

BERKSHIRE HILLS BANCORP INC
Form SC 13D
October 23, 2017

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 13D

Under the Securities Exchange Act of 1934

Berkshire Hills Bancorp, Inc.
(Name of Issuer)

Common Stock, par value \$0.01 per share
(Title of Class of Securities)

084680107
(CUSIP Number)

David G. Massad, Sr.

14 Jefferson Road

Westborough, MA 01581-2417

(508) 340-8787

(Name, Address and Telephone Number of Person Authorized to Receive Notices and
Communications)

October 13, 2017
(Date of Event Which Requires Filing of This Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of §§240.13d-1(e), 240.13d-1(f) or 240.13d-1(g), check the following box. "

Note: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. *See* §240.13d-7 for other parties to whom copies are to be sent.

*The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, *see* the *Notes*).

(1) Names of reporting persons

David G. Massad, Sr.

(2) Check the appropriate box if a member of a group (see instructions)

(a)

(b)

(3) SEC use only

(4) Source of Funds (See Instructions)

OO

(5) Check if Disclosure of Legal Proceedings is Required Pursuant to Item 2(d) or 2(e)

(6) Citizenship or place of organization

United States

(7) Sole voting power:

4,357,344⁽¹⁾

Number of shares beneficially owned by (8) Shared voting power:

each reporting person 0⁽¹⁾

(9) Sole dispositive power:

with:

4,357,344⁽¹⁾

(10) Shared dispositive power:

0⁽¹⁾

(11) Aggregate amount beneficially owned by each reporting person:

4,357,344⁽¹⁾

(12) Check if the aggregate amount in Row (11) excludes certain shares (see instructions)

(13) Percent of class represented by amount in Row 11:

9.6%

(14) Type of reporting person (see instructions):

IN

(1) Excludes 1,043,214 shares of Common Stock which may be acquired by the Reporting Person upon conversion of 521,607 shares of Series B Non-Voting Preferred Stock. The Series B Non-Voting Preferred Stock may only be converted into Common Stock or disposed of by the Reporting Person under certain limited circumstances set forth in the Shareholder Agreement and described in Item 4, and does not carry any voting rights. Therefore, the

Reporting Person expressly disclaims beneficial ownership of such shares.

Item 1. Security and Issuer.

This statement relates to the common stock, \$0.01 par value (the “Common Stock”), of Berkshire Hills Bancorp, Inc. (the “Issuer”). The address of the principal executive offices of the Issuer is 24 North Street, Pittsfield, Massachusetts 01201.

Item 2. Identity and Background.

- (a) This statement is filed by David G. Massad, Sr. (the “Reporting Person”).
- (b) The address of the Reporting Person is 14 Jefferson Road, Westborough, Massachusetts 01581.
- (c) The Reporting Person’s present principal occupation is real estate developer.
- (d) During the past five years, the Reporting Person has not been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors).
- (e) During the past five years, the Reporting Person has not been a party to a civil proceeding of a judicial or administrative body of competent jurisdiction, pursuant to which such person, was or is subject to a judgment, decree or final order enjoining future violations of, or prohibiting or mandating activities subject to, federal or state securities laws or finding any violation with respect to such laws.
- (f) The Reporting Person is a citizen of the United States of America.

Item 3. Source and Amount of Funds or Other Consideration.

On October 13, 2017, Commerce Bancshares Corp. (“Commerce”), the holding company of Commerce Bank & Trust Company and its subsidiaries, merged with and into the Issuer, with the Issuer as the surviving entity (the “Merger”), pursuant to the Agreement and Plan of Merger by and between the Issuer and Commerce, dated as of May 22, 2017 (the “Merger Agreement”). Effective as of the close of business on October 13, 2017, each share of Commerce common stock outstanding as of the closing was converted into 0.93 shares of the Issuer’s common stock pursuant to the Merger Agreement, except that pursuant to the Merger Agreement, to the extent the Reporting Person and those aggregated with him pursuant to 12 C.F.R. 225.41 of Regulation Y (the “Acting in Concert Group”) would have received more than

9.9% of the then-outstanding shares of Issuer Common Stock as of the closing of the Merger, the Reporting Person received 0.465 shares of Series B Non-Voting Preferred Stock of the Issuer for every share of Issuer Common Stock that the Reporting Person would have received in the Merger but for the 9.9% limitation. As a result of the Merger, the Reporting Person acquired 4,357,344 shares of Common Stock and 521,607 shares of Series B Non-Voting Preferred Stock in exchange for shares of Commerce common stock held by the Reporting Person prior to the Merger. Each share of Series B Non-Voting Preferred Stock is convertible into two shares of Common Stock under limited conditions, including a transfer to an individual outside of the Acting in Concert Group or a conversion of a limited number of Series B Non-Voting Preferred Stock to permit the holder to own no more than 9.9% of the then-outstanding shares of Issuer Common Stock.

References to and descriptions of the Merger Agreement set forth above in this Item 3 are not intended to be complete and are qualified in their entirety by reference to the full text of such agreement, which is included as Exhibit A to this Schedule 13D.

Item 4. Purpose of Transaction.

The Reporting Person acquired the Issuer Common Stock in connection with the Merger defined and described in Item 3 above, which description is incorporated herein by reference. Concurrent with the execution of the Merger Agreement, the Reporting Person entered into an agreement with the Issuer (the "Shareholder Agreement"). The Shareholder Agreement provides that, so long as the Reporting Person and his Acting in Concert Group collectively own 5% or more of the then-outstanding shares of Issuer Common Stock, the Reporting Person will not, individually or in concert with the Acting in Concert Group acquire shares of Issuer Common Stock in excess of the 9.9% Common Stock ownership limit, or sell shares of Issuer Common Stock without prior approval of the Issuer, except for specified monthly amounts permissible under the terms of the Shareholder Agreement. The Shareholder Agreement also provides that the Reporting Person may vote up to 5% of the then-outstanding shares of Issuer Common Stock in his discretion and will vote any shares of Issuer Common Stock above 5% in favor of Board nominees and proposals. In addition, for a period of three years from the effective time of the Merger, and solely if either of the board members appointed to serve as a member of the Boards of Directors of the Issuer and Berkshire Bank as a result of the Merger no longer serve as a member of the Boards of Directors, the Reporting Person has a right to consult with the Issuer's Corporate Governance and Nominating Committee of the Board of Directors in its selection of a qualified nominee to serve on the Boards of Director of the Issuer and Berkshire Bank.

Other than as described above, the Reporting Person has no present plan or proposal which would relate to or result in any of the matters set forth in subparagraphs (a) - (j) of Item 4 of Schedule 13D.

References to and descriptions of the Shareholder Agreement set forth above in this Item 4 are not intended to be complete and are qualified in their entirety by reference to the full text of such agreement, which is included as Exhibit B to this Schedule 13D.

The Reporting Person's Acting in Concert Group for purposes of 12 C.F.R. 225.41 of Regulation Y consists of the Reporting Person and his two adult daughters, neither of who reside with him. 12 C.F.R. 225.41 of Regulation Y presumes that an individual and the individual's immediate family are acting in concert, however, the Reporting Person is not actually and does not intend to act in concert with his daughters and disclaims beneficial ownership of all Issuer Common Stock owned by his daughters.

Item 5. Interest in Securities of the Company.

(a) As of the date hereof, the Reporting Person may be deemed to be the beneficial owner of 4,357,344 shares of Common Stock,⁽¹⁾ representing approximately 9.6%⁽²⁾ of the total issued and outstanding shares of Common Stock

of the Issuer.

The Reporting Person has the sole power to vote or direct the vote of 4,357,344 shares of Common Stock, subject to the Shareholder Agreement, and the shared power to vote or direct the vote of 0 shares of Common Stock. The Reporting Person has no voting rights with respect to the 521,607 shares of Series B Non-Voting Preferred Stock. The Reporting Person has the sole power to dispose or direct the disposition of 4,357,344 shares of Common Stock and the shared power to dispose or direct the disposition of 0 shares of Common Stock.⁽¹⁾

The Reporting Person acquired the Issuer Common Stock in connection with the Merger defined and described in Item 3 above. No other transactions in the Common Stock were effected by the Reporting Persons within the past 60 days.

(d) Not applicable.

(e) Not applicable.

Excludes 1,043,214 shares of Common Stock which may be acquired by the Reporting Person upon conversion of 521,607 shares of Series B Non-Voting Preferred Stock. The Series B Non-Voting Preferred Stock may only be converted into Common Stock or disposed of by the Reporting Person under certain limited circumstances set forth in the Shareholder Agreement and described in Item 4, and does not carry any voting rights. Therefore, the Reporting Person expressly disclaims beneficial ownership of such shares.

Based on 40,425,246 shares of Common Stock outstanding as of the close of business on October 13, 2017 as represented to the Reporting Person by the Issuer, together with the 4,842,074 shares of Common Stock issued for exchange in the Merger.

Item 6. Contracts, Arrangements, Understandings or Relationships with Respect to Securities of the Company.

Concurrent with the execution of the Merger Agreement, the Reporting Person entered into the Shareholder Agreement defined and described in Item 4 above, which description is incorporated herein by reference. References to and descriptions of the Shareholder Agreement set forth above in this Item 6 are not intended to be complete and are qualified in their entirety by reference to the full text of such agreement, which are included as Exhibit B to this Schedule 13D.

Item 7. Material to be Filed as Exhibits.

Exhibit A: Merger Agreement

Exhibit B: Shareholder Agreement

SIGNATURE

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete, and correct.

Dated: October 23, 2017

/s/ David G. Massad, Sr.*

David G. Massad, Sr

*By: /s/ Erin M. Anderman

Erin M. Anderman, as attorney-in-fact

Exhibit A

EXECUTION VERSION

AGREEMENT AND PLAN OF MERGER

BY AND BETWEEN

BERKSHIRE HILLS BANCORP, INC.,

AND

COMMERCE BANCSHARES CORP.

DATED AS OF

MAY 22, 2017

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EXHIBITS

A Form of Voting Agreement

B Form of Settlement Agreement

C Form of Certificate of Designation of BHLB Preferred Stock Consideration

AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER (this “**Agreement**”) is dated as of May 22, 2017 by and among Berkshire Hills Bancorp, Inc., a Delaware corporation (“**BHLB**”) and Commerce Bancshares Corp., a Massachusetts corporation (“**Commerce**”).

Recitals

1. The Board of Directors of each of BHLB and Commerce (i) has determined that this Agreement and the business combination and related transactions contemplated hereby are in the best interests of their respective companies and stockholders, (ii) has determined that this Agreement and the transactions contemplated hereby are consistent with and in furtherance of their respective business strategies and (iii) has approved this Agreement.
2. In accordance with the terms of this Agreement, Commerce will merge with and into BHLB (the “**Merger**”), and it is anticipated that Commerce Bank & Trust Company (“**CBTC**”), which is a wholly owned subsidiary of Commerce, will be merged with and into Berkshire Bank, a wholly owned subsidiary of BHLB.
3. As a condition to the willingness of BHLB to enter into this Agreement, each of the directors of Commerce have entered into a Voting Agreement, substantially in the form of Exhibit A hereto, dated as of the date hereof, with BHLB (the “**Voting Agreement**”), pursuant to which each such director has agreed, among other things, to vote all shares of Commerce Common Stock (as defined herein) owned by such Person in favor of the approval of this Agreement and the transactions contemplated hereby, upon the terms and subject to the conditions set forth in such Voting Agreement.
4. The parties intend the Merger to qualify as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended (the “**Code**”), and that this Agreement be and is hereby adopted as a “plan of reorganization” within the meaning of Sections 354 and 361 of the Code.
5. The parties desire to make certain representations, warranties and agreements in connection with the business transactions described in this Agreement and to prescribe certain conditions thereto.

6. In consideration of the mutual covenants, representations, warranties and agreements herein contained, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I
CERTAIN DEFINITIONS

1.1 Certain Definitions.

As used in this Agreement, the following terms have the following meanings.

“**Acquisition Proposal**” shall have the meaning set forth in Section 6.11.2.

“**Acting in Concert Group**” shall have the meaning set forth in Section 3.1.3.

“**Affiliate**” shall mean any Person who directly, or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person and, without limiting the generality of the foregoing, includes any executive officer or director of such Person and any Affiliate of such executive officer or director.

“**Agreement**” shall mean this agreement, the exhibits and schedules hereto and any amendment hereto.

“**Bank Merger**” shall mean the merger of CBTC with and into Berkshire Bank, with Berkshire Bank as the surviving institution.

“**Bank Regulator**” shall mean any Federal or state banking regulator, including but not limited to the MDOB, FRB and FDIC, which regulates or has the statutory authority to regulate Berkshire Bank, CBTC, and their respective holding companies and subsidiaries, as the case may be, and the Department of Justice or the Federal Trade Commission, or any other relevant Federal or state regulator, as it relates to anticompetitive matters.

“**Benefit Plan Determination Date**” shall have the meaning set forth in Section 7.6.1.

“**Berkshire Bank**” shall mean Berkshire Bank, a Massachusetts trust company with its principal offices located at 24 North Street, Pittsfield, Massachusetts 01202, which is a wholly owned subsidiary of BHLB.

“**Berkshire Insurance**” means Berkshire Insurance Group, Inc., an independent insurance agency which is wholly owned by BHLB.

“**BHCA**” shall mean the Bank Holding Company Act of 1956, as amended.

“**BHLB**” shall mean Berkshire Hills Bancorp, Inc., a Delaware corporation, with its principal offices located at 24 North Street, Pittsfield, Massachusetts 02101.

“**BHLB Benefit Plans**” shall have the meaning set forth in Section 5.12.1.

“**BHLB Common Stock**” shall mean the common stock, par value \$0.01 per share, of BHLB.

“**BHLB Common Stock Consideration**” shall have the meaning set forth in Section 3.1.3.

“**BHLB Disclosure Schedule**” shall mean the collective written disclosure schedules delivered by BHLB to Commerce pursuant hereto.

“**BHLB Financial Statements**” shall mean the (i) the audited consolidated statements of financial condition (including related notes and schedules) of BHLB as of December 31, 2016 and 2015 and the consolidated statements of income, comprehensive income, changes in shareholders’ equity and cash flows (including related notes and schedules, if any) of BHLB for each of the three (3) years ended December 31, 2016, as set forth in BHLB’s annual report on Form 10-K for the year ended December 31, 2016, and (ii) the unaudited interim consolidated financial statements of BHLB as of the end of each calendar quarter following March 31, 2017, and for the periods then ended, as filed by BHLB in its Securities Documents.

“**BHLB Loan Property**” shall have the meaning set forth in Section 5.14.2.

“**BHLB Loan Participation**” shall have the meaning set forth in Section 5.14.2.

“**BHLB Non-qualified Deferred Compensation Plan**” shall have the meaning set forth in Section 5.12.1.

“**BHLB Preferred Stock**” shall have the meaning set forth in Section 5.3.1.

“**BHLB Preferred Stock Consideration**” means shall have the meaning set forth in Section 3.1.3.

“**BHLB Regulatory Reports**” shall mean the Call Reports of Berkshire Bank, and accompanying schedules (other than such schedules as are required to be kept confidential pursuant to applicable law or regulatory requirements), filed or to be filed with the FDIC with respect to each calendar quarter beginning with the quarter ended March 31, 2017, through the Closing Date, and all Annual Reports on Form FR H-(b)11 and any Current Report on Form FR H-(b)11 filed with the FRB by BHLB from March 31, 2017 through the Closing Date.

“**BHLB SEC Reports**” shall have the meaning set forth in Section 5.16.

“**BHLB Stock**” shall have the meaning set forth in Section 5.3.1.

“**BHLB Subsidiary**” shall mean any corporation, 10% or more of the capital stock of which is owned, either directly or indirectly, by BHLB or Berkshire Bank, except any corporation the stock of which is held in the ordinary course of the lending activities of Berkshire Bank.

“**Business Day**” shall mean any day other than a Saturday, Sunday, or day on which banks in the Commonwealth of Massachusetts are authorized or obligated by law or executive order to close.

“**CBTC**” shall mean Commerce Bank & Trust Company, a Massachusetts trust company, with its principal office located at 386 Main Street, Worcester, Massachusetts 01608, and which is a wholly owned subsidiary of Commerce.

“**CBTC Regulatory Reports**” shall mean the Call Reports of CBTC, and accompanying schedules (other than such schedules as are required to be kept confidential pursuant to applicable law or regulatory requirements), filed or to be filed with the FDIC with respect to each calendar quarter beginning with the quarter ended March 31, 2017 through the Closing Date, and all Annual Reports on Form FR H-(b)11 and any Current Report on Form FR H-(b)11 filed with the FRB by Commerce from March 31, 2017 through the Closing Date.

“**Certificate**” shall mean a certificate or book entry evidencing shares of Commerce Common Stock.

“**Claim**” shall have the meaning set forth in Section 7.6.2.

“**Closing Date**” shall have the meaning set forth in Section 2.2.

“**COBRA**” shall have the meaning set forth in Section 4.13.5.

“**Code**” shall mean the Internal Revenue Code of 1986, as amended.

“**Commerce**” shall mean Commerce Bancshares Corp., a Massachusetts corporation with its principal office located at 386 Main Street, Worcester, Massachusetts 01608.

“**Commerce Benefit Plans**” shall have the meaning set forth in Section 4.13.1.

“**Commerce Common Stock**” shall mean the common shares, par value \$0.01 per share, of Commerce.

“**Commerce Disclosure Schedule**” shall mean the collective written disclosure schedules delivered by Commerce to BHLB pursuant hereto.

“**Commerce Financial Statements**” shall mean (i) the audited consolidated statements of financial condition (including related notes and schedules) of Commerce as of December 31, 2016 and 2015 and the related consolidated statements of income, changes in shareholders’ equity and cash flows (including related notes and schedules, if any) of Commerce for each of the three (3) years ended December 31, 2016, as provided to BHLB and included in Commerce’s annual report to stockholders for such year and (ii) the unaudited interim consolidated financial statements of Commerce as of the end of each calendar quarter following March 31, 2017, and for the periods then ended, as provided by Commerce to BHLB.

