off and security interest in the account (or right to charge the account for any debt the deceased joint holder or any surviving joint holder may have owed us). A POD Account belongs to the holder(s) during their lifetimes and not to the POD beneficiary or beneficiaries. A beneficiary acquires the right to withdraw only if (1) all account holders die, and (2) the beneficiary is then living. If two or more beneficiaries are named and survive the death of all holders, these beneficiaries will own the account in equal shares, without right of survivorship. We may request proof of death of the original holder(s) and any beneficiaries and require identification from any person requesting funds from the account. Upon request for payment by any beneficiary, we will pay to all of the beneficiaries surviving at the death of the last surviving holder, the entire proceeds of the account either by check payable jointly to all these beneficiaries or by separate checks in equal shares. If the account was opened at a branch located in Kansas, the funds may be subject to a claim of the Secretary of Social and Rehabilitation Services pursuant to K.S.A. 39-709(g). Account holders may at any time remove any or all of the beneficiaries or name additional beneficiaries; provided, however, all of the account holders must agree to the change on a form acceptable to us.

G. Agency and Fiduciary Accounts (Including Powers of Attorney). Any individual or entity acting as an agent, guardian, conservator, personal representative, trustee, custodian, attorney-in-fact or in some other fiduciary capacity ("Agent") must be designated to us as such on the signature card or other account documentation or record. We are

III. GENERAL RULES GOVERNING DEPOSIT ACCOUNTS

authorized to follow the directions of an Agent regarding an account until we receive written notice that the agency or fiduciary relationship has been terminated and we have a reasonable opportunity to act on such notice, not to be less than five (5) business days, provided we may recognize such termination earlier. We are not liable for misapplication of funds from your account by your Agent. Agent or fiduciary shall be solely responsible for acting in accordance with applicable laws and the terms of any court order, trust or other document establishing and covering the agent or fiduciary relationship. We are not responsible for insuring compliance with such laws, court orders or documents. When an account is held in the name of two or more persons as Agents or in a fiduciary capacity, each authorizes the other to act independently with respect to the account. We are not required to recognize any power of attorney. If we do allow the transaction of business by its use, you and all joint account holders will be bound by the actions taken by the person holding your power of attorney. We also reserve the right to restrict the types or sizes of transactions we will permit an attorney-in-fact to conduct on a case-by-case basis and may require the attorney-in-fact to present the original power of attorney before conducting any transaction. You must notify us in writing, as provided in this Agreement, of the revocation of any power of attorney.

H. Business and Other Non-Personal Accounts. Business accounts are those established by any sole proprietorship, partnership, corporation, fiduciary, limited liability company, limited liability partnership, association or other entity, other than in an individual capacity, operated for profit. Other non-personal accounts include those established by a corporation, association or other organization operated primarily for religious, philanthropic, charitable, educational, fraternal or other similar purposes and not operated for a profit; and accounts established by governmental units including the United States, any state of the United States, or any county, municipality, or political subdivision thereof, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam or political subdivision thereof.

We may require a resolution, authorization, agreement or other documents to evidence the authority of individuals to act on behalf of the business or other non-personal account holder. We are not required to recognize any resolution or authorization that is not our form. The business or other legal entity agrees to provide us promptly a new resolution, authorization or other documentation as we may request upon any change in authority. We are authorized to follow the directions of a person designated as having authority to act on the entity's behalf in all matters and transactions with respect to the account until we receive a written resolution or authorization effecting a change in the authorized signers and have a reasonable time to act on such change, not to be less than five (5) business days, provided we may recognize such change earlier.

Each person whose name appears on the signature card, or any resolution or authorization, represents and agrees that such person is authorized to execute all documents in the capacity stated therein, has furnished all documents necessary to evidence that authority and will furnish any other documents in such form as we may request from time to time. If the account is under a trade name, you certify that you are doing business under that name and that no one else has any right, title or interest in that trade name. You shall indemnify us against any loss or liability, including court costs and attorneys' fees to the extent permitted by law, arising from our acceptance for payment or credit, checks or other items drawn to the order of that trade name.

Earnings in the form of interest or credits will be paid on the collected balance, which includes deposits of cash and checks drawn on us and non-cash items (for example, checks) for which we have received credit in accordance with schedules adopted from time to time by us. Interest will be charged on the use of uncollected funds.

A. Customer Responsibilities.

1. Prompt Review of Account Statements. Statements will be mailed to you at the address shown on our deposit records or otherwise made available to you. At our option, and with no further notice to you, we may choose not to send your account statement when there is no activity on your account for one statement period. If you request that we hold your mail, you agree that we have made your statements and items available to you when the statement is issued. You must promptly review statements and any accompanying items. Notify us in writing of any dispute or difference of account for any reason, including but not limited to, any unauthorized debit, any unauthorized signature, lack of signature, alteration or other irregularity. If we make an encoding error on a deposit made by you, such error must also be reported to us. You must report any such irregularity promptly, and in no event later than 30 days after your statement and items were received or otherwise made available to you. You will be deemed to have received your statement five (5) business days after its date, absent proof of an earlier or later actual delivery date. Failure to report such irregularity within 30 days shall preclude you from recovering any amounts from us. By law, we may be relieved of any potential liability for multiple unauthorized signatures or alterations by the same wrongdoer if you do not notify us in writing within 30 days after your statement containing the first such irregularity was received or otherwise made available to you. In no case shall we be liable if items were counterfeit, forged or altered so cleverly that a reasonable person could not detect the fraud, including unauthorized use of a facsimile, electronic or imaged signature mark or symbol. No legal proceeding or action shall be brought by you against us to recover any amount alleged to have been improperly paid out of the account due to an unauthorized signature, alteration or other defect unless (1) you have given the written notice provided above, and (2) such action shall have been commenced within one (1) year after the date the statement containing such defect was received or made available to you.

2. Claim of Loss. If you claim a credit or refund because of a forgery, alteration, or any other unauthorized withdrawal, you agree to cooperate with us in the investigation of the loss, including giving us an affidavit containing whatever reasonable information we require concerning your account, the transaction and the circumstances surrounding the loss. You will notify law enforcement authorities of any criminal act related to the claim of lost, missing, or stolen checks or unauthorized withdrawals. Your requesting that the bank delay action or engaging in informal workout arrangements will impair our rights and be considered a waiver of your claim. We will have a reasonable period of time to investigate the facts and circumstances surrounding any claim of loss. We will not be liable for special or consequential damages, including loss of profits or opportunity, or for attorney's fees incurred by you. You agree that you will not waive any rights you have to recover your loss against anyone who is obligated to repay, insure, or otherwise reimburse you for your loss. You will pursue your right or, at our option, assign them to us so that we may pursue them. Our liability will be reduced by the amount you recover or are entitled to recover from these other sources.

3. Check Orders. All checks, withdrawal forms and deposit slips must be on forms obtained through us or which we approve in advance. You are responsible for verifying the accuracy of all information on such forms. Our liability, if any, for any printing errors on forms obtained through us is limited to the cost of replacement. We are not responsible for errors or losses resulting from improper printing on forms not obtained through us or approved by us in advance.

