

SECURITIES AND EXCHANGE COMMISSION

FORM S-8 POS

Post-effective amendment to a S-8 registration statement

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FILER

**Bank of Commerce Holdings**

CIK: **702513** | IRS No.: **942823865** | State of Incorp.: **CA** | Fiscal Year End: **1231**  
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SIC: **6022** State commercial banks

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SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

**POST-EFFECTIVE AMENDMENT NO. 1**

to

**FORM S-8**

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

**BANK OF COMMERCE HOLDINGS**  
(Exact name of registrant as specified in its charter)

California  
(State of incorporation)

94-2823865  
(IRS Employer Identification No.)

555 Capitol Mall, Suite 1255  
Sacramento, California  
(Address of principal executive offices)

95814  
(Zip Code)

**BANK OF COMMERCE HOLDINGS AMENDED AND RESTATED 2010 EQUITY INCENTIVE PLAN**  
(Full title of the plan)

Randall S. Eslick  
President and Chief Executive Officer  
Bank of Commerce Holdings  
555 Capitol Mall, Suite 1255  
Sacramento, California 95814  
Telephone (800) 421-2575  
(Name, address, and telephone number of agent for service)

**Copies to:**

Mary Ann Frantz  
Miller Nash Graham & Dunn LLP  
111 SW Fifth Avenue, Suite 3400  
Portland, Oregon 97204  
Telephone (503) 224-5858

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.

## EXPLANATORY STATEMENT

Registration Statement on Form S-8 (File No. 333-143321) (the “Registration Statement”), initially filed May 29, 2007, by Bank of Commerce Holdings (the “Registrant”), registered 620,000 shares of common stock of the Registrant for issuance under the Bank of Commerce Holdings 2008 Stock Option Plan. Subsequently, the 2008 Stock Option Plan was amended in 2010 and 2012 and is now called the Amended and Restated 2010 Equity Incentive Plan (the “Plan”).

This Post-Effective Amendment No. 1 to the Registration Statement is being filed by the Registrant to reflect the subsequent amendments to the Plan.

## PART II

### INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

#### Item 3. Incorporation of Documents by Reference.

The following documents filed by the Registrant with the Securities and Exchange Commission are incorporated by reference in this registration statement:

- (a) The Registrant's Annual Report on Form 10-K for the year ended December 31, 2018.
- (b) The Registrant's Quarterly Reports on Form 10-Q for the quarters ended March 31, 2019, and June 30, 2019.
- (c) The Registrant's Current Reports on Form 8-K filed (not furnished) on January 18, 2019, February 1, 2019, March 27, 2019 (as amended by Amendment No. 1 filed on March 27, 2019), April 15, 2019, April 19, 2019, May 20, 2019 (as amended by Amendment No. 1 filed on July 17, 2019), May 23, 2019, June 19, 2019, and July 19, 2019.
- (d) The description of the Registrant's Common Stock contained in Exhibit 99.1 to the Registrant's Form 8-K filed on May 23, 2019.

Except to the extent that information is deemed furnished and not filed pursuant to securities laws and regulations, all documents filed by the Registrant pursuant to Sections 13(a), 13(c), 14, or 15(d) of the Securities Exchange Act of 1934, as amended, subsequent to the date hereof and prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, shall also be deemed to be incorporated by reference herein and to be a part hereof from the dates of filing of such documents.

Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this registration statement to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this registration statement.

#### Item 4. Description of Securities.

Not applicable.

#### Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

Indemnification

The California General Corporation Law (the “CGCL”) provides a detailed statutory framework covering limitation of liability of directors in certain instances and indemnification of any officer or other agent of a corporation who is made or threatened to be made a party to any legal proceeding by reason of his or her services on behalf of such corporation.

With respect to limitation of liability, the CGCL permits a California corporation to adopt a provision in its articles of incorporation reducing or eliminating the liability of a director to the corporation or its shareholders for monetary damages for breach of the fiduciary duty of care, provided that such liability does not arise from certain proscribed conduct (including intentional misconduct and breach of duty of loyalty). The CGCL in this regard relates only to actions brought by shareholders on behalf of the corporation (i.e., “derivative actions”) and does not apply to claims brought by outside parties.

The Registrant’s Restated Articles of Incorporation limit the liability of directors of the Registrant to the fullest extent permissible under the CGCL. The Restated Articles of Incorporation further provide that the Board of Directors may by bylaw, agreement or otherwise provide for the indemnification of agents to the fullest extent permissible under the CGCL.

The Registrant’s Amended and Restated Bylaws provide as follows:

“Agent” means any person who is or was a director, officer, employee or other agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another foreign or domestic corporation, partnership, joint venture, trust or other enterprise, or was a director, officer, employee or agent of a foreign or domestic corporation that was a predecessor corporation of the corporation or of another enterprise at the request of such predecessor corporation; “proceeding” means any threatened, pending or completed action or proceeding, whether civil, criminal, administrative or investigative; and “expenses” include without limitation attorneys’ fees and any expenses of establishing a right to indemnification.

The Registrant shall indemnify any person who was or is a party or is threatened to be made a party to any proceeding (other than an action by or in the right of the Registrant to procure a judgment in its favor) by reason of the fact that such person is or was an agent of the Registrant, against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with such proceeding if such person acted in good faith and in a manner such person reasonably believed to be in the best interests of the Registrant and, in the case of a criminal proceeding, if such person had no reasonable cause to believe that such person’s conduct was unlawful. The termination of any proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that such person did not act in good faith and in a manner which such person reasonably believed to be in the best interests of the Registrant or that such person had reasonable cause to believe that such person’s conduct was unlawful.

The Registrant shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action by or in the right of the Registrant to procure a judgment in its favor by reason of the fact that such person is or was an agent of the Registrant, against expenses actually and reasonably incurred by such person in connection with the defense or settlement of such action if such person acted in good faith, in a manner such person believed to be in the best interests of the Registrant.

No indemnification will be made:

(1) In respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Registrant in the performance of such person’s duty to the Registrant, unless and only to the extent that the court in which such proceeding is or was pending shall determine upon application that, in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for the expenses which such court shall determine;

(2) Of amounts paid in settling or otherwise disposing of a threatened or pending action, with or without court approval; or

(3) Of expenses incurred in defending a threatened or pending action, which is settled or otherwise disposed of without court approval.