“**Commerce Loan Participation**” shall have the meaning set forth in Section 4.15.2.

“**Commerce Loan Property**” shall have the meaning set forth in Section 4.15.2.

“**Commerce Long-Term Incentive Plan**” shall mean the Commerce Bancshares Corp. 2010 Long-Term Incentive Plan.

“**Commerce Material Contract**” shall have the meaning set forth in Section 4.9.3.

“**Commerce Phantom Stock Award**” shall mean a phantom stock appreciation right granted pursuant to the Commerce Long-Term Incentive Plan and the outstanding phantom stock appreciation award agreements, outstanding as of the date hereof, as set forth in Commerce Disclosure Schedule 6.15.

“**Commerce Preferred Stock**” shall have the meaning set forth in Section 4.3.

“**Commerce Stockholder Approval**” shall have the meaning set forth in Section 4.4.1.

“**Commerce Stockholders Meeting**” shall have the meaning set forth in Section 8.1.

“**Commerce Subsidiary**” shall mean any corporation, 10% or more of the capital stock of which is owned, either directly or indirectly, by Commerce or CBTC.

“**Commerce Subordinated Debt**” shall mean the subordinated debt issued to certain holders pursuant to the Capital Enhancement and Subordinated Note and Debenture Purchase Agreement dated June 7, 2002, as subsequently amended, and as further described in Commerce Disclosure Schedule 4.3.1.

“**Confidentiality Agreement**” shall mean the confidentiality agreement dated as of March 10, 2017 between BHLB and Commerce.

“**Continuing Commerce Employees**” shall have the meaning set forth in Section 7.5.1.

“**CRA**” shall have the meaning set forth in Section 4.12.1.

“**DGCL**” shall mean the Delaware General Corporation Law.

“**Dissenting Shares**” shall have the meaning set forth in Section 3.1.4.

“**Dissenting Shareholder**” shall have the meaning set forth in Section 3.1.4.

“**Effective Time**” shall mean the date and time specified pursuant to Section 2.2 as the effective time of the Merger.

“**Environmental Laws**” shall mean any applicable federal, state or local law, statute, ordinance, rule, regulation, code, license, permit, approval, consent, order, judgment, decree, injunction or agreement with any Governmental Entity as in effect on or prior to the date of this Agreement relating to (1) the protection, preservation or restoration of the environment (including, without limitation, air, water vapor, surface water, groundwater, drinking water supply, surface soil, subsurface soil, plant and animal life or any other natural resource), and/or (2) the use, storage, recycling, treatment, generation, transportation, processing, handling, labeling, production, release or disposal of Materials of Environmental Concern. The term Environmental Law includes without limitation (a) the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. § 9601, et seq; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, et seq; the Clean Air Act, as amended, 42 U.S.C. § 7401, et seq; the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, et seq; the Toxic Substances Control Act, as amended, 15 U.S.C. § 2601, et seq; the Emergency Planning and Community Right to Know Act, 42 U.S.C. § 11001, et seq; the Safe Drinking Water Act, 42 U.S.C. § 300f, et seq; and all comparable state and local laws, and (b) any common law (including without limitation common law that may impose strict liability) that may impose liability or obligations for injuries or damages due to the presence of or exposure to any Materials of Environmental Concern as in effect on or prior to the date of this Agreement.

“**ERISA**” shall mean the Employee Retirement Income Security Act of 1974, as amended.

“**ERISA Affiliate**” shall mean, with respect to any Person, any other Person that, together with such Person, would be treated as a single employer under Section 414 of the Code or Section 4001 of ERISA.

“**Exchange Act**” shall mean the Securities Exchange Act of 1934, as amended.

“**Exchange Agent**” shall mean Broadridge Corporate Issuer Solutions, Inc., or such other bank or trust company or other agent as mutually agreed upon by BHLB and Commerce, which shall act as agent for BHLB in connection with the exchange procedures for exchanging Certificates for the Merger Consideration.

“**Exchange Fund**” shall have the meaning set forth in Section 3.2.1.

“**Exchange Ratio**” shall have the meaning set forth in Section 3.1.3, subject to adjustment under Section 10.1.9.

“**FDIC**” shall mean the Federal Deposit Insurance Corporation or any successor thereto.

“**FHLB**” shall mean the Federal Home Loan Bank of Boston.

“**FRB**” shall mean the Board of Governors of the Federal Reserve System.

“**GAAP**” shall mean accounting principles generally accepted in the United States of America applied on a consistent basis.

“**Good Reason**” shall mean the occurrence of any of the following events with respect to an employee of Commerce of a Commerce Subsidiary: (i) a material reduction in the nature or scope of such employee’s responsibilities, as compared to the nature and scope of such employee’s responsibilities immediately prior to the Effective Time, (ii) any material reduction in such employee’s compensation, as compared to such employee’s compensation immediately prior to the Effective Time, or (iii) the relocation of such employee’s principal workplace by more than thirty (30) miles, as compared to such employee’s principal workplace immediately prior to the Effective Time, provided, that in each case (a) written notice of an employee’s resignation for Good Reason must be delivered to Commerce or BHLB within 30 days after the initial occurrence of any such event, (b) Commerce or BHLB must have thirty (30) days to cure such event, and (c) such employee must resign within 30 days after the failure of Commerce or BHLB to cure such event, in order for an employee’s resignation with Good Reason to be effective hereunder.

“**Governmental Entity**” shall mean any Federal or state court, department, administrative agency or commission or other governmental authority or instrumentality.

“**Indemnified Parties**” shall have the meaning set forth in Section 7.7.2.

“**Insurance Regulator**” shall mean the Massachusetts Division of Insurance and any other Governmental Entity which has authority to regulate a Massachusetts insurance agency.

“**IRS**” shall mean the United States Internal Revenue Service.

“**Knowledge**” as used with respect to a Person (including references to such Person being aware of a particular matter) shall mean those facts that are known or should have been known by the executive officers of such Person after reasonable inquiry.

“**Material Adverse Effect**” shall mean, with respect to BHLB or Commerce, respectively, any effect that (1) is material and adverse to the financial condition, results of operations or business of BHLB and the BHLB Subsidiaries, taken as a whole, or Commerce and the Commerce Subsidiaries, taken as a whole, respectively, or (2) materially impairs the ability of either Commerce, on the one hand, or BHLB, on the other hand, to perform its obligations under this Agreement or otherwise materially impedes the consummation of the transactions contemplated by this Agreement; provided, that “Material Adverse Effect” shall not be deemed to include (i) the impact of (x) changes, after the date hereof, in laws, rules or regulations of general applicability to financial institutions and/or their holding companies generally, or interpretations thereof by courts or governmental agencies, or (y) changes in GAAP or applicable regulatory accounting requirements, (ii) public disclosure of the execution of this Agreement, public disclosure or consummation of the transactions contemplated hereby (including any effect on a party’s relationships with its customers or employees) or actions expressly required by this Agreement or actions

or omissions that are taken without the prior written consent of the other party in contemplation of the transactions contemplated hereby, (iii) changes, after the date hereof, in global, national or regional political conditions (including the outbreak of war or acts of terrorism) or in economic or market (including equity, credit and debt markets, as well as changes in interest rates) conditions affecting the financial services industry generally and not specifically relating to such party or its Subsidiaries, (iv) changes or events, after the date hereof, affecting the financial services industry generally and not specifically relating to Commerce or its Subsidiaries, on the one hand, or BHLB or any of its Subsidiaries, on the other hand, provided that a decrease in the trading or market prices of Commerce Common Stock or BHLB Common Stock shall not be considered, by itself, to constitute a “Material Adverse Effect”, (v) the expenses incurred by either party in negotiating, documenting, effecting and consummating the transactions contemplated by this Agreement (vi) changes or events affecting the aggregate value of taxicab medallions generally, or of Commerce’s portfolio of loans collateralized by taxicab medallions specifically, solely as described in BHLB Disclosure Schedule 1.1; except, with respect to subclauses (i)(x) or (i)(y), to the extent that the effects of such change are materially disproportionately adverse to the business, properties, assets, liabilities, results of operations or financial condition of such party and its Subsidiaries, taken as a whole, as compared to other companies in the financial services industry.

“**Materially Burdensome Regulatory Condition**” shall mean any condition that would require BHLB, Commerce or their Subsidiaries to take, or agree to take, any actions, or to accept any restriction, requirement or condition, that, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect on BHLB, Commerce and their respective Subsidiaries, taken as a whole, or prohibit or materially limit the operation by BHLB or any of its Subsidiaries, or Commerce or any of its Subsidiaries, of all or any material portion of the business or assets of BHLB and its Subsidiaries or Commerce and its Subsidiaries, in each case taken as a whole, or compel BHLB or any of its Subsidiaries to dispose of or hold separate all or any material portion of the business or assets of BHLB and its Subsidiaries or Commerce and its Subsidiaries, in each case taken as a whole.

“**Materials of Environmental Concern**” shall mean pollutants, contaminants, wastes, toxic or hazardous substances, petroleum and petroleum products, and any other materials regulated under Environmental Laws.

“**MDOB**” shall mean the Massachusetts Division of Banks.

“**Merger**” shall mean the merger of Commerce with and into BHLB pursuant to the terms hereof.

“**Merger Consideration**” shall mean the BHLB Common Stock Consideration and BHLB Preferred Stock Consideration.

“**Merger Registration Statement**” shall mean the registration statement, together with all amendments, filed with the SEC under the Securities Act for the purpose of registering the offer of shares of BHLB Common Stock to be offered to holders of Commerce Common Stock in connection with the Merger.

“**MGL**” shall mean the General Laws of the Commonwealth of Massachusetts.

“**New Board Members**” shall have the meaning set forth in Section 2.4.

“**NYSE**” shall mean the New York Stock Exchange.

“**Observer**” shall have the meaning set forth in Section 6.13.

“**PBGC**” shall mean the Pension Benefit Guaranty Corporation or any successor thereto.

“**Person**” shall mean any individual, corporation, partnership, joint venture, association, trust or “group” (as that term is defined under the Exchange Act).

“**Pre-Closing**” shall have the meaning set forth in Section 2.2.

“**Proxy Statement-Prospectus**” shall have the meaning set forth in Section 8.2.1.

“**Regulatory Agreement**” shall have the meaning set forth in Section 4.12.3.

“**Regulatory Approval**” shall mean the approval of any Bank Regulator necessary in connection with the consummation of the Merger, the Bank Merger and the related transactions contemplated by this Agreement.

“**Representatives**” shall have the meaning set forth in Section 6.11.1.

“**Rights**” shall mean puts, calls, warrants, options, conversion, redemption, repurchase or other rights, convertible securities, stock appreciation rights and other arrangements or commitments which obligate an entity to issue or dispose of any of its capital stock or other ownership interests or which provide for compensation based on the equity appreciation of its capital stock.

“**SEC**” shall mean the Securities and Exchange Commission or any successor thereto.

“**Securities Act**” shall mean the Securities Act of 1933, as amended.

“**Securities Documents**” shall mean all reports, offering circulars, proxy statements, registration statements and all similar documents filed pursuant to the Securities Laws.

“**Securities Laws**” shall mean the Securities Act; the Exchange Act; the Investment Company Act of 1940, as amended; the Investment Advisers Act of 1940, as amended; the Trust Indenture Act of 1939, as amended, and the rules and regulations of the SEC promulgated thereunder.

“**Shareholder Agreement**” shall mean the Agreement by and between David G. Massad and BHLB, as ratified as of the date hereof and effective as of the Effective Time.

“**Subsidiary**” shall mean any corporation, 10% or more of the capital stock of which is owned, either directly or indirectly, except any corporation the stock of which is held in the ordinary course of the lending activities, of either Berkshire Bank or CBTC, as applicable.

“**Superior Proposal**” shall have the meaning set forth in Section 6.11.1.

“**Surviving Corporation**” shall have the meaning set forth in Section 2.1.

“**Tax**” shall mean any federal, state, local, foreign or provincial income, gross receipts, property, sales, service, use, license, lease, excise, franchise, employment, payroll, withholding, employment, unemployment insurance, workers’ compensation, social security, alternative or added minimum, ad valorem, value added, stamp, business license, occupation, premium, environmental, windfall profit, customs, duties, estimated, transfer or excise tax, or any other tax, custom, duty, premium, governmental fee or other assessment or charge of any kind whatsoever, together with any interest, penalty or additional tax imposed by any Governmental Entity.

“**Tax Return**” shall mean any return, declaration, report, claim for refund, or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

“**Termination Date**” shall mean April 30, 2018.

“**Termination Fee**” shall have the meaning set forth in Section 10.2.2(C).

“**Treasury Stock**” shall have the meaning set forth in Section 3.1.2.

“**Voting Agreement**” shall have the meaning set forth in the recitals.

“**Voting Stock Consideration Limit**” shall have the meaning set forth in Section 3.1.3.

“**WARN Act**” shall have the meaning set forth in Section 7.5.7.

“401(k) Plan” shall have the meaning set forth in Section 6.14.

Other terms used herein are defined in the preamble and elsewhere in this Agreement.

ARTICLE II
THE MERGER

2.1 Merger.

Subject to the terms and conditions of this Agreement, at the Effective Time: (a) Commerce shall merge with and into BHLB, with BHLB as the resulting or surviving corporation (the “**Surviving Corporation**”); and (b) the separate existence of Commerce shall cease and all of the rights, privileges, powers, franchises, properties, assets, liabilities and obligations of Commerce shall be vested in and assumed by BHLB. As part of the Merger, each outstanding share of Commerce Common Stock will be converted into the right to receive the Merger Consideration pursuant to the terms of Article III.

2.2 Closing; Effective Time.

The closing (“**Closing**”) shall occur no later than the close of business on the fifth Business Day following the satisfaction or (to the extent permitted by applicable law) waiver of the conditions set forth in Article IX (other than those conditions that by their terms are to be satisfied at the Closing, but subject to the satisfaction or (to the extent permitted by applicable law) waiver of those conditions), or such other date that may be agreed to in writing by the parties. The Merger shall be effected by the filing of a certificate of merger with the Secretary of State of the State of Delaware and articles of merger with the Secretary of the Commonwealth of Massachusetts on the day of the Closing (the “**Closing Date**”), in accordance with the DGCL and MGL, respectively. The “**Effective Time**” means the date and time upon which the certificate of merger and the articles of merger, respectively, are filed with the Secretary of State of the State of Delaware and the Secretary of the Commonwealth of Massachusetts, or as otherwise stated in the certificate of merger or articles of merger, in accordance with the DGCL and MGL. A pre-closing of the transactions contemplated hereby (the “**Pre-Closing**”) shall take place at the offices of Luse Gorman, PC, at 10:00 a.m. on the day prior to the Closing Date.

2.3 Certificate of Incorporation and Bylaws.

The certificate of incorporation and bylaws of BHLB as in effect immediately prior to the Effective Time shall be the certificate of incorporation and bylaws of the Surviving Corporation, until thereafter amended as provided therein and by applicable law.

2.4 Directors of the Surviving Corporation.

Effective immediately after the Closing Date, Pamela Massad and David Brunelle (the “**New Board Members**”) shall be appointed and elected to the BHLB and Berkshire Bank Boards of Directors; provided, however, that if, prior to the Effective Time, Ms. Massad or Mr. Brunelle are unable or unwilling to serve as members of the BHLB and Berkshire Bank Board of Directors, BHLB, in consultation with Commerce, shall designate a New Board Member from the remaining existing members of the Commerce Board of Directors.

2.5 Effects of the Merger.

At and after the Effective Time, the Merger shall have the effects as set forth in the DGCL and MGL.

2.6 Tax Consequences.

It is intended that the Merger shall constitute a reorganization within the meaning of Section 368(a) of the Code, and that this Agreement shall constitute a “plan of reorganization” as that term is used in Sections 354 and 361 of the Code.

2.7 Possible Alternative Structures.

Notwithstanding anything to the contrary contained in this Agreement and subject to the satisfaction of the conditions set forth in Article IX prior to the Effective Time, BHLB may revise the structure for effecting the

Merger described in Section 2.1 or the Bank Merger including, without limitation, (A) by substituting a wholly owned subsidiary for BHLB or Berkshire Bank, as applicable, or (B) entering into a stock purchase agreement with certain stockholders of Commerce and immediately thereafter effectuating a short-form merger between parent and subsidiary pursuant to MGL Ch. 156D, §11.05, provided that, in any revision to the structure: (i) any such subsidiary shall become a party to, and shall agree to be bound by, the terms of this Agreement; (ii) there are no adverse Federal or state income tax consequences to BHLB, Berkshire Bank, Commerce, CBTC or to the BHLB or Commerce stockholders, and nothing would prevent the rendering of the opinions contemplated in Sections 9.2.5 and 9.3.5, as a result of the modification; (iii) the consideration to be paid to the holders of Commerce Common Stock under this Agreement is not thereby changed in kind, value or reduced in amount, other than as contemplated in the Shareholder Agreement in connection with the Merger; and (iv) such modification will not materially delay the Closing or materially jeopardize or delay (x) the calling and holding of the Commerce Stockholders Meeting, the solicitation of proxies in connection therewith, or stockholder consent in lieu of a meeting of stockholders, to the extent permissible or (y) the receipt of any Regulatory Approvals or other consents and approvals relating to the consummation of the Merger or otherwise cause any condition to Closing set forth in Article IX not to be capable of being fulfilled. The parties hereto agree to appropriately amend this Agreement and any related documents in order to reflect any such revised structure.

2.8 Additional Actions.

If, at any time after the Effective Time, BHLB shall consider or be advised that any further deeds, documents, assignments or assurances in law or any other acts are necessary or desirable to (i) vest, perfect or confirm, of record or otherwise, in BHLB its right, title or interest in, to or under any of the rights, properties or assets of Commerce or any Commerce Subsidiary, or (ii) otherwise carry out the purposes of this Agreement, Commerce and its officers and directors shall be deemed to have granted to BHLB an irrevocable power of attorney to execute and deliver, in such official corporate capacities, all such deeds, assignments or assurances in law or any other acts as are necessary or desirable to (a) vest, perfect or confirm, of record or otherwise, in BHLB its right, title or interest in, to or under any of the rights, properties or assets of Commerce or (b) otherwise carry out the purposes of this Agreement, and the officers and directors of the BHLB are authorized in the name of Commerce or otherwise to take any and all such action.

