

**IN THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF ILLINOIS**

EMILY SMITH COSTELLO AND	)	
DAWN M. GREATHOUSE	)	
Each Individually and on Behalf of All	)	
Others Similarly Situated,	)	
	)	Case No.
Plaintiff,	)	
v.	)	
	)	
COMMERCE BANK	)	JURY TRIAL DEMANDED
SERVE: 1000 Walnut Street	)	
Kansas City, MO 64101	)	
	)	
Defendant.	)	

**CLASS ACTION COMPLAINT**

COME NOW Plaintiffs EMILY SMITH COSTELLO and DAWN M. GREATHOUSE (hereinafter referred to as “Plaintiffs”), on behalf of themselves and on behalf and all others similarly situated, and for their Class Action Complaint against Defendant Commerce Bank allege as follows:

**NATURE OF CASE**

1. This class action is brought by Plaintiffs, both on behalf of themselves and on behalf of other holders of Commerce Bank credit cards, seeking relief to redress the overcharging of interest by Commerce Bank caused by its method of computing interest charges.
2. Commerce Bank’s method of computing interest charges involves the daily compounding of interest.
3. Plaintiffs allege that the interest extracted by Commerce Bank from cardholders was excessive and in violation of Missouri law, which prohibits Commerce Bank from compounding interest daily.

### **JURISDICTION AND VENUE**

4. This Court has subject matter jurisdiction over Plaintiffs' claims pursuant to 28 U.S.C. § 1332(d) because there are over 100 class members, the combined claims of the proposed class members exceed \$5,000,000 and because Defendant is a citizen of a different state from the members of the Class.

5. This Court has personal jurisdiction over Defendant because it regularly conducts business in this District. Defendant has had more than minimum contacts with the State of Illinois and has purposefully availed itself of the privilege of conducting business in this state. In addition, as explained below, Defendant has committed affirmative unlawful acts within the State of Illinois that gives rise to civil liability, including unlawfully computing interest on the accounts of Illinois residents throughout the State of Illinois.

6. Venue is proper in this District pursuant to: (a) 28 U.S.C. § 1391(b)(2) in that a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this District; and (b) 28 U.S.C. § 1391(b)(3) in that Defendant is subject to personal jurisdiction in this District.

### **PARTIES**

7. Plaintiff Emily Smith Costello is a resident and citizen of the state of Illinois who resides in Belleville, Illinois.

8. Plaintiff Dawn M. Greathouse is a resident and citizen of the state of Illinois who resides in Fairview Heights, Illinois.

9. Defendant Commerce Bank is a Missouri chartered trust company with its principal office located at 1000 Walnut St., Kansas City, MO 64106.

## FACTUAL BACKGROUND

10. Commerce Bank (hereinafter sometimes referred to as “Bank”) issues credit cards which are subject to a set of written terms and conditions contained within cardholder agreements.

11. Commerce Bank issued credit cards to Plaintiffs subject to a set of written terms and conditions contained within a cardholder agreements (“the Agreements”). A true copy of the cardholder agreement of plaintiff Dawn M. Greathouse is attached here to as **Exhibit 1** and incorporated by reference.

12. The Agreements governing Plaintiffs’ cards provide that interest charges are computed daily, by multiplying the daily balance by the daily interest rate. The interest is then added to the daily balance to get the beginning balance for the next day. Bank does this for all days on which a balance is owing.

13. Bank’s method of computing interest charges results in daily compounded interest.

14. Compound interest is interest upon interest; where interest is added to principal sum and the whole treated as new principal for the calculation of interest for the next period.

15. Each and every monthly statement sent by Bank to Plaintiffs restated Commerce Bank’s manner of compounding interest.

16. The Agreements governing Plaintiffs’ cards provide further that the laws of the state of Missouri shall govern and Missouri interest law prohibits Commerce Bank from compounding interest.

17. The cardholder agreements issued by Commerce Bank to Plaintiffs and to the class members are form contracts, which contain identical or substantially similar provisions, with respect to the governance of Missouri law and the method of computing interest charges.

18. The interest extracted by Commerce Bank from Plaintiff and the class was excessive, in that it unlawfully charged and received daily compounded interest in violation of Missouri law.

19. Plaintiff and the class have suffered injury resulting from Bank's extraction of excessive and unlawful interest.

### **CLASS ACTION ALLEGATIONS**

20. Plaintiff brings this class action on behalf of themselves and all other individuals against Commerce Bank pursuant to Rule 23 of the Federal Rules of Civil Procedure. The Class which Plaintiffs seek to represent is defined as follows:

All persons who are citizens of the United States who have or have had within five years of the commencement of this action, a Commerce Bank credit card account, and who have been charged and paid daily compounded interest.

Excluded from the class are:

- (a) Loans to corporations;
- (b) Loans which are secured by a lien on real estate, non-processed farm products, livestock, farm machinery or crops;
- (c) Defendant and all directors, officers, agents, and employees of defendant; and
- (d) Any persons or entity who timely opts-out of the proceeding;
- (e) Any person or entity who is a citizen of the state of Missouri.

21. Commerce Bank has banking offices and branches throughout Illinois and the United States. While the exact number of class members is unknown to Plaintiff at present, Plaintiffs believe the members are so numerous as to render joinder of all class members in this action impractical. Thus, the class meets the numerosity requirement. The members of the class



and their last known addresses are readily identifiable from the information and records in the possession or control of the Defendant and/or its servicing agents.

22. There are questions of law and fact common to the class, which predominate over any questions affecting individual members of the class. The wrongs suffered and remedies sought by Plaintiff and the other members of the class are identical; the only difference being the exact monetary amount to which each class member is entitled. Thus, the Class meets the commonality requirement. Common issues include, but are not limited to, the following:

- 1) Whether Bank's method of computing interest charges violated Missouri law;
- 2) Whether Missouri law prescribes that Plaintiff and the Class may recover all interest collected by Commerce Bank;
- 3) Whether Missouri law prescribes that Plaintiff and the Class may recover attorney's fees from Commerce Bank;
- 4) Whether Commerce Bank charges compounded interest; and
- 5) Whether Plaintiffs and the Class paid compounded interest.

23. Plaintiffs will fairly and adequately represent the interests of the Class. Plaintiff's claims are typical of those of the class and are based on the same factual and legal theories.

24. Plaintiff's interests are not antagonistic to those of the other Class Members and Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs have retained counsel experienced in handling class actions and actions involving unlawful consumer practices. Neither Plaintiffs nor their counsel have any interest which might cause them to not actively and vigorously pursue this action.

