

**FEDERAL DEPOSIT INSURANCE CORPORATION**

**WASHINGTON, D.C.**

**AND**

**MICHIGAN COMMERCE BANK, ANN ARBOR, MICHIGAN**

**AND**

**OFFICE OF FINANCIAL AND INSURANCE REGULATION**

**FOR THE STATE OF MICHIGAN**

**WRITTEN AGREEMENT**

WHEREAS, Michigan Commerce Bank, Ann Arbor, Michigan (“Bank”) is an insured state nonmember Bank as that term is defined in section 3(e)(2) of the Federal Deposit Insurance Act (“FDI Act”), 12 U.S.C. §1813(e)(2);

WHEREAS, the Federal Deposit Insurance Corporation (“FDIC”) is authorized to enter into this Written Agreement (“Written Agreement”) with the Bank pursuant to section 9 of the FDI Act, 12 U.S.C. §1819(a)(Seventh);

WHEREAS, the Office of Financial and Insurance Regulation for the State of Michigan (“OFIR”) is authorized to enter into this Written Agreement with the Bank pursuant to Mich. Comp. Laws section 487.11101;

WHEREAS, the Bank, the FDIC and the OFIR are of the opinion that the Written Agreement is necessary to protect the interests of the Bank and its depositors; and

WHEREAS, on April 20, 2009, the Bank’s board of directors at a duly constituted meeting adopted a resolution authorizing and directing John C. Smythe, President, to enter into this agreement on behalf of the Bank.

NOW, THEREFORE, the Bank, the FDIC and the OFIR agree as follows:

**ARTICLE I  
CAPITAL**

1. (a) From the effective date of this Written Agreement, the Bank shall increase and maintain its level of Tier 1 capital as a percentage of its total average assets (“capital ratio”) at a minimum of 8.0% and its total risk-based capital ratio at a minimum of 10.0%. For purposes of this Written Agreement, Tier 1 capital, total risk-based capital, total assets, and total risk-weighted assets, shall be calculated in accordance with Part 325 of the FDIC Rules and Regulations (“Part 325”), 12 C.F.R. Part 325.

(b) Within 120 days of the effective date of this Written Agreement, the Bank shall increase and maintain its capital ratio to a minimum of 9.0% and its total risk-based capital ratio at a minimum of 12.00%.

(c) Any such increase in Tier 1 capital may be accomplished by the following:

- (i) The sale of common stock and noncumulative perpetual preferred stock constituting Tier 1 capital under Part 325; or
- (ii) The elimination of all or part of the assets classified “Loss” in the most recent examinations and visitations of the consolidated banks, without loss or liability to the Bank, provided any such collection on a partially charged-off asset shall first be applied to that portion of the asset which was not charged off pursuant to this Written Agreement; or
- (iii) The sale or collection in cash of assets previously charged off; or
- (iv) The direct contribution of cash by the directors and/or Capitol Bancorp Limited (“Holding Company”), of the Bank; or
- (v) Any other means acceptable to the Regional Director of the Chicago Regional Office of the FDIC (“Regional Director”) and the Chief Deputy Commissioner of OFIR (“Chief Deputy Commissioner”); or
- (vi) Any combination of the above means.

(d) If all or part of the increase in capital required by this paragraph is to be accomplished by the sale of new securities, the board of directors of the Bank shall adopt and implement a plan for the sale of such additional securities, including the voting of any shares owned or proxies held by or controlled by them in favor of said plan. Should the implementation of the plan involve public distribution of Bank securities, including a distribution limited only to the Bank’s existing shareholders, the Bank shall prepare detailed offering materials fully describing the securities being offered, including an accurate description of the financial condition of the Bank and the circumstances giving rise to the offering, and other material disclosures necessary to comply with Federal securities laws. Prior to the implementation of the plan and, in any event, not less than 20 days prior to the dissemination of such materials, the materials used in the sale of the securities shall be submitted to the FDIC Registration and Disclosure Section, 550 17<sup>th</sup> Street, N.W., Washington, D.C. 20429 and to Ken Ross, Commissioner, Office of Financial and Insurance Regulation, 611 West Ottawa Street, Lansing, Michigan, 48933, for their review. Any changes requested to be made in the materials by the FDIC or OFIR shall be made prior to their dissemination.