ARTICLE III CONVERSION OF SHARES

3.1 Conversion of Commerce Common Stock; Merger Consideration.

At the Effective Time, by virtue of the Merger and without any action on the part of BHLB, Commerce or the holders of any of the shares of Commerce Common Stock, the Merger shall be effected in accordance with the following

terms:

3.1.1 Each share of BHLB Common Stock that is issued and outstanding immediately prior to the Effective Time shall remain issued and outstanding following the Effective Time and shall be unchanged by the Merger.

3.1.2 All shares of Commerce Common Stock held in the treasury of Commerce prior to the Effective Time (other than shares held in a fiduciary capacity or in connection with debts previously contracted) (“**Treasury Stock**”) cease to exist, and such shares, including any Certificates therefor, shall be canceled as promptly as practicable thereafter, and no payment or distribution shall be made in consideration therefor.

3.1.3 Subject to a potential adjustment as provided in Section 10.1.9, each outstanding share of Commerce Common Stock (other than Treasury Stock and Dissenting Shares) shall be converted into the right to receive 0.93 (the “**Exchange Ratio**”) shares of BHLB Common Stock (the “**BHLB Common Stock Consideration**”); provided, however, that no Commerce stockholder shall receive, as aggregated with such stockholder’s immediate family members and affiliates for purposes of 12 C.F.R. § 225.41 of Regulation Y (the “**Acting in Concert Group**”), BHLB Common Stock Consideration that would exceed 9.9% of the outstanding BHLB Common Stock as of the Effective Time (the “**Voting Stock Consideration Limit**”). In the event that any Commerce stockholder, as aggregated with such stockholder’s Acting in Concert Group, would otherwise exceed the Voting Stock Consideration Limit, such

Commerce stockholder shall receive 0.465 shares of non-voting, participating BHLB preferred stock as defined by the Certificate of Designation attached as Exhibit C hereto (“**BHLB Preferred Stock Consideration**”) for every share of Commerce Common Stock that may not be converted into BHLB Common Stock as a consequence of the Voting Stock Consideration Limit.

3.1.4 Each outstanding share of Commerce Common Stock, the holder of which has perfected his right to appraisal under applicable law and has not effectively withdrawn or lost such right as of the Effective Time (the “**Dissenting Shares**”), shall not be converted into or represent a right to receive the Merger Consideration hereunder, and the holder thereof shall be entitled only to such rights as are granted by applicable law. Commerce shall give BHLB prompt notice upon receipt by Commerce of any such demands for payment of the fair value of such shares of Commerce Common Stock and of withdrawals of such notice and any other related communications (any shareholder duly making such demand being hereinafter called a “**Dissenting Shareholder**”), and BHLB shall have the right to participate in all discussions, negotiations and proceedings with respect to any such demands. Commerce shall not, except with the prior written consent of BHLB, voluntarily make any payment with respect to, or settle or offer to settle, any such demand for payment, or waive any failure to timely deliver a written demand for appraisal or the taking of any other action by such Dissenting Shareholder as may be necessary to perfect appraisal rights under applicable law. Any payments made in respect of Dissenting Shares shall be made by BHLB as the surviving company.

3.1.5 If any Dissenting Shareholder withdraws or loses (through failure to perfect or otherwise) his right to such payment at or prior to the Effective Time, such holder’s shares of Commerce Common Stock shall be converted into a right to receive the Merger Consideration in accordance with the applicable provisions of this Agreement. If such holder withdraws or loses (through failure to perfect or otherwise) his right to such payment after the Effective Time, each share of Commerce Common Stock of such holder shall be entitled to receive the Merger Consideration.

3.1.6 Upon the Effective Time, outstanding shares of Commerce Common Stock shall no longer be outstanding and shall automatically be canceled and shall cease to exist, and shall thereafter by operation of this Section 3.1 represent only the right to receive the Merger Consideration and any dividends or distributions with respect thereto or any dividends or distributions with a record date prior to the Effective Time that were declared or made by Commerce on such shares of Commerce Common Stock in accordance with the terms of this Agreement on or prior to the Effective Time and which remain unpaid at the Effective Time.

3.1.7 Notwithstanding anything to the contrary contained herein, no certificates or scrip representing fractional shares of BHLB Common Stock or BHLB Preferred Stock shall be issued upon the surrender for exchange of Certificates, no dividend or distribution with respect to BHLB Common Stock or BHLB Preferred Stock shall be payable on or with respect to any fractional share interests, and such fractional share interests shall not entitle the owner thereof to vote or to any other rights of a stockholder of BHLB. In lieu of the issuance of any such fractional share, BHLB shall pay to each former holder of Commerce Common Stock who otherwise would be entitled to receive a fractional share of BHLB Common Stock or BHLB Preferred Stock, an amount in cash, rounded to the

nearest cent and without interest, equal to the product of (i) the fraction of a share to which such holder would otherwise have been entitled and (ii) the average of the daily closing sales prices of a share of BHLB Common Stock as reported on the NYSE for the five (5) consecutive trading days immediately preceding the Closing Date. For purposes of determining any fractional share interest, all shares of Commerce Common Stock owned by a Commerce stockholder shall be combined so as to calculate the maximum number of whole shares of BHLB Common Stock and BHLB Preferred Stock issuable to such Commerce stockholder.

3.1.8 If BHLB changes (or the BHLB Board sets a related record date that will occur before the Effective Time for a change in) the number or kind of shares of BHLB Common Stock outstanding by way of a stock split, stock dividend, recapitalization, reclassification, reorganization or similar transaction, then the Merger Consideration (and any other dependent items) will be adjusted proportionately to account for such change. If Commerce changes (or the Commerce Board sets a related record date that will occur before the Effective Time for a change in) the number or kind of shares of Commerce Common Stock (or Rights thereto) outstanding by way of a stock split, stock dividend, recapitalization, reclassification, reorganization or similar transaction, then the Merger Consideration (and any other dependent items) will be adjusted proportionately to account for such change.

3.2 Procedures for Exchange of Commerce Common Stock.

3.2.1 *BHLB to Make Merger Consideration Available.* After the Closing and at or prior to the Effective Time, BHLB shall deposit, or shall cause to be deposited, with the Exchange Agent for the benefit of the holders of Commerce Common Stock, for exchange in accordance with this Section 3.2, an aggregate amount of cash sufficient to pay the aggregate amount of the cash payable in lieu of the issuance of fractional shares pursuant to this Article III and shall instruct the Exchange Agent to issue such cash and shares of BHLB Common Stock and BHLB Preferred Stock for exchange in accordance with this Section 3.2 (such cash and shares of BHLB Common Stock and BHLB Preferred Stock, together with any dividends or distributions with respect thereto (without any interest thereon) being hereinafter referred to as the “**Exchange Fund**”).

3.2.2 *Exchange of Certificates.* BHLB shall take all steps necessary to cause the Exchange Agent, not later than five (5) Business Days after the Effective Time, to mail to each holder of a Certificate or Certificates a form letter of transmittal for return to the Exchange Agent and instructions for use in effecting the surrender of the Certificates in exchange for the Merger Consideration and cash in lieu of fractional shares into which the Commerce Common Stock represented by such Certificates shall have been converted as a result of the Merger, if any. The letter of transmittal shall specify that delivery shall be effected, and risk of loss and title to the Certificates shall pass, only upon delivery of the Certificates to the Exchange Agent. Upon proper surrender of a Certificate for exchange and cancellation to the Exchange Agent, together with a properly completed letter of transmittal, duly executed, the holder of such Certificate shall be entitled to receive in exchange therefor the Merger Consideration and the Certificate so surrendered shall be cancelled. No interest will be paid or accrued on any cash payable in lieu of fractional shares or any unpaid dividends and distributions, if any, payable to holders of Certificates.

3.2.3 *Rights of Certificate Holders after the Effective Time.* The holder of a Certificate that prior to the Merger represented issued and outstanding Commerce Common Stock shall have no rights, after the Effective Time, with respect to such Commerce Common Stock except to surrender the Certificate in exchange for the Merger Consideration as provided in this Agreement. No dividends or other distributions declared after the Effective Time with respect to BHLB Common Stock shall be paid to the holder of any unsurrendered Certificate until the holder thereof shall surrender such Certificate in accordance with this Section 3.2. After the surrender of a Certificate in accordance with this Section 3.2, the record holder thereof shall be entitled to receive any such dividends or other distributions, without any interest thereon, which theretofore had become payable with respect to shares of BHLB Common Stock represented by such Certificate.

3.2.4 *Surrender by Persons Other than Record Holders.* If the Person surrendering a Certificate and signing the accompanying letter of transmittal is not the record holder thereof, then it shall be a condition of the payment of the Merger Consideration that: (i) such Certificate is properly endorsed to such Person or is accompanied by appropriate stock powers, in either case signed exactly as the name of the record holder appears on such Certificate, and is otherwise in proper form for transfer, or is accompanied by appropriate evidence of the authority of the Person surrendering such Certificate and signing the letter of transmittal to do so on behalf of the record holder; and (ii) the

Person requesting such exchange shall pay to the Exchange Agent in advance any transfer or other similar taxes required by reason of the payment to a Person other than the registered holder of the Certificate surrendered, or required for any other reason, or shall establish to the satisfaction of the Exchange Agent that such tax has been paid or is not payable.

3.2.5 *Closing of Transfer Books.* From and after the Closing Date, there shall be no transfers on the stock transfer books of Commerce of the Commerce Common Stock that were outstanding immediately prior to the Effective Time. If, after the Effective Time, Certificates representing such shares are presented for transfer to the Exchange Agent, they shall be exchanged for the Merger Consideration and canceled as provided in this Section 3.2.

3.2.6 *Return of Exchange Fund.* At any time following the nine (9) month period after the Effective Time, BHLB shall be entitled to require the Exchange Agent to deliver to it any portion of the Exchange Fund which had been made available to the Exchange Agent and not disbursed to holders of Certificates (including, without limitation, all interest and other income received by the Exchange Agent in respect of all funds made available to it), and thereafter such holders shall be entitled to look to BHLB (subject to abandoned property, escheat

and other similar laws) with respect to any Merger Consideration that may be payable upon due surrender of the Certificates held by them. Notwithstanding the foregoing, neither BHLB nor the Exchange Agent shall be liable to any holder of a Certificate for any Merger Consideration delivered in respect of such Certificate to a public official pursuant to any abandoned property, escheat or other similar law.

3.2.7 *Lost, Stolen or Destroyed Certificates.* In the event any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such Certificate to be lost, stolen or destroyed and the posting by such Person of a bond in such amount as the Exchange Agent may reasonably direct as indemnity against any claim that may be made against it with respect to such Certificate, the Exchange Agent will issue in exchange for such lost, stolen or destroyed Certificate the Merger Consideration deliverable in respect thereof.

3.2.8 *Withholding.* BHLB or the Exchange Agent will be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement or the transactions contemplated hereby to any holder of Commerce Common Stock such amounts as BHLB (or any Affiliate thereof) or the Exchange Agent are required to deduct and withhold with respect to the making of such payment under the Code, or any applicable provision of U.S. federal, state, local or non-U.S. tax law. To the extent that such amounts are properly withheld by BHLB or the Exchange Agent, such withheld amounts will be treated for all purposes of this Agreement as having been paid to the holder of the Commerce Common Stock in respect of whom such deduction and withholding were made by BHLB or the Exchange Agent.

3.3 Bank Merger.

BHLB intends to cause the merger of CBTC with and into Berkshire Bank, with Berkshire Bank as the surviving institution, but retains the right to hold CBTC as a separate subsidiary or as a division of Berkshire Bank. Subject to the foregoing and in BHLB's sole determination, following the execution and delivery of this Agreement, BHLB will cause Berkshire Bank, and Commerce will cause CBTC, to execute and deliver an agreement and plan of merger in respect of the Bank Merger. Berkshire Bank will make its commercially reasonable best efforts to utilize the name and brand of CBTC in Worcester market area, subject to Regulatory Approval, following the completion of the Bank Merger.

3.4 Reservation of Shares.

BHLB shall reserve for issuance a sufficient number of shares of the BHLB Common Stock for the purpose of issuing shares of BHLB Common Stock to the Commerce stockholders in accordance with this Article III.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF COMMERCE

Commerce represents and warrants to BHLB that the statements contained in this Article IV are correct as of the date of this Agreement and will be correct as of the Closing Date (as though made then and as though the Closing Date were substituted for the date of this Agreement throughout this Article IV), subject to the standard set forth in Section 4.1 and except as set forth in the Commerce Disclosure Schedule delivered by Commerce to BHLB on the date hereof, and except as to any representation or warranty which specifically relates to an earlier date, which only need be correct as of such earlier date, *provided, however*, that disclosure in any section of such Commerce Disclosure Schedule shall apply only to the indicated Section of this Agreement except to the extent that it is reasonably apparent that such disclosure is relevant to another section of this Agreement. References to the Knowledge of Commerce shall include the Knowledge of CBTC.

4.1 Standard.

Except as set forth in the following sentence, no representation or warranty of Commerce contained in this Article IV shall be deemed untrue or incorrect, and Commerce shall not be deemed to have breached a representation or warranty, as a consequence of the existence of any fact, circumstance or event unless such fact, circumstance or event, individually or taken together with all other facts, circumstances or events inconsistent with

any paragraph of this Article IV, has had or reasonably would be expected to have a Material Adverse Effect, disregarding for these purposes (x) any qualification or exception for, or reference to, materiality in any such representation or warranty and (y) any use of the terms “material,” “materially,” “in all material respects,” “Material Adverse Effect” or similar terms or phrases in any such representation or warranty. The foregoing standard shall not apply to representations and warranties contained in Sections 4.2 (other than Sections 4.2.3, 4.2.4 and 4.2.5 and the last sentence of Sections 4.2.1 and 4.2.2), Section 4.3 and 4.4 (other than Section 4.4.2(iii)) which shall be true and correct in all material respects).

4.2 Organization.

4.2.1 Commerce is a corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Massachusetts, and is duly registered as a bank holding company under the BHCA. Commerce has full corporate power and authority to carry on its business as now conducted. Commerce is duly licensed or qualified to do business in the states of the United States and foreign jurisdictions where its ownership or leasing of property or the conduct of its business requires such qualification.

4.2.2 CBTC is a Massachusetts-chartered stock trust company duly organized, validly existing and in good standing under the laws of the Commonwealth of Massachusetts. The deposits in CBTC are insured by the FDIC to the fullest extent permitted by law, and all premiums and assessments required to be paid in connection therewith have been paid by CBTC when due. CBTC is a member in good standing of the FHLB and owns the requisite amount of stock of each as set forth on Commerce Disclosure Schedule 4.2.2.

4.2.3 Commerce Disclosure Schedule 4.2.3 sets forth each Commerce Subsidiary and its jurisdiction of incorporation or organization. Each Commerce Subsidiary (other than CBTC) is a corporation, limited liability company or other legal entity as set forth on Commerce Disclosure Schedule 4.2.3, duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization. Each Commerce Subsidiary is duly licensed or qualified to do business in the states of the United States and foreign jurisdictions where its ownership or leasing of property or conduct of its business requires such qualification.

4.2.4 The respective minute books of Commerce, CBTC and each other Commerce Subsidiary accurately record all corporate actions of their respective stockholders and boards of directors (including committees).

4.2.5 Prior to the date of this Agreement, Commerce has made available to BHLB true and correct copies of the certificate of incorporation, articles of organization or articles of association, as applicable, and bylaws or other governing documents of Commerce, CBTC and each other Commerce Subsidiary.

4.3 Capitalization.

4.3.1 The authorized capital stock of Commerce consists of (i) 10,000,000 shares of Commerce Common Stock, \$0.01 par value, and 500,000 shares of preferred stock, \$0.01 par value (“**Commerce Preferred Stock**” and collectively with Commerce Common Stock, “**Commerce Stock**”). As of April 30, 2017, there were (i) 6,328,300 shares of Commerce Common Stock validly issued and outstanding, fully paid and non-assessable and free of preemptive rights, (ii) no outstanding shares of Commerce Preferred Stock, and (iii) no shares of Commerce Common Stock held by Commerce as Treasury Stock. Commerce does not own, of record or beneficially, any shares of Commerce Stock which are not Treasury Stock. CBTC does not own, of record or beneficially, any shares of Commerce Stock. Neither Commerce nor any Commerce Subsidiary has or is bound by any Rights or other arrangements of any character relating to the purchase, sale or issuance or voting of, or right to receive dividends or other distributions on, any capital stock of Commerce, or any other security of Commerce or a Commerce Subsidiary or any securities representing the right to vote, purchase or otherwise receive any capital stock of Commerce or a Commerce Subsidiary or any other security of Commerce or any Commerce Subsidiary. Commerce Disclosure Schedule 4.3.1 also includes (i) the aggregate amount of subordinated debt issued and outstanding by Commerce as of April 30, 2017, and (ii) a list of the individual debt holders and the amount of subordinated debt issued and outstanding to each debt holder.

4.3.2 Commerce owns all of the capital stock of each Commerce Subsidiary, free and clear of any lien or encumbrance. Except for the Commerce Subsidiaries and as set forth in Commerce Disclosure Schedule 4.3.2, Commerce does not possess, directly or indirectly, any equity interest in any corporate or other legal entity, except for equity interests held in the investment portfolios of Commerce or any Commerce Subsidiary (which as to any one issuer, do not exceed five percent (5%) of such issuer's outstanding equity securities) and equity interests held in connection with the lending activities of CBTC, including stock in the FHLB.

4.3.3 To Commerce's Knowledge, except as set forth on Commerce Disclosure Schedule 4.3.3, as of the date hereof no Person is the beneficial owner (as defined in Section 13(d) of the Exchange Act) of five percent (5%) or more of the outstanding shares of Commerce Common Stock.

4.3.4 No bonds, debentures, notes or other indebtedness having the right to vote on any matters on which Commerce's stockholders may vote have been issued by Commerce and are outstanding.