To the extent that an agent of the Registrant has been successful on the merits in defense of any proceeding or in defense of any claim, issue or matter therein, the agent shall be indemnified against expenses actually and reasonably incurred by the agent in connection therewith.

Any indemnification shall be made by the Registrant only if authorized in the specific case, upon a determination that indemnification of the agent is proper in the circumstances because the agent has met the applicable standard of conduct, by:

(1) A majority vote of a quorum consisting of directors who are not parties to such proceeding;

(2) If such a quorum of directors is not obtainable, by independent legal counsel in a written opinion;

(3) Approval or ratification by the affirmative vote of a majority of the shares of the Registrant represented and voting at a duly held meeting at which a quorum is present (which shares voting affirmatively also constitute at least a majority of the required quorum) or by the written consent of holders of a majority of the outstanding shares entitled to vote; for such purpose, the shares owned by the person to be indemnified shall not be considered outstanding or entitled to vote thereon; or

(4) The court in which such proceeding is or was pending, upon application made by the Registrant or the agent or the attorney or other person rendering services in connection with the defense, whether or not such application by the agent, attorney or other person, is opposed by the Registrant.

Expenses incurred in defending any proceeding may be advanced by the Registrant prior to the final disposition of such proceeding upon receipt of an undertaking by or on behalf of the agent to repay such amount unless it shall be determined ultimately that the agent is entitled to be indemnified as authorized.

Nothing shall affect any right to indemnification to which persons other than directors and officers of the Registrant or any subsidiary thereof may be entitled by contract or otherwise.

No indemnification or advance shall be made in any circumstance where it appears:

(1) That it would be inconsistent with a provision of the Restated Articles of Incorporation, a resolution of the shareholders or an agreement in effect at the time of the accrual of the alleged cause of action asserted in the proceeding in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification; or

(2) That it would be inconsistent with any condition expressly imposed by a court in approving a settlement.

With respect to indemnification, the CGCL provides that to the extent any officer, director or other agent of a corporation is successful "on the merits" in defense of any legal proceeding to which such person is a party or is threatened to be made a party by reason of his or her service on behalf of such corporation or in defense of any claim, issue, or matter therein, such agent shall be indemnified against expenses actually and reasonably incurred by the agent in connection therewith, but does not require indemnification in any other circumstance. The CGCL also provides that a corporation may indemnify any agent of the corporation, including officers and directors, against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in a third-party proceeding against such person by reason of his or her services on behalf of the corporation, provided the person acted in good faith and in a manner he or she reasonably believed to be in the best interests of such corporation. The CGCL further provides that in derivative suits a corporation may indemnify such a person against expenses incurred in such a proceeding, provided such person acted in good faith and in a manner he or she reasonably believed to be in the best interests of the corporation and its shareholders. Indemnification is not available in derivative actions (i) for amounts paid or expenses incurred in connection with a matter that is settled or otherwise disposed of without court approval or (ii) with respect to matters for which the agent shall have been adjudged to be liable to the corporation unless the court shall determine that such person is entitled to indemnification.

The CGCL permits the advancing of expenses incurred in defending any proceeding against a corporate agent by reason of his or her service on behalf of the corporation upon the giving of a promise to repay any such sums in the event it is later determined that such person is not entitled to be indemnified. Finally, the CGCL provides that the indemnification provided by the statute is not exclusive of other rights to which those seeking indemnification may be entitled, by bylaw, agreement or otherwise, to the extent additional rights are authorized in a corporation's articles of incorporation. The law further permits a corporation to procure insurance on behalf of its directors, officers and agents against any liability incurred by any such individual, even if a corporation would not otherwise have the power under applicable law to indemnify the director, officer or agent for such expenses.

The Registrant has entered into Indemnification Agreements with each of its directors. The Indemnification Agreements codify procedural mechanisms pursuant to which directors may enforce the indemnification rights that such directors are granted under the Registrant's Restated Articles of Incorporation and Amended and Restated Bylaws. The Indemnification Agreements provide that, if so requested by the indemnitee, the Registrant shall advance expenses without regard to the indemnitee's ultimate entitlement to indemnification under the agreement and further provide that the execution and delivery of the agreement shall constitute an undertaking providing that the indemnitee undertakes to the fullest extent permitted by law to repay the advance if and to the extent that it is ultimately determined by a final, non-appealable decision rendered by a court of competent jurisdiction that the indemnitee is not entitled to be indemnified by the Registrant.

The Registrant has entered into Employment Agreements with certain of its executive officers that provide that the Registrant and its banking subsidiary (the "Bank") shall indemnify and hold harmless each such executive, to the maximum extent permitted under applicable law and the Amended and Restated Bylaws of each of the Registrant and the Bank, in the event that such executive is made a party or threatened to be made a party to any action, suit or proceeding, by reason of the fact that such executive is or was a director or executive officer of the Registrant or the Bank. Costs and expenses incurred by such executive in defense of such proceeding shall be paid in advance of the final disposition of such litigation upon receipt by the Registrant and the Bank of: (i) a written request for payment; (ii) appropriate documentation of the costs and expenses for which indemnification is being sought; and (iii) an undertaking by or on behalf of the executive to repay the amounts so paid if it shall be ultimately determined that the executive is not entitled to be indemnified by the Registrant or the Bank under the Employment Agreement.

#### Insurance

The Registrant maintains directors' and officers' liability insurance under which the Registrant's directors and officers are insured against loss (as defined) as a result of claims brought against them based upon their acts or omissions in such capacities, including civil liabilities under the Securities Act of 1933.

#### Item 7. Exemption from Registration Claimed.

Not applicable.

#### Item 8. Exhibits.

Exhibit  
Number

Description of Document

- |      |  |
|------|--|
| 5    | <a href="#">Opinion of Miller Nash Graham &amp; Dunn LLP as to the legality of the securities being registered.</a>  |
| 23.1 | <a href="#">Consent of Moss Adams LLP, Independent Registered Public Accounting Firm. Incorporated by reference to Exhibit 23.1 to the Registrant's Annual Report on Form 10-K for the year ended December 31, 2018.</a> |
| 23.2 | <a href="#">Consent of Miller Nash Graham &amp; Dunn LLP (included in Exhibit 5).</a>  |
| 24   | <a href="#">Power of attorney of certain officers and directors.</a>   |
| 99.1 | <a href="#">Amended and Restated 2010 Equity Incentive Plan.</a>   |

Item 9. Undertakings.