(e) In complying with the provisions of this paragraph, the Bank shall provide to any subscriber and/or purchaser of Bank securities written notice of any planned or existing development or other changes which are materially different from the information reflected in any offering materials used in connection with the sale of Bank securities. The written notice required by this paragraph shall be furnished within 10 calendar days of the date any material development or change was planned or occurred, whichever is earlier, and shall be furnished to every purchaser and/or subscriber of the Bank’s original offering materials.

(f) The capital ratio analysis required by this paragraph shall not negate the responsibility of the Bank and its board of directors for maintaining throughout the year an adequate level of capital protection for the kind, quality and degree of market depreciation of assets held by the Bank.

**ARTICLE II  
DIVIDENDS AND MANAGEMENT FEES**

While this Written Agreement is in effect, the Bank shall not declare or pay any cash dividends, capital distribution, earnings distribution, management fee, or any other fee to Capitol Bancorp, Limited or any of Capitol Bancorp Limited's affiliates or subsidiaries, without the prior written consent of the Regional Director and the Chief Deputy Commissioner.

**ARTICLE III  
REDUCTION IN PROBLEM ASSETS (LOANS AND OTHER REAL ESTATE)**

Within 60 days from the effective date of this Written Agreement, the Bank shall adopt, implement, and adhere to a written plan which is acceptable to the Regional Director and the Chief Deputy Commissioner to reduce the Bank's risk position in each asset relationship in excess of \$300,000, held as other real estate owned (ORE) or which is classified "Substandard" or "Doubtful" by the FDIC or OFIR, or classified "Substandard" or "Doubtful" internally by management.

- (a) In developing such plan, the Bank shall, at a minimum:
- Review the financial position of each such borrower, including source of repayment, repayment ability, and alternative repayment sources;
  - Evaluate the available collateral for each such credit, including possible actions to improve the Bank's collateral position;
  - Include the appraised value and date of the appraisal for the loan collateral and for the parcels of ORE;
  - Document that taxes and insurance premiums are paid in a timely manner for parcels of ORE;
  - Ensure each parcel of ORE is listed with a real estate broker or otherwise made widely available for sale within an appropriate timeframe and at a realistic selling price;
  - Establish dollar levels to which the Bank shall reduce each asset within six and twelve months from the effective date of this Written Agreement;
  - Formulate a formal written action plan for collection of each classified loan outlining the Bank's collection strategy for the loan;
  - Formulate a formal written plan for the disposition of each parcel of other real estate outlining the Bank's disposition strategy; and
  - Provide for the submission of monthly written progress reports to the Bank's board of directors for review and notation in minutes of the meetings of the board of directors.

(b) As used in this paragraph, "reduce" means to: (1) collect; (2) charge off; (3) sell; or (4) improve the quality of such assets so as to warrant removal of any adverse classification by the FDIC and OFIR.

**ARTICLE IV  
ALLOWANCE FOR LOAN AND LEASE LOSSES**

(a) While this Written Agreement is in effect and prior to submission or publication of all Reports of Condition and Income required by the FDIC after the effective date of this Written Agreement, the board of directors of the Bank shall review the adequacy of the Bank's allowance for loan and lease losses ("ALLL"), provide for an adequate ALLL, and accurately report the same. The minutes of the board meeting at which such review is undertaken shall indicate the findings of the review, the amount of the Bank's ALLL recommended, if any, and the basis for determination of the amount of ALLL provided. In making these determinations, the board of directors shall consider the FFIEC Instructions for the Reports of Condition and Income and any analysis of the Bank's ALLL provided by the FDIC or OFIR. The Bank shall comply with the Interagency Policy Statement on the Allowance for Loan and Lease Losses and utilize its historical loss experience, rather than the corporate loss experience as determined by the Holding Company, when determining the adequacy of the ALLL.

(b) While this Written Agreement is in effect, the Bank shall not make any negative provisions to the ALLL without the prior written consent of the Regional Director and the Chief Deputy Commissioner.

(c) The Bank shall submit to the Regional Director and the Chief Deputy Commissioner the analysis supporting the determination of the appropriateness of its ALLL. These submissions may be made a part of the progress reports otherwise required by this Written Agreement.