25. A class action is superior to other methods for the fair and efficient adjudication of this action because individual joinder of all class members is impracticable. Furthermore, because the damages suffered by each individual member of the Class may be relatively small,

the expense and burden of individual litigation would make it difficult or impossible for the individual class members to redress the wrongs done to them.

26. A certification of the class would allow litigation of claims that, in view of the expense of litigation, may be insufficient in amount to support individual actions. The individual class members are unlikely to be aware of their rights and not in a position, by way of experience or financial means, to commence litigation against the Defendant.

27. If each of the class members are forced to bring an individualized suit, such suits would burden judicial resources and would create the risk of inconsistent results for similarly situated parties.

28. A class action will result in an orderly and expeditious administration of the claims by the Class. Moreover, economies of time, effort, and expense and uniformity of decisions will be insured.

#### **DAMAGES FOR VIOLATIONS OF MISSOURI LAW BY COMPOUNDING INTEREST**

29. Plaintiff incorporates by reference the allegations contained in all of the above allegations as though fully restated herein.

30. This case is brought on behalf of Plaintiffs and the Class for violations of Missouri interest law.

31. The violations consist of charging, contracting for, and/or receiving daily compounded interest.

32. Plaintiffs and the Class are entitled to all damages resulting from the charging and collection of compound interest, are entitled to the relief and damages proscribed by and in accordance with Missouri statute, are entitled to all permissible attorney's fees, costs, and other relief which the Court deems proper.

### Prayer for Relief

WHEREFORE, Plaintiffs respectfully request judgment in favor of Plaintiffs and the Class and against Commerce Bank, and award the following relief:

- I. Ordering that this action be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure and ordering the following class to be certified:  
  
All persons who are citizens of the United States who have, or have had within five years of the commencement of this action, a Commerce Bank credit card account, and who have been charged and paid daily compounded interest.  
  
Excluded from the class are:
  - (a) Loans to corporations;
  - (b) Loans which are secured by a lien on real estate, non-processed farm products, livestock, farm machinery or crops;
  - (c) Defendant and all directors, officers, agents, and employees of defendant; and
  - (d) Any persons or entity who timely opts-out of the proceeding.
  - (e) Any person or entity who is a citizen of the state of Missouri.
- II. Awarding all actual and statutory damages to the Plaintiffs and the class members, including, but not limited to the disgorgement and return of all interest paid by Plaintiff and the Class to Defendant, all in excess of \$5,000,000.00;
- III. Awarding Plaintiffs and the Class costs of suit;
- IV. Awarding reasonable attorney's fees;
- V. Awarding pre-judgment interest and post-judgment interest at the highest lawful rates; and,
- VI. Awarding such other and further relief as the Court deems just and proper under the circumstances.

Respectfully Submitted,

THE BUXNER LAW FIRM

**/s/ Evan D. Buxner**

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This Agreement is for your Account with Commerce Bank, and the Card(s) which has/have been given to you in connection with your Account. Such Account and Card(s) provide you with credit card services and ATM Services. "You" and "your" mean any applicant for the Account and any person using the Account and/or related Card(s) with the expressed or implied permission of any of the applicants. Any person whose name appears on the Account for the Card(s) accompanying this Agreement consents, either by using or permitting another to use the Card(s), to all provisions of this Agreement. "We", "us" and "our" means Commerce Bank, our successors and assigns.

**In this Agreement:**  
**Account** is your credit card account.  
**Annual Fee** is a fee charged on a yearly basis for your continued use of the Account.  
**APR** is Annual Percentage Rate.  
**ATM** is Automated Teller Machine.  
**Business Days** are Monday through Friday. Federal holidays are not included.  
**Card** is the credit card(s) given to you in connection with your Account.  
**Cash Advance** includes:  
 • **Non-Overdraft Cash Advance** - advance made by means of an electronic device or machine, or a financial institution teller, or for the purchase of wire transfers, non-U.S. currency, travelers' checks, money orders, lottery tickets and casino gaming chips.  
 • **Overdraft Cash Advance** - advance made by means of overdraft protection  
 • **Balance Transfer** - advance made when transferring a balance from another creditor to your Account.  
 • **Convenience Check** - check used to make a Cash Advance on your Account.  
 Charges are costs imposed as part of this Agreement and include both interest and fees.

**Daily Balance** is determined, for each day in the billing cycle, by taking the beginning balance, adding any new transactions or other debits, and subtracting any payments or other credits.  
**Daily Periodic Rate** is the APR divided by 365.  
**Fees** are non-interest Charges, including transaction fees.  
**Grace Period** means the period of time during a billing cycle when you will not accrue interest Charges on certain transactions or balances.  
**Interest Charges** are the portion of Charges attributed to periodic interest rates.  
**Participation Fee** is a fee charged for added service or functionality on your Account.  
**PIN** is Personal Identification Number.  
**Prime Rate** is the U.S. Prime Rate published in *The Wall Street Journal* in its column called "Money Rates" on the last Business Day of each month.  
**Promotional Balance** is the balance subject to the Promotional Rate. Balances subject to Introductory Rates are included.  
**Promotional Rate** is a rate other than the standard rate, tied to a special offering. A Promotional Rate offered when you open your Account may be called an introductory Rate.  
**Purchase** means purchase of merchandise or services on the Account plus related Charges and does not include any type of Cash Advance, Cash Advance Transaction Fees or Cash Advance Interest Charges.  
**Statement** is your billing statement.

**SCHEDULED CARD SERVICES:**  
 The following provisions relate only to credit card services except as otherwise applicable.

**ACCOUNT DESCRIPTION**  
 We will grant you a line of credit with a maximum dollar limit as determined by us. This limit will be indicated on your Statement. Subject to the terms of this Agreement.

You may use your Account to make Purchases and obtain Cash Advances, including Balance Transfers and Convenience Checks, that do not exceed your credit limit at any time. Should your Purchases, and/or Cash Advances ever exceed your credit limit, we reserve the right to terminate this Agreement and demand the return of your Card(s). We can increase or decrease your credit limit at any time without prior notice or liability. A change to your credit limit will not affect your obligation to pay us.

We may decline, at any time in our sole discretion, an authorization request for any transaction for any reason, included but not limited to:

- operational considerations,
  - your Account is in default,
  - we suspect fraudulent or unlawful activity
- We are not responsible for any losses or damages, including consequential damages, if a transaction on your Account is declined, either by us or a third party, even if you have sufficient credit available.