4. Check Safekeeping. If your account provides for copies of your items to be held by us rather than returned to you, you waive any right to receive cancelled checks or other items with your statement, which will be considered to be made available to you when you receive your statement. We will keep a microfilm, digital or similar record of the front

and back of each check as long as required by law. We may charge a fee for providing copies to you. We may provide copies upon written or verbal request. We have no duty to retain the original of any cancelled items. You continue to be responsible for notifying us promptly in writing of any dispute or difference of account for any reason including unauthorized signature, lack of signature, alteration, or irregularity within the time period described in Section III A 1.

5. **Customer Information.** We provide for your convenience various methods by which you can obtain information on your accounts, including ATM, telephone and computer. You acknowledge that our reasonable security measures cannot absolutely ensure against "unauthorized" inquiries. You, therefore, agree that we will not be responsible for the release of information to anyone not authorized by you who has gained possession of your ATM access device or who has learned your identifying characteristics such as personal identification number (PIN) or social security number. You agree that if you give your account number to a third person by telephone or otherwise, who is seeking to sell you goods or services, that act authorizes that third person to initiate debits to the account even if a particular transaction was not authorized. You authorize us to obtain credit bureau and account information reports, verification of employment and other information we may need in connection with your accounts at any time.

6. **Change of Address.** You are responsible for notifying us of any change in your address or your name. We may accept a notice of change from any joint holder on a joint account, the account holder's agent or fiduciary or any authorized signer on a business or other non personal account. Change of address or name should be made in writing by at least one of the account holders, however, we may, solely at our option, accept a verbal change of address. Informing us of your address or name change on a check reorder form is not sufficient. We will attempt to communicate with you only by use of the most recent address you have provided to us.

7. **Notices.** All notices concerning your account are effective when mailed or delivered to the address we have for you in our account records. Notice from us to any one holder of an account constitutes notice to all holders of the account. Unless otherwise provided in this Agreement, any notice you give to us must be in writing and is effective when it is actually received by us and we have a reasonable opportunity to act, not to be less than five (5) business days. Written notice to us must be sent to ATTN: Branch Manager, Commerce Bank, N.A. at the address of the branch at which the account was opened. If the branch at which the account was opened has been closed, or if the account was opened by mail, telephone or electronic means, notice must be sent to Commerce Bank, N.A., ATTN: Branch Manager, 1000 Walnut, Kansas City, MO 64106. We may, in our discretion, act upon verbal notice from you except with respect to oral stop payment notices.

B. **Joint Accounts.** Each joint holder authorizes us to deposit in the account, with or without endorsement, all checks, drafts and other instruments for the payment of money made payable to all or any joint holder. Each joint holder authorizes each other joint holder to 1) withdraw, by any means we make available, any or all of the funds on deposit; 2) make deposits to the account; 3) endorse for deposit to the joint account any item payable to any joint holder(s); 4) instruct us to stop payment on any item drawn on or debit to the account regardless of which joint holder drew the item or authorized the debit; 5) draw upon any overdraft or other line of credit which may be established in connection with the account; 6) pledge the account as security for any debts, whether individual, joint, corporate or otherwise; 7) close the account at any time; 8) appoint an agent or attorney-in-fact with respect to the account; and 9) conduct business concerning the account without the knowledge and consent of the other joint holders. We may give cash back to any one of you.

You agree to be jointly and severally liable to us for any account deficit and service charges regardless of which of you caused the deficit or incurred the service charges, or benefited from the overdraft or charges. Each joint holder authorizes us to exercise setoff and enforce its security

interest in the entire joint account, even though only one of the joint holders is the debtor. Garnishment against any joint holder(s) are subject to our right of setoff and security interest and may cause the account to be frozen or debited whether or not all joint account holders are named in the garnishment. You agree that any one joint holder may pledge the account, including certificates of deposit, and that the lien created by the pledge will survive the death of the joint holder who made the pledge. Notice to any one joint holder constitutes notice to all joint account holders.

C. **Deposits.** Refer to Bank's Funds Availability Policy to determine when funds from your deposits will be available to you for withdrawal.

1. **Items Deposited.** We may refuse, accept for collection only, or return all or part of any deposit even if, and after, the deposit has been credited to your account. We act only as your collection agent for transmitting items through our correspondent banks or directly to the paying bank, in accordance with our customary practices and applicable law.

We assume no responsibility beyond the exercise of due care and shall not be liable for losses caused by a correspondent's or sub-agent's failure to act or willful or negligent action, or for loss in transit. Credit for items deposited is provisional and subject to revocation if the item is not paid for any reason. We reserve our rights under applicable law, including without limitation, the right to accept or reject a check for deposit, to revoke a provisional settlement, charge back an account, or claim a refund of a provisional credit. We shall not be deemed to have received items sent by mail or placed in an ATM, night depository or any other type of depository until after we have received actual delivery of those items sent by mail or removed the contents from such depositories. All deposits received by us after our cutoff hour or on Saturday, Sunday or a bank holiday, including items received through the mail or removed from depositories after hours, will be deemed deposited on the next banking day. If we elect to return any deposit, notice will be mailed to you and the deposit shall cease to bear interest, if applicable, after the mailing of notice. You will be responsible for any loss or expense caused by your failure to properly identify the account to which a deposit is made or intended to be made.

Check 21. You may not deposit any substitute check that has not previously been handled by a bank in the U.S. collection process, unless we enter into a written agreement with you to do so. This means that you cannot deposit a substitute check you create, or one that is created by another person, without such written agreement with us. If you do deposit such a substitute check, you will be responsible for any losses we sustain, and will defend and hold us harmless from any Check 21 Act warranty, indemnity or expedited recedit claim.

Deposit of Remotely Created Checks. You agree to take back any remotely created check deposited into your account that is returned. We may reverse any credit made to your account for the remotely created check, or otherwise collect from you the amount of the remotely created check. You agree that you will not deposit a remotely created check drawn on a person's bank account without that person's express, verifiable authorization, and that you will maintain a record of the express verifiable authorization for 24 months from the date of the authorization.

2. **Authorization to Pay Overdrafts and Deduct Fees from Government Benefit Check and Direct Deposits.** If you make deposits of government benefits to your account, whether by check or direct deposit, including but not limited to, Social Security, SSI or veterans' benefits, you understand and agree that once the funds are deposited they will be treated the same as any other funds in your account. This means that the funds may be applied to the payment of overdrafts and bank fees, including, but not limited to, NSF and overdraft fees, and may be applied by setoff or security agreement to any indebtedness due to us.

3. **Verification of Deposits.** Deposits and receipts are subject to subsequent verification and correction if necessary. If we determine that a deposit does not contain all items or cash claimed to be deposited, we may correct the error and adjust the account balance, even if you have

already with drawn all or part of the deposit. You will have the burden of proving that our records are erroneous with respect to any disputed item or dispute over cash claimed to be deposited.