(a) The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933 ("Securities Act");

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

Provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrant pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 ("Exchange Act") that are incorporated by reference in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to Section 13(a) or 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(h) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the provisions described in Item 6 above, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.



SIGNATURES

The Registrant.

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Post-Effective Amendment No. 1 to the Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the city of Redding, state of California, on the 5th day of August, 2019.

BANK OF COMMERCE HOLDINGS

By: /s/ James A. Sundquist

James A. Sundquist  
Executive Vice President and Chief Financial Officer

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities indicated as of the 5th day of August, 2019.

<u>Signature</u>	<u>Title</u>
(1) Principal Executive Officer and Director:	
<u>/s/ Randall S. Eslick</u> Randall S. Eslick	President and Chief Executive Officer and Director
(2) Principal Financial and Accounting Officer:	
<u>/s/ James A. Sundquist</u> James A. Sundquist	Executive Vice President and Chief Financial Officer
(3) A majority of the Board of Directors:	
*ORIN N. BENNETT	Director
*GARY R. BURKS	Director
*JOSEPH Q. GIBSON	Director
*JON W. HALFHIDE	Director
*DAVID J. INDERKUM	Director
*LINDA J. MILES	Director
*KARL L. SILBERSTEIN	Director
*TERENCE J. STREET	Director
*LYLE L. TULLIS	
<u>*By/s/ James A. Sundquist</u> James A. Sundquist Attorney-in-fact	

U.S. Bancorp Tower  
111 S.W. Fifth Avenue, Suite 3400  
Portland, Oregon 97204

OFFICE 503.224.5858  
FAX 503.224.0155

Miller Nash Graham & Dunn LLP

August 5, 2019

Bank of Commerce Holdings  
555 Capitol Mall, Suite 1255  
Sacramento, California 95814

Subject: Registration Statement on Form S-8

Ladies and Gentlemen:

Reference is made to the Registration Statement on Form S-8 (Registration No. 333-143321) (the "Registration Statement") filed by Bank of Commerce Holdings, a California corporation (the "Company"), with the Securities and Exchange Commission (the "Commission") relating to the registration of 620,000 shares of the Company's common stock, no par value (the "Registered Shares"), issuable under the Company's Amended and Restated 2010 Equity Incentive Plan (the "Plan"). As of May 21, 2019, as a result of the adoption of the Bank of Commerce Holdings 2019 Equity Incentive Plan, no further Awards (as defined in the Plan) may be granted under the Plan.

In connection with this opinion, we have examined originals or copies, certified or otherwise identified to our satisfaction, of (i) the Company's Restated Articles of Incorporation, (ii) the Company's Amended and Restated Bylaws, (iii) the Registration Statement, (iv) the Plan, (v) the Bank of Commerce Holdings 2019 Equity Incentive Plan, and (vi) such corporate records, agreements, documents, and other instruments, and such certificates of comparable documents of public officials and of officers and representatives of the Company, and have made such inquiries of such officers and representatives, as we have deemed relevant and necessary or appropriate as a basis for the opinion set forth below.

In making our examination of documents, we have assumed that the parties thereto, other than the Company, had or will have the power, corporate or other, to enter into and perform all obligations thereunder and have also assumed the due authorization by all requisite action, corporate or other, and the execution and delivery by such parties of such documents and the validity and binding effect thereof on such parties. As to any facts material to the opinions expressed herein, we have relied upon statements and representations of officers and other representatives of the Company and others and of public officials.

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Based upon, subject to and limited by the foregoing, we are of the opinion, as to the Registered Shares that have been issued, or remain issuable pursuant to Awards outstanding under the Plan, that, upon (a) issuance of the Registered Shares in accordance with the terms of the Plan and the instruments executed pursuant to the Plan governing the awards to which any such Registered Shares relate, and (b) receipt by the Company of the consideration for the Registered Shares specified in the applicable resolutions of the Board of Directors or a duly authorized committee thereof and in the Plan or any such instruments, the Registered Shares have been or will be validly issued, fully paid, and nonassessable.

The opinion expressed herein is limited to the corporate laws of the State of California and the federal laws of the United States of America, and we express no opinion as to the effect on the matters covered by this letter of the laws of any other jurisdictions.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement. In giving such consent, we do not thereby admit that we are included in the category of persons whose consent is required under Section 7 of the Securities Act of 1933, as amended, or the rules and regulations of the Commission promulgated thereunder.

Very truly yours,

/s/ MILLER NASH GRAHAM & DUNN LLP

MILLER NASH GRAHAM & DUNN LLP

## POWER OF ATTORNEY

Each person whose signature appears below designates and appoints RANDALL S. ESLICK and JAMES A. SUNDQUIST, and either of them, true and lawful attorneys-in-fact and agents, to sign a Post-Effective Amendment No. 1 to the Registration Statement on Form S-8 (Registration No. 333-143321) filed by Bank of Commerce Holdings, a California corporation, with the Securities and Exchange Commission under the Securities Act of 1933, as amended. Each person whose signature appears below also grants to these attorneys-in-fact and agents full power and authority to perform every act and execute any instruments that they deem necessary or desirable in connection with the preparation and filing of the registration statement, as fully as he or she could do in person, hereby ratifying and confirming all that the attorneys-in-fact and agents or their substitutes may lawfully do or cause to be done.

IN WITNESS WHEREOF, this power of attorney has been executed by each of the undersigned as of this 16<sup>th</sup> day of July, 2019.