4.4 Authority; No Violation.

4.4.1 Commerce has full corporate power and authority to execute and deliver this Agreement and, subject to the receipt of the Regulatory Approvals and the approval of this Agreement by Commerce's stockholders (the "**Commerce Stockholder Approval**"), to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement by Commerce and the completion by Commerce of the transactions contemplated hereby, up to and including the Merger, have been duly and validly approved by the Board of Directors of Commerce. This Agreement has been duly and validly executed and delivered by Commerce, and subject to Commerce Stockholder Approval (the "**Commerce Stockholder Approval**"), and the receipt of the Regulatory Approvals and due and valid execution and delivery of this Agreement by BHLB, constitutes the valid and binding obligation of Commerce, enforceable against Commerce in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally, and subject, as to enforceability, to general principles of equity.

4.4.2 (a) The execution and delivery of this Agreement by Commerce, and (b) subject to receipt of Regulatory Approvals and Commerce's and BHLB's compliance with any conditions contained therein, the receipt of the Commerce Stockholder Approval, and compliance by BHLB with the terms and conditions of this Agreement, the consummation of the transactions contemplated hereby and compliance by Commerce with the terms and provisions hereof will not (i) conflict with or result in a breach of any provision of the articles of organization and bylaws of Commerce or CBTC; (ii) violate any statute, code, ordinance, rule, regulation, judgment, order, writ, decree or injunction applicable to Commerce or CBTC or any of their respective properties or assets; or (iii) violate, conflict with, result in a breach of any provisions of, constitute a default (or an event which, with notice or lapse of time, or both, would constitute a default) under, result in the termination or amendment of, accelerate the performance required

by, or result in a right of termination or acceleration or the creation of any lien, security interest, charge or other encumbrance upon any of the properties or assets of Commerce or CBTC under any of the terms, conditions or provisions of any Commerce Material Contract.

4.5 Consents.

Except for (a) the receipt of the Regulatory Approvals and compliance with any conditions contained therein, (b) compliance with applicable requirements of the Securities Act, the Exchange Act and state securities or “blue sky” laws, (c) the filing of the Certificate of Merger with the Secretary of State of the State of Delaware and articles of merger with the Secretary of State of the Commonwealth of Massachusetts, and (d) the Commerce Stockholder Approval, no consents, waivers or approvals of, or filings or registrations with, any Governmental Entity or Bank Regulator are necessary, and, to the Knowledge of Commerce, no consents, waivers or approvals of, or filings or registrations with, any other third parties are necessary, in connection with (x) the execution and delivery of this Agreement by Commerce, the completion by Commerce of the Merger and the performance by Commerce of its obligations hereunder or (y) the execution and delivery of the agreement and plan of merger in respect of the Bank Merger and the completion of the Bank Merger. Commerce has no reason to believe that (i) any Regulatory Approvals or other required consents or approvals will not be received or will include the imposition of any condition (financial or otherwise) or requirement that could reasonably be expected by Commerce to result in a Materially Burdensome Regulatory Condition, or that (ii) any public body or authority having jurisdiction over the

affairs of Commerce or CBTC, the consent or approval of which is not required or pursuant to the rules of which a filing is not required, will object to the completion of the transactions contemplated by this Agreement.

4.6 Financial Statements.

4.6.1 The Commerce Regulatory Reports have been prepared in all material respects in accordance with applicable regulatory accounting principles and practices throughout the periods covered by such reports, and fairly present in all material respects the consolidated financial position, results of operations and changes in shareholders' equity of Commerce as of and for the periods ended on the dates thereof, in accordance with applicable regulatory accounting principles applied on a consistent basis.

4.6.2 Commerce has previously made available to BHLB the Commerce Financial Statements. The Commerce Financial Statements have been prepared in accordance with GAAP in all material respects, and (including the related notes where applicable) fairly present in each case in all material respects (subject in the case of the unaudited interim statements to normal year-end adjustments) the consolidated financial position, results of operations and cash flows of Commerce and the Commerce Subsidiaries on a consolidated basis as of and for the respective periods ending on the dates thereof, in accordance with GAAP during the periods involved, except as indicated in the notes thereto.

4.6.3 Except as provided in Commerce Disclosure Schedule 4.6.3, at the date of the most recent consolidated statement of financial condition included in the Commerce Financial Statements or in the Commerce Regulatory Reports, Commerce did not have any liabilities, obligations or loss contingencies of any nature (whether absolute, accrued, contingent or otherwise) of a type required to be reflected in such Commerce Financial Statements or in the Commerce Regulatory Reports or in the footnotes thereto which are not fully reflected or reserved against therein or fully disclosed in a footnote thereto, except for liabilities, obligations and loss contingencies which are not material individually or in the aggregate or which are incurred in the ordinary course of business, consistent with past practice, and subject, in the case of any unaudited statements, to normal, recurring audit adjustments and the absence of footnotes.

4.7 Taxes.

Commerce and the Commerce Subsidiaries are members of the same affiliated group within the meaning of Code Section 1504(a). Commerce, on behalf of itself and its Subsidiaries, has timely filed or caused to be filed all Tax Returns (including, but not limited to, those filed on a consolidated, combined or unitary basis) required to have been filed by Commerce and the Commerce Subsidiaries prior to the date hereof, or requests for extensions to file such returns and reports have been timely filed. All such Tax Returns are true, correct, and complete in all material

respects. Commerce and the Commerce Subsidiaries have timely paid or, prior to the Effective Time will pay, all Taxes, whether or not shown on such returns or reports, due or claimed to be due to any Governmental Entity prior to the Effective Time other than Taxes which are being contested in good faith. Commerce and the Commerce Subsidiaries have declared on their Tax Returns all positions taken therein that could give rise to a substantial underpayment of United States Federal Income Tax within the meaning of Section 6662 of the Code (or any corresponding provision of state or local laws). The accrued but unpaid Taxes of Commerce and the Commerce Subsidiaries did not, as of the most recent Commerce Financial Statements, exceed the reserve for Tax liability (rather than any reserve for deferred Taxes established to reflect timing differences between book and Tax income) set forth on the face of the most recent Commerce balance sheet (rather than in any notes thereto). Commerce and its Subsidiaries are subject to Tax audits in the ordinary course of business. Commerce management does not believe that an adverse resolution to any of such audits of which it has Knowledge would be reasonably likely to have a Material Adverse Effect on Commerce. Commerce and the Commerce Subsidiaries have not been notified in writing by any jurisdiction that the jurisdiction believes that Commerce or any of the Commerce Subsidiaries were required to file any Tax Return in such jurisdiction that was not filed. Neither Commerce nor any of the Commerce Subsidiaries (A) has been a member of a group with which they have filed or been included in a combined, consolidated or unitary income Tax Return other than a group the common parent of which was Commerce or (B) has any liability for the Taxes of any Person (other than Commerce or any of the Commerce Subsidiaries) under Treas. Reg. § 1.1502-6 (or any similar provision of state, local, or non-U.S. law), as a transferee or successor, by contract, or otherwise. As of the date hereof, all deficiencies proposed in writing as a result of any audits have been paid or settled. There are no written claims or assessments pending against Commerce or any Commerce Subsidiary

for any alleged deficiency in any Tax, and neither Commerce nor any Commerce Subsidiary has been notified in writing of any proposed Tax claims or assessments against Commerce or any Commerce Subsidiary. Commerce and the Commerce Subsidiaries each have duly and timely withheld, collected and paid over to the appropriate taxing authority all amounts required to be so withheld and paid under all applicable laws, and have duly and timely filed all Tax Returns with respect to such withheld Taxes, within the time prescribed under any applicable law. Commerce and the Commerce Subsidiaries have delivered to BHLB true and complete copies of all Income Tax Returns of Commerce and the Commerce Subsidiaries for taxable periods ending on or after January 1, 2014. Neither Commerce nor any of the Commerce Subsidiaries is or has been a party to any “reportable transaction,” as defined in Code § 6707A(c)(1) and Treas. Reg. § 1.6011-4(b). Neither Commerce nor any of the Commerce Subsidiaries has distributed stock of another Person, or has had its stock distributed by another Person, in a transaction that was purported or intended to be governed in whole or in part by Code § 355 or Code § 361. Neither Commerce nor any of the Commerce Subsidiaries has been a United States real property holding corporation within the meaning of Code § 897(c)(2) during the applicable period specified in Code § 897(c)(1)(A)(ii).

4.8 No Material Adverse Effect.

Neither Commerce nor any Commerce Subsidiary has suffered any Material Adverse Effect since March 31, 2017 and, to Commerce’s Knowledge, no event has occurred or circumstance arisen since that date which, in the aggregate, has had or reasonably would be expected to have a Material Adverse Effect on Commerce.

4.9 Material Contracts; Leases; Defaults.

4.9.1 Except as set forth in Commerce Disclosure Schedule 4.9.1, neither Commerce nor any Commerce Subsidiary is a party to or subject to: (i) any employment, consulting or severance contract or arrangement with any past or present officer, director, employee or consultant of Commerce or any Commerce Subsidiary, except for “at will” arrangements; (ii) any plan, arrangement or contract providing for bonuses, pensions, options, deferred compensation, retirement payments, profit sharing or similar arrangements for or with any past or present officers, directors, employees or consultants of Commerce or any Commerce Subsidiary; (iii) any collective bargaining agreement with any labor union relating to employees of Commerce or any Commerce Subsidiary; (iv) any agreement which by its terms limits or affects the payment of dividends by Commerce or any Commerce Subsidiary; (v) any instrument evidencing or related to indebtedness for borrowed money in excess of \$100,000, whether directly or indirectly, by way of purchase money obligation, conditional sale, lease purchase, guaranty or otherwise, in respect of which Commerce or any Commerce Subsidiary is an obligor to any Person, which instrument evidences or relates to indebtedness other than deposits, FHLB advances with a term to maturity not in excess of one (1) year, repurchase agreements, bankers’ acceptances, and transactions in “federal funds” or which contains financial covenants or other non-customary restrictions (other than those relating to the payment of principal and interest when due) which would be applicable on or after the Closing Date to Commerce or any Commerce Subsidiary; (vi) any other agreement, written or oral, which is not terminable without cause on sixty (60) days’ notice or less without penalty or payment, or that obligates Commerce or any Commerce Subsidiary for the payment of more than \$60,000 annually or for the

payment of more than \$100,000 over its remaining term; or (vii) any agreement (other than this Agreement), contract, arrangement, commitment or understanding (whether written or oral) that materially restricts or limits the conduct of business by Commerce or any Commerce Subsidiary.

4.9.2 Each real estate lease that will require the consent of the lessor or its agent as a result of the Merger or the Bank Merger by virtue of the terms of any such lease, is listed in Commerce Disclosure Schedule 4.9.2 identifying the section of the lease that contains such prohibition or restriction. Subject to any consents that may be required as a result of the transactions contemplated by this Agreement, to its Knowledge neither Commerce nor any Commerce Subsidiary is in material default under any material contract, agreement, commitment, arrangement, lease, insurance policy or other instrument to which it is a party, by which its assets, business, or operations may be bound or affected, or under which it or its assets, business, or operations receive benefits, and, to Commerce's Knowledge, there has not occurred any event that, with the lapse of time or the giving of notice or both, would constitute such a default and all such material contracts, agreements, commitments, arrangements, leases, insurance policies and other instruments are listed on Commerce Disclosure Schedule 4.9.2.

4.9.3 True and correct copies of agreements, contracts, arrangements and instruments referred to in Section 4.9.1 and 4.9.2 (each a "**Commerce Material Contract**," and collectively, the "**Commerce Material**

Contracts”) have been made available to BHLB on or before the date hereof, are listed on Commerce Disclosure Schedules 4.9.1 and 4.9.2 and are in full force and effect without modification on the date hereof. Except as set forth in Commerce Disclosure Schedule 4.9.3, no Commerce Material Contract (i) provides for acceleration of the vesting of benefits or payments due thereunder upon the occurrence of a change in ownership or control of Commerce or any Commerce Subsidiary or upon the occurrence of a subsequent event; (ii) requires Commerce or any Commerce Subsidiary to provide a benefit in the form of Commerce Common Stock or determined by reference to the value of Commerce Common Stock or (iii) contains provisions which permit an employee, director or independent contractor to terminate such agreement or arrangement without cause and continue to accrue future benefits thereunder.

4.10 Ownership of Property; Insurance Coverage.

4.10.1 Commerce and each Commerce Subsidiary has good and, as to real property, marketable title to all assets and properties owned by Commerce or such Commerce Subsidiary, as applicable, in the conduct of its businesses, whether such assets and properties are real or personal, tangible or intangible, including assets and property reflected in the most recent consolidated statement of financial condition contained in the Commerce Financial Statements or acquired subsequent thereto (except to the extent that such assets and properties have been disposed of in the ordinary course of business, since the date of such consolidated statement of financial condition), subject to no encumbrances, liens, mortgages, security interests or pledges, except (i) those items which secure liabilities for public or statutory obligations or any discount with, borrowing from or other obligations to FHLB, inter-bank credit facilities, reverse repurchase agreements or any transaction by a Commerce Subsidiary acting in a fiduciary capacity, and (ii) statutory liens for amounts not yet delinquent or which are being contested in good faith. Commerce and the Commerce Subsidiaries, as lessee, have the right under valid and existing leases of real and personal properties used by Commerce and the Commerce Subsidiaries in the conduct of their businesses to occupy or use all such properties as presently occupied and used by each of them. Such existing leases and commitments to lease constitute or will constitute operating leases for both tax and financial accounting purposes and the lease expense and minimum rental commitments with respect to such leases and lease commitments are as disclosed in all material respects in the notes to the Commerce Financial Statements.

4.10.2 With respect to all material agreements pursuant to which Commerce or any Commerce Subsidiary has purchased securities subject to an agreement to resell, if any, Commerce or such Commerce Subsidiary, as the case may be, has a lien or security interest (which to Commerce’s Knowledge is a valid, perfected first lien) in the securities or other collateral securing the repurchase agreement, and the value of such collateral equals or exceeds the amount of the debt secured thereby.

4.10.3 Commerce and each Commerce Subsidiary currently maintain insurance considered by each of them to be reasonable for their respective operations. Neither Commerce nor any Commerce Subsidiary, has received notice from any insurance carrier on or before the date hereof that (i) such insurance will be canceled or that coverage thereunder will be reduced or eliminated, or (ii) premium costs with respect to such policies of insurance will be substantially increased. Except as listed on Commerce Disclosure Schedule 4.10.3, there are presently no claims pending under

such policies of insurance and no notices of claim have been given by Commerce or any Commerce Subsidiary under such policies. All such insurance is valid and enforceable and in full force and effect (other than insurance that expires in accordance with its terms), and within the last three (3) years Commerce and each Commerce Subsidiary has received each type of insurance coverage for which it has applied and during such periods has not been denied indemnification for any claims submitted under any of its insurance policies. Commerce Disclosure Schedule 4.10.3 identifies all policies of insurance maintained by Commerce and each Commerce Subsidiary, including the name of the insurer, the policy number, the type of policy and any applicable deductibles, as well as the other matters required to be disclosed under this Section 4.10.3. Commerce has made available to BHLB copies of all of the policies listed on Commerce Disclosure Schedule 4.10.3.

4.11 Legal Proceedings.

There is no suit, action, investigation or proceeding pending or, to its Knowledge, threatened against or affecting Commerce or any of its Subsidiaries (and it is not aware of any facts that reasonably would be expected to be the basis for any such suit, action or proceeding) (1) that involves a Governmental Entity or Bank Regulator, or (2) that, individually or in the aggregate, is (A) material to it and its Subsidiaries' businesses or, after the Effective Time, BHLB's or any of its Subsidiaries' businesses, or (B) reasonably likely to prevent or delay it from performing

its obligations under, or consummating the transactions contemplated by, this Agreement. Except as set forth on Commerce Disclosure Schedule 4.11, there is no injunction, order, award, judgment, settlement, decree or regulatory restriction imposed upon or entered into by Commerce, any of its Subsidiaries or the assets of it or any of its Subsidiaries.

4.12 Compliance with Applicable Law.

Except as set forth on Commerce Disclosure Schedule 4.12 and in Section 4.15:

4.12.1 To Commerce's Knowledge, Commerce and each Commerce Subsidiary is in compliance in all material respects with all applicable federal, state, local and foreign statutes, laws, regulations, ordinances, rules, judgments, orders or decrees applicable to it, its properties, assets and deposits, its business, its conduct of business and its relationship with its employees, including, without limitation, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, the Equal Credit Opportunity Act, the Truth in Lending Act, the Real Estate Settlement Procedures Act, the Consumer Credit Protection Act, the Fair Credit Reporting Act, the Fair Debt Collections Act, the Fair Housing Act, the Community Reinvestment Act of 1977 ("CRA"), the Home Mortgage Disclosure Act, and all other applicable fair lending laws and other laws relating to discriminatory business practices, and neither Commerce nor any Commerce Subsidiary has received any written notice to the contrary.

4.12.2 Commerce and each Commerce Subsidiary has all material permits, licenses, authorizations, orders and approvals of, and has made all filings, applications and registrations with, all Governmental Entities and Bank Regulators that are required in order to permit it to own or lease its properties and to conduct its business as presently conducted; all such permits, licenses, certificates of authority, orders and approvals are in full force and effect and, to the Knowledge of Commerce, no suspension or cancellation of any such permit, license, certificate, order or approval is threatened or will result from the consummation of the transactions contemplated by this Agreement, subject to obtaining the Regulatory Approvals.