**PROMISE TO PAY**  
 You promise to pay for all Purchases and Cash Advances, including Balance Transfers and Convenience Checks, made by you through the use of the Account. In addition, you promise to pay all other amounts owed due to use of the Account, by anyone else, you authorize to use the Account until such person's authority is ended. You may only end such person's authority by notifying us in writing and returning to us any Card such person may have. All of you are responsible, both together and individually, for the entire Account balance even though only one of you uses the Account.

**BILLING STATEMENTS**  
 You will receive a Statement periodically (normally monthly). Your payment is due within 25 days from the date of the Statement (payment due date).

**PAYMENT OPTIONS**  
 You may pay the new balance shown on your Statement each month or you may pay in monthly installments. If you decide to pay in monthly installments, you must pay at least the minimum payment on your Statement. The minimum payment will be the greater of:

- \$30.00 or the full amount of your total balance if it is less than \$30.00; or
- 3.00% of your new balance plus any amounts that are past due; or
- 1.00% of your new balance plus any amounts that are past due, plus Fees (excluding Balance Transfer and/or Convenience Check Fees) and Interest Charges accumulated during the billing period

When a payment is posted to your Account, we reserve the right to restrict or delay all or part of the available credit created by the payment. The restriction or delay of the available credit is for risk management or other related purposes, including but not limited to protection against actual or potential fraudulent activities or unauthorized transactions.

**OVERDRAFT PROTECTION**  
 If you select overdraft protection, a Cash Advance will be made to cover an overdraft in your designated Commerce Bank deposit account. Such Overdraft Cash Advances will be in the amount of \$50.00 or multiples of \$50.00. If the designated deposit account is a joint account, you will be liable for all overdrafts on the account regardless of which joint account owner caused, or benefited from the overdraft. Each Overdraft Cash Advance is at our discretion. We are not liable or responsible for any check drawn that may for any reason be returned or otherwise dishonored. We may cancel this overdraft feature at any time without notice.

**BALANCE ON WHICH INTEREST CHARGE IS CALCULATED**  
 If you accrue any interest charge on your Account at a variable rate, that rate will be calculated by adding a margin to the Prime Rate. Please see the ACCOUNT OPENING DISCLOSURE, which is part of this Agreement, for specific information regarding the APRs used to compute your interest Charges.



We calculate your Daily Balance for each day in the billing cycle by taking your beginning balance, adding any new transactions or other debits, and subtracting any payments or other credits. We multiply the Daily Balance by the Daily Periodic Rate to get your interest charges for that day. We add these interest charges to your Daily Balance to get the beginning balance for the next day. We do this for all days on which you have a balance owing on the Account, disregarding any credit balance, for the billing cycle.

We add all the daily interest charges and round the sum to the next highest cent to get your total interest charges for that billing cycle. We do this calculation separately for each type of balance.

The Prime Rate used to determine the APR on your Account is the U.S. Prime Rate published in *The Wall Street Journal*, in its column called "Money Rates", on the last Business Day of each month. Although each Daily Periodic Rate is determined by an index published prior to the first day of each calendar month, the respective Daily Periodic Rate will only become effective and charged as of the first day of the monthly billing period following the respective calendar month in which the index is so published. No representation is made that the U.S. Prime Rate is the lowest, the best or the favored rate of interest. If for any reason *The Wall Street Journal* no longer publishes the "Money Rates" column, then we will choose a new index based on comparable information. An increase in the Prime Rate will cause your interest rate to increase and may cause your minimum monthly payment to increase.

**INTEREST CHARGE COMPUTATION**

**ON PURCHASES:** Interest Charges on Purchases begin to accrue on the transaction date, provided such date will never be later than the date the Purchase is posted to the Account or earlier than the first day of the billing cycle for the Statement on which such transaction is shown. Purchases are subject to a Grace Period. If the previous balance is zero, or was paid in full by the payment due date shown on your Statement, no interest charge will be assessed on current Purchases.

**ON CASH ADVANCES:** Interest Charges begin to accrue on the date of the Cash Advance, provided such date will never be later than the date the Cash Advance is posted to the Account or earlier than the first day of the billing cycle for the Statement on which such advance is shown.

**TOTAL INTEREST CHARGE COMPUTATION**

We add interest charges for each type of balance to obtain your total interest charge for each billing cycle.

**PENALTY RATE AND WHEN IT APPLIES**

If at any time we have not received the required minimum monthly payment within 60 days of the respective payment due date, we may increase the applicable APR to the Penalty Rate. Please see the ACCOUNT OPENING DISCLOSURE for information regarding the Penalty Rate for your Account. The Account may be eligible for your standard Daily Periodic Rates and corresponding APR for each type of balance after you have met the terms of this Agreement for six consecutive billing cycles after the monthly Statement on which the Penalty APR first appears. Otherwise, the Penalty Rate may apply indefinitely.

**TERMINATION OF INTRODUCTORY OR PROMOTIONAL RATES**

If during an Introductory or Promotional Rate period, we have not received the required minimum monthly payment within 60 days of the respective payment due date, we will increase the applicable APR to the Penalty APR, introductory and/or Promotional Rates will not be reinstated.

**FEES**

**Transaction, Annual and Penalty Fees:**

Please see the ACCOUNT OPENING DISCLOSURE for information regarding the specific Fees that may be charged to your Account.

**Minimum Interest Charge**

A minimum interest charge will be imposed in any billing cycle for which an interest charge is payable, and will appear on your Statement as a Fee.

**Balance Transfer Or Convenience Check Transaction Fee**

You will be charged a Transaction Fee, with a minimum and no maximum, for each Balance Transfer and/or Convenience Check posted to your Account.

**Non-Overdraft Cash Advance Transaction Fee**

You will be charged a Transaction Fee, with a minimum and no maximum, for each Cash Advance posted to your Account.

**Overdraft Cash Advance Transaction Fee**

You will be charged a Transaction Fee for each Cash Advance resulting from the overdraft protection.

**Annual Fee**

Your Account may have a Fee that will be added annually to your Account (Annual Fee). Please see the ACCOUNT OPENING DISCLOSURE for information regarding the specific fee, if any, for your Account.

The imposition or payment of an Annual Fee does not affect or limit our right to terminate this Agreement, cancel your Account, and demand payment, in a manner permitted by law, of any amounts owed on your Account.