4. **Endorsements.** We may accept for deposit any items payable to you or your order, even if they are not endorsed by you. We may supply any missing endorsement(s) for any item we accept for deposit or collection, and you warrant that all endorsements are genuine.

To ensure that your deposited item is processed without delay, you must endorse it (sign it on the back) in a specific area. Your entire endorsement (whether a signature or a stamp) along with any other endorsement information (e.g. additional endorsements, ID information, driver's license number) must fall within 1 1/2" of the "trailing edge" of a check. As you look at the front of a check, the "trailing edge" is the left edge. When you flip the check over, be sure to keep all endorsement information within 1 1/2" of that edge.

It is important that you confine the endorsement information to this area since the remaining blank space will be used by others in the processing of the check to place additional needed endorsements and information. You agree that you will indemnify, defend, and hold us harmless for any loss, liability, damage or expense that occurs because your endorsement, a prior endorsement or information you have printed on the back of the check obscures our endorsement. We may, but are not required to, refuse to accept a check whose back is unreasonably obscured. These endorsement guidelines apply to both personal and business checks.

We may require that certain government checks, insurance company items or other special types of checks be personally endorsed by each of the payees. You agree to reimburse us for any loss or expense it incurs because you fail to endorse an item or fail to endorse an item exactly as it is drawn.

5. **Encoding and Endorsing.** If you undertake to provide our endorsement or encode the amount on items deposited, you agree to adhere to any standards which are set forth in federal and state law. You are responsible for any damages to us caused by such endorsement or encoding.

6. **Items Returned.** If a deposited item is returned to us by the bank on which it was drawn, we may accept that return and charge the item back against your account without regard to whether the other bank returned the item before its midnight deadline or otherwise finally paid the item. At our option and without prior notice to you, we have the right to pursue collection of previously dishonored items, including permitting a paying bank to hold an item beyond its midnight deadline in an attempt to recover payment. You waive presentment, notice of dishonor and protest, and agree that we have no obligation to notify you of any deposited item that is returned to us. Without prior notice to you, we may charge back any item at any time before final payment, whether returned or not. We may process a copy or other evidence of the returned item in lieu of the original. Unless prohibited by applicable law, if an item deposited to your account or cashed for you has been paid by the paying bank and that bank later returns the item to us due to an allegedly forged, unauthorized or missing endorsement, claim of alteration, encoding error or other problem which in its judgment justifies reversal of credit, we reserve the right to charge back the item to your account.

7. **Return of Direct Deposit.** If we are required to reimburse the Federal Government for all or any portion of any benefit payments deposited into your account through a direct deposit plan for any reason, you agree that we may, at any time and without prior notice to you, deduct the amount returned to the Federal Government from your account or from any other account you have with us, unless the deduction is prohibited by law.

8. **Foreign Currency.** If we take an item payable in foreign currency for deposit or collection, you bear all exchange rate risk. We may not credit the item to your account until we receives the proceeds in U.S. dollars. Actual credit for deposits of, or payable in, foreign currency will be at the exchange rate in effect on final collection in U.S. dollars.

D. Withdrawals.

1. Federal Limitations on Withdrawals.

(a) **Transaction Limitations.** For savings and money market accounts you may make up to six transfers or withdrawals by means of a preauthorized, automatic, or telephonic transfer to another account of yours or to a third party during any calendar month (or statement cycle of at least four weeks). Of these six, you may make no more than three transfers to a third party by check, debit card, or similar order. A preauthorized transfer includes any arrangement with us to pay a third party from your account at (i) a predetermined time; (ii) on a fixed schedule or (iii) upon oral or written orders including orders received through the automated clearing house (ACH). If the transfer or withdrawal is initiated in person, by mail, by messenger, or at an ATM then there is no limit on the number of payments that may be made directly to you, directly to us for amounts you owe us, or transfers to your other Commerce accounts you have with us. Withdrawals by phone are also unlimited if you are requesting that a check be mailed to you. Telephone instructions to transfer between accounts with us or to third parties are regarded as preauthorized transfers. If you abuse these limitations, we may close the account or, at our option, reclassify the account as a regular checking account.

(b) **Notice of Intended Withdrawal.** Under federal law, we must reserve the right to require you to give us seven (7) days prior notice of your intent to withdraw funds from an interest checking, regular savings or money market account.

2. **Checks, Visa Check Card Transactions and Other Debits.** The law permits us to and you agree that we may pay checks or other items drawn upon or debits to your account in any order determined by us, even if paying a particular item or debit results in an insufficient available balance in your account to pay one or more items or debits that otherwise could have been paid out of your account. In general, we pay checks or other items drawn upon or debits to your account in order from the highest to the lowest, after posting credits and bank initiated transactions, including fees. This policy is based on the fact that larger items typically include payments for rent, home loans and auto loans, where the consequences for a dishonored payment are much more severe.

Point-of-Sale Transactions. The use of your Commerce Visa® Check Card ("Check Card") to purchase goods and services constitutes a simultaneous withdrawal from and/or demand upon your checking account, even though the transaction may not actually be posted to your account until a later date. When we approve a non-PIN transaction (which may or may not require your signature), we may immediately reduce the available balance in your account by the authorization amount requested by the merchant even though we have not received the transaction electronically for payment. This authorization amount will not be available to you until our receipt of the transaction OR no more than three business days after the transaction date, whichever first occurs. If funds are not available for checks, other items or debits, you may be subject to overdraft or insufficient funds fees. Transactions with your Check Card will be posted to your account in the order and with the same legal effect as checks or other debits drawn on your account.

We encourage you to keep careful records and practice good account management. This practice will help you avoid writing checks or authorizing debits, such as online bill payments or recurring preauthorized debits, without sufficient available funds and incurring the resulting fees. We may refuse any check or other item or debit drawn against your account or used to withdraw funds from your account if it is not on a form approved by us. We also reserve the right to refuse any check, other item or debit drawn against your account or used to withdraw funds from your account if made in a manner not specifically authorized for your account, if made more frequently or in a greater number than specifically permitted for your account, or if made in an amount less than the minimum withdrawal or transfer specifically permitted for your account.

Check 21. You may not use any checks that contain a background image, latent security feature, paper stock, ink or other characteristic that interferes with our or any other bank's ability to produce a digital image of your check. If you do, you will be responsible for any losses you or another person suffers because of the inability to produce a readable digital image of your check. You will defend and hold harmless the bank from any Check 21 Act warranty, indemnity or expedited recredit claim.

3. Telephone Transfers. A telephone transfer of funds from your account to another account with us, if otherwise arranged for or permitted, may be made by the same persons and under the same conditions generally applicable to withdrawals made in writing. Telephone instructions to transfer between accounts with us or to third parties are regarded as preauthorized transfers for purposes of the limitations set forth in Section III D 1(a).