4.12.3 For the period beginning January 1, 2014, neither Commerce nor any Commerce Subsidiary has received any written notification or any other communication from any Bank Regulator (i) asserting that Commerce or any Commerce Subsidiary is not in material compliance with any of the statutes, regulations or ordinances which such Bank Regulator enforces; (ii) threatening to revoke any license, franchise, permit or governmental authorization; (iii) requiring or threatening to require Commerce or any Commerce Subsidiary, or indicating that Commerce or any Commerce Subsidiary may be required, to enter into a cease and desist order, agreement or memorandum of understanding or any other agreement with any federal or state governmental agency or authority which is charged with the supervision or regulation of banks, or engages in the insurance of bank deposits, restricting or limiting, or purporting to restrict or limit the operations of Commerce or any Commerce Subsidiary, including without limitation

any restriction on the payment of dividends; or (iv) directing, restricting or limiting, or purporting to direct, restrict or limit the operations of Commerce or any Commerce Subsidiary (any such notice, communication, memorandum, agreement or order described in this sentence is hereinafter referred to as a “**Regulatory Agreement**”). Except as disclosed in Commerce Disclosure Schedule 4.12.3, neither Commerce nor any Commerce Subsidiary has consented to or entered into any Regulatory Agreement that is currently in effect. Commerce has disclosed to BHLB its most recent regulatory ratings.

4.13 Employee Benefit Plans.

4.13.1 Commerce Disclosure Schedule 4.13.1 contains a list of all written and unwritten pension, retirement, profit-sharing, thrift, savings, deferred compensation, phantom stock awards, stock appreciation rights, stock option, employee stock ownership, employee stock purchase, restricted stock, severance pay, retention, vacation, bonus or other incentive plans, all employment, change in control, consulting, severance and retention agreements, all other written employee programs, arrangements or agreements, all medical, vision, dental, disability, life insurance, workers’ compensation, employee assistance or other health or welfare plans, and all other employee benefit or fringe benefit plans, including “employee benefit plans” as that term is defined in Section 3(3) of ERISA, currently adopted, maintained by, sponsored in whole or in part by, or contributed to by Commerce or any of the Commerce Subsidiaries for the benefit of employees, former employees, retirees (or the dependents, including spouses, of the foregoing), directors, independent contractors or other service providers to Commerce and under

which employees, former employees, retirees, dependents, spouses, directors, or other service providers of Commerce are eligible to participate (collectively, the “**Commerce Benefit Plans**”). Commerce has made available to BHLB true and complete copies of (i) the plan documents and summary plan descriptions for each written Commerce Benefit Plan, (ii) a summary of each unwritten Commerce Benefit Plan (if applicable), (iii) the actuarial valuation reports with respect to each tax-qualified Commerce Benefit Plan that is a defined benefit pension plan for the three (3) most recent years, (iv) all related trust agreements, insurance contracts or other funding agreements which currently implement the Commerce Benefit Plans (if applicable), (v) the most recent IRS determination letter with respect to each tax-qualified Commerce Benefit Plan (or, for a Commerce Benefit Plan maintained under a pre-approved prototype or volume submitter plan, the IRS determination letter on such pre-approved plan) and (vi) all substantive correspondence relating to any liability of or non-compliance relating to any Commerce Benefit Plan addressed to or received from the IRS, the Department of Labor or any other Governmental Entity within the past three (3) years. Each Commerce Benefit Plan that may be subject to Section 409A of the Code (“**Commerce Non-qualified Deferred Compensation Plan**”) has been maintained and operated in compliance with Section 409A of the Code.

4.13.2 All Commerce Benefit Plans are in material compliance with (and have been managed and administrated in all material respects in accordance with) the applicable terms of ERISA, the Code and any other applicable laws. Except as set forth on Commerce Disclosure Schedule 4.13.2, each Commerce Benefit Plan governed by ERISA that is intended to be a qualified retirement plan under Section 401(a) of the Code has either (i) received a favorable determination letter from the IRS (and Commerce is not aware of any circumstances likely to result in revocation of any such favorable determination letter) or timely application has been made therefore, or (ii) is maintained under a prototype plan which has been approved by the IRS and is entitled to rely upon the IRS National Office opinion letter issued to the prototype plan sponsor. To the Knowledge of Commerce and the Commerce Subsidiaries, there exists no fact which would adversely affect the qualification of any of the Commerce Benefit Plans intended to be qualified under Section 401(a) of the Code, or any threatened or pending claim against any of the Commerce Benefit Plans or their fiduciaries by any participant, beneficiary or Governmental Entity (other than routine claims for benefits).

4.13.3 No “defined benefit plan” (as defined in Section 414(j) of the Code) has been maintained within the last six (6) years by Commerce or any of its ERISA Affiliates for the benefit of the employees or former employees of Commerce or its Subsidiaries.

4.13.4 Within the last six (6) years, neither Commerce nor any of its ERISA Affiliates maintained or had any obligation to contribute to a Commerce Benefit Plan which is a “multiemployer plan” within the meaning of Section 3(37) of ERISA, and within the last six (6) years neither Commerce nor any of its ERISA Affiliates has incurred any withdrawal liability within the meaning of Section 4201 of ERISA to any such “multiemployer plan.” Within the last six (6) years, neither Commerce nor any of its ERISA Affiliates has incurred any unsatisfied liability (other than PBGC premiums) to the PBGC, the IRS or any other individual or entity under Title IV of ERISA or Section 412 of the Code, with respect to any Commerce Benefit Plan, and, to Commerce’s Knowledge, no event or condition exists that would reasonably be expected to result in the imposition of any liability on Commerce or any of its ERISA Affiliates under such provisions or that could reasonably be expected to have an adverse effect on BHLB or Berkshire Bank.

4.13.5 Commerce has complied in all material respects with the notice and continuation requirements of Parts 6 and 7 of Subtitle B of Title I of ERISA and Section 4980B of the Code (“**COBRA**”), and the regulations thereunder. All reports, statements, returns and other information required to be furnished or filed with respect to Commerce Benefit Plans have been timely furnished, filed or both in accordance with Sections 101 through 105 of ERISA and Sections 6057 through 6059 of the Code, and they are true, correct and complete. To Commerce’s Knowledge, records with respect to Commerce Benefit Plans have been maintained in compliance with Section 107 of ERISA. To Commerce’s Knowledge, neither Commerce nor any other fiduciary (as that term is defined in Section 3(21) of ERISA) with respect to any of Commerce Benefit Plans has any liability for any breach of any fiduciary duties under Sections 404, 405 or 409 of ERISA. No Commerce Benefit Plan fails to meet the applicable requirements of Section 105(h)(2) of the Code.

4.13.6 Commerce has not, with respect to any Commerce Benefit Plan, nor, to Commerce’s Knowledge, has any administrator of any Commerce Benefit Plan, the related trusts or any trustee thereof, engaged

in any non-exempt prohibited transaction which would subject Commerce, any ERISA Affiliate of Commerce, or any Commerce Benefit Plan to a Tax or penalty on prohibited transactions imposed by ERISA, Section 4975 of the Code, or to any other liability under ERISA.

4.13.7 Except as set forth on Commerce Disclosure Schedule 4.13.7, Commerce has no liability for retiree health and life benefits under any Commerce Benefit Plan other than any benefits required under COBRA or similar state laws or benefits in the nature of severance pursuant to an employment agreement, severance agreement, separation agreement or similar plan, policy or arrangement.

4.13.8 Except as set forth on Commerce Disclosure Schedule 4.13.8, neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will (A) result in any payment (including severance) becoming due to any director or any employee of Commerce from Commerce under any Commerce Benefit Plan, (B) increase any benefits otherwise payable under any Commerce Benefit Plan or (C) result in any acceleration of the time of payment or vesting of any such benefit. Except as set forth on Commerce Disclosure Schedule 4.13.8, no payment which in connection with the transactions contemplated by this Agreement is or may reasonably be expected to be made by, from or with respect to any Commerce Benefit Plan, either alone or in conjunction with any other payment will or could properly be characterized as an “excess parachute payment” under Section 280G of the Code on which an excise tax under Section 4999 of the Code is payable or will or could, either individually or collectively, provide for any payment by Commerce or any of its ERISA Affiliates that would not be deductible under Code Section 162(m).

4.13.9 The actuarial present values of all accrued Commerce Non-qualified Deferred Compensation Plans (including, to the extent applicable, entitlements under any executive compensation, supplemental retirement, or employment agreement) of employees and former employees of Commerce and their respective beneficiaries, other than entitlements accrued pursuant to funded retirement plans subject to the provisions of Section 412 of the Code or Section 302 of ERISA, have been fully reflected on the Commerce Financial Statements to the extent required by and in accordance with GAAP.

4.13.10 There is not, and has not been, any trust or fund maintained by or contributed to by Commerce or its employees to fund an employee benefit plan which would constitute a Voluntary Employees’ Beneficiary Association or a “welfare benefit fund” within the meaning of Section 419(a) of the Code.

4.13.11 No claim, lawsuit, arbitration or other action has been asserted or instituted or, to the Knowledge of Commerce, has been threatened or is anticipated, against any Commerce Benefit Plan (other than routine claims for benefits and appeals of such claims), Commerce or any Commerce Subsidiary or any director, officer or employee thereof, or any of the assets of any trust of any Commerce Benefit Plan or any fiduciary thereof.

4.13.12 Commerce Disclosure Schedule 4.13.12 sets forth: the name of each holder of a Commerce Phantom Stock Award, identifying the number of shares of phantom stock issued to such holder, the grant, vesting and expiration dates, and the grant price and exercise price relating to the awards held.

4.14 Brokers, Finders and Financial Advisors.

Neither Commerce nor any Commerce Subsidiary, nor any of their respective officers, directors, employees or agents, has employed any broker, finder or financial advisor in connection with the transactions contemplated by this Agreement, or incurred any liability or commitment for any fees or commissions to any such Person in connection with the transactions contemplated by this Agreement except for the retention of Sandler O'Neill & Partners, L.P. by Commerce and the fee payable pursuant thereto. Commerce has made available to BHLB a true and correct copy of the engagement agreement with Sandler O'Neill & Partners, L.P., setting forth the fee payable to Sandler O'Neill & Partners, L.P. for its services rendered to Commerce in connection with the Merger and the transactions contemplated by this Agreement.

4.15 Environmental Matters.

4.15.1 Except as may be set forth in Commerce Disclosure Schedule 4.15, with respect to Commerce and each Commerce Subsidiary:

(A) To the Knowledge of Commerce and the Commerce Subsidiaries, each of Commerce and the Commerce Subsidiaries, and the Commerce Loan Properties (as defined in Section 4.15.2) are, and have been, in material compliance with any Environmental Laws;

(B) Neither Commerce nor any Commerce Subsidiary has received written notice in the last five (5) years that there is any material suit, claim, action, demand, executive or administrative order, directive, request for information, investigation or proceeding pending and, to the Knowledge of Commerce and the Commerce Subsidiaries, no such action is threatened, before any court, governmental agency or other forum against them or any Commerce Loan Property (x) for alleged noncompliance (including by any predecessor) with, or liability under, any Environmental Law or (y) relating to the presence of or release into the environment of any Materials of Environmental Concern, whether or not occurring at or on a site owned, leased or operated by Commerce, or any of the Commerce Subsidiaries;

(C) To the Knowledge of Commerce and the Commerce Subsidiaries, the properties currently owned or operated by Commerce or any Commerce Subsidiary (including, without limitation, soil, groundwater or surface water on, or under the properties, and buildings thereon) do not contain any Materials of Environmental Concern in an amount, manner or condition requiring any notification, investigation, abatement, remediation or any response action under applicable Environmental Laws;

(D) There are no underground storage tanks on, in or under any properties owned or operated by Commerce or any of the Commerce Subsidiaries or any Commerce Loan Property, and no underground storage tanks have been closed or removed from any properties owned or operated by Commerce or any of the Commerce Subsidiaries or any Commerce Loan Property except as in compliance with Environmental Laws; and

(E) During the period of (a) Commerce's or any of the Commerce Subsidiaries' ownership or operation of any of their respective current properties or (b) Commerce's or any of the Commerce Subsidiaries' holding of a direct or indirect security interest in any Commerce Loan Property, to the Knowledge of Commerce and the Commerce Subsidiaries, there has been no material contamination by or material release of Materials of Environmental Concern in, on, under or affecting such properties. To the Knowledge of Commerce and the Commerce Subsidiaries, prior to the period of (x) Commerce's or any of the Commerce Subsidiaries' ownership or operation of any of their respective

current properties or (y) Commerce's or any of the Commerce Subsidiaries' holding of a direct or indirect security interest in any Commerce Loan Property, there was no material contamination by or release of Materials of Environmental Concern in, on, under or affecting such properties.

(F) Neither Commerce nor any other Commerce Subsidiary has conducted any environmental assessment or investigation during the past five (5) years (other than Phase II assessments which did not indicate any contamination of the environment by Materials of Environmental Concern above reportable levels) with respect to any properties owned or leased by it or any of its Subsidiaries, or with respect to any Commerce Loan Property.

4.15.2 For purposes of this Section 4.15, "**Commerce Loan Property**" means any property in which Commerce or a Commerce Subsidiary presently holds a direct or indirect security interest securing to a loan or other extension of credit made by them, including through a Commerce Loan Participation, and "**Commerce Loan Participation**" means a participation interest in a loan or other extension of credit other than by Commerce or a Commerce Subsidiary.

4.16 Loan Portfolio.

4.16.1 The allowances for loan losses reflected in the notes to Commerce's audited consolidated statements of financial condition at December 31, 2016 and 2015 were, and the allowance for loan losses shown in

the notes to the unaudited consolidated financial statements for periods ending after December 31, 2016 were, or will be, adequate, as of the dates thereof, under GAAP.

4.16.2 Commerce Disclosure Schedule 4.16.2 sets forth a listing, as of the most recently available date (and in no event earlier than March 31, 2017), by account, of: (A) all loans (including loan participations) of CBTC that have been accelerated during the past twelve (12) months; (B) with respect to all commercial loans (including commercial real estate loans), all notification letters and other written communications from CBTC to any borrowers, customers or other parties during the past twelve (12) months wherein CBTC has requested or demanded that actions be taken to correct existing defaults or facts or circumstances which may become defaults; (C) each borrower, customer or other party which has notified CBTC during the past twelve (12) months of, or has asserted against Commerce or CBTC, in each case in writing, any “lender liability” or similar claim, and, to the Knowledge of Commerce and CBTC, each borrower, customer or other party which has given Commerce or CBTC any oral notification of, or orally asserted to or against Commerce or CBTC, any such claim; and (D) all loans, (1) that are contractually past due ninety (90) days or more in the payment of principal and/or interest, (2) that are on non-accrual status, (3) that as of March 31, 2017 are classified as “Other Loans Specially Mentioned,” “Special Mention,” “Substandard,” “Doubtful,” “Loss,” “Classified,” “Critical,” “Watch list” or words of similar import, together with the principal amount of and accrued and unpaid interest on each such Loan and the identity of the obligor thereunder, (4) where a reasonable doubt exists as to the timely future collectability of principal and/or interest, whether or not interest is still accruing or the loans are less than ninety (90) days past due, (5) where the interest rate terms have been reduced and/or the maturity dates have been extended subsequent to the agreement under which the loan was originally created due to concerns regarding the borrower’s ability to pay in accordance with such initial terms, or (6) where a specific reserve allocation exists in connection therewith; and (E) all other assets classified by Commerce or CBTC as real estate acquired through foreclosure or in lieu of foreclosure, including in-substance foreclosures, and all other assets currently held that were acquired through foreclosure or in lieu of foreclosure. Commerce Disclosure Schedule 4.16.2 may exclude any individual loan with a principal outstanding balance of less than \$100,000, provided that Commerce Disclosure Schedule 4.16.2 includes, for each category described, the aggregate amount of individual loans with a principal outstanding balance of less than \$100,000 that has been excluded.

4.16.3 All loans receivable (including discounts) and accrued interest entered on the books of Commerce and CBTC arose out of bona fide arm’s-length transactions, were made for good and valuable consideration in the ordinary course of Commerce’s and CBTC’s respective businesses, and the notes or other evidences of indebtedness with respect to such loans (including discounts) are true and genuine and are what they purport to be. The loans, discounts and the accrued interest reflected on the books of Commerce and CBTC are subject to no defenses, set-offs or counterclaims (including, without limitation, those afforded by usury or truth-in-lending laws), except as may be provided by bankruptcy, insolvency or similar laws affecting creditors’ rights generally or by general principles of equity. Except with respect to liens in favor of the FHLB, all such loans are owned by Commerce or CBTC free and clear of any liens.

4.16.4 The notes and other evidences of indebtedness evidencing the loans described above, and all pledges, mortgages, deeds of trust and other collateral documents or security instruments relating thereto are valid, true and genuine, and what they purport to be.

4.17 Related Party Transactions.

Neither Commerce nor any Commerce Subsidiary is a party to any transaction (including any loan or other credit accommodation) with any Affiliate of Commerce or any Commerce Subsidiary, except as described in Commerce Disclosure Schedule 4.17. All such transactions (a) were made in the ordinary course of business, (b) were made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions with other Persons, and (c) did not involve more than the normal risk of collectability or present other unfavorable features. No loan or credit accommodation to any Affiliate of Commerce or any Commerce Subsidiary is presently in default or, during the three (3)-year period prior to the date of this Agreement, has been in default or has been restructured, modified or extended. Neither Commerce nor any Commerce Subsidiary has been notified that principal or interest with respect to any such loan or other credit accommodation will not be paid when due or that the loan grade classification accorded such loan or credit accommodation is inappropriate.

4.18 Deposits.

Except as disclosed in Commerce Disclosure Schedule 4.18, none of the deposits of CBTC as of March 31, 2017 are a “brokered deposit” as defined in 12 C.F.R. Section 337.6(a)(2).

4.19 Board Approval.

The Board of Directors of Commerce determined that the Merger is in the best interests of Commerce and its stockholders, approved this Agreement, resolved to recommend approval of this Agreement by the holders of Commerce Common Stock, and directed that this Agreement be submitted to the holders of Commerce Common Stock for their approval. The Board of Directors of Commerce has taken all action so that BHLB and Berkshire Bank will not be an “interested stockholder” or prohibited from entering into or consummating a “business combination” with Commerce (in each case as such term is used in Section 203 of the DGCL) as a result of the execution of this Agreement or the consummation of the transactions in the manner contemplated hereby.

4.20 Registration Obligations.

Neither Commerce nor any Commerce Subsidiary is under any obligation, contingent or otherwise, which will survive the Effective Time by reason of any agreement to register any transaction involving any of its securities under the Securities Act.