Signature	Title
<u>/s/ Randall S. Eslick</u> Randall S. Eslick	President and Chief Executive Officer and Director (Principal Executive Officer)
<u>/s/ James A. Sundquist</u> James A. Sundquist	Executive Vice President and Chief Financial Officer (Principal Financial and Accounting Officer)
<u>/s/ Orin N. Bennett</u> Orin N. Bennett	Director
<u>/s/ Gary R. Burks</u> Gary R. Burks	Director
<u>/s/ Joseph Q. Gibson</u> Joseph Q. Gibson	Director
<u>/s/ Jon W. Halfhide</u> Jon W. Halfhide	Director
<u>/s/ David J. Inderkum</u> David J. Inderkum	Director
<u>/s/ Linda J. Miles</u> Linda J. Miles	Director
<u>/s/ Karl L. Silberstein</u> Karl L. Silberstein	Director
<u>/s/ Terence J. Street</u> Terence J. Street	Director
<u>/s/ Lyle L. Tullis</u> Lyle L. Tullis	Director

**BANK OF COMMERCE HOLDINGS**

**AMENDED AND RESTATED  
2010 EQUITY INCENTIVE PLAN**

*Recitals*

- A. Bank of Commerce Holdings originally adopted the “2008 Stock Option Plan” in May of 2007. That plan was amended and restated, and was renamed the “2010 Equity Incentive Plan” in May of 2010.
- B. Bank of Commerce Holdings now wishes to further amend the 2010 Equity Plan and to restate the plan, as so amended, in its entirety as provided herein.

*Plan*

**1. Purpose of the Plan**

The purposes of the Plan are (a) to attract and retain the most talented employees and directors available, and (b) to promote the growth and success of the Company by aligning the long-term interests of employees and directors with those of the shareholders by providing an opportunity to acquire an interest in the Company and by providing both rewards for exceptional performance and long term incentives for future contributions to the success of the Company and its subsidiaries.

**2. Definitions**

As used herein, the following definitions shall apply:

- a. “Award” means an award under this Plan of an Option, Restricted Stock or Restricted Stock Unit.
- b. “Award Agreement” means a written agreement entered into by and between each Grantee and Company setting forth terms and conditions relating to an Award granted to such Grantee. The agreement shall take such form, and contain such terms and conditions, as shall be determined from time to time by the Committee in its sole discretion.
- c. “Beneficial Ownership” has the meaning set forth in Rule 13d-3 promulgated under the Exchange Act.
- d. “Board” means the board of directors of Company.
- e. “Cause” means any of the following: (i) dishonesty in performing one’s duties to Company or a Subsidiary, (ii) willful misconduct, or a willful failure to act, with the intent of injuring, or having the effect of injuring, the reputation, business or business relationships of Company or a Subsidiary, or any of their officers, directors or employees; (iii) conviction of a felony or of any crime involving moral turpitude or that reflects unfavorably on Company or a Subsidiary; (iv) willful or prolonged absence from work or failure for any reason to perform duties as an Employee or Director, unless excused by Company or a Subsidiary, whichever is the entity for which services are performed; and (v) breach of any material terms of an employment or service agreement with Company or a Subsidiary, including an Award Agreement.

f. "Change in Control" means the first day that any one or more of the following conditions shall have been satisfied:

(i) the sale, liquidation or other disposition of all or substantially all of the Company's assets in one or a series of related transactions;

(ii) an acquisition (other than directly from the Company) of any outstanding voting securities by any person after which such person (as the term is used for purposes of Section 13(d) or 14(d) of the Exchange Act) has Beneficial Ownership of twenty-five percent (25%) or more of the then outstanding voting securities of the Company, other than as the result of a Board approved transaction;

(iii) during any 12-consecutive month period, the individuals who, at the beginning of such period, constitute the Board ("Incumbent Directors") cease for any reason other than death to constitute at least a majority of the members of the Board; provided however that except as set forth in this Section 2(f)(iii), an individual who becomes a member of the Board subsequent to the beginning of the 12-month period, shall be deemed to have satisfied such 12-month requirement and shall be deemed an Incumbent Director if such Director was elected by or on the recommendation of or with the approval of at least two-thirds of the Directors who then qualified as Incumbent Directors either actually (because they were Directors at the beginning of such period) or by operation of the provisions of this section; if any such individual initially assumes office as a result of or in connection with either an actual or threatened solicitation with respect to the election of Directors (as such terms are used in Rule 14a-12(c) of Regulation 14A promulgated under the Exchange Act) or other actual or threatened solicitations of proxies or consents by or on behalf of a person other than the Board, then such individual shall not be considered an Incumbent Director; or

(iv) a merger, consolidation or reorganization of the Company, as a result of which the shareholders of the Company immediately prior to such merger, consolidation or reorganization own directly or indirectly immediately following such merger, consolidation or reorganization less than fifty percent (50%) of the combined voting power of the outstanding voting securities of the entity resulting from such merger, consolidation or reorganization.

g. "Code" means the Internal Revenue Code of 1986, as amended.

h. "Common Stock" means the no par value common stock of the Company.

i. "Committee" has the meaning given such term in Section 4.a.

j. "Company" means Bank of Commerce Holdings, a California corporation.

k. "Director" means a person elected or appointed as a member of the Board or the board of directors of a Subsidiary.

l. "Disability" has the meaning given to such term in Code Section 22(e)(3).

- m. "Employee" means a person employed by Company or a Subsidiary.
- n. "Exchange Act" means the Securities Exchange Act of 1934, as amended.
- o. "Fair Market Value" means, as of any date, the value of Common Stock determined as follows:
- (i) If the Common Stock is listed on any established stock exchange or a national market system, including without limitation The Nasdaq Stock Market, its Fair Market Value shall be the closing sales price for such stock (or the closing bid price, if no sales were reported) as quoted on such exchange or system for such date (or, if such pricing information is not published for such date, the last date prior to such date for which pricing information is published), as reported in The Wall Street Journal or such other source as the Committee deems reliable; or
  - (ii) If the Common Stock is regularly quoted by recognized securities dealers but selling prices are not reported, its Fair Market Value shall be the mean of the closing bid and asked prices for such stock on such date, as reported in The Wall Street Journal or such other source as the Committee deems reliable; or
  - (iii) In the absence of an established market for the Common Stock, the Fair Market Value shall be determined in good faith by the Committee and by taking into account such criteria and information as is required to comply with Code Section 409A.
- p. "Grantee" means a person who has been granted an Award.
- q. "Incentive Stock Option" means an Option that qualifies as an "incentive stock option," as that term is defined in Code Section 422.
- r. "Nonqualified Stock Option" means an Option, other than an Incentive Stock Option.
- s. "Option" means a right granted under the Plan to purchase Common Stock. Options granted under this Plan may be either Incentive Stock Options or Nonqualified Stock Options; and the term means either or both an Incentive Stock Option and/or a Nonqualified Stock Option, as the context requires. Each Award Agreement shall state whether an Option subject to the agreement is an Incentive Stock Option or a Nonqualified Stock Option.
- t. "Plan" means this Bank of Commerce Holdings Amended and Restated 2010 Equity Incentive Plan, as it may be amended from time to time.
- u. "Restricted Stock" means a share of Common Stock, issued under the Plan that is subject to such restrictions and conditions as are set forth in the Plan and the related Award Agreement.
- v. "Restricted Stock Unit" means a right granted under the Plan to receive a payment in cash or Common Stock, as determined by the Committee, of an amount equal to the Fair Market Value, on the date of exercise of the right, of one share of Common Stock per Restricted Stock Unit. Such Fair Market Value shall not be increased or otherwise adjusted because of dividends or other distributions paid at any time on or with respect to shares of Common Stock.
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w. "SEC" means the U.S. Securities and Exchange Commission.