**Foreign Transactions**

Please see the ACCOUNT OPENING DISCLOSURE for information regarding the specific Fees that may be charged to your Account related to foreign transactions.

Visa and MasterCard 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<sup>®</sup> International and MasterCard<sup>®</sup> International. Visa 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 may vary from the rate Visa itself receives or the government-mandated rate in effect for the applicable central processing date. MasterCard conversion will be at a rate selected by MasterCard, typically either a government-mandated rate or a wholesale rate provided to MasterCard. 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 the applicable foreign transaction fee. For Purchases, cash withdrawals, and Cash Advances made in U.S. dollars outside of the United States and its territories, you agree to pay the transaction amount, plus the applicable foreign transaction fee.

**Late Payment Fee**

For each payment not received by the payment due date, we may charge a Late Payment Fee. The first time you are late making the required minimum monthly payment ("First Occurrence"), a \$27 Late Payment Fee may be imposed. After the First Occurrence, if you make a late payment at anytime during the next six billing cycles ("Second Occurrence"), a \$37 Late Payment Fee may be imposed. After the Second Occurrence, any subsequent late payment during the next six billing cycles will also incur a \$37 Late Payment Fee. At no time will the Late Payment Fee exceed the amount of the required minimum monthly payment.

**Overlimit Fee**

In the event your balance exceeds your credit limit, no fee will be charged.

**Other Fees**

Returned Payment Fee  
No Fee will be charged for any check or other form of payment sent to us which is returned unpaid.

**Returned Item Fee**

If we decline to honor a Convenience Check or when payment of a Convenience Check is stopped at your request, we may charge a Returned Item Fee. The first time we decline to honor a Convenience Check or when payment of a Convenience Check is stopped at your request ("First Occurrence"), a \$27 Returned Item Fee

may be imposed. After the First Occurrence, if we decline a Convenience Check or your request to stop payment of a Convenience Check at anytime during the next six billing cycles ("Second Occurrence"), a \$37 Returned Item Fee may be imposed. After the Second Occurrence, any subsequent declined Convenience Check or stop payment of a Convenience Check during the next six billing cycles will also incur a \$37 Returned Item Fee. At no time will the Returned Item Fee exceed the amount of the Convenience Check.

**Convenience Checks and Document Copy Charges**

Charges for Convenience Checks and requests for copies of sales drafts, Statements or other documents related to your Account may be billed on your Account as Purchases, in accordance with the fee schedule established by us from time to time. No charge will be made for copy requests related to billing error resolution within 60 days of the disputed transaction.

**TOTAL FEE COMPUTATION**

We add all Fees assessed to obtain your total Fees for each billing cycle (excluding Balance Transfer and/or Convenience Check Fees). We will assess Balance Transfer Fees and/or Convenience Check Fees to your Account in the same balance category to which the transaction is posted.

**CANCELLATION**

To the extent permitted by law, Commerce Bank may cancel your Account, refuse to allow further transactions against your Account or revoke your Card(s) at any time (whether or not you are in default of any part of this Agreement) including, without limitation, when any affiliation you may have with a sponsoring organization ceases or when any agreement we may have with the sponsoring organization is terminated. Cancellation of your Account will not affect your liability to us for credit we have extended to you, including amounts not yet billed to your Account. We may cancel your Account without prior notice or liability. You must surrender the Card(s), either upon a direct request by us, or any other bank or merchant who is acting upon our instructions.

**CONDITIONS OF DEFAULT**

We may consider you to be in default if we do not receive a required payment when due, including the minimum payment by the date shown on your Statement; you fail to comply with the terms of this Agreement; you make any false or misleading statements or omissions on your application; you file a bankruptcy petition or have one filed against you; we obtain information that causes us to believe that you may be unwilling or unable to pay your debts to us or to others on time including, but not limited to, your failure to make any payment to us on any other indebtedness or loan; you are declared incompetent by a court or a court appoints a guardian/conservator for you or your assets; you die.

If we consider your Account to be in default, we may close your account without notice and require you to pay the balance in a manner permitted by law (subject to applicable law regarding notice or right to cure). To the extent permitted by law, if you are in default you will pay our collections costs, attorneys' fees, court costs, and all other expenses of enforcing our rights under this Agreement.

**ALLOCATION OF PAYMENTS**

We will allocate your minimum payment in the manner we determine. We will apply the amount in excess of the minimum payment to balances with higher APRs before balances with lower APRs.

**RECEIPT OF PAYMENTS**

Payments received before 5 PM CT at the address shown on your Statement on any of our regular Business Days will be posted as of the date of receipt. Payments made in person before the close of business to an employee at a Commerce branch will be posted as of date of receipt. Payments mailed to the address shown or made in person at a branch must be accompanied by the Account number or payment stub, and in the form of a check or money order in U.S. Dollars drawn on a U.S. financial institution. Do not send cash through the mail. A delay in crediting the payment to your Account may occur if the payment does not meet these



requirements for making payments (conforming payments). In no case shall such delay exceed five days from receipt of such payment.

The cutoff time for payments made on any of our regular Business Days through Commerce as transfers from your Commerce deposit account are as follows: Commerce ATM, 7:00 PM CT; Commerce Online Banking, including Mobile Banking, 7:00 PM CT; Commerce Account Information Line, 7:00 PM CT; Commerce BankCards Online, 11:00 PM CT; Commerce Collections Department, 11:00 PM CT. A payment made through Commerce Online Bill Pay will be posted on the Pay Date.

Conforming payments received after the respective cutoff time will be posted no later than the next Business Day. Payments made by a third-party payor, will be posted as of the date we receive the payment.

When the due date falls on a weekend or holiday, your payment due date will be on the next Business Day.

We may accept late payments, partial payments or checks and money orders (or accompanying written communication) containing a statement to the effect that the instrument was tendered as "payment in full," full satisfaction of a disputed claim or other similar language, without losing any rights under this Agreement or under the law. All such payments or written communications must be mailed to: Commerce Bank, P.O. Box 410857, Kansas City, MO 64141-1857.

**CHANGE OF TERMS**

Provided the Account is meeting the terms of this Agreement: (1) We will not increase an Introductory APR during any Introductory Rate period; and (2) We will not increase any APR, Annual Fee or minimum interest charge for 12 months following account opening, except for increases due to the expiration of an introductory or Promotional Rate period, if any, changes in the Prime Rate; completion or failure of a temporary hardship arrangement; application of a Penalty Rate; or the end of military service to which the provisions of the Servicemembers Civil Relief Act (SCRA) apply ("Exceptions"). Otherwise, we may change the terms of the Agreement at any time, after notice and the right to reject if required by law. Changes in any APR, other than the stated Exceptions, Annual Fee or minimum interest charge will apply to new transactions created after the end of the 14th day following our providing notice to you. If you reject a change, your Account will be cancelled and you will no longer be able to use the Account.