4. Insufficient Funds/Overdrafts. We are not obligated to pay an item presented if your account does not contain sufficient available funds. The presentment of an item for which there are insufficient funds (NSF) in the account will result in a service charge regardless of whether we, at our option, pay or dishonor the item. In addition, if payment is not received for any deposited item, the amount of the item will be charged back to your account and may create an overdraft for which you will be charged a fee. We are not required to give you prior notice of an NSF check. You agree to deposit, or pay on demand, sufficient funds to cover the amount of any overdraft together with any overdraft fees and to reimburse us for any costs we incur in collecting the overdraft from you including, without limitation, attorneys' fees and the costs of litigation to the extent permitted by law. Our payment of any item or other debit that causes an overdraft on one or more occasions does not obligate us to allow such overdrafts on any future occasion. You should not rely on us to honor an overdraft.

5. Determination of Account Balance. Your account may be debited on the day an item is presented by electronic or other means, or at an earlier time based on notification received by us that an item drawn on your account has been deposited for collection in another financial institution. We may determine the amount of available funds in your account for the purpose of deciding whether to return an item for insufficient funds at any time between the receipt of such presentment or notice and the time we return the item or send notice in lieu of return. We only need to make one such determination.

6. Fraud Detection; Return of Items or Debits. You agree that we may utilize fraud detection systems, as we deems necessary or desirable, to review items or other debits presented for payment either in person or through the bank collection system. We may return or refuse to pay items or debits that reasonably appear to be forged, counterfeit, altered, improperly endorsed, missing endorsement, improperly encoded or otherwise irregular or that are outside criteria set by us to detect fraud - such as check numbers or dollar amounts outside the range for the account. You agree that our refusal to pay or the return of such items or debits, when based upon fraud detection criteria, will not be considered wrongful. We will not be liable for refusing to honor your checks or other signed instructions if we believe in good faith that the signature appearing on such checks or instructions is not genuine.

7. Automated Processing of Items. Because of the automated nature of processing a high volume of items, you agree that we do not fail to exercise ordinary care if we examine items pursuant to a random sampling of items drawn on all accounts or a procedure that meets certain minimum criteria that we may establish for inspection.

8. Facsimile Signatures. If you have authorized the use of a facsimile, electronic or imaged signature, mark, symbol or other non - handwritten authorization ("facsimile"), we may honor any item or other signed instruction that bears or appears to bear your facsimile or any facsimile previously affixed to any item drawn on your account, which was accepted and paid without timely objection, even if it was made by an unauthorized person or with a counterfeit facsimile device.

You must notify us at once if you suspect that your facsimile is being or has been misused. You accept sole responsibility for maintaining control over your facsimile equipment.

9. Multiple Signers. If we establish an account that purports to require two or more signatures on any items drawn on the account, you acknowledge that such provision is solely for your personal or internal control purposes and shall not be binding on us. Checks or other debits purporting to require more than one signature shall not be binding on us. When an account is held in the name of two or more persons as agents, trustees, personal representatives or other fiduciary capacity, each authorizes the other to draw items, make withdrawals and otherwise act on the account.

10. Stale-Dated Items. We are not obligated to, but may at our option, pay a check, other than a certified check, presented for payment more than six months after its date without notice to you. You agree that we are acting in good faith so long as there is no stop payment order in effect at the time the item is paid. If you do not want us to pay a stale-dated item, you must place a stop payment order on the item in the manner we have described elsewhere.

11. Postdated Items. Unless otherwise required by law, we reserve the right to honor or dishonor postdated items. An item is post-dated if it is dated after the date it is presented for payment. We will not be liable for any damages resulting from payment or dishonor of a postdated item presented for payment before the date of the item.

12. Restrictive Legends. The automated processing of the large volume of items we receive prevents us from inspecting or looking for special instructions or "restrictive legends." Examples of restrictive legends are "must be presented within 90 days" or "not valid for more than \$1,000.00." You agree that we may pay or refuse to pay such items, in our sole discretion, even though the restriction or condition has not been met. We are not responsible for any losses, claims, damages, or expenses that result from your placement of these or other special instructions on your checks.

13. Stop Payment Orders. If your account is one on which checks, drafts or negotiable orders of withdrawal may be drawn, you may ask us to stop payment on any such items, which have not been cashed or certified. We may honor a stop payment order on an item from any account holder or authorized signer, regardless of who signed the item.

You should be aware that anyone holding the item may be entitled to enforce payment against you despite the stop-payment order. For rules related to stopping payment on preauthorized electronic fund transfers from an account held primarily for personal, family or household purposes (such as an ACH debit from your account for an insurance premium), refer to our Federal Electronic Fund Transfer Act Disclosure. A stop payment on an ACH transaction is only effective with respect to one transaction.

We may terminate oral stop payment orders without notice in 14 days from the date requested, unless confirmed in writing. A written stop payment order will remain in effect for a minimum of 180 days from the effective date. At our option, we may keep the stop payment order effective for a longer period, unless you terminate it. If you wish to renew or terminate a stop payment order, you must do so by notice to us in writing. You must renew a stop payment order in writing prior to the expiration date. We may refuse a request to terminate a stop payment order unless given by the account holder or authorized signer who placed the stop payment order.

We must receive a stop payment order, renewal or termination in time to give us a reasonable opportunity to act on it before our stop-payment cutoff time, which is 10:00 a.m. on the banking day following the banking day we receive the item. Because stop payment orders are handled by computers, to be effective, your stop payment order must precisely identify the number, date, and amount of the item, and the payee. Any missing or incorrect information may result in payment of the item.

If you stop payment on an item and we incur any damages or expenses because of the stop payment, you agree to indemnify us for those damages or expenses, including attorneys' fees. If we pay an item over a valid and timely stop order, you agree to sign a statement describing the dispute with the payee and, if we re-credit your account, to transfer to us all of your rights against the payee or other holder of the item, and to assist us in legal action taken against that person. Our liability for paying an item subject to a proper and timely stop payment order is limited to the lesser of the amount of the item or the actual loss suffered, which you must prove to our satisfaction. We are not liable for paying an item if a previous stop payment order has not been renewed.

You may not place a stop payment order on an official check. If an official check is lost or stolen, we may require an indemnity bond in order to stop payment on the original check and issue a replacement.

14. Check Cashing Requirements. We may impose additional requirements we deem necessary on a payee or other holder who presents for cash an item drawn on your account, which is otherwise properly payable. If that person fails or refuses to satisfy such requirements, our refusal to cash the item will not be considered wrongful. Subject to applicable law, such requirements may include, but are not limited to, physical and/or documentary identification requirements (for example, collecting a thumbprint), check cashing fees and requirements that such items may only be cashed at specified locations.

E. Wire and ACH Transactions.

1. Governing Laws and Rules. From time to time, you may be a party to an Automated Clearing House (ACH) entry or wire transfer, which may be credited to or charged against your account. If you have signed a Treasury Services Agreement and/or Wire Transfer or Automated Clearing House Services Agreement with us, the transaction will be subject to the terms of those agreements.