x. "Shareholder-Employee" means an Employee who owns, at the time an Incentive Stock Option is granted, stock representing more than ten percent (10%) of the total combined voting power of all classes of stock of Company or a Subsidiary. For this purpose, the attribution of stock ownership rules of Code Section 424(d) shall apply.

y. "Subsidiary" means, (i) in the case of an Incentive Stock Option, a corporation having a relationship with Company described in Code Section 424(f), and (ii) in the case of any other type of Award, a corporation with which Company is considered a single employer under Code Section 414(b).

z. "Vest" means that the Grantee has satisfied all conditions precedent imposed by the Plan and the related Award Agreement to his or her right to exercise an Option, to hold Restricted Stock free of any obligation to forfeit or retransfer the same to Company or to receive payments under a Restricted Stock Unit.

### **3. Stock Subject to Plan**

a. General. Subject to the adjustments provided in Section 17, the maximum number of shares of Common Stock that may be subject to Awards of all types shall be five hundred seventy-two thousand five hundred (572,500). For purposes of the foregoing sentence, shares of Common Stock that are or were made subject to an Award of Restricted Stock or Restricted Stock Units that will or may be settled in stock shall be counted against such number, unless and until the Grantee has forfeited rights in such Award by failing to satisfy any condition to Vesting. The aggregate number of shares of Common Stock that may be issued under Incentive Stock Options shall equal the maximum number of shares of Common Stock that may be subject to Awards, as described in the first sentence of this Section 3.a, reduced by the number of shares of Common Stock that have been made subject to other types of Awards.

b. Unused Shares. If any shares of Common Stock subject to an Award are not issued (for example, because the Award is forfeited or cancelled, or the Award is settled in cash, or a portion of the Award is used to satisfy applicable tax withholding obligations), then such shares shall again be available to be made subject to Awards under the Plan.

### **4. Administration of the Plan**

a. The Committee. The power and authority to administer the Plan is vested in a committee (the "Committee") in accordance with this Section 4. The Committee shall be selected by the Board and shall consist of at least three directors, each of whom shall satisfy applicable independence criteria of the stock exchange or quotation system on which the Common Stock may then be listed or quoted, be a "non-employee director" within the meaning of Rule 16b-3 promulgated under the Exchange Act, and be an "outside director" within the meaning of Code Section 162(m). If the Committee does not exist or the Board, for any reason determined by it desires to directly administer the Plan, then the Board may take any action under the Plan that would otherwise be the responsibility of the Committee. Once appointed, the Committee shall continue to serve until otherwise directed by the Board.

b. Delegation of Responsibilities. Except to the extent prohibited by applicable law or the applicable rules of a stock exchange or quotation system, the Committee may delegate all or some of its power and authority to administer the Plan to one or more of its members, or to any other person or persons selected by it. The Committee may revoke such delegation at any time.



c. Reports. At least annually, the Committee shall present a written report to the Board setting forth the following information relating to Awards granted since the date of the last such report: the date or dates of each such Award; the type of each such Award; the number of shares subject to each such Award; and the exercise price for, and Fair Market Value on the date of grant of, shares of Common Stock subject to Awards.

d. Powers of the Committee. Subject to the terms and conditions explicitly set forth in the Plan, the Committee shall have the authority and discretion to do the following:

- (1) determine the persons to whom Awards are to be granted, the times of grant, and the number of shares subject to each Award;
- (2) subject to the terms of this Plan, determine the exercise price for shares of Common Stock to be issued pursuant to the exercise of an Option; the purchase price, if any, of Restricted Stock; and the Fair Market Value of Common Stock used to determine the amount required to be paid under a Restricted Stock Unit;
- (3) determine all other terms and conditions (which need not be identical between or among Grantees) of each Award;
- (4) modify or amend the terms of any Award previously granted, or grant substitute Options, subject to the provisions of Section 20;
- (5) cancel or suspend Awards, subject to the restrictions imposed by Section 20;
- (6) interpret the Plan;
- (7) authorize any person or persons to execute and deliver Award Agreements, or to take any other actions deemed by the Committee to be necessary or appropriate, to effectuate the grant of Awards;
- (8) waive any conditions to Vesting; and
- (9) make all other determinations, and take all other actions that the Committee deems necessary or appropriate, to administer the Plan in accordance with its terms and conditions.

All decisions, determinations and interpretations of the Committee relating to the Plan and Awards shall be final and binding upon all persons, including all Grantees and any other persons interested in any Awards, unless otherwise expressly determined by a vote of a majority of the entire Board. No member of the Committee or the Board shall be liable to any person for any action or determination made in good faith with respect to the Plan or any Awards.

e. Section 16(b) Compliance and Bifurcation of Plan. It is the intention of Company that the Plan comply in all respects with Rule 16b-3 under the Exchange Act, and the Plan shall be construed in favor of its so complying. If any Plan provision is determined to not comply with such Rule 16b-3, the provision shall be deemed null and void. Notwithstanding any contrary provisions of the Plan, the Board, in its absolute discretion, may bifurcate the Plan so as to restrict, limit or condition the use of any provision of the Plan with respect to participants who are officers and directors subject to Section 16(b) of the Exchange Act, without so restricting, limiting, or conditioning the use of such provision of the Plan with respect to other participants.