Cancellation of your Account will not affect your liability to us for credit we have extended to you, including amounts not yet billed to your Account.

**ELECTRONIC RECORDS**

You agree that this document and all paper records related to your Account and whether or not the other paper records were submitted, received or obtained in advance of, contemporaneously with or subsequent to, the delivery of this document may, at the option of Commerce Bank, be converted by any digital or electronic method or process to an electronic record or subsequently further converted or migrated to another electronic record format or electronic storage medium. You further agree that upon conversion to an electronic record as authorized herein such electronic record shall be the record of the transaction and the electronic record shall have the same legal force and effect as the paper documents from which it was converted. You waive any legal requirement that any documents digitally or electronically converted be embodied, stored or reproduced in a tangible media. You understand and agree that a printed or digitally reproduced copy of the electronic record shall be given the same legal force and effect as a signed writing. In addition, you authorize and agree to destruction of the paper documents by Commerce Bank upon conversion of the paper documents to a digital or electronic record.

**PERMISSION TO CONTACT**

You agree, in order for us to service your account or to collect any amounts you may owe, we may contact you by telephone at any telephone number associated with your account, including wireless telephone numbers, which could result in charges to you. We may also contact you by sending text messages or emails.

using any telephone number or email address you provide to us. You consent and acknowledge that methods of contact may include using pre-recorded/artificial voice message and/or use of an automatic dialing device, as applicable. You further consent and agree that our personnel may listen to and/or record phone calls between you and our representatives without additional notice to you, including but not limited to calls we make to service your account or collect debt(s).

**MISCELLANEOUS PROVISIONS**

You also agree that:

- We may refuse to extend credit to you or anyone using your Account or Card(s).
- We will not be liable or responsible for anyone's refusal to honor your Card(s).
- Each Account you have with us is separate from any others you have with us, and Interest Charges will be charged on each Account's balance at the APR given with each Cardholder Agreement. Each individual Account will be designated by an individual Account number.
- Your Card(s) are Commerce Bank property.
- We may change the premium enhancements offered at any time without further notice to you.
- Merchants with whom you've shared your Account number may be updated with new Account information to ensure the continuation of your payment agreement.
- You will not use your Card(s) for any purpose that has been deemed illegal. We reserve the right to deny authorization requests from online gambling merchants, whether or not online gambling is illegal in the state in which you reside.
- Commerce Bank may share your Account experience and transaction information with its Affiliates, which are members of the Commerce Corporate family as defined in your Privacy Policy Notice. Unless you call 1-800-543-4845, you agree that Commerce Bank and its Affiliates may also share other information about you or your Account.
- You must notify us immediately at Commerce Bank, P.O. Box 411036, Kansas City, MO 64141-1036, if you believe any information we reported to a credit reporting agency is inaccurate.

**SECURITY INTEREST**

Collateral securing other loans with us may also secure this indebtedness.

**CHANGES IN ADDRESS**

You agree to notify us immediately if you change your address.

**INTERPRETATION**

The Agreement shall be governed by applicable federal law and regulations. To the extent not preempted by applicable federal law, this Agreement shall be governed by the laws of the state of Missouri, but Commerce Bank will rely on the provisions of Nebraska law with respect to the fees and charges (other than interest) that apply to your Account, as authorized by Missouri Revised Statutes Section 408.145.

**YOUR BILLING RIGHTS: KEEP THIS DOCUMENT FOR FUTURE USE**

This notice tells you about your rights and our responsibilities under the Fair Credit Billing Act.

**What To Do If You Find A Mistake On Your Statement**

If you think there is an error on your Statement, write to us at:

**Commerce Bank**

P.O. Box 411036, Kansas City, MO 64141-1036.

You may also send us this information via fax at 1-616-234-2811

In your letter, give us the following information:

- Account information: Your name and Account number.
- Dollar amount: The dollar amount of the suspected error.
- Description of problem: If you think there is an error on your bill, describe what you believe is wrong and why you believe it is a mistake.

You must contact us:

- Within 60 days after the error appeared on your Statement.
- At least 3 Business Days before an automated payment is scheduled, if you want to stop payment on the amount you think is wrong.

You must notify us of any potential errors in writing. You may call us, but if you do we are not required to investigate any potential errors and you may have to pay the amount in question.

**What Will Happen After We Receive Your Letter**

When we receive your letter, we must do two things:

1. Within 30 days of receiving your letter, we must tell you that we received your letter. We will also tell you if we have already corrected the error.
2. Within 90 days of receiving your letter, we must either correct the error or explain to you why we believe the bill is correct.

**While we investigate whether or not there has been an error:**

- We cannot try to collect the amount in question, or report you as delinquent on that amount.
- The charge in question may remain on your Statement, and we may continue to charge you interest on that amount.
- While you do not have to pay the amount in question, you are responsible for the remainder of your balance.
- We can apply any unpaid amount against your credit limit.

**After we finish our investigation, one of two things will happen:**

- If we made a mistake, you will not have to pay the amount in question or any Interest Charges or other fees related to that amount.
- If we do not believe there was a mistake, you will have to pay the amount in question, along with applicable interest charges and fees. We will send you a Statement of the amount you owe and the date payment is due. We may then report you as delinquent if you do not pay the amount we think you owe.

If you receive our explanation but still believe your bill is wrong, you must write to us within 10 days telling us that you still refuse to pay. If you do so, we cannot report you as delinquent without also reporting that you are questioning your bill. We must tell you the name of anyone to whom we reported you as delinquent, and we must let those organizations know when the matter has been settled between us.

If we do not follow all of the rules above, you do not have to pay the first \$50 of the amount you question even if your bill is correct.

**Your Rights If You Are Dissatisfied With Your Credit Card Purchases**

If you are dissatisfied with the goods or services that you have purchased with your credit card, and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the remaining amount due on the purchase.