Wire transfers are subject to the laws, regulations or rules then in effect governing the use of any system through which the funds may be transmitted including, but not limited to, Article 4A of the Uniform Commercial Code and Federal Reserve Board Regulation J with regard to Fedwire, the Clearing House Interbank Payments System (CHIPS) and the Society for Worldwide Interbank Financial Telecommunications (SWIFT). These provisions generally apply to internal telephone transfers as well as external transfers. These rules apply to debits and credits to and from personal, business and other non-personal accounts. If a portion of a fund transfer is governed by the Federal Electronic Fund Transfer Act, that portion will be subject to the terms of our Regulation E disclosure. We may deduct our fee for handling incoming and outgoing wire transfers from the amount of the transfer.

Transactions through the Automated Clearing House (ACH) are governed by the National Automated Clearing House Association (NACHA) Operating rules and any local ACH operating rules then in effect.

2. Notice. We will notify you of the receipt of any ACH entry or wire transfer in your account statement, but will not provide next-day notice or any other notice. If you believe we have failed to properly credit a transfer to you, you must promptly notify us of all relevant facts.

3. Final Payment/Reversal of Erroneous Credit Entries. Any credit given you by us resulting from an ACH credit entry or wire transfer credit is provisional until we receive final payment. If we do not receive final payment, you agree that we may reverse the credit to your account or that you will otherwise reimburse us if funds in your account are not sufficient. If we receive satisfactory documentation that a credit entry was made in error, or for an erroneous amount, we may debit your account for the amount erroneously credited, or you agree to otherwise reimburse us if funds are insufficient. In the event the payment does not become final, the originator will not be deemed to have paid you the amount of the credit.

4. Use of Account Numbers. You agree that payment for ACH or wire credit transfers may be made solely by reference to the account number of the recipient. We are not obligated to determine whether a discrepancy exists between the name and the account number shown on the transfer information.

5. Cancellation or Amendment of Wire Transfer Orders. The originator of a wire transfer payment order may cancel or amend any payment order only if the cancellation or amendment is received by our Wire Transfer Department in a time and manner in which it has a reasonable opportunity to act, which is not less than two (2) hours before we execute the payment order.

6. Compensation. If you are entitled to compensation for delay or improper completion of an ACH entry or wire transfer, our liability will be limited to the payment of interest for a period of time not exceeding the lesser of sixty (60) days or the period between the date of the error and the date of the correction. Any such compensation will be paid at our discretion by either 1) adjusting your account balance to reflect the average balances you would have had but for the error, or 2) direct payment in an amount equal to interest at the average Federal Funds Rate at the Federal Reserve Bank of New York for that period.

F. Setoff and Security Interest. If you ever owe us money as borrower, guarantor or otherwise, and it becomes due, we have the right under the law (called "set off") and under this Agreement (by which you grant us a security interest in your deposit accounts) to use the money from your account to pay the debt. In the case of a partnership or joint account, each partner or joint owner agrees that we may use the money in the account to satisfy any one of their individual obligations. Similarly, each partner or joint owner agrees that we may use the money in their individual accounts to satisfy obligations in the joint account or partnership account. The indebtedness, now or in the future which you owe to us, either individually or jointly, may be charged against any deposit account, including certificates of deposit before or after maturity, in your name whether in sole ownership or as a joint tenant or as tenants by the entirety. We may use the funds to pay the debt even if withdrawal results in an interest penalty or dishonor of checks. We will not be liable for dishonoring items where our exercise of the right of setoff and security interest results in insufficient funds in the account. The security interest you have granted us by this Agreement is consensual and is in addition to our right to setoff. This right of setoff and security interest may not apply if (a) the account is an Individual Retirement Account or other tax-deferred retirement account, (b) the debt is created by a consumer credit transaction under a credit card plan or (c) you are an account holder in a representative capacity.

G. Legal Actions Affecting Your Account. An account may be subject to legal process such as a subpoena, restraining order, search warrant, writ of attachment or execution, levy, garnishment or similar court or administrative order (termed "legal actions" in this section).

In these cases, we shall not be liable to you for withdrawing funds or restricting the account even if such action leaves insufficient funds to pay checks or other debits. Such legal actions may cause the account to be frozen or debited whether or not all joint owners are named on the legal action. With respect to checks, our cutoff hour under Section 4-303 of the Uniform Commercial Code for legal process is 10 a.m. of the banking day following the banking day we receive the check. Any legal action against the account is subject to our right of set off and security interest. Our standard fees to research and copy documents and other expenses, including our administrative and attorney's fees, incurred in complying with legal actions may be charged to your account without prior notice to you, unless limited or prohibited by law. We may release account information and documentation in response to legal actions without notice to account holder, unless prohibited or limited by law.

H. Inactive Accounts/Unclaimed Property. Accounts (other than certificates of deposits) in which no deposit (excluding interest credits) or withdrawal has been made for 12 months (18 months if regular

savings) are considered inactive and shall, at our option, cease to earn any further interest. Unless otherwise prohibited by law, we may charge inactive account fees on inactive accounts in addition to regular maintenance and other applicable fees, even if other fees had previously been waived. Unless otherwise required by applicable law, you will not be entitled to recover any such fees or unpaid interest in the event that you reestablish contact with us. Funds in inactive accounts may be turned over to the state as unclaimed property under applicable law. If your funds are surrendered to the state, you may be able to reclaim them, but your claim must be presented to the state. Once your funds are surrendered, we no longer have any liability or responsibility with respect to the funds.

I. Assignments. No assignment of an account shall be binding on us unless and until a control agreement indicating the name and address of assignee, and in form satisfactory to us, is signed by you and acknowledged by our authorized officer. Unless we agree otherwise in writing, any rights of an assignee will be subject to our right of setoff or prior security interest. We have no obligation to notify you or any other person before disbursing any funds from your account in accordance with what we in good faith believe to be the terms of the assignment. We shall have the right to set off against the account any indebtedness matured or unmatured of you or any assignee if we deem ourselves insecure.

J. Personal Interest Checking and Personal and Business Non-Interest Checking/Accounting Procedures. For regulatory accounting purposes, your account may be divided into two sub-accounts: a checking sub-account and a money market sub-account. These sub-accounts are treated as a single account - the interest or non-interest checking account - for purposes of interest payments (if applicable), minimum balance requirements, fees and charges and your account access. Your account statement and other records of your account activity (e.g. ATM receipts) will reflect this account as a single account and will not reflect the sub-accounts or transfers between sub-accounts in any way. If you have interest checking, both sub-accounts pay an identical interest rate and annual percentage yield on account balances. If you have non-interest checking, neither sub-account will pay interest on account balances. You may access the money market sub-account only indirectly through transactions on your checking sub-account.

At various times during each statement cycle, if your checking sub-account balance exceeds a threshold amount, we may transfer all funds in excess of that amount into the money market sub-account. As your transactions against the account reduce the checking sub-account balance below the threshold, we will transfer funds back into the checking sub-account. We may make up to six transfers from the money market sub-account into the checking sub-account per statement cycle. Upon the sixth such transfer in a statement cycle, we will transfer the entire balance of the money market sub-account to the checking sub-account. We may repeat this process each statement cycle. We set the balance threshold and may change it at any time at our discretion.