4.21 Risk Management Instruments.

All interest rate swaps, caps, floors, option agreements, futures and forward contracts and other similar risk management arrangements, whether entered into for Commerce’s own account, or for the account of one or more of Commerce’s Subsidiaries or their customers, in force and effect as of March 31, 2017 (all of which are set forth in Commerce Disclosure Schedule 4.21), were entered into in compliance with all applicable laws, rules, regulations and regulatory policies, and to the Knowledge of Commerce and each Commerce Subsidiary, with counterparties believed to be financially responsible at the time; and to Commerce’s and each Commerce Subsidiary’s Knowledge each of them constitutes the valid and legally binding obligation of Commerce or such Commerce Subsidiary, enforceable in accordance with its terms (except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer and similar laws of general applicability relating to or affecting creditors’ rights or by general equity principles), and is in full force and effect. Neither Commerce nor any Commerce

Subsidiary, nor any other party thereto, is in breach of any of its obligations under any such agreement or arrangement.

4.22 Fairness Opinion.

Commerce has received an opinion, a copy of which will be provided to BHLB promptly following the date of this Agreement, from Sandler O'Neill & Partners, L.P. to the effect that, subject to the terms, conditions and qualifications set forth therein, as of the date hereof, the Merger Consideration to be received by the stockholders of Commerce pursuant to this Agreement is fair to such stockholders from a financial point of view. Such opinion has not been amended or rescinded as of the date of this Agreement.

4.23 Intellectual Property.

Commerce and each Commerce Subsidiary owns or, to Commerce's Knowledge, possesses the rights necessary (subject to expirations in accordance with their terms) to use all patents, copyrights, trade secrets, trade names, computer software, service marks and trademarks used in its respective business, each without payment (except for license fees or other payments pursuant to commercially available off-the-shelf technology), and neither Commerce nor any Commerce Subsidiary has received any written notice of breach or conflict with respect thereto that asserts the rights of others. Commerce and each Commerce Subsidiary have performed all the obligations required to be performed, and are not in default in any respect, under any contract, agreement, arrangement or commitment relating to any of the foregoing.

4.24 Duties as Fiduciary.

CBTC has, if required by virtue of any line of business in which it is or previously was engaged in a “fiduciary capacity,” to its Knowledge performed all of its duties in a fashion that complied with all applicable laws, regulations, orders, agreements, wills, instruments, and common law standards in effect at that time. CBTC has not received notice of any claim, allegation, or complaint from any Person that CBTC failed to perform these duties in a manner that complied with all applicable laws, regulations, orders, agreements, wills, instruments, and common law standards, except for notices involving matters that have been resolved and any cost of such resolution is reflected in Commerce’s Financial Statements. For purposes of this Section 4.24, the term “fiduciary capacity” (i) shall mean (a) acting as trustee, executor, administrator, registrar of stocks and bonds, transfer agent, guardian, assignee, receiver, or custodian under a uniform gifts to minors act and (b) possessing investment discretion on behalf of another, and (ii) shall exclude CBTC’s capacity with respect to individual retirement accounts or the Commerce Benefit Plans.

4.25 Employees; Labor Matters.

4.25.1 Commerce Disclosure Schedule 4.25.1 sets forth the following information with respect to each employee of Commerce and the Commerce Subsidiaries as of March 31, 2017: job location, job title, current annual base salary, year of hire and years of service.

4.25.2 There are no labor or collective bargaining agreements to which Commerce or any Commerce Subsidiary is a party. There is no union organizing effort pending or, to the Knowledge of Commerce, threatened against Commerce or any Commerce Subsidiary. There is no labor strike, labor dispute (other than routine employee grievances that are not related to union employees), work slowdown, stoppage or lockout pending or, to the Knowledge of Commerce, threatened against Commerce or any Commerce Subsidiary. There is no unfair labor practice or labor arbitration proceeding pending or, to the Knowledge of Commerce, threatened against Commerce or any Commerce Subsidiary (other than routine employee grievances that are not related to union employees). Commerce and each Commerce Subsidiary is in compliance with all applicable laws respecting employment and employment practices, terms and conditions of employment and wages and hours, and are not engaged in any unfair labor practice. Neither Commerce nor any Commerce Subsidiary is a party to, or bound by, any agreement for the leasing of employees.

4.25.3 To Commerce’s Knowledge, all Persons who have been treated as independent contractors by Commerce or any Commerce Subsidiary for Tax purposes have met the criteria to be so treated under all applicable federal, state and local Tax laws, rules and regulations.

4.26 Commerce Information Supplied.

The information relating to Commerce and any Commerce Subsidiary to be contained in the Merger Registration Statement, or in any other document filed with any Bank Regulator or other Governmental Entity in connection herewith, will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances in which they are made, not misleading.

4.27 Internal Controls.

4.27.1 The records, systems, controls, data and information of Commerce and its Subsidiaries are recorded, stored, maintained and operated under means (including any electronic, mechanical or photographic process, whether computerized or not) that are under the exclusive ownership and direct control of Commerce or its Subsidiaries or accountants (including all means of access thereto and therefrom), except for any non-exclusive ownership and non-direct control that would not reasonably be expected to have a material adverse effect on the system of internal accounting controls described in the following sentence. Commerce and its Subsidiaries have devised and maintain a system of internal accounting controls sufficient to provide reasonable assurances regarding the reliability of financial reporting and the preparation of financial statements in accordance with GAAP.

4.27.2 Commerce's management has completed an assessment of the effectiveness of its internal control over financial reporting for the year ended December 31, 2016, and such assessment concluded that such controls were effective. It has previously disclosed, based on its most recent evaluation prior to the date hereof, to its auditors and the audit committee of the Commerce board: (A) any significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting and (B) any fraud, whether or not material, that involves management or other employees who have a significant role in its internal controls over financial reporting.

4.27.3 Since December 31, 2014, (A) neither Commerce nor any of its Subsidiaries nor, to its knowledge, any director, officer, employee, auditor, accountant or representative of Commerce or any of its Subsidiaries has received or otherwise had or obtained knowledge of any material complaint, allegation, assertion or claim, whether written or oral, regarding the accounting or auditing practices, procedures, methodologies or methods (including with respect to loan loss reserves, write-downs, charge-offs and accruals) of it or any of its subsidiaries or their respective internal accounting controls, including any material complaint, allegation, assertion or claim that it or any of its subsidiaries has engaged in questionable accounting or auditing practices, and (B) no attorney representing Commerce or any of its Subsidiaries, whether or not employed by it or any of its Subsidiaries, has reported evidence of a material violation of securities laws, breach of fiduciary to duty or similar violation by Commerce or any of its officers, directors, employees or agents to its board of directors or any committee thereof or to any of its directors officers.

4.28 Bank Owned Life Insurance.

Commerce and each Commerce Subsidiary has obtained the written consent of each employee on whose behalf bank owned life insurance ("**BOLI**") has been purchased. CBTC has taken all actions necessary to comply with applicable law in connection with its purchase of BOLI. Commerce Disclosure Schedule 4.28 sets forth all BOLI owned by Commerce or any Commerce Subsidiary, a breakdown of the cash surrender values on each policy, the purpose for which each policy was purchased, the beneficiaries of such policy and a list of the lives insured thereunder.

4.29 Stock Transfer Records.

The Stock transfer books and records of Commerce are materially complete and accurate.

ARTICLE V
REPRESENTATIONS AND WARRANTIES OF BHLB

BHLB represents and warrants to Commerce that the statements contained in this Article V are correct as of the date of this Agreement and will be correct as of the Closing Date (as though made then and as though the Closing Date were substituted for the date of this Agreement throughout this Article V), subject to the standard set forth in Section 5.1 and except as set forth in the BHLB Disclosure Schedule delivered by BHLB to Commerce on the date hereof, and except as to any representation or warranty which specifically relates to an earlier date, which only need be so correct as of such earlier date, *provided, however*, that disclosure in any section of such BHLB Disclosure Schedule shall apply only to the indicated Section of this Agreement except to the extent that it is reasonably apparent that such disclosure is relevant to another section of this Agreement. References to the Knowledge of BHLB shall include the Knowledge of Berkshire Bank.

5.1 Standard.

Except as set forth in the following sentence, no representation or warranty of BHLB contained in this Article V shall be deemed untrue or incorrect, and BHLB shall not be deemed to have breached a representation or warranty, as a consequence of the existence of any fact, circumstance or event unless such fact, circumstance or event, individually or taken together with all other facts, circumstances or events inconsistent with any paragraph of this Article V, has had or reasonably could be expected to have a Material Adverse Effect, disregarding for these purposes (x) any qualification or exception for, or reference to, materiality in any such representation or warranty and (y) any use of the terms “material,” “materially,” “in all material respects,” “Material Adverse Effect” or similar

terms or phrases in any such representation or warranty. The foregoing standard shall not apply to representations and warranties contained in Sections 5.2 (other than Sections 5.2.3, 5.2.4, and 5.2.5 and the last sentence of Sections 5.2.1 and 5.2.2), Section 5.3 and 5.4 (other than Section 5.4.2(iii)) which shall be true and correct in all material respects.

5.2 Organization.

5.2.1 BHLB is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, and is duly registered as a bank holding company under the BHCA. BHLB has full corporate power and authority to carry on its business as now conducted and is duly licensed or qualified to do business in the states of the United States and foreign jurisdictions where its ownership or leasing of property or the conduct of its business requires such qualification.

5.2.2 Berkshire Bank is a Massachusetts-chartered stock trust company duly organized, validly existing and in good standing under the laws of the Commonwealth of Massachusetts. The deposits in Berkshire Bank are insured by the FDIC to the fullest extent permitted by law, and all premiums and assessments required to be paid in connection therewith have been paid when due. Berkshire Bank is a member in good standing of the FHLB and owns the requisite amount of stock of each as set forth on BHLB Disclosure Schedule 5.2.2.

5.2.3 BHLB Disclosure Schedule 5.2.3 sets forth each BHLB Subsidiary and its jurisdiction of incorporation or organization. Each BHLB Subsidiary (other than Berkshire Bank) is a corporation, limited liability company or other legal entity as set forth on BHLB Disclosure Schedule 5.2.3, duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization. Each BHLB Subsidiary is duly licensed or qualified to do business in the states of the United States and foreign jurisdictions where its ownership or leasing of property or conduct of its business requires such qualification.

5.2.4 The respective minute books of BHLB and Berkshire Bank accurately record all corporate actions of their respective stockholders and Boards of Directors (including committees).

5.2.5 Prior to the date of this Agreement, BHLB has made available to Commerce true and correct copies of the certificate of incorporation or articles of association, as applicable, and bylaws or other governing documents of BHLB and Berkshire Bank and each other BHLB Subsidiary.

5.3 Capitalization.

5.3.1 The authorized capital stock of BHLB consists of (i) 50,000,000 shares of BHLB Common Stock and (ii) 1,000,000 shares of preferred stock, \$0.01 par value per share (“**BHLB Preferred Stock**” and collectively with the BHLB Common Stock, the “**BHLB Stock**”). As of April 30, 2017, there are (i) 35,789,762 shares of BHLB Common Stock validly issued and outstanding, fully paid and non-assessable and free of preemptive rights, (ii) 942,367 shares of BHLB Common Stock held by BHLB as treasury stock, and (iii) no shares of BHLB Preferred Stock outstanding. Berkshire Bank does not own, of record or beneficially, any shares of BHLB Stock, other than shares held as treasury stock. Neither BHLB nor any BHLB Subsidiary has or is bound by any Rights or other arrangements of any character relating to the purchase, sale or issuance or voting of, or right to receive dividends or other distributions on, any capital stock of BHLB, or any other security of BHLB or an BHLB Subsidiary or any securities representing the right to vote, purchase or otherwise receive any capital stock of BHLB or an BHLB Subsidiary or any other security of BHLB or any BHLB Subsidiary, other than shares of BHLB Common Stock underlying the options and restricted stock granted pursuant to benefit plans maintained by BHLB. BHLB has granted options to acquire 92,222 shares of BHLB Common Stock at a weighted average exercise price of \$13.91 per share. All shares of BHLB Common Stock issuable pursuant to option plans maintained by BHLB will be duly authorized, validly issued, fully paid and non-assessable when issued upon the terms and conditions specified in the instruments pursuant to which they are issuable.

5.3.2 BHLB owns all of the capital stock of each BHLB Subsidiary free and clear of all liens, security interests, pledges, charges, encumbrances, agreements and restrictions of any kind or nature. Except for the BHLB Subsidiaries and as set forth in BHLB Disclosure Schedule 5.3.2, BHLB as of the date of this Agreement

does not possess, directly or indirectly, any equity interest in any corporate or other legal entity, except for equity interests held in the investment portfolios of BHLB or any BHLB Subsidiary (which as to any one issuer, do not exceed five percent (5%) of such issuer's outstanding equity securities) and equity interests held in connection with the lending activities of Berkshire Bank, including stock in the FHLB.

5.3.3 To BHLB's Knowledge, except as set forth on BHLB Disclosure Schedule 5.3.3, as of the date hereof, no Person is the beneficial owner (as defined in Section 13(d) of the Exchange Act) of five percent (5%) or more of the outstanding shares of BHLB Common Stock.

5.3.4 No bonds, debentures, notes or other indebtedness having the right to vote on any matters on which BHLB's stockholders may vote have been issued by BHLB and are outstanding.

5.4 Authority; No Violation.

5.4.1 BHLB has full corporate power and authority to execute and deliver this Agreement and, subject to receipt of the Regulatory Approvals, to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement by BHLB and the completion by BHLB of the transactions contemplated hereby, up to and including the Merger, have been duly and validly approved by the Board of Directors of BHLB. This Agreement has been duly and validly executed and delivered by BHLB, and subject to the receipt of the Regulatory Approvals, the Commerce Stockholder Approval, and due and valid execution and delivery of this Agreement by Commerce, constitutes the valid and binding obligations of BHLB, enforceable against BHLB in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally, and subject, as to enforceability, to general principles of equity.

5.4.2 (a) The execution and delivery of this Agreement by BHLB, and (b) subject to receipt of the Regulatory Approvals, and compliance by Commerce and BHLB with any conditions contained therein, the receipt of the Commerce Stockholder Approval, and compliance by Commerce with the terms and conditions of this Agreement, the consummation of the transactions contemplated hereby and compliance by BHLB with the terms and provisions hereof will not (i) conflict with or result in a breach of any provision of the certificate of incorporation or articles of association, as applicable, and bylaws of BHLB or any BHLB Subsidiary; (ii) violate any statute, code, ordinance, rule, regulation, judgment, order, writ, decree or injunction applicable to BHLB or any BHLB Subsidiary or any of their respective properties or assets; or (iii) violate, conflict with, result in a breach of any provisions of, constitute a default (or an event which, with notice or lapse of time, or both, would constitute a default) under, result in the termination or amendment of, accelerate the performance required by, or result in a right of termination or acceleration or the creation of any lien, security interest, charge or other encumbrance upon any of the properties or assets of BHLB or any BHLB Subsidiary under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, deed of trust, license, lease, agreement or other investment or obligation to which BHLB or any

BHLB Subsidiary is a party, or by which they or any of their respective properties or assets may be bound or affected.

5.5 Consents.

Except for (a) the receipt of the Regulatory Approvals and compliance with any conditions contained therein, (b) compliance with applicable requirements of the Securities Act, the Exchange Act and state securities or “blue sky” laws, (c) the filing of the Certificate of Merger with the Secretary of State of the State of Delaware, (d) the filing with the SEC of (i) the Merger Registration Statement and (ii) such reports under Sections 13(a), 13(d), 13(g) and 16(a) of the Exchange Act as may be required in connection with this Agreement and the transactions contemplated hereby and the obtaining from the SEC of such orders as may be required in connection therewith, (e) notification of the listing of BHLB Common Stock to be issued in the Merger on the NYSE and (f) the approval of this Agreement by the Commerce Stockholder Approval, no consents, waivers or approvals of, or filings or registrations with, any Governmental Entity or Bank Regulator are necessary, and, to the Knowledge of BHLB, no consents, waivers or approvals of, or filings or registrations with, any other third parties are necessary, in connection with (x) the execution and delivery of this Agreement by BHLB, the completion by BHLB of the Merger and the performance by BHLB of its obligations hereunder or (y) the execution and delivery of the agreement and plan of merger in respect of the Bank Merger and the completion of the Bank Merger. BHLB has no reason to believe that (i) any Regulatory Approvals or other required consents or approvals will not be received or will include the

imposition of any condition (financial or otherwise) or requirement that could reasonably be expected by BHLB to result in a Materially Burdensome Regulatory Condition or that (ii) any public body or authority having jurisdiction over the affairs of BHLB and Berkshire Bank, the consent or approval of which is not required or pursuant to the rules of which a filing is not required, will object to the completion of the transactions contemplated by this Agreement.

5.6 Financial Statements.

5.6.1 The BHLB Regulatory Reports have been prepared in all material respects in accordance with applicable regulatory accounting principles and practices throughout the periods covered by such statements, and fairly present in all material respects the consolidated financial position, results of operations and changes in shareholders' equity of BHLB as of and for the periods ended on the dates thereof, in accordance with applicable regulatory accounting principles applied on a consistent basis.

5.6.2 BHLB has previously made available to Commerce the BHLB Financial Statements covering periods ended prior to the date hereof. The BHLB Financial Statements have been prepared in accordance with GAAP in all material respects, and (including the related notes where applicable) fairly present in each case in all material respects (subject in the case of the unaudited interim statements to normal year-end adjustments) the consolidated financial position, results of operations and cash flows of BHLB and the Berkshire Bank on a consolidated basis as of and for the respective periods ending on the dates thereof, in accordance with GAAP during the periods involved, except as indicated in the notes thereto, or in the case of unaudited statements, as permitted by Form 10-Q.