To use this right, all of the following must be true:

1. The purchase must have been made in your home state or within 100 miles of your current mailing address, and the purchase price must have been more than \$50. (Note: Neither of these are necessary if your purchase was based on an advertisement we mailed to you, or if we own the company that sold you the goods or services.)
  2. You must have used your credit card for the purchase. Purchases made with Cash Advances from an ATM or with a check that accesses your credit card Account do not qualify.
  3. You must not yet have fully paid for the purchase.
- If all of the criteria above are met and you are still dissatisfied with the purchase, contact us in writing at:
- Commerce Bank**  
P.O. Box 411036, Kansas City, MO 64141-1036.



While we investigate, the same rules apply to the disputed amount as discussed above. After we finish our investigation, we will tell you our decision. At that point, if we think you owe an amount and you do not pay, we may report you as delinquent.

**LIABILITY FOR UNAUTHORIZED USE**

If your name appears on the Account for the Card(s) accompanying this Agreement, then by using or permitting another to use the Card(s) and/or PIN, you agree to all the provisions of this Agreement, including, but not limited to your promise to pay. You will not be liable for unauthorized use that occurs after you notify Commerce Bank orally or in writing. Notification of loss, theft or possible unauthorized use may be mailed to Commerce Bank, P.O. Box 411036, Kansas City, MO 64141-1036, or you may call 1-800-645-2103.

If you have any questions regarding this Agreement, or our current fee schedule, write to us at Commerce Bank, P.O. Box 411036, Kansas City, MO 64141-1036, or call us at 1-800-645-2103.

**OPTIONAL FEATURES**

Commerce Bank credit cards may come with optional credit card payment features, including Special Connections<sup>SM</sup> and toggle<sup>SM</sup>. The Special Connections and toggle<sup>SM</sup> features are offered at the sole discretion of Commerce Bank ("Commerce") to Accountholders ("You" or "Your") that have Qualified Commerce Bank Credit Card Accounts. A "Qualified Commerce Credit Card Account" means any open Account that is not designated by Commerce as lost, stolen, fraud transferred, credit revoked, closed, bankrupt, charged off, or in Consumer Credit Counseling or recovery. By using these optional features, you acknowledge that you have read and accepted the Commerce Bank Special Connections Terms and Conditions and the Commerce Bank toggle<sup>SM</sup> Terms and Conditions which shall govern your use of and rights under these optional features.

The Special Connections<sup>SM</sup> and toggle<sup>SM</sup> Terms and Conditions are a separate agreement and are not part of your cardholder agreement.

**SPECIAL CONNECTIONS<sup>SM</sup> FEATURE**

With the Special Connections<sup>SM</sup> Feature, and as permitted from time to time, you may use your Card to access Commerce Bank Special Connections Feature-eligible deposit accounts, credit cards, lines of credit, and/or loans. You may request the Special Connections Feature from a Commerce Bank branch, through Commerce Bank Online Banking, or from our Customer Service Department at 1-800-645-2103. These features are not automatically activated.

For customers with a Special Connections<sup>SM</sup> Visa<sup>®</sup> or MasterCard<sup>®</sup> credit card, please note: The Special Connections<sup>SM</sup> Feature is different from a Commerce Bank Special Connections Visa or MasterCard credit card. The Special Connections Feature allows you to add certain functionality to any Commerce Bank-issued credit card, including Commerce Bank's Special Connections Visa or MasterCard credit card. However, your Special Connections Visa or MasterCard credit card is not automatically enabled with the Special Connections Feature. You must proactively enroll any credit card, including your Special Connections Visa or MasterCard credit card, in the Special Connections Feature in order for that card to utilize the Special Connections Feature's capabilities described herein.

**ELECTRONIC FUND TRANSFERS**

The following provisions apply only to Electronic Fund Transfers ("EFTs"). EFTs are any transfer of funds initiated with your Card(s) at an ATM or as a debit transaction at Point of Sale. We can cancel these services at any time and for any reason without notice. We can also cancel your entire Account, including credit card services, and revoke your Card(s) as provided in the CANCELLATION paragraph above. This may be done by an ATM or merchant not returning your Card(s) to you. We may change the terms of this Agreement relating to EFTs without notice to you unless required by law.

**TELEPHONE NUMBER AND ADDRESS TO BE NOTIFIED IN EVENT OF UNAUTHORIZED TRANSFER**

Tell us AT ONCE if you believe your card has been lost or stolen, or if you believe that an electronic fund transfer has been made without your permission using information from your check. 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 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 period. By permitting another person to use the card, you authorize and are fully liable for any transactions that person initiates until that person's authority is ended. You may only end that person's authority by notifying us.

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 us at 1-800-617-7480 or write to us at Commerce Bank, PO Box 411036, Kansas City, MO 64141-1036. You should also call the number or write to the address listed above if you believe a transfer has been made using the information from your check without your permission.

**BUSINESS DAY**

Our Business Days are Monday through Friday. Federal Reserve holidays are not included.

**TYPES OF AVAILABLE TRANSFERS AND LIMITS ON TRANSFERS**

Account Access. The following EFTs are only available if you request the Special Connections<sup>SM</sup> Feature. Depending on the type of accounts that Commerce determines from time-to-time are eligible for the Special Connections Feature as well as which of your accounts you choose to access using the Special Connections Feature, you may use your Card to perform the following functions where otherwise permitted:

**ATM Transaction**

At the ATM, insert your Card and enter the credit card PIN that you established for this Card to (i) withdraw cash from, deposit money in, transfer funds between, or learn the balances in your checking, regular savings or money-market accounts; (ii) use funds from your checking, regular savings, and money-market accounts to make payments on your Commerce credit cards, lines of credit or loans or (iii) take cash advances on your Commerce credit cards.

The account(s) you designate for ATM accessibility will be considered your Special Connections<sup>SM</sup> Feature at the ATM Account(s) ("ATM Account"). If you wish to designate one or more checking accounts as an ATM Account, then you must designate one of those checking accounts as your Point of Sale Account as defined below. In order to have ATM access to your checking accounts, you must at all times maintain a Point of Sale Account. If you no longer have a Point of Sale Account, then you will lose ATM access to all of your checking accounts.

Commerce has no control over the functionalities offered at non-Commerce ATMs. Some or all of these features may not be available at all non-Commerce ATMs and some ATMs may allow you to perform other functions not mentioned here, including the ability to make purchases (e.g. stamps), if at any time you use a non-Commerce ATM to request to take money from an account that you do not have or if the non-Commerce ATM does not prompt you to select a specific account from which to take the money, then you agree that Commerce will attempt to comply with your request by providing you with money from one of your open ATM Accounts. Cash withdrawals may be taken from any open deposit ATM Account owned by you and cash advances may be taken from any credit card ATM Account owned by you.