## **5. Eligibility**

All Employees and Directors are eligible to be selected to be granted an Award. Notwithstanding any contrary provisions of this Plan, a Director who is not also an Employee may not be selected to be granted an Incentive Stock Option.

## **6. Granting of Awards**

a. General. Only Employees and Directors selected by the Committee, in its sole discretion, shall be granted Awards. An Award may consist solely of Incentive Stock Options, Nonqualified Stock Options, Restricted Stock, Restricted Stock Units or any combination of the foregoing. All Awards are subject to the terms and conditions of the Plan.

b. Award Agreement. Each Award shall be evidenced by an Award Agreement that sets forth the terms and conditions of the Award. A person who is granted an Award shall have no rights under the Award unless and until such person duly executes and delivers to Company an Award Agreement. An Award shall expire, and the Company shall have no further obligations with respect thereto, if the person does not so execute and deliver an Award Agreement within any period of time prescribed by the Company.

c. Consideration. The Committee shall determine the form and amount, if any, of consideration required to be paid by a Grantee with respect to an Award. Such consideration may take the form of cash, property, shares of Common Stock or services.

d. Arrangements to Cancel Restricted Stock. Company may make such arrangements as it deems necessary or appropriate to hold shares of Restricted Stock in escrow until Grantee satisfies all conditions to Vesting and to automatically cancel such shares if Grantee fails to satisfy such conditions.

## **7. Performance-Based Compensation.**

a. General. Any Award that is intended to be “performance-based compensation” within the meaning of Code Section 162(m) shall be conditioned on the achievement of one or more objective performance measures, to the extent required by Code Section 162(m), as may be determined by the Committee. The grant of an Award and the establishment of performance measures that are intended to be performance-based compensation shall be made during the period required under Code Section 162(m).

b. Maximum of Awards. The maximum number of Shares with respect to which Awards may be granted in a calendar year to any individual employee is the maximum number of Shares that may be made subject to Awards, as described in the first sentence of Section 3, reduced by the number of Shares with respect to which Awards have previously been made to all Grantees.

c. Performance Measures. Performance measures may be based on any one or more of the following: earnings; financial return ratios; increase in revenue, operating or net cash flows; cash flow return on investment; total shareholder return; market share; net operating income, operating income or net income; debt load reduction; expense management; economic value added; stock price; assets, asset quality level, charge offs, loan reserves, non-performing assets, loans, deposits, growth of loans, deposits or assets; interest sensitivity gap levels, regulatory compliance, improvement of financial rating, gross premiums written, net premiums written, premiums earned, losses and loss expenses, underwriting and administrative expenses, achievement of balance sheet or income statement objectives and strategic business objectives, consisting of one or more objectives based on meeting specific cost targets, business expansion goals and goals relating to acquisitions or divestitures. Performance measures may be based on the performance of the Company as a whole or of any one or more Subsidiaries or business units of the Company or a Subsidiary and may be measured relative to a peer group, an index or a business plan.

d. Partial Achievement. The terms of an Award may provide that partial achievement of the performance measures may result in a payment or vesting based upon the degree of achievement.

e. Adjustments. In certain circumstances the Committee may adjust performance measures; provided, however, that no adjustment may be made with respect to an Award that is intended to be performance-based compensation, except to the extent the Committee exercises such negative discretion as is permitted under applicable law for purposes of an exception under Code Section 162(m). If the Committee determines that a change in the business, operations, corporate structure or capital structure of the Company or the manner in which the Company or its Subsidiaries conducts its business or other events or circumstances render current performance measures to be unsuitable, the Committee may modify such performance measures, in whole or in part, as the Committee deems appropriate. If a Grantee is promoted, demoted or transferred to a different business unit during a performance period, the Committee may determine that the selected performance measures or applicable performance period are no longer appropriate, in which case, the Committee, in its sole discretion, may: (i) adjust, change or eliminate the performance measures or change the applicable performance period; or (ii) cause to be made a cash payment to the Grantee in an amount determined by the Committee.

## **8. Vesting of Awards**

The Committee may impose any terms and conditions on the Vesting of an Award that it determines to be appropriate, including requiring the Grantee to continue to provide services as an Employee or Director for a specified period of time or to meet performance goals established by the Committee. Such terms and conditions shall be set forth in an Award Agreement.

## **9. Exercise and Settlement of Awards**

a. Options. Grantee shall pay the full exercise price for shares of Common Stock purchased under an Option, at the time the Option is exercised, in cash or other consideration of comparable value deemed acceptable by the Committee (including by tendering, by either actual delivery of shares or by attestation, shares of Common Stock acceptable to the Committee and valued at Fair Market Value as of the date of exercise), or in any combination thereof, as determined by the Committee. The Committee may permit a Grantee to elect to pay the exercise price upon the exercise of an Option by irrevocably authorizing a third party to sell shares of Common Stock (or a portion of the shares of Common Stock sufficient to pay the exercise price) acquired upon exercise of the Option and remit to Company the sale proceeds therefrom sufficient to pay the entire exercise price and any tax withholding resulting from such exercise.

b. Restricted Stock. Company shall take such actions as it determines to be reasonably necessary to release Restricted Stock from forfeiture restrictions as soon as practicable after the Restricted Stock Vests.

c. Restricted Stock Units. Company shall settle payment of any amounts due under a Restricted Stock Unit upon exercise of such right by the Grantee; provided, however, that notwithstanding any contrary provisions of the Plan, Restricted Stock Units that become Vested shall be settled by payment of amounts owed thereunder on or before the later of (i) the date that is two and one-half (2 1/2) months after the end of the Grantee's first taxable year in which such amounts are no longer subject to a substantial risk of forfeiture, or (ii) the date that is two and one-half (2 1/2) months after the end of the first taxable year of the person for whom the Grantee performed services in which such amounts are no longer subject to a substantial risk of forfeiture.