**ARTICLE V  
LIQUIDITY**

(a) Within 60 days from the date of this Written Agreement, the Bank shall formulate and adopt a plan for improving liquidity and reducing the dependency upon volatile liabilities to fund loans and long-term assets. The liquidity plan shall be forwarded to the Regional Director and to the Chief Deputy Commissioner. At a minimum the plan shall:

- Be consistent with the Bank's strategic plan, profit plan, and budget, and contain a description of the assumptions that form the basis for major projected changes in the funding structure;
- Establish target levels and dates to reduce the level of non-core and volatile funding sources that existed on March 1, 2009;
- Establish limits on concentrations in or excessive reliance upon any single source or type of funding, such as brokered funds, internet deposits, or other similar non-core or volatile funding source;
- Be reviewed at board meetings at least quarterly to determine and evaluate the Bank's actual performance in relation to the plan; and
- Be reviewed, and any actions taken by the Bank, shall be recorded in the minutes of the board of directors.

(b) Within 60 days from the effective date of this Written Agreement, the Bank shall

develop or revise, adopt, and implement a written liquidity contingency funding plan. Such plan shall be in a form and manner acceptable to the Regional Director and the Chief Deputy Commissioner as determined at subsequent examinations and/or visitations. The plan shall:

- Define responsibilities and decision-making authority so that all personnel understand their role during a problem-funding situation;
- Include an assessment of the possible liquidity events that the Bank might encounter, ranging from high-probability/low-impact events that can occur in day-to-day operations, to low-probability/high impact events that can arise through institution-specific, systemic market, or operational circumstances;
- Analyze and make quantitative projections of all significant on- and off-balance sheet fund flows and their related effects;
- Match potential sources and uses of funds;
- Establish indicators that alert management to a predetermined level of potential risks;
- Identify and assess the adequacy of contingent funding sources, including any back-up facilities (lines of credit), the conditions related to their use, and the circumstances where the institution might use them;
- Identify the potential sequence in which sources of funds will be used for contingent needs;
- Address procedures to ensure funds will be available to meet the overnight cash letter; and
- Include an asset tracking system that monitors which assets are immediately available for pledging or sale.

## **ARTICLE VI PROFIT PLANNING**

Within 90 days from the effective date of this Written Agreement, the Bank shall adopt, implement, and adhere to a written profit plan, and a realistic, comprehensive budget for all categories of income and expense for calendar years 2009 and 2010, which plans and budgets shall be acceptable to the Regional Director and the Chief Deputy Commissioner. The plans required by this paragraph shall contain formal goals and strategies, consistent with the Bank's strategic plan and sound banking practices, to improve the Bank's overall earnings, including net interest income, and shall contain a description of the operating assumptions that form the basis for major projected income and expense components.

- (a) The written profit plan shall, at a minimum:
- Identify the major areas in, and means by which, the board of directors will continue to seek to improve the Bank's operating performance;
  - Establish a review process to monitor the income and expenses of the Bank to compare actual figures with projections on not less than a quarterly basis; and
  - Describe the operating assumptions that form the basis for and support major projected income and expense components including fees to be paid to the holding company.

(b) Within 30 days from the end of each calendar quarter following completion of the profit plans and budgets required by this paragraph, the Bank's board of directors shall evaluate the

Bank's actual performance in relation to the plan and budget, record the results of the evaluation, and note any actions taken by the Bank in the minutes of the board of directors' meeting at which such evaluation is undertaken.

(c) The Bank shall prepare, implement, and adhere to a written profit plan and budget which are acceptable to the Regional Director and the Chief Deputy Commissioner for each calendar year for which this Written Agreement is in effect.

## **ARTICLE VII CONCENTRATIONS**

Within 60 days from the effective date of this Written Agreement, the Bank shall adopt, implement, and adhere to a written plan which is acceptable to the Regional Director and Chief Deputy Commissioner to manage concentrations of credit in a safe and sound manner. At a minimum, the plan must provide written procedures for the ongoing measurement and monitoring of concentrations of credit, including the commercial real estate concentration, and establish limits on concentrations relative to of the Bank's capital that is commensurate with safe and sound banking practices and the overall risk profile of the Bank.

## **ARTICLE VIII INTEREST RATE RISK**

Within 60 days of the effective date of this Written Agreement, the Bank shall implement an effective interest rate risk management program. The interest rate risk program shall provide for measurement tools, appropriate for the size and complexity of the Bank. The program and independent review shall comply with the requirements of the Joint Agency Policy Statement on Interest Rate Risk.