FUNDS AVAILABILITY POLICY

Our policy is to make funds from your deposits to checking and interest checking accounts available to you on the next business day after the banking day we receive your deposit. Electronic direct deposits will be available on the day we receive the deposit. Once they are available, you can withdraw the funds in cash and we will use the funds to pay checks that you have written.

For the purpose of determining the availability of your deposits, every day is a business day except Saturdays, Sundays, and federal holidays. If you make a deposit before the cut-off time for provisional credit on a business day that we are open, we will consider that day to be the day of your deposit. Although some locations may have later cut-off times,

2:00 p.m. is the earliest cut-off time that could apply. However, a deposit made after the cut-off time on a business day; on a Saturday, Sunday or federal holiday; or on a business day that we are not open, shall be treated as though it were made on the next business day we are open.

Longer Delays May Apply. Funds you deposit by check may be delayed for a longer period under the following circumstances:

- You are a new customer (see special rules below).
- We believe a check you deposit will not be paid.
- You deposit checks totaling more than \$5,000 on any one day.
- You redeposit a check that has been returned unpaid.
- You have overdrawn your account repeatedly in the last six months.
- There is an emergency, such as failure of communications or computer equipment.

If your ability to withdraw funds is delayed beyond the next business day, we will notify you and tell you when the funds will be available. They will generally be available no later than the seventh business day after the day of your deposit.

Special Rules for New Accounts. If you are a new customer, the following special rules will apply during the first 30 days your account is open.

Funds from electronic direct deposits to your account will be available on the day we receive the deposit. Funds from deposits of cash, wire transfer, and the first \$5,000 of a day's total deposits of cashier's, certified, tellers, traveler's; and federal, state and local government checks from the state in which we are located will be available on the first business day after the day of your deposit if the checks are payable to you. The excess over \$5,000 may be delayed until generally no later than the seventh business day after the day of your deposit.

Funds from all other check deposits will generally be available on the next business day after the day of your deposits unless we invoke a delay because you are a new customer or for the other reasons set forth in the section entitled "Longer Delays May Apply" above.

Other Provisions. If a check or item is accepted on a collection basis, the proceeds usually will not be credited to your account until final collection. Checks with documents attached or accompanied by special instructions are not subject to the availability schedule set forth in this disclosure and will be accepted on a collection basis only. Checks drawn on or payable through depository institutions located outside the United States, or payable in foreign currency, are also excluded from the stated availability schedule.

Although your deposit may or may not be available for withdrawal, there are different rules as to when interest begins to accrue on your interest-bearing account. These rules are described in a separate brochure. Also, there may be different rules as to how and when deposits are considered in assessing fees and charges on your account.

FEDERAL ELECTRONIC FUND TRANSFER ACT DISCLOSURE ATM CARD AGREEMENT

Electronic fund transfers include transactions that are initiated by means of an automated teller machine card (ATM Card, referred to in this Agreement as "card") preauthorized automatic electronic fund transfers, such as social security or payroll direct deposit, or insurance premium or bill payment and/or electronic transfers made using information from a check (ARC or POP). Paragraphs A and C below apply to customers with ATM cards. Paragraphs B and C apply to customers who have preauthorized electronic fund transfers but do not have an ATM Card.

A. ATM Card. Each cardholder agrees to the following terms and conditions which are the contract governing the issuance and use of

your card. The agreements that apply to your checking, interest checking, regular savings, and savings with limited check writing privileges (money market type) accounts, apply to all ATM transactions made on these accounts. You agree that all accounts accessed by the card must have the same common ownership or liability as the card. The card is our property and we may revoke the card at any time without cause or notice. You must surrender a revoked card and you may not use an expired or revoked card. You will notify us if the card is lost or stolen. We may change the terms of this agreement without notice, unless required by law.

Disclosure of Consumer's Liability for Unauthorized Transfers and Disclosures of Advisability of Prompt Reporting. Tell us AT ONCE if you believe your card has been stolen or lost. Telephoning is the best way of keeping your possible losses down. You could lose all the money in your account plus your maximum overdraft line of credit. If you tell us within 2 business days after you learn of the loss or theft of your card, you can lose no more than \$50.00 if someone used your card without your permission.

If you do NOT tell us within 2 business days after you learn of the loss or theft of your card, and we can prove we could have stopped someone from using your card without your permission if you had told us, you could lose as much as \$500.

Also, if your statement shows transfers that you did not make, including those made by card, code or other means, tell us at once. If you do not tell us within 60 days after the statement was mailed to you, you may not get back any money you lost after the 60 days if we can prove that we could have stopped someone from taking the money if you had told us in time.

If a good reason (such as a long trip or a hospital stay) kept you from telling us, we will extend the time periods.

Disclosure of Types of Available Transfers and Limits on Transfers.

(1) *Account Access.* You may use your card to:

- Withdraw cash from, deposit money in, transfer funds between, or learn the balances in your checking, regular savings or savings with limited check writing privileges (money market type) accounts.
- Make payments from your checking, regular savings, savings with limited check writing privileges (money market type) accounts in the amounts you request to us or third parties as we may permit.
- Make cash advances on your Commerce credit cards for cash withdrawals or for deposit to your checking account.
- Pay for purchases at places that have agreed to accept transactions on the networks utilized by us.
- For transactions occurring outside of the United States, the nature of which is unspecified to us, we will apply the transaction to accounts in the following order: checking, savings with limited check writing privileges (money market type), regular savings, Commerce VISA® or Commerce MasterCard®. Some of these services may not be available at all terminals.

(2) *Electronic Check Conversion.* You may authorize a merchant or other payee to make a one-time electronic payment from your checking account using information from your check to:

- (i) Pay for purchases
- (ii) Pay bills

Limitation on Frequency of Transfers. There are no limitations on the number of transfers that can be made during any time period to or from any account, except as provided by federal regulations limiting preauthorized transfers. By federal regulations, you are limited during any statement cycle to six preauthorized transfers (three of which may be by check, draft or similar order if the account is a savings account with limited check writing privileges [money market type of accounts]).

Limitation on Dollar Amount of Transfers. The balance available for authorizing purchases and cash withdrawals is the lesser of 1) your available account balance, plus any credit available through an overdraft protection line of credit (CheckingPlus) or through any overdraft authorized by us in our sole discretion, OR 2) daily dollar limitations. For cash advances against a Commerce Bank credit card, you may withdraw cash to the lesser of your available credit line or daily dollar limitations. In addition, daily withdrawal frequency limitations may apply to cash advances. Dollar limitations may differ at ATMs other than ours.

Point-of-Sale Transactions. Your ATM Card can be used for debit card transactions using your PIN. The use of your card to purchase goods and services from merchants constitutes a simultaneous withdrawal from and/or demand upon your checking account, even though the transaction may not actually be posted to your account until a later date. Any person honoring your card may be required to obtain approval or authorization for any transaction. Transactions with your card will be posted to your account in the order and with the same legal effect as checks and other debits drawn on your account.

You may use your card only in the manner and for the purposes authorized by this Agreement. We may recognize a transaction even if we have not authorized it, but that does not mean we will authorize the same type of transaction again. You do not have the right to stop payment on any transaction originated by use of your card, except recurring preauthorized transfers as described in this Agreement.