5.6.3 At the date of the most recent consolidated statement of financial condition included in the BHLB Financial Statements or in the BHLB Regulatory Reports, BHLB did not have any liabilities, obligations or loss contingencies of any nature (whether absolute, accrued, contingent or otherwise) of a type required to be reflected in such BHLB Financial Statements or in the footnotes thereto which are not fully reflected or reserved against therein or fully disclosed in a footnote thereto, except for liabilities, obligations and loss contingencies which are not material individually or in the aggregate or which are incurred in the ordinary course of business, consistent with past practice, and subject, in the case of any unaudited statements, to normal, recurring audit adjustments and the absence of footnotes.

5.7 Taxes.

5.7.1 Neither BHLB nor any of its Subsidiaries or Affiliates has taken or agreed to take any action, has failed to take any action or knows of any fact, agreement, plan or other circumstance that could reasonably be expected to prevent the Merger from qualifying as a "reorganization" within the meaning of Section 368(a) of the Code. BHLB and

the BHLB Subsidiaries are members of the same affiliated group within the meaning of Code Section 1504(a). BHLB, on behalf of itself and its Subsidiaries, has timely filed or caused to be filed all Tax Returns (including, but not limited to, those filed on a consolidated, combined or unitary basis) required to have been filed by BHLB and the BHLB Subsidiaries prior to the date hereof, or requests for extensions to file such returns and reports have been timely filed. All such Tax Returns are true, correct, and complete in all material respects. BHLB and the BHLB Subsidiaries have timely paid or, prior to the Effective Time will pay, all Taxes, whether or not shown on such returns or reports, due or claimed to be due to any Governmental Entity prior to the Effective Time other than Taxes which are being contested in good faith. BHLB and the BHLB Subsidiaries have declared on their Tax Returns all positions taken therein that could give rise to a substantial underpayment of United States Federal Income Tax within the meaning of Section 6662 of the Code (or any corresponding provision of state or local laws). The unpaid accrued but unpaid Taxes of BHLB and the BHLB Subsidiaries did not, as of the most recent BHLB Financial Statements, exceed the reserve for Tax liability (rather than any reserve for deferred Taxes established to reflect timing differences between book and Tax income) set forth on the face of the most recent BHLB balance sheet (rather than in any notes thereto). BHLB and its Subsidiaries are subject to Tax audits in the ordinary course of business. BHLB management does not believe that an adverse resolution to any of such audits of which it has Knowledge would be reasonably likely to have a Material Adverse Effect on BHLB. BHLB and the BHLB Subsidiaries have not been notified in writing by any jurisdiction that the jurisdiction believes that BHLB or any of the BHLB Subsidiaries were required to file any Tax Return in such jurisdiction that was not filed. Neither BHLB nor any of the BHLB Subsidiaries (A) has been a member of a group with which they have filed or been included in

a combined, consolidated or unitary income Tax Return other than a group the common parent of which was BHLB or (B) has any liability for the Taxes of any Person (other than BHLB or any of the BHLB Subsidiaries) under Treas. Reg. § 1.1502-6 (or any similar provision of state, local, or non-U.S. law), as a transferee or successor, by contract, or otherwise. As of the date hereof, all deficiencies proposed in writing as a result of any audits have been paid or settled. There are no written claims or assessments pending against BHLB or any BHLB Subsidiary for any alleged deficiency in any Tax, and neither BHLB nor any BHLB Subsidiary has been notified in writing of any proposed Tax claims or assessments against BHLB or any BHLB Subsidiary. BHLB and the BHLB Subsidiaries each have duly and timely withheld, collected and paid over to the appropriate taxing authority all amounts required to be so withheld and paid under all applicable laws, and have duly and timely filed all Tax Returns with respect to such withheld Taxes, within the time prescribed under any applicable law. BHLB and the BHLB Subsidiaries have delivered to Commerce true and complete copies of all Tax Returns of BHLB and the BHLB Subsidiaries for taxable periods ending on or after December 31, 2014. Neither BHLB nor any of the BHLB Subsidiaries is or has been a party to any “reportable transaction,” as defined in Code § 6707A(c)(1) and Treas. Reg. § 1.6011-4(b). Neither BHLB nor any of the BHLB Subsidiaries has distributed stock of another Person, or has had its stock distributed by another Person, in a transaction that was purported or intended to be governed in whole or in part by Code § 355 or Code § 361. Neither BHLB nor any of the BHLB Subsidiaries has been a United States real property holding corporation within the meaning of Code § 897(c)(2) during the applicable period specified in Code § 897(c)(1)(A)(ii).

5.8 No Material Adverse Effect.

Neither BHLB nor any BHLB Subsidiary has suffered any Material Adverse Effect since March 31, 2017 and, to BHLB’s Knowledge, no event has occurred or circumstance arisen since that date which, in the aggregate, has had or is reasonably likely to have a Material Adverse Effect on BHLB.

5.9 Ownership of Property; Insurance Coverage.

5.9.1 Except as set forth on BHLB Disclosure Schedule 5.9.1, BHLB and each BHLB Subsidiary has good and, as to real property, marketable title to all assets and properties owned by BHLB or such BHLB Subsidiary, as applicable, in the conduct of its businesses, whether such assets and properties are real or personal, tangible or intangible, including assets and property reflected in the most recent consolidated statement of financial condition contained in the BHLB Financial Statements or acquired subsequent thereto (except to the extent that such assets and properties have been disposed of in the ordinary course of business, since the date of such consolidated statement of financial condition), subject to no encumbrances, liens, mortgages, security interests or pledges, except (i) those items which secure liabilities for public or statutory obligations or any discount with, borrowing from or other obligations to FHLB, inter-bank credit facilities, reverse repurchase agreements or any transaction by an BHLB Subsidiary acting in a fiduciary capacity, and (ii) statutory liens for amounts not yet delinquent or which are being contested in good faith. BHLB and the BHLB Subsidiaries, as lessee, have the right under valid and existing leases of real and personal properties used by BHLB and the BHLB Subsidiaries in the conduct of their businesses to occupy or use all such properties as presently occupied and used by each of them. Such existing leases and commitments to lease constitute

or will constitute operating leases for both tax and financial accounting purposes and the lease expense and minimum rental commitments with respect to such leases and lease commitments are as disclosed in all material respects in the notes to the BHLB Financial Statements.

5.9.2 With respect to all material agreements pursuant to which BHLB or any BHLB Subsidiary has purchased securities subject to an agreement to resell, if any, BHLB or such BHLB Subsidiary, as the case may be, has a lien or security interest (which to BHLB's Knowledge is a valid, perfected first lien) in the securities or other collateral securing the repurchase agreement, and the value of such collateral equals or exceeds the amount of the debt secured thereby.

5.9.3 BHLB and each BHLB Subsidiary currently maintain insurance considered by each of them to be reasonable for their respective operations. Neither BHLB nor any BHLB Subsidiary, has received notice from any insurance carrier on or before the date hereof that (i) such insurance will be canceled or that coverage thereunder will be reduced or eliminated, or (ii) premium costs with respect to such policies of insurance will be substantially increased. Except as listed on BHLB Disclosure Schedule 5.9.3, there are presently no claims pending under such policies of insurance and no notices of claim have been given by BHLB or any BHLB Subsidiary under

such policies. All such insurance is valid and enforceable and in full force and effect (other than insurance that expires in accordance with its terms), and within the last three (3) years BHLB and each BHLB Subsidiary has received each type of insurance coverage for which it has applied and during such periods has not been denied indemnification for any claims submitted under any of its insurance policies. BHLB Disclosure Schedule 5.9.3 identifies all policies of insurance maintained by BHLB and each BHLB Subsidiary, including the name of the insurer, the policy number, the type of policy and any applicable deductibles, as well as the other matters required to be disclosed under this Section 5.9.3. BHLB has made available to Commerce copies of all of the policies listed on BHLB Disclosure Schedule 5.9.3.

5.10 Legal Proceedings.

Except as set forth on BHLB Disclosure Schedule 5.10, there is no suit, action, investigation or proceeding pending or, to its knowledge, threatened against or affecting BHLB or any of its Subsidiaries (and it is not aware of any facts that reasonably could be expected to form the basis for any such suit, action or proceeding) (1) that involves a Governmental Entity or Bank Regulator, or (2) that, individually or in the aggregate, is (A) material to it and its Subsidiaries, taken as a whole, or reasonably likely to result in a restriction on its or any of its Subsidiaries' businesses or, or after the Effective Time, BHLB's or any of its Subsidiaries' businesses, or (B) reasonably likely to prevent or delay it from performing its obligations under, or consummating the transactions contemplated by, this Agreement. There is no injunction, order, award, judgment, settlement, decree or regulatory restriction imposed upon or entered into by BHLB, any of its Subsidiaries or the assets of it or any of its Subsidiaries.

5.11 Compliance with Applicable Law.

Except as set forth on BHLB Disclosure Schedule 5.11:

5.11.1 To BHLB's Knowledge, BHLB and each BHLB Subsidiary is in compliance in all material respects with all applicable federal, state, local and foreign statutes, laws, regulations, ordinances, rules, judgments, orders or decrees applicable to it, its properties, assets and deposits, its business, its conduct of business and its relationship with its employees, including, without limitation, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, the Equal Credit Opportunity Act, the Truth in Lending Act, the Real Estate Settlement Procedures Act, the Consumer Credit Protection Act, the Fair Credit Reporting Act, the Fair Debt Collections Act, the Fair Housing Act, the CRA, the Home Mortgage Disclosure Act, and all other applicable fair lending laws and other laws relating to discriminatory business practices, and neither BHLB nor any BHLB Subsidiary has received any written notice to the contrary.

5.11.2 BHLB and each BHLB Subsidiary has all material permits, licenses, authorizations, orders and approvals of, and has made all filings, applications and registrations with, all Governmental Entities and Bank Regulators that are required in order to permit it to own or lease its properties and to conduct its business as presently conducted; all such permits, licenses, certificates of authority, orders and approvals are in full force and effect and, to the Knowledge of BHLB, no suspension or cancellation of any such permit, license, certificate, order or approval is threatened or will result from the consummation of the transactions contemplated by this Agreement, subject to obtaining the approvals set forth in Section 8.3.

5.11.3 For the period beginning January 1, 2014, neither BHLB nor any BHLB Subsidiary has received any written notification or any other communication from any Bank Regulator or Insurance Regulator (i) asserting that BHLB or any BHLB Subsidiary is not in material compliance with any of the statutes, regulations or ordinances which such Bank Regulator or Insurance Regulator enforces; (ii) threatening to revoke any license, franchise, permit or governmental authorization; (iii) requiring or threatening to require BHLB or any BHLB Subsidiary, or indicating that BHLB or any BHLB Subsidiary may be required, to enter into a cease and desist order, agreement or memorandum of understanding or any other agreement with any federal or state governmental agency or authority which is charged with the supervision or regulation of banks, bank holding companies or insurance agencies, or engages in the insurance of bank deposits, restricting or limiting, or purporting to restrict or limit the operations of BHLB or any BHLB Subsidiary, including without limitation any restriction on the payment of dividends; or (iv) directing, restricting or limiting, or purporting to direct, restrict or limit the operations of BHLB or any BHLB Subsidiary. Neither BHLB nor any BHLB Subsidiary has consented to or entered into any Regulatory

Agreement that is currently in effect. The most recent regulatory rating given to Berkshire Bank as to compliance with the CRA is “Satisfactory” or better.

5.11.4 Berkshire Bank is, and immediately after the Effective Time will be, “well capitalized,” as such term is defined in the rules and regulations promulgated by the FDIC, as amended from time to time. BHLB is, and immediately after the Effective Time will be, “well capitalized,” as such term is defined in the rules and regulations promulgated by the FDIC, as amended from time to time.

5.12 Employee Benefit Plans.

5.12.1 BHLB Disclosure Schedule 5.12.1 contains a list of all written and unwritten pension, retirement, profit-sharing, thrift, savings, deferred compensation, phantom stock awards, stock appreciation rights, stock option, employee stock ownership, employee stock purchase, restricted stock, severance pay, retention, vacation, bonus or other incentive plans, all employment, change in control, consulting, severance and retention agreements, all other written employee programs, arrangements or agreements, all medical, vision, dental, disability, life insurance, workers’ compensation, employee assistance or other health or welfare plans, and all other employee benefit or fringe benefit plans, including “employee benefit plans” as that term is defined in Section 3(3) of ERISA, currently adopted, maintained by, sponsored in whole or in part by, or contributed to by BHLB or any of its ERISA Affiliates for the benefit of employees, former employees, retirees (or the dependents, including spouses, of the foregoing), directors, independent contractors or other service providers to BHLB and under which employees, former employees, retirees, dependents, spouses, directors, or other service providers of BHLB are eligible to participate (collectively, the “**BHLB Benefit Plans**”). BHLB has furnished or otherwise made available to Commerce true and complete copies of (i) the plan documents and summary plan descriptions for each written BHLB Benefit Plan, (ii) a summary of each unwritten BHLB Benefit Plan (if applicable), (iii) the actuarial valuation reports with respect to each tax-qualified BHLB Benefit Plan that is a defined benefit pension plan for the three (3) most recent years, (iv) all related trust agreements, insurance contracts or other funding agreements which currently implement the BHLB Benefit Plans (if applicable), (v) the most recent IRS determination letter with respect to each tax-qualified BHLB Benefit Plan (or, for a BHLB Benefit Plan maintained under a pre-approved prototype or volume submitter plan, the IRS determination letter on such pre-approved plan) and (vi) all substantive correspondence relating to any liability of or non-compliance relating to any BHLB Benefit Plan addressed to or received from the IRS, the Department of Labor or any other Governmental Entity within the past three (3) years. Each BHLB Benefit Plan that may be subject to Section 409A of the Code (“**BHLB Non-qualified Deferred Compensation Plan**”) has been maintained and operated in compliance with Section 409A of the Code.

5.12.2 All BHLB Benefit Plans are in material compliance with (and have been managed and administrated in all material respects in accordance with) the applicable terms of ERISA, the Code and any other applicable laws. Except as set forth on BHLB Disclosure Schedule 5.12.2, each BHLB Benefit Plan governed by ERISA that is intended to be a qualified retirement plan under Section 401(a) of the Code has either (i) received a favorable determination letter from the IRS (and BHLB is not aware of any circumstances likely to result in revocation of any such favorable

determination letter) or timely application has been made therefore, or (ii) is maintained under a prototype plan which has been approved by the IRS and is entitled to rely upon the IRS National Office opinion letter issued to the prototype plan sponsor. To the Knowledge of BHLB and the BHLB Subsidiaries, there exists no fact which would adversely affect the qualification of any of the BHLB Benefit Plans intended to be qualified under Section 401(a) of the Code, or any threatened or pending claim against any of the BHLB Benefit Plans or their fiduciaries by any participant, beneficiary or Governmental Entity (other than routine claims for benefits).

5.12.3 Except as set forth on BHLB Disclosure Schedule 5.12.3, no “defined benefit plan” (as defined in Section 414(j) of the Code) has been maintained within the last six (6) years by BHLB or any of its ERISA Affiliates for the benefit of the employees or former employees of BHLB or its Subsidiaries.

5.12.4 Within the last six (6) years, neither BHLB nor any of its ERISA Affiliates maintained or had any obligation to contribute to a BHLB Benefit Plan which is a “multiemployer plan” within the meaning of Section 3(37) of ERISA, and within the last six (6) years neither BHLB nor any of its ERISA Affiliates has incurred any withdrawal liability within the meaning of Section 4201 of ERISA to any such “multiemployer plan.” Within the last six (6) years, neither BHLB nor any of its ERISA Affiliates has incurred any unsatisfied liability (other than

PBGC premiums) to the PBGC, the IRS or any other individual or entity under Title IV of ERISA or Section 412 of the Code with respect to any BHLB Benefit Plan, and no event or condition exists that would reasonably be expected to result in the imposition of any liability on BHLB or any of its ERISA Affiliates under such provisions or that could reasonably be expected to have an adverse effect on BHLB or Berkshire Bank.

5.12.5 BHLB has complied in all material respects with the notice and continuation requirements of Parts 6 and 7 of Subtitle B of Title I of ERISA and Section 4980B of the Code, and the regulations thereunder. All reports, statements, returns and other information required to be furnished or filed with respect to BHLB Benefit Plans have been timely furnished, filed or both in accordance with Sections 101 through 105 of ERISA and Sections 6057 through 6059 of the Code, and they are true, correct and complete. To BHLB's Knowledge, records with respect to BHLB Benefit Plans have been maintained in compliance with Section 107 of ERISA. To BHLB's Knowledge, neither BHLB nor any other fiduciary (as that term is defined in Section 3(21) of ERISA) with respect to any of BHLB Benefit Plans has any liability for any breach of any fiduciary duties under Sections 404, 405 or 409 of ERISA. No BHLB Benefit Plan fails to meet the applicable requirements of Section 105(h)(2) of the Code (determined without regard to whether such BHLB Benefit Plan is self-insured).

5.12.6 BHLB has not, with respect to any BHLB Benefit Plan, nor, to BHLB's Knowledge, has any administrator of any BHLB Benefit Plan, the related trusts or any trustee thereof, engaged in any non-exempt prohibited transaction which would subject BHLB, any ERISA Affiliate of BHLB, or any BHLB Benefit Plan to a Tax or penalty on prohibited transactions imposed by ERISA, Section 4975 of the Code, or to any other liability under ERISA.

5.12.7 Except as set forth on BHLB Disclosure Schedule 5.12.7, BHLB has no liability for retiree health and life benefits under any BHLB Benefit Plan other than any benefits required under COBRA or similar state laws.

5.12.8 Except as set forth on BHLB Disclosure Schedule 5.12.8, neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will (A) result in any payment (including severance) becoming due to any director or any employee of BHLB from BHLB under any BHLB Benefit Plan, (B) increase any benefits otherwise payable under any BHLB Benefit Plan or (C) result in any acceleration of the time of payment or vesting of any such benefit. Except as set forth on BHLB Disclosure Schedule 5.12.8, no payment which in connection with the transactions contemplated by this Agreement is or may reasonably be expected to be made by, from or with respect to any BHLB Benefit Plan, either alone or in conjunction with any other payment will or could properly be characterized as an "excess parachute payment" under Section 280G of the Code on which an excise tax under Section 4999 of the Code is payable or will or could, either individually or collectively, provide for any payment by BHLB or any of its ERISA Affiliates that would not be deductible under Code Section 162(m).