**Point of Sale Transaction**

You may designate one (1) checking account as your Special Connections<sup>SM</sup> Feature at the Point of Sale Account ("Point of Sale Account"). At merchants that have agreed to accept the Card on networks utilized by us, you can use funds in your Point of Sale Account to pay for your purchases. The use of your Card in this manner 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.

Only Commerce checking accounts are eligible for this functionality and only one (1) Commerce Bank checking account can be designated as the Point of Sale Account at any one time. Your Point of Sale Account shall always remain as an ATM Account. If at any time you instruct Commerce to remove the Point of Sale capabilities from your card, you will no longer have access to any of your checking accounts at the ATM.

ATM and Point of Sale transactions will post to your checking account(s) as detailed in your Deposit Agreement.

#### **Foreign Transaction**

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, money-market, regular savings, Commerce Visa or Commerce MasterCard.

**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 deposit account, except as provided by federal regulations limiting preauthorized transfers. By federal regulation, 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 money market-type account).

**Limitation on Dollar Amount of Transfers.** The balance available for authorizing purchases and cash withdrawals is the lesser of 1) your available deposit account balance, plus any credit available through an overdraft protection line of credit 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 up to the lesser of your 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.

**Online Gambling.** You agree that you will not use your card for any purpose that has been deemed illegal. We reserve the right to deny authorization requests from online gambling merchants, whether or not online gambling is illegal in the state in which you use your card.

**Reservations and Merchant Authorization.** Under certain circumstances, a merchant (e.g., hotel) may require the use of a card to guarantee reservations that may result in a hold on the available funds in the account. If you cancel any guaranteed reservation made using the card, you must obtain a cancellation number; if you fail to do so, the hold placed for the guaranteed reservation will not be canceled and the amount will be held against the balance in the account. This may limit your future transactions. Further, if the merchant subsequently charges the amount of the guaranteed reservation to the account, we will not be obligated to re-credit the account if you fail to obtain a cancellation number. In addition, authorizations issued for card transactions must be canceled when you initiate a card transaction and subsequently use another form of payment for the transaction such as a credit card or cash, since failure to have the authorization canceled may also result in a hold on funds in the account and limit your future transactions.

#### **POINT OF SALE TRANSACTIONS**

The use of your card with the Special Connections<sup>SM</sup> Feature 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. Any person or merchant honoring your card may be required to obtain approval or authorization for any transaction. When we approve a non-PIN transaction (which may or may not require your signature), we may immediately reduce the available balance in your checking account by the authorization amount requested by the merchant even though we have not received the transaction electronically for payment, which may differ from the final posted amount.

This authorization amount will not be available 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 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. 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 with the Special Connections<sup>SM</sup> Feature, except recurring preauthorized transfers as described in this Agreement.

**Overdrafts.** You are responsible for all authorized transactions initiated by use of your card with the Special Connections<sup>SM</sup> Feature. If a negative balance (overdraft) in your checking account results from the use of the card with the Special Connections Feature, you will pay us on demand this negative balance and our then current charge for overdrafts, if you have an overdraft line of credit (Checking Plus) for an account, you are bound by the rules and regulations that apply to that credit privilege (Overdraft Protection). In addition, if your checking account is closed before transactions are posted, you will pay us on demand the outstanding amount.

#### **FEES**

Fees for All Electronic Fund Transfer services are disclosed in our fee schedule. You will receive a fee schedule at account opening. You may request a copy of our current fee schedule at any Commerce branch or by contacting 1-800-453-2265. 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.

#### **RIGHT TO RECEIVE DOCUMENTATION OF TRANSFERS**

Terminal Receipts. You will get a receipt at the time you make any transfer to or from your deposit account using an ATM or electronic POS terminal.

**Preauthorized Credits.** If you have arranged to have direct deposits made to your deposit account at least once every 60 days from the same person or company, you can call us at 1-800-746-6704 to find out whether or not the deposit has been made.

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

#### **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. Merchants with whom you've shared your account number may be updated with new account information to ensure the continuation of your payment agreement.
- In order to verify the existence and condition of your account for a third party, such as a consumer reporting agency or merchant.
- In order to comply with government agency or court orders.
- If you give us your permission.
- In accordance with our current Privacy Policy Notice.

#### **RIGHT TO STOP PAYMENT OF PREAUTHORIZED TRANSFERS AND PROCEDURES FOR DOING SO. RIGHT TO RECEIVE NOTICE OF VARYING AMOUNTS; AND OUR LIABILITY FOR FAILURE TO STOP PAYMENT**

If you have told us in advance to make regular payments out of your deposit account, you can stop any of these payments. Here's how: Call us at 1-800-617-7480 or write us at Commerce Bank, PO Box 411036, Kansas City, MO 64141-1036 in time for us to receive your request three 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 three business days or more before the transfer is scheduled, and we do not do so, we will be liable for your losses or damages.

**Our Liability for Failure to Make Transfers.** If we do not complete a transfer to or from your deposit 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.

#### **ERROR RESOLUTION PROCEDURES**

In case(s) of errors or questions about your EFTs, telephone us at 1-800-617-7480 or write us at Commerce Bank, PO Box 411036, Kansas City, MO 64141-1036 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 deposit statement on which the problem or error appeared.

- Tell us your name and account number.
- Tell us the name of the merchant, the transaction date and the dollar amount of the suspected error.
- Describe the error or the 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 if you have already attempted to resolve the issue directly with the merchant.
- 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 deposit 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 deposit 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.

#### **LOGGLE FEATURE**

Commerce may add "loggle" to any Qualified Commerce Visa or MasterCard Credit Card Account.

#### **DEMAND DEPOSIT ACCOUNT**

You may link up to two (2) DDAs to Your Qualified Commerce Credit Card Account for the use of the loggle<sup>SM</sup> payment feature.

If you link a Commerce DDA to Your Account, that DDA must be an open checking account. You must have an ownership relationship to that DDA in order to link it to Your credit card Account. Any person using the Account and/or related Card(s) with the expressed or implied permission of any of the applicants ("Authorized Users") will have access to the linked DDA through the use of Your Account.

Any DDA that has been designated by Commerce as having a garnishment, a closed-to-posting restriction, or has been forced to close by Commerce, will not





be eligible to link to Your Account for the purpose of the toggle<sup>®</sup> payment feature. Small Business banking accounts will not be eligible to link to Your Account for the purpose of the toggle<sup>®</sup> payment feature.