#### **10. Terms Applicable to Options**

a. Limit on Value of Options Granted. Any number of Options may be granted from time to time to a person eligible to receive the same hereunder, except that in the case of Incentive Stock Options the aggregate Fair Market Value (determined as of the date each Option is granted) of all shares of Common Stock with respect to which Incentive Stock Options become exercisable for the first time by the Grantee in any one calendar year (under all incentive stock option plans of Company and all Subsidiaries taken together) shall not exceed \$100,000.

b. Exercise Price. The exercise price for shares of Common Stock subject to an Option shall not be less than 100% of the Fair Market Value of a share of Common Stock as of the date of grant of the Option; provided, however, that in the case of an Incentive Stock Option granted to an Employee who immediately before the grant of such Incentive Stock Option is a Shareholder-Employee, the Incentive Stock Option exercise price shall be at least 110% of the Fair Market Value of the Common Stock as of the date of grant of the Incentive Stock Option.

c. Term of Option. No Incentive Stock Option granted under the Plan shall in any event be exercisable after the expiration of ten (10) years from the date such Option is granted; provided, however, that in the case an Incentive Stock Option granted to an Employee who immediately before such Incentive Stock Option is granted is a Shareholder-Employee, the term of such Incentive Stock Option shall be for not more than five (5) years from the date such Option is granted. Subject to the foregoing and other applicable provisions of the Plan, the Committee shall determine the term of each Option in its sole discretion.

d. Exercise During Lifetime of Grantee. During the lifetime of a Grantee, only the Grantee may exercise such Option.

#### **11. Termination of Employment or Directorship**

a. Unvested Awards. Grantee shall forfeit all rights in, to and under all Awards that have not Vested prior to the time the Grantee first ceases to be an Employee or Director. Such forfeiture shall occur without the need for further action by any person.

b. Vested Awards Other than Options. All Awards, other than Options, that are Vested at the time a Grantee first ceases to be an Employee or Director shall be settled promptly provided, however, that notwithstanding any contrary provisions of the Plan; provided, however, that Restricted Stock Units that become Vested shall be settled by payment of amounts owed thereunder on or before the later of (i) the date that is two and one-half (2 1/2) months after the end of the Grantee's first taxable year in which such amounts are no longer subject to a substantial risk of forfeiture, or (ii) the date that is two and one-half (2 1/2) months after the end of the first taxable year of the person for whom the Grantee performed services in which such amounts are no longer subject to a substantial risk of forfeiture.

c. Vested Options. Options that are Vested at the time a Grantee first ceases to be an Employee or Director shall terminate on, if not exercised before, the earlier of (i) the same day of the third month after the date of termination of his status as an Employee or Director, or (ii) the expiration date of the Option provided in the Award Agreement. Notwithstanding the immediately preceding sentence:

(i) Upon the death of a Grantee who at the time of his or her death is and has been an Employee or Director at all times since the date of grant of the Option, an Option that is Vested at such time shall terminate, and may no longer be exercised, on the earlier of (a) one year after the date of death of the Grantee or at such later date as the Committee may set, in its sole discretion; or (b) the expiration date of the Option provided in the Award Agreement, except that if the expiration date of an Option should occur during the 90-day period immediately following the Grantee's death, such Option shall terminate, and may no longer be exercised, at the end of such 90-day period. The Option shall be exercisable at any time prior to such termination by the Grantee's estate, or by any person or persons who acquire the right to exercise the Option by bequest, inheritance or otherwise by reason of the death of the Grantee;

(ii) If a Grantee ceases to be an Employee or Director at any time during the term of his or her Option by reason of a Disability and the Grantee has been an Employee or Director at all times since the date of grant of the Option, an Option that is Vested at such time shall terminate, and may no longer be exercised, on the earlier of (i) one year after the date the Grantee ceases to be an Employee or Director, or (ii) the expiration date of the Option provided in his or her Award Agreement;

(iii) If a Grantee ceases to be an Employee or Director for Cause, then all Options that are Vested at such time shall terminate, and may no longer be exercised, immediately upon his or her ceasing to be an Employee or Director; and

(iv) Nonqualified Stock Options granted to a person who is a Director but who ceases thereafter to be a Director (other than due to death or Disability) shall expire at such time as the Committee shall determine, but in no event more than six (6) months after the person ceases to be a Director, and shall otherwise be exercisable on such terms and conditions as the Committee shall determine.

d. Permitted Absences From Work. A person shall not be treated as ceasing to be an Employee or Director if the interruption of his or her services as such is caused by military leave, sick leave or any other bona fide leave of absence approved by Company or a Subsidiary, whichever is the entity for which the person primarily performs services; provided, however, that in the case of Incentive Stock Options, the foregoing is subject to any restrictions of laws or regulations applicable to such Options.

## **12. Compliance with Applicable Law**

Shares of Common Stock shall not be issued pursuant to the Plan or any Award granted hereunder, unless the issuance and delivery of the shares will not violate, and can otherwise be done in a manner that complies with, the provisions of applicable law (including, without limitation, the Securities Act of 1933, as amended, and the Exchange Act), and the rules regulations of any stock exchange or quotation system on which the Common Stock may then be listed or quoted. Issuance of shares of Common Stock is further subject to the approval of counsel for Company with respect to such compliance.

## **13. Tax Compliance**

Company, in its sole discretion, may take any actions that it deems to be necessary or advisable to comply with all tax reporting and withholding requirements applicable to Awards under applicable law, including, but not limited to, withholding or causing to be withheld from any form of compensation or other amount due a Grantee such amounts as Company determines is required to be withheld.

## **14. Non-Transferability**

No Award or rights under an Award may be sold, pledged, assigned, hypothecated, transferred, or disposed of in any manner, other than by will or by the laws of descent or distribution if permitted herein. Shares of Restricted Stock may be sold, pledged, assigned, hypothecated, transferred, or disposed of only after such shares Vest.

## **15. Change in Control**

Except as otherwise provided in the Award Agreement, in the event of a Change in Control, then all Awards shall immediately Vest as of the date of the closing of such transaction, unless the Committee elects to Vest the Awards as of an earlier date. Notwithstanding the immediately preceding sentence, if the surviving, successor or acquiring corporation in the transaction (or its parent) agrees to replace Awards with rights to its shares that confer substantially the same benefits as those represented by the Awards, as determined by the Committee, then the Awards shall not Vest but shall be so replaced. The Committee shall notify each Grantee in writing of any action to Vest or replace Awards hereunder not less than twenty (20) days prior to the expected closing date of the transaction that prompts such action.