Overdrafts. You are responsible for all authorized transactions initiated by use of your card. If a negative balance (overdraft) in your checking account results from the use of the card, you will pay us on demand this negative balance and our then current charge for overdrafts. If you have an overdraft line of credit (CheckingPlus) for an account, you are bound by the rules and regulations which apply to that credit privilege. In addition, if your checking account is closed before transactions are posted you will pay us on demand the outstanding amount.

Disclosure of Charges for Transfers or Right to Make Transfers. With the following exceptions, there will be no charge for validation of your card or for any transfers initiated by the use of your card at Commerce Bank ATM machines. If your account is a regular savings account and you make more than 3 withdrawals or transfers during the statement cycle, we will charge \$1 for each withdrawal or transfer over 3. We will charge you \$1.25 for each transfer, withdrawal, or balance inquiry you make at ATMs other than Commerce's; however, there will be no ATM charge by us for credit card cash advances.

International Service Assessment. Purchases, cash withdrawals and cash advances made in currencies other than U.S. Dollars will be converted to U.S. Dollars under regulations established by VISA International. Conversion will be at a rate selected by Visa from the range of rates available in wholesale currency markets for the applicable central processing date, which rate may vary from the rate Visa itself receives, or the government-mandated rate in effect for the applicable central processing date. Conversion to U.S. Dollars may occur on a date other than the date of the transaction. Therefore, the conversion rate may be different from the rate in effect at the time of the transaction. You agree to pay the converted amount, plus a 1% international service fee. The international service fee applies to all transactions in non-U.S. countries, and includes transactions made in U.S. Dollars.

Fees By Others. When you use an ATM not owned by us you may be charged a fee by the ATM operator (or any network used) for a transaction or for a balance inquiry even if you do not complete a fund transfer.

Disclosures of Right to Receive Documentation of Transfers. Terminal Receipts. You will get a receipt at the time you make a transfer to or from your account using one of our ATMs.

Preauthorized Credits. If you have arranged to have direct deposits made to your account at least once every 60 days from the same person or company, you can call us at the phone number listed in Section D to find out whether or not the deposit has been made.

Periodic Statement. You will get a monthly statement if you have an account upon which checks or drafts may be drawn. You will get a monthly statement on your regular savings account if there are electronic transfers during the month. In any case you will get a regular savings statement at least quarterly.

Disclosure of Our Liability for Failure to Make Transfers. If we do not complete a transfer to or from your account on time or in the correct amount according to our agreement with you, we will be liable for your losses or damages. However, there are some exceptions. We will not be liable, for instance:

- If through no fault of ours, you do not have enough money in your account to make the transfer.
- If the transfer would go over the credit limit on your overdraft line.
- If the ATM where you are making the transfer does not have enough cash.
- If the terminal or system was not working properly and you knew about the breakdown when you started the transaction.
- If circumstances beyond our control (such as flood or fire) prevent the transfer, despite reasonable precautions that we have taken.
- There may be other exceptions stated in our agreement with you.

NOTICE OF ATM / NIGHT DEPOSIT FACILITY USER PRECAUTIONS

As with all financial transactions, please exercise discretion when using an automated teller machine (ATM) or night deposit facility. For your own safety, be careful. The following suggestions may be helpful:

1. Prepare for your transactions at home (for instance, by filling out a deposit slip) to minimize your time at the ATM or night deposit facility.
2. Mark each transaction in your account record, but not while at the ATM or night deposit facility. Always save your ATM receipts. Don't leave them at the ATM or night deposit facility because they may contain important account information.
3. Compare your records with the account statements you receive.
4. Don't lend your ATM card to anyone.
5. Remember, do not leave your card at the ATM. Do not leave any documents at a night deposit facility.
6. Protect the secrecy of your Personal Identification Number (PIN). Protect your ATM card as though it were cash. Don't tell anyone your PIN. Don't give anyone information regarding your ATM card or PIN over the telephone. Don't write your PIN where it can be discovered. For example, don't keep a note of your PIN in your wallet or purse.
7. Prevent others from seeing you enter your PIN by using your body to shield their view.
8. If you lose your ATM card or if it is stolen, promptly notify us. You should consult the other disclosures you have received about electronic fund transfers for additional information about what to do if your card is lost or stolen.
9. When you make a transaction, be aware of your surroundings. Look out for suspicious activity near the ATM or night deposit facility, particularly if it is after sunset. At night, be sure that the facility (including the parking area and walkways) is well lighted. Consider having someone accompany you when you use the facility, especially after sunset. If you observe any problem, go to another ATM or night deposit facility.
10. Don't accept assistance from anyone you don't know when using an ATM or night deposit facility.
11. If you notice anything suspicious or if any other problem arises after you have begun an ATM transaction, you may want to cancel the transaction, pocket your card and leave. You might consider using another ATM or coming back later.

12. Don't display your cash; pocket it as soon as the ATM transaction is completed and count the cash later when you are in the safety of your own car, home, or other secure surrounding.
13. At a drive-up facility, make sure all the car doors are locked and all of the windows are rolled up, except the driver's window. Keep the engine running and remain alert to your surroundings.
14. We want the ATM and night deposit facility to be safe and convenient for you. Therefore, please tell us if you know of any problem with a facility. For instance, let us know if a light is not working or there is any damage to a facility. Please report any suspicious activity or crimes to both the operator of the facility and the local law enforcement officials immediately.

B. Preauthorized Electronic Fund Transfers

Disclosure of Consumer's Liability for Unauthorized Transfers and Advisability of Prompt Reporting.

If your statement shows transfers that you did not make, tell us at once. If you do not tell us within 60 days after the statement was mailed to you, you may not get back any money you lost after the 60 days if we can prove that we could have stopped someone from taking the money if you had told us in time. If a good reason (such as a long trip or a hospital stay) kept you from telling us, we will extend the time periods.

Disclosure of Types of Available Transfers and Limits on Transfers.

(1) *Account Access.* You may use your account to:

- Transfer preauthorized credits or direct deposits to your account.
- Transfer preauthorized debits or payments from your account.

(2) *Electronic Check Conversion.* You may authorize a merchant or other payee to make a one-time electronic payment from your checking account using information from your check to:

- (i) Pay for purchases
- (ii) Pay bills

Limitation on Frequency of Transfers. There are no limitations on the number of transfers that can be made during any time period to or from any account, except as provided by federal regulations limiting preauthorized transfers. By federal regulation, you are limited during any statement cycle to 6 preauthorized transfers (3 of which may be by check, draft, or similar order if the account is a savings account with limited check writing privileges [money market type accounts]).

Limitations on Dollar Amount of Transfers. The balance available for authorizing debits or payments from your account is your available account balance, plus any credit available through an overdraft protection line of credit (CheckingPlus) or through any overdraft authorized by us in our sole discretion.