If You link a non-Commerce DDA to Your Account, You must provide Commerce with the account number and the routing information for that financial institution. Certain transaction restrictions may apply to such non-Commerce DDAs. Please refer to such bank's terms and conditions of Your DDA for applicable fees, restrictions and/or limitations of Your DDA.

**PAYMENT PREFERENCES**

"Payment Preferences" means the selection of a category, setting and/or amount You choose to determine if a credit card purchase is to be paid for from your linked DDA or if it is to remain a part of your credit card balance.

**PAY NOW<sup>™</sup>**

"Pay Now<sup>™</sup>" means a credit card purchase that will be automatically paid for from Your DDA according to Your Payment Preferences. Any purchase made by You or an Authorized User with Your Account, will be paid for from the DDA that has been linked to Your Account, and in accordance with the Payment Preferences that have been selected by the applicants of the Account.

When a toggle<sup>®</sup> credit is posted to your Account, we reserve the right to place a temporary hold on the available credit created by the toggle<sup>®</sup> credit. Toggle<sup>®</sup> does not, nor is it intended to, shorten the time-frame in which your available credit is replenished after a payment to your Account.

Purchases may take 1-2 business days to post to Your Account following the date of Purchase. After the Purchase has posted to Your Account, an ACH may take 1-2 business days to appear as a debit on Your DDA.

Payments are not applied to the required minimum payment due on Your Statement each month. You will still have a required minimum payment due each month, which will appear on Your Statement and will be subject to the terms of Your cardholder agreement.

**PAY LATER<sup>™</sup>**

"Pay Later<sup>™</sup>" means any Purchase that is made with Your Account that will not be automatically paid for from a DDA, and will become a part of your outstanding credit card balance.

You may choose to use the Pay Later<sup>™</sup> feature for Your Purchases by choosing not to activate a specific Payment Preference, by deactivating a previously chosen Payment Preference, by cancellation of a linked DDA, or by the cancellation of the toggle<sup>®</sup> payment feature from Your credit card Account.

**UNWIND<sup>™</sup>**

"Unwind<sup>™</sup>" means the ability to return funds that were used to pay for a Purchase from Your DDA with the Pay Now<sup>™</sup> feature, and to have the original Purchase placed back on to Your Account.

You will have up to 30 calendar days to use the Unwind<sup>™</sup> feature for a Pay Now<sup>™</sup> feature Purchase. When the Purchase posts back to Your Account, it will post with the original transaction date, and will be subject to interest charges according to the terms of Your Cardholder Agreement. We reserve the right to limit the total amount of your Unwind<sup>™</sup> feature requests from exceeding the available credit for Your Account.

**TOGGLE ON DEMAND<sup>™</sup>**

"Toggle On Demand<sup>™</sup>" means any credit card purchase that You manually choose to be paid from either Your DDA or reward points after the transaction posts to Your Account.

**ACH RETURNS**

If an ACH payment request is returned for any reason, the original Purchase that indicated that ACH payment request will be posted back to Your Account, and will be due according to the terms of Your Cardholder Agreement.

An ACH return for any reason will result in the deactivation of any active Payment Preferences for the DDA that caused the return, and any other DDA that might share an active Payment Preference. Your Payment Preferences will remain deactivated until such time that you re-activate Your Payment Preferences.

If Your Payment Preferences are not active, any pending and future Purchases that previously matched that Payment Preference, will post to Your Account, and will not initiate an ACH payment request. These Purchases will become a part of your outstanding credit card balance with Commerce, and will be due according to the terms of Your Cardholder Agreement.

If You have linked a Commerce DDA to Your Account, any ACH payment request that would result in an overdraft of Your DDA will be returned to Your Account, and no overdraft or insufficient funds fees will be assessed to You, if you have linked a non-Commerce DDA to Your Account. You may be assessed overdraft and/or insufficient funds fees according to that financial institution's deposit agreement.

**toggle<sup>®</sup> ALERTS**

Commerce will use the email address provided by You at the time of the Account(s) or Card(s) opening to notify you of important changes in regards to the toggle<sup>®</sup> payment feature for Your Account. You will not be able to turn off these notifications. You agree that You are responsible for maintaining a valid email address and agree to notify us of any change in Your email address. You can change the email address for account notification at any time through Commerce Online Banking. Should delivery of the account notification be unsuccessful, it remains Your responsibility to monitor Your toggle<sup>®</sup> Payment Preferences in a timely manner from Commerce Online Banking.

**GENERAL TERMS & CONDITIONS**

You must be enrolled in a Commerce Rewards Program in order to receive rewards for Your Purchases.

Commerce reserves the right, in its sole discretion, to suspend, cancel or modify the toggle<sup>®</sup> payment feature at any time and for any reason and without prior notice. Commerce reserves the right, in its sole discretion, to add, delete, change or revise these Terms and Conditions including, but not limited to, qualifications for participation in toggle<sup>®</sup>.

Commerce reserves the right, in its sole discretion, to disqualify any Accountholder from participation in toggle<sup>®</sup> in cases of actual or suspected abuse, fraud, violations of these Terms and Conditions or any actual or suspected abuse or fraud with respect to the Account or DDA.

Neither Commerce nor its third-party service providers, their respective employees, officers, affiliates or agents will be liable to You for any action or inaction any of them take or fail to take with respect to toggle<sup>®</sup> or any changes to these Terms and Conditions.

All trademarks, service marks and trade names used by Commerce for toggle<sup>®</sup>, including the toggle<sup>®</sup> design are property of Commerce. No use of these may be made without the prior written authorization of Commerce.

By using toggle<sup>®</sup>, You agree to all of the toggle<sup>®</sup> features, limitations and restrictions contained in these Terms and Conditions as well as any additional terms and conditions contained in any programs, promotions or transactions that may be offered to You from time-to-time and any terms and conditions contained in any document issued to You by Commerce.

This authorization is to remain in effect until Commerce has received electronic notice of termination from You. You may terminate toggle<sup>®</sup> electronically through Online Banking, or by contacting us at 1-800-545-2103. Your notice must be sent in such time and manner as to afford Commerce Bank a reasonable opportunity to act upon the termination (but in no event less than three business days). Commerce reserves the right to decline or cancel toggle<sup>®</sup> service at any time.

# Cardholder Agreement

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**Mrs. Dawn Greathouse**  
33 Lexington Dr.  
Fairview Heights, IL 62208-2138

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Alleges Commerce Bank Charges Cardholders Excessive Interest Rates Under MO Law](#)

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