## **ARTICLE IX PRIOR APPROVAL**

The Bank shall conduct business pursuant to a business plan acceptable to the Regional Director and Chief Deputy Commissioner. Further, the Bank shall obtain the prior written approval of the Regional Director and Chief Deputy Commissioner prior to consummating any proposed major deviation or material change from its established business plan. Material changes in the business plan includes, but is not limited to, any material deviation from projected assets or liabilities and any new or significantly altered products, including the use of funding strategies significantly other than those noted in the established business plan. Further, while this Written Agreement is in effect, the Bank shall not acquire or establish any branches, loan production offices or other locations, or enter into any agreement to merge with any other financial institution, or any other similar transaction, without the prior written approval of the Regional Director and Chief Deputy Commissioner.

## **ARTICLE X MANAGEMENT**

(a) Within 90 days from the effective date of this Written Agreement, the Bank shall retain qualified management. At a minimum, such management shall not serve as employees of the holding company or any other affiliated entity nor have responsibilities for holding company or other affiliated entity functions, and shall include: (i) a full-time chief executive officer with proven ability in managing a bank of comparable size and experience in upgrading a low quality loan portfolio; and (ii) a full-time chief credit officer with an appropriate level of collection and loan supervision experience for the type and quality of the Bank's loan portfolio. The qualifications of management shall be assessed on its ability to:

- Comply with the requirements of this Written Agreement;
- Operate the Bank in a safe and sound manner;
- Comply with applicable laws, rules, and regulations; and
- Maintain all aspects of the Bank in a safe and sound condition, including asset quality, capital adequacy, earnings, management effectiveness, and liquidity.

(b) During the life of this Written Agreement, the Bank shall notify the Regional Director and the Chief Deputy Commissioner in writing of any changes in any of the Bank's directors or senior executive officers. For purposes of this Written Agreement, "senior executive officer" is defined as in section 32 of the Act ("section 32"), 12 U.S.C. § 1831(i), and section 303.101(b) of the FDIC Rules and Regulations, 12 C.F.R. § 303.101(b) and includes any person identified by the FDIC and OFIR, whether or not hired as an employee, with significant influence over, or who participates in, major policymaking decisions of the Bank.

## **ARTICLE XI DIRECTORATE COMPOSITION**

Within 30 days from the effective date of this Written Agreement, and every 30 days thereafter while this Written Agreement is in effect, the Bank shall provide a written report to the Regional Director and the Chief Deputy Commissioner describing what actions it has taken to identify and retain as directors at least five individuals who are local business and community leaders and not officers or employees of Capitol Bancorp, Limited, or any other Bank-affiliated institution or entity. Such independent directors shall constitute a majority of the board members of the bank. The Bank shall submit Interagency Biographical and Financial Reports for each proposed director to the Regional Director and Chief Deputy Commissioner for review in accordance with Section 32 of the FDI Act. Proposed board members will begin serving in their roles as directors only after receiving letters of non-objection from both the Regional Director and Chief Deputy Commissioner.

## **ARTICLE XII BOARD COMMITTEES**

(a) Within 60 days after the effective date of this Written Agreement, the Bank's board of directors shall establish a committee of the board of directors of the Bank charged with the responsibility of ensuring that the Bank complies with the provisions of this Written Agreement. A majority of the members of such committee shall be directors not employed in any capacity by the Bank other than as a director. The committee shall report monthly to the full board of

directors of the Bank, and a copy of the report and any discussion relating to the report or the Written Agreement shall be noted in the minutes of the Bank's board of directors' meetings. The establishment of this subcommittee shall not diminish the responsibility or liability of the entire board of directors of the Bank to ensure compliance with the provisions of this Written Agreement.

(b) Within 60 days from the effective date of this Written Agreement, the Bank's board of directors shall designate such committees that are needed to provide guidance and oversight to active management and, at a minimum, shall include the following Board committees not elsewhere addressed in this Written Agreement: Audit Committee, with a minimum of three members and comprised entirely of independent directors; Loan Committee, to review and approve loans as well as oversee the lending function; and Asset Liability Management Committee, to oversee the liquidity and interest rate risk programs.