## **16. Rights as a Shareholder**

No person shall have any rights as a shareholder by reason of an Award until and unless Company actually issues and delivers shares of Common Stock to such person pursuant to the Award. In the case of Restricted Stock, the Grantee thereof shall have all the rights of a shareholder (including voting, dividend and liquidation rights) with respect to shares of Restricted Stock that are issued and delivered to the Grantee, until such shares are forfeited or reacquired by the Company in accordance with the terms of the Award.

### **17. Adjustments Upon Changes in Capitalization**

Subject to any required action by the shareholders of Company, the number of shares of Common Stock subject to Awards, the number of shares of Common Stock available for grants under additional Awards, the exercise price for shares of Common Stock specified in each outstanding Option, and the value of Common Stock used to determine amounts required to be paid under Restricted Stock Units shall be proportionately adjusted for any increase or decrease in the number of issued shares of Common Stock resulting from a stock split or other subdivision or consolidation of shares, the payment of any stock dividend on the Common Stock or any other increase or decrease in the number of such shares of Common Stock effected without receipt of consideration by Company; provided, however, that conversion of any convertible securities of Company shall not be deemed to have been “effected without receipt of consideration.” The Committee shall make such adjustments and its determination in that respect shall be final, binding and conclusive. No Incentive Stock Option shall be adjusted by the Committee pursuant to this Section 17 in a manner that causes the Incentive Stock Option to fail to continue to qualify as an “incentive stock option” within the meaning of Code Section 422. Except as otherwise expressly provided in this Section 17, no Grantee shall have any rights by reason of any stock split or other subdivision or consolidation of shares, any payment of a stock dividend, or any other increase or decrease in the number of such shares of Common Stock. Except as otherwise expressly provided in this Section 17, any issuance by Company of shares of stock of any class, or securities convertible into shares of stock of any class, shall not affect the number of shares or price of Common Stock subject to any Award, and no adjustments in Awards shall be made by reason thereof. The grant of an Award shall not affect in any way the right or power of Company to adjust, reclassify, reorganize or change its capital or business structure.

### **18. Term of the Plan**

The Plan shall become effective on the earlier of the date it is (i) adopted by the Board; or (ii) approved by the shareholders. Revisions and amendments to the Plan requiring the approval of shareholders of Company, as described in Section 20, shall be effective when approved by the shareholders. No Awards may be granted under the Plan on a date that is more than ten (10) years from the date the Plan is adopted or, if earlier, the date the Plan is approved by shareholders, provided that the approval by shareholders occur within 12 months before or after the date of adoption. In the event the Plan is terminated as provided in Section 20, it shall remain in effect with respect to any Awards granted under it that are outstanding at the time of such termination.

### **19. No Right to Employment**

Neither the adoption of the Plan nor the granting of an Award shall (i) confer upon any person a right to be employed by or to provide services to Company or any Subsidiary, or to continue such employment or service; or (ii) interfere in any way with the right of a person, or the right of Company or a Subsidiary, to terminate such employment relationship or service at any time.

### **20. Amendment or Early Termination of the Plan**

a. Amendment or Early Termination. The Board may terminate the Plan at any time. The Board may amend the Plan from time to time in such respects as the Board deems advisable, except that, without proper approval of the shareholders of Company, no such revision or amendment shall:

(i) increase the number of shares of Common Stock subject to the Plan, other than in connection with an adjustment under Section 17; or

(ii) otherwise modify the Plan in a manner that would require shareholder approval under any applicable laws or regulations or the rules of any stock exchange or quotation system on which the Common Stock may then be listed or quoted.

Subject to the foregoing, it is specifically intended that the Board or Committee may amend the Plan without shareholder approval to comply with legal, regulatory, and stock exchange or quotation system requirements and to avoid unanticipated consequences deemed by the Committee to be inconsistent with the purposes of the Plan or any Award Agreement.

b. **Modification and Amendment of Awards.** The Board or Committee may modify or amend outstanding Awards granted under the Plan, provided, however that the modification or amendment shall not, without the consent of the Grantee, impair or diminish any of the Grantee's rights or any of the obligations of Company under such Award. Except as otherwise provided in this Plan, no outstanding Award shall be terminated without the consent of the Grantee. Unless the Grantee otherwise agrees, any changes or adjustments made to outstanding Incentive Stock Options granted under this Plan shall be prospective only and shall be made in a manner that will not constitute a "modification," as defined in Code Section 424(h), and will not cause such Incentive Stock Options to fail to qualify as "incentive stock options" under Code Section 422.

c. **Re-pricing or Repurchase of Options.** The exercise price of outstanding Options may not be changed, and the Company may not conduct any offer to purchase outstanding Options for cash or exchange outstanding Options for other securities at a time when the exercise price of the outstanding Options exceeds the Fair Market Value of the Common Stock covered by the Options, except (i) with the approval of shareholders of Company, or (ii) as otherwise required or permitted in the Plan.

#### **21. Nature of Awards**

All Awards are unfunded and unsecured obligations of Company. Any bookkeeping entries maintained by Company with respect to Awards are merely for the convenience of Company. Company is not required to segregate any assets that may at any time represent an Award and no Grantee or other person shall have any rights or interests in any particular assets of Company by reason of an Award. A Grantee is a mere general unsecured creditor of Company with respect to an Award.

#### **22. IRC Section 409A**

The provisions of this Plan are intended to comply with Code Section 409A, U.S. Treasury regulations issued thereunder, and related U.S. Internal Revenue Service guidance ("409A Rules"). Such provisions will be interpreted and applied in a manner consistent with the 409A Rules so that payments and benefits provided to Employee hereunder will not, to the greatest extent possible, be subject to taxation under Code Section 409A. Notwithstanding any contrary provisions hereof, this Plan may be amended if and to the extent Bank determines that such amendment is necessary to comply with the 409A Rules.

#### **23. Construction of Certain Terms**

The term "Section" or "Sections," as used herein, shall mean a Section or Sections of this Plan, unless otherwise required by the context. The masculine form of words shall include the feminine, and vice-versa, as required by the context.

#### **24. Governing Law.**

This Plan and any agreements or other documents hereunder shall be interpreted and construed in accordance with the laws of the State of California and applicable Federal law. Any reference in this Plan or in any Award Agreement to a provision of law or to a rule or regulation shall be deemed to include any successor law, rule or regulation of similar effect or applicability.