Disclosure of Charges for Transfers or Right to Make Transfers. There are no charges for any transfers or for the right to make transfers with the exception that if your account is a regular savings account and you make more than 3 withdrawals or transfers during the statement cycle, we will charge \$1 for each withdrawal or transfer over 3.

Disclosure of Right to Receive Documentation of Transfers. Preauthorized Credits. If you have arranged to have direct deposits made to your account at least once every 60 days from the same person or company, you can call us at the phone number listed in Section D below to find out whether or not the deposit has been made.

Periodic Statements. You will get a monthly statement if you have an account upon which checks or drafts may be drawn. If you have a regular savings account and there are transfers during the month you will get a monthly statement. In any case you will get a regular savings statement at least quarterly.

Disclosure of Our Liability for Failure to Make Transfers. If we do not complete a transfer to or from your account on time or in the correct

amount according to our agreement with you, we will be liable for your losses and damages. However, there are some exceptions. We will not be liable, for instance:

- If, through no fault of ours, you do not have enough money in your account to make the transfer.
- If the transfer would go over the credit limit on your overdraft line.
- If circumstances beyond our control (such as fire or flood) prevent the transfer, despite reasonable precautions that we have taken.
- There may be other exceptions stated in our agreement with you.

C. Other Disclosures Applicable to All Electronic Fund Transfers

Disclosure of Consumer's Liability for Unauthorized Transfers and Advisability of Prompt Reporting. Tell us AT ONCE if you believe that an electronic fund transfer has been made without your permission using information from your check. If you do not tell us within 60 days after the statement was mailed to you, you may not get back any money you lost after the 60 days if we can prove that we could have stopped someone from taking the money if you had told us in time. If a good reason (such as a long trip or a hospital stay) kept you from telling us, we will extend the time periods.

Disclosure of What Constitutes Our Business Day. Our business days are Monday through Friday. Federal holidays are not included.

Disclosure of Account Information to Third Parties. We will disclose information to third parties about your account or the transfers you make:

- Where it is necessary for completing transfers, or
- In order to verify the existence and condition of your account for a third party, such as a credit bureau or merchant, or
- In order to comply with government agency or court orders, or
- If you give us permission.

Disclosure of Right to Stop Payment of Preauthorized Transfers, Procedures for Doing So, Right to Receive Notice of Varying Amounts, and Our Liability for Failure to Stop Payment. *Right to Stop Payment and Procedure for Doing So.* If you have told us in advance to make regular payments out of your account, you can stop any of these payments. Here's how:

Call us or write us at the phone number or address listed in Section D in time for us to receive your request 3 business days or more before the payment is scheduled to be made. If you call, we may also require you to put your request in writing and get it to us within 14 days after your call.

Notice of Varying Amounts. If these regular payments may vary in amount, the person you are going to pay will tell you, 10 days before each payment, when it will be made and how much it will be. You may choose to get this notice only when the payment would differ by more than a certain amount from the previous payment, or when the amount would fall outside certain limits that you set.

Liability for Failure to Stop Payment of Preauthorized Transfers. If you order us to stop one of these payments 3 business days or more before the transfer is scheduled, and we do not do so, we will be liable for your losses or damages.

Disclosure of Error Resolution Procedures. In Case of Errors or Questions About Your Electronic Transfers Telephone us or Write us at the phone number or address listed in Section D as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer listed on the statement or receipt. We must hear from you no later than 60 days after we sent the FIRST statement on which the problem or error appeared.

- Tell us your name and account number.
- Describe the error or transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.

- Tell us the date, type and dollar amount of the suspected error.

If you tell us orally, we may require that you send your complaint or question in writing within 10 business days.

We will determine whether an error occurred within 10 business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 calendar days to investigate your complaint or question. If we decide to do this, we will credit your account within 10 business days for the amount you think is in error so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account. For errors involving new accounts, point-of-sale, or foreign-initiated transactions, we may take up to 90 days to investigate your complaint or question. For new accounts, we may take up to 20 business days to credit your account for the amount you think is in error.

We will tell you the results within three business days after completing our investigation. If we decide that there was no error, we will send you a written explanation. You may ask for copies of documents that we used in our investigation.

D. Telephone Number and Address To Be Notified in Event of Unauthorized Transfer

If you believe your card has been lost or stolen, or that someone has transferred or may transfer money from your account without your permission, call: 1-800-453 BANK (2265) or write: Commerce Bank, N.A., P. O. Box 411635, Creve Coeur, MO 63141. You should also call the number or write at the address above if you believe a transfer has been made using the information from your check without your permission

SUBSTITUTE CHECK POLICY DISCLOSURE

Substitute Checks and Your Rights

What is a substitute check?

To make check processing faster, federal law permits banks to replace original checks with "substitute checks." These checks are similar in size to original checks with a slightly reduced image of the front and back of the original check. The front of a substitute check states: "This is a legal copy of your check. You can use it the same way you would use the original check." You may use a substitute check as proof of payment just like the original check.

Some or all of the checks that you receive back from us may be substitute checks. This notice describes rights you have when you receive substitute checks from us. The rights in this notice do not apply to original checks or to electronic debits to your account. However, you have rights under other law with respect to those transactions.

What are my rights regarding substitute checks?

In certain cases, federal law provides a special procedure that allows you to request a refund for losses you suffer if a substitute check is posted to your account (for example, if you think that we withdrew the wrong amount from your account or that we withdrew money from your account more than once for the same check). The losses you may attempt to recover under this procedure may include the amount that was withdrawn from your account and fees that were charged as a result of the withdrawal (for example, bounced check fees).

The amount of your refund under this procedure is limited to the amount of your loss or the amount of the substitute check, whichever is less. You also are entitled to interest on the amount of your refund if your account is an interest-bearing account. If your loss exceeds the amount of the substitute check, you may be able to recover additional

amounts under other law.

If you use this procedure, you may receive up to \$2,500 of your refund (plus interest if your account earns interest) within 10 business days after we received your claim and the remainder of your refund (plus interest if your account earns interest) not later than 45 calendar days after we received your claim.

We may reverse the refund (including any interest on the refund) if we later are able to demonstrate that the substitute check was correctly posted to your account.

How do I make a claim for a refund?

If you believe that you have suffered a loss relating to a substitute check that you received and that was posted to your account, please contact us at:

Commerce Bank,
Attn: Expedited Recrediting,
P.O. Box 419248,
Kansas City, MO 64141.

You must contact us within 40 calendar days of the date that we mailed (or otherwise delivered by a means to which you agreed) the substitute check in question or the account statement showing that the substitute check was posted to your account, whichever is later. We will extend this time period if you were not able to make a timely claim because of extraordinary circumstances.

Your claim must include--

- A description of why you have suffered a loss (for example, you think the amount withdrawn was incorrect);
- An estimate of the amount of your loss;
- An explanation of why the substitute check you received is insufficient to confirm that you suffered a loss; and
- A copy of the substitute check and/or the following information to help us identify the substitute check: The check number, the name of the person to whom you wrote the check, and the amount of the check.



Commerce Bank

Member FDIC

CB 5965 (Rev. 2/08) C95965 FCP 118-A

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