### **ARTICLE XIII SHAREHOLDER DISCLOSURE**

Within 30 days from the effective date of this Written Agreement, the Bank shall send to its shareholder a copy or description of this Written Agreement: (1) in conjunction with the Bank's next shareholder communication; and (2) in conjunction with its notice or proxy statement preceding the Bank's next shareholder meeting. The description shall fully describe this Written Agreement in all material respects. The description and any accompanying communication, notice or statement shall be sent to the FDIC Registration and Disclosure Section 550 17<sup>th</sup> Street, N.W., Washington, D.C. 20429 and to OFIR, 611 Ottawa Street, Lansing, Michigan 48909, for review at least 20 days prior to dissemination to shareholders. Any changes requested to be made by the FDIC and OFIR shall be made prior to dissemination of the description, communication, notice or statement.

### **ARTICLE XIV PROGRESS REPORTS**

Within 30 days of the last day of each calendar quarter following the effective date of this Written Agreement, the Bank shall furnish to the Regional Director and Chief Deputy Commissioner written progress reports signed by each member of the Bank's board of directors, detailing the actions taken to secure compliance with the Written Agreement and the results thereof. Such reports may be discontinued when the corrections required by this Written Agreement have been accomplished and the Regional Director and Chief Deputy Commissioner have, in writing, released the Bank from making further reports.

### **ARTICLE XV CONCLUDING PROVISIONS**

(1) The provisions of this Written Agreement shall be effective upon execution by the parties hereto and its provisions shall continue in full force and effect unless or until such provisions are amended in writing by mutual consent of the parties to the Written Agreement or excepted,



waived, or terminated in writing by the FDIC and OFIR.

(2) Any time limitations imposed by this Written Agreement shall begin to run from the effective date of this Agreement. Such time requirements may be extended in writing by the FDIC and OFIR for good cause upon written application by the Bank.

(3) In each instance in this Written Agreement in which the Board is required to ensure adherence to, and undertake to perform certain obligations of the Bank, it is intended to mean that the Board will: (i) authorize and adopt such actions on behalf of the Bank as may be necessary for the Bank to perform its obligations and undertakings under the terms of this Written Agreement; (ii) require the timely reporting by Bank management of such actions directed by the Board to be taken under the terms of this Written Agreement; (iii) follow up on any non-compliance with such actions in a timely and appropriate manner; and (iv) require corrective action be taken in a timely manner regarding any non-compliance with such actions.

(4) Each provision of this Written Agreement shall be binding upon the Bank and all of its institution-affiliated parties, in their capacities as such, and their successors and assigns.

(5) This Written Agreement is a “written agreement” for the purposes of section 8 of the FDIC Act, 12 U.S.C. §1818, and enforceable under the provisions of that section. The Bank waives the right to challenge the validity of the Written Agreement under the FDIC Act or any other provision of law.

(6) This Written Agreement expressly does not form, and may not be construed to form, a contract binding on the FDIC or the United States. Notwithstanding the absence of mutuality of obligation, or of consideration, the FDIC may enforce any of the commitments or obligations herein undertaken by the Bank under its supervisory powers, including 12 U.S.C. § 1818(i), and not as a matter of contract law. The Bank expressly acknowledges that the Bank, the OFIR and the FDIC have no intention to enter into a contract.

(7) The provisions of this Written Agreement shall not in any manner bar, estop, or otherwise prevent the FDIC or the OFIR or any other federal or state agency or department from taking any other action affecting the Bank

(8) All communications regarding this Written Agreement shall be sent to:

(a) Michigan Commerce Bank  
Attention: John C. Smythe  
200 Washington Square N.  
Lansing, MI 48933

(b) M. Anthony Lowe  
Regional Director  
Chicago Regional Office  
500 West Monroe Street, Suite 3300  
Chicago, IL 60661

(c) Stephen R. Hilker  
Chief Deputy Commissioner  
Office of Financial and Insurance Regulation  
for the State of Michigan  
611 West Ottawa Street, 3<sup>rd</sup> Floor  
P.O. Box 30220  
Lansing, MI 48909-7720

IN WITNESS WHEREOF, the parties have caused this Written Agreement to be executed as of the 20th day of April, 2009.

\_\_\_\_\_/s/  
M. Anthony Lowe  
Regional Director  
Chicago Regional Office  
Federal Deposit Insurance Corporation

\_\_\_\_\_/s/  
Stephen R. Hilker  
Chief Deputy Commissioner  
Office of Financial and Insurance  
Regulation State of Michigan

\_\_\_\_\_/s/  
John C. Smythe  
President  
Michigan Commerce Bank