5.12.9 The actuarial present values of all accrued BHLB Non-qualified Deferred Compensation Plans (including, to the extent applicable, entitlements under any executive compensation, supplemental retirement, or employment

agreement) of employees and former employees of BHLB and their respective beneficiaries, other than entitlements accrued pursuant to funded retirement plans subject to the provisions of Section 412 of the Code or Section 302 of ERISA, have been fully reflected on the BHLB Financial Statements to the extent required by and in accordance with GAAP.

5.12.10 There is not, and has not been, any trust or fund maintained by or contributed to by BHLB or its employees to fund an employee benefit plan which would constitute a Voluntary Employees' Beneficiary Association or a "welfare benefit fund" within the meaning of Section 419(a) of the Code.

5.12.11 No claim, lawsuit, arbitration or other action has been asserted or instituted or, to the Knowledge of BHLB, has been threatened or is anticipated, against any BHLB Benefit Plan (other than routine claims for benefits and appeals of such claims), BHLB or any BHLB Subsidiary or any director, officer or employee thereof, or any of the assets of any trust of any BHLB Benefit Plan or any fiduciary thereof.

5.13 Brokers, Finders and Financial Advisors.

Neither BHLB nor any BHLB Subsidiary, nor any of their respective officers, directors, employees or agents, has employed any broker, finder or financial advisor in connection with the transactions contemplated by this Agreement, or incurred any liability or commitment for any fees or commissions to any such Person in connection with the transactions contemplated by this Agreement, except for the retention of J.P. Morgan Securities LLC by BHLB and the fee payable thereto.

5.14 Environmental Matters.

5.14.1 Except as may be set forth in BHLB Disclosure Schedule 5.14, with respect to BHLB and each BHLB Subsidiary:

(A) To the Knowledge of BHLB and the BHLB Subsidiaries, each of BHLB and the BHLB Subsidiaries, and the BHLB Loan Properties (as defined in Section 5.14.2) are, and have been, in material compliance with any Environmental Laws;

(B) Neither BHLB nor any BHLB Subsidiary has received written notice in the last five (5) years that there is any material suit, claim, action, demand, executive or administrative order, directive, request for information, investigation or proceeding pending and, to the Knowledge of BHLB and the BHLB Subsidiaries, no such action is threatened, before any court, governmental agency or other forum against them or any BHLB Loan Property (x) for alleged noncompliance (including by any predecessor) with, or liability under, any Environmental Law or (y) relating to the presence of or release into the environment of any Materials of Environmental Concern, whether or not occurring at or on a site owned, leased or operated by BHLB, or any of the BHLB Subsidiaries;

(C) To the Knowledge of BHLB and the BHLB Subsidiaries, the properties currently owned or operated by BHLB or any BHLB Subsidiary (including, without limitation, soil, groundwater or surface water on, or under the properties, and buildings thereon) do not contain any Materials of Environmental Concern in an amount, manner or condition requiring any notification, investigation, abatement, remediation or any response action under applicable Environmental Laws;

(D) There are no underground storage tanks on, in or under any properties owned or operated by BHLB or any of the BHLB Subsidiaries or any BHLB Loan Property, and no underground storage tanks have been closed or removed

from any properties owned or operated by BHLB or any of the BHLB Subsidiaries or any BHLB Loan Property except as in compliance with Environmental Laws; and

(E) During the period of (a) BHLB's or any of the BHLB Subsidiaries' ownership or operation of any of their respective current properties or (b) BHLB's or any of the BHLB Subsidiaries' holding of direct or indirect security interests in any BHLB Loan Property, to the Knowledge of BHLB and the BHLB Subsidiaries, there has been no material contamination by or material release of Materials of Environmental Concern in, on, under or affecting such properties. To the Knowledge of BHLB and the BHLB Subsidiaries, prior to the period of (x) BHLB's or any of the BHLB Subsidiaries' ownership or operation of any of their respective current properties or (y) BHLB's or any of the BHLB Subsidiaries' holding of direct or indirect security interests in any BHLB Loan Property, there was no material contamination by or material release of Materials of Environmental Concern in, on, under or affecting such properties.

(F) Neither BHLB nor any other BHLB Subsidiary has conducted any environmental assessment or investigation during the past five (5) years (other than Phase II assessments which did not indicate any contamination of the environment by Materials of Environmental Concern above reportable levels) with respect to any properties owned or leased by it or any of its Subsidiaries, or with respect to any BHLB Loan Property.

5.14.2 For purposes of this Section 5.14, "**BHLB Loan Property**" means any property in which BHLB or an BHLB Subsidiary presently holds a direct or indirect security interest securing to a loan or other extension of credit made by them, including through an BHLB Loan Participation, and "**BHLB Loan Participation**" means a participation interest in a loan or other extension of credit other than by BHLB or an BHLB Subsidiary.

5.15 BHLB Information Supplied.

The information relating to BHLB and any BHLB Subsidiary to be contained in the Merger Registration Statement, or in any other document filed with any Bank Regulator or other Governmental Entity in connection herewith, will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances in which they are made, not misleading.

5.16 Securities Documents.

Since January 1, 2014, BHLB has filed with the SEC all forms, reports, schedules, registration statements, definitive proxy statements and information statements or other filings (“**BHLB SEC Reports**”) required to be filed by it with the SEC. As of their respective dates, the BHLB SEC Reports complied as to form with the requirements of the Exchange Act or the Securities Act, as applicable, and the applicable rules and regulations of the SEC promulgated thereunder in all material respects. As of their respective dates and as of the date any information from the BHLB SEC Reports has been incorporated by reference, the BHLB SEC Reports did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein made, in light of the circumstances under which they were made, not misleading. BHLB has filed all material contracts, agreements and other documents or instruments required to be filed as exhibits to the BHLB SEC Reports (the “**BHLB Material Agreements**”).

5.17 Internal Controls.

5.17.1 The records, systems, controls, data and information of BHLB and its Subsidiaries are recorded, stored, maintained and operated under means (including any electronic, mechanical or photographic process, whether computerized or not) that are under the exclusive ownership and direct control of BHLB or its Subsidiaries or accountants (including all means of access thereto and therefrom), except for any non-exclusive ownership and non-direct control that would not reasonably be expected to have a material adverse effect on the system of internal accounting controls described in the following sentence. BHLB and its Subsidiaries have devised and maintain a system of internal accounting controls sufficient to provide reasonable assurances regarding the reliability of financial reporting and the preparation of financial statements in accordance with GAAP. BHLB has designed and implemented disclosure controls and procedures (within the meaning of Rules 13a-15(e) and 15D-15(e) of the Exchange Act) to ensure that material information relating to it and its Subsidiaries is made known to its management by others within those entities as appropriate to allow timely decisions regarding required disclosure and to make the certifications required by the Exchange Act and Section 302 and 906 of the Sarbanes-Oxley Act.

5.17.2 BHLB's management has completed an assessment of the effectiveness of its internal control over financial reporting in compliance with the requirements of Section 404 of the Sarbanes-Oxley Act for the year ended December 31, 2016, and such assessment concluded that such controls were effective. It has previously disclosed, based on its most recent evaluation prior to the date hereof, to its auditors and the audit committee of the Commerce Board; (A) any significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting and (B) any fraud, whether or not material, that involves management or other employees who have a significant role in its internal controls over financial reporting.

5.17.3 Since December 31, 2014, (A) neither BHLB nor any of its Subsidiaries nor, to its knowledge, any director, officer, employee, auditor, accountant or representative of BHLB or any of its Subsidiaries has received or otherwise had or obtained knowledge of any material complaint, allegation, assertion or claim, whether written or oral, regarding the accounting or auditing practices, procedures, methodologies or methods (including with respect to loan loss reserves, write-downs, charge-offs and accruals) of it or any of its subsidiaries or their respective internal accounting controls, including any material complaint, allegation, assertion or claim that it or any of its subsidiaries has engaged in questionable accounting or auditing practices, and (B) no attorney representing BHLB or any of its Subsidiaries, whether or not employed by it or any of its Subsidiaries, has reported evidence of a material violation of securities laws, breach of fiduciary duty or similar violation by BHLB or any of its officers, directors, employees or agents to its board of directors or any committee thereof or to any of its directors or officers.

5.18 BHLB Common Stock.

The shares of BHLB Common Stock to be issued pursuant to this Agreement, when issued in accordance with the terms of this Agreement, will be duly authorized, validly issued, fully paid and non-assessable and subject to no preemptive rights.

5.19 Available Funds

Immediately prior to the Effective Time, BHLB will have cash sufficient to pay or cause to be deposited into the Exchange Fund as required by Section 3.2.

5.20 [Intentionally Omitted]

5.21 Board Approval.

The Board of Directors of BHLB determined that the Merger is in the best interests of BHLB and its stockholders, approved this Agreement, and determined that stockholder approval is not required by law. The Board of Directors of BHLB has taken all action so that Commerce and CBTC will not be an “interested stockholder” or prohibited from entering into or consummating a “business combination” with BHLB (in each case as such term is used in Section 203 of the DGCL) as a result of the execution of this Agreement or the consummation of the transactions in the manner contemplated hereby.

5.22 Material Agreement; Defaults.

5.22.1 Subject to any consents that may be required as a result of the transactions contemplated by this Agreement, to its Knowledge neither BHLB nor any BHLB Subsidiary is in material default under any BHLB Material Agreement by which its assets, business, or operations may be bound or affected, or under which it or its assets, business, or operations receive benefits, and there has not occurred any event that, with the lapse of time or the giving of notice or both, would constitute such a default.

5.22.2 Except as set forth in BHLB Disclosure Schedule 5.22.2, no BHLB Material Agreement (i) provides for acceleration of the vesting of benefits or payments due thereunder upon the occurrence of a change in ownership or control of BHLB or any BHLB Subsidiary or upon the occurrence of a subsequent event; (ii) requires BHLB or any BHLB Subsidiary to provide a benefit in the form of BHLB Common Stock or determined by reference to the value of BHLB Common Stock or (iii) contains provisions which permit an employee, director or independent contractor to terminate such agreement or arrangement without cause and continue to accrue future benefits thereunder.

5.23 Loan Portfolio.

5.23.1 The allowances for loan losses reflected in the notes to BHLB's audited consolidated statements of financial condition at December 31, 2016 and 2015 were, and the allowance for loan losses shown in the notes to the unaudited consolidated financial statements for periods ending after December 31, 2016 were, or will be, adequate, as of the dates thereof, under GAAP.

5.23.2 BHLB Disclosure Schedule 5.23.2 sets forth a listing that as of March 31, 2017 are classified as "Other Loans Specially Mentioned," "Special Mention," "Substandard," "Doubtful," "Loss," "Classified," "Criticized," "Watch list" or word similar import, together with the principal amount of and accrued and unpaid interest on each such Loan and the identity of the obligor thereunder.

5.23.3 All loans receivable (including discounts) and accrued interest entered on the books of BHLB and Berkshire Bank arose out of bona fide arm's-length transactions, were made for good and valuable consideration in the ordinary course of BHLB's and Berkshire Bank's respective businesses, and the notes or other evidences of indebtedness with respect to such loans (including discounts) are true and genuine and are what they purport to be. The loans, discounts and the accrued interest reflected on the books of BHLB and Berkshire Bank are

subject to no defenses, set-offs or counterclaims (including, without limitation, those afforded by usury or truth-in-lending laws), except as may be provided by bankruptcy, insolvency or similar laws affecting creditors' rights generally or by general principles of equity. All such loans are owned by BHLB or Berkshire Bank free and clear of any liens.

5.23.4 The notes and other evidences of indebtedness evidencing the loans described above, and all pledges, mortgages, deeds of trust and other collateral documents or security instruments relating thereto are valid, true and genuine, and what they purport to be.

5.24 Related Party Transactions.

5.24.1 Neither BHLB nor any BHLB Subsidiary is a party to any transaction (including any loan or other credit accommodation) with any Affiliate of BHLB or any BHLB Subsidiary, except as set forth in BHLB Disclosure Schedule 5.24 or as described in BHLB's proxy statement dated April 7, 2017 distributed in connection with its annual meeting of stockholders held on May 18, 2017. Except as described in such proxy statement or in BHLB Disclosure Schedule 5.24, all such transactions (a) were made in the ordinary course of business, (b) were made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions with other Persons, and (c) did not involve more than the normal risk of collectability or present other unfavorable features. No loan or credit accommodation to any Affiliate of BHLB or any BHLB Subsidiary is presently in default or, during the three (3)-year period prior to the date of this Agreement, has been in default or has been restructured, modified or extended. Neither BHLB nor any BHLB Subsidiary has been notified that principal or interest with respect to any such loan or other credit accommodation will not be paid when due or that the loan grade classification accorded such loan or credit accommodation is inappropriate.

5.25 Risk Management Instruments.

All interest rate swaps, caps, floors, option agreements, futures and forward contracts and other similar risk management arrangements, whether entered into for BHLB's own account, or for the account of one or more of BHLB's Subsidiaries or their customers, in force and effect as of March 31, 2017 (all of which are set forth in BHLB Disclosure Schedule 5.25), were entered into in compliance with all applicable laws, rules, regulations and regulatory policies, and to the Knowledge of BHLB and each BHLB Subsidiary, with counterparties believed to be financially responsible at the time; and to BHLB's and each BHLB Subsidiary's Knowledge each of them constitutes the valid and legally binding obligation of BHLB or such BHLB Subsidiary, enforceable in accordance with its terms (except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer and similar laws of general applicability relating to or affecting creditors' rights or by general equity principles), and is in full force and effect. Neither BHLB nor any BHLB Subsidiary, nor any other party thereto, is in breach of any of its obligations under any such agreement or arrangement.

5.26 Duties as Fiduciary.

Other than as set forth on BHLB Disclosure Schedule 5.26, Berkshire Bank has, if required by virtue of any line of business in which it is or previously was engaged in a “fiduciary capacity,” to its Knowledge has performed all of its duties in a fashion that complied with all applicable laws, regulations, orders, agreements, wills, instruments, and common law standards in effect at that time. Berkshire Bank has not received notice of any claim, allegation, or complaint from any Person that Berkshire Bank failed to perform these duties in a manner that complied with all applicable laws, regulations, orders, agreements, wills, instruments, and common law standards, except for notices involving matters that have been resolved and any cost of such resolution is reflected in the BHLB Financial Statements. For purposes of this Section 5.27, the term “fiduciary capacity” (i) shall mean (a) acting as trustee, executor, administrator, registrar of stocks and bonds, transfer agent, guardian, assignee, receiver, or custodian under a uniform gifts to minors act and (b) possessing investment discretion on behalf of another, and (ii) shall exclude Berkshire Bank’s capacity with respect to individual retirement accounts or the BHLB Benefit Plans.

5.27 Employees; Labor Matters.

5.27.1 There are no labor or collective bargaining agreements to which BHLB or any BHLB Subsidiary is a party. There is no union organizing effort pending or, to the Knowledge of BHLB, threatened against BHLB or any BHLB Subsidiary. There is no labor strike, labor dispute (other than routine employee grievances that are not related to union employees), work slowdown, stoppage or lockout pending or, to the Knowledge of BHLB, threatened against BHLB or any BHLB Subsidiary. There is no unfair labor practice or labor arbitration proceeding pending or, to the Knowledge of BHLB, threatened against BHLB or any BHLB Subsidiary (other than routine employee grievances that are not related to union employees). BHLB and each BHLB Subsidiary is in compliance with all applicable laws respecting employment and employment practices, terms and conditions of employment and wages and hours, and are not engaged in any unfair labor practice. Neither BHLB nor any BHLB Subsidiary is a party to, or bound by, any agreement for the leasing of employees.

5.27.2 To BHLB's Knowledge, all Persons who have been treated as independent contractors by BHLB or any BHLB Subsidiary for Tax purposes have met the criteria to be so treated under all applicable federal, state and local Tax laws, rules and regulations.

5.28 Bank Owned Life Insurance.

BHLB and each BHLB Subsidiary has obtained the written consent of each employee on whose behalf BOLI has been purchased. Berkshire Bank has taken all actions necessary to comply with applicable law in connection with its purchase of BOLI.

ARTICLE VI
COVENANTS OF COMMERCE

6.1 Conduct of Business.

6.1.1 *Affirmative Covenants.* During the period from the date of this Agreement to the Effective Time, except with the written consent of BHLB, which consent will not be unreasonably withheld, conditioned or delayed, Commerce will, and it will cause each Commerce Subsidiary to: operate its business only in the usual, regular and ordinary course of business; use commercially reasonable efforts to preserve intact its business organization and assets and maintain its rights and franchises; and voluntarily take no action which would: (i) materially adversely affect the

ability of the parties to obtain the Regulatory Approvals or materially increase the period of time necessary to obtain the Regulatory Approvals, (ii) materially adversely affect its ability to perform its covenants and agreements under this Agreement or (iii) result in the representations and warranties contained in Article IV of this Agreement not being true and correct on the date of this Agreement or at any future date on or prior to the Closing Date, subject to the standard set forth in Section 4.1, or in any of the conditions set forth in Article IX hereof not being satisfied.

6.1.2 *Negative Covenants.* Commerce agrees that from the date of this Agreement to the Effective Time, except as otherwise specifically permitted or required by this Agreement or consented to by BHLB in writing (not to be unreasonably withheld, conditioned or delayed), it will not, and it will cause each of the Commerce Subsidiaries not to:

(A) take any action that would, or is reasonably likely to, prevent or impede the Merger from qualifying as a reorganization within the meaning of Section 368(a) of the Code;

(B) change or waive any provision of its articles of organization (or CBTC's articles of organization) or bylaws, except as required by law;

(C) change the number of authorized or issued shares of its capital stock, issue any shares of Commerce Common Stock that are held as Treasury Stock as of the date of this Agreement, or issue or grant any Right or agreement of any character relating to its authorized or issued capital stock or any securities convertible

into shares of such stock, make any grant or award under the Commerce Long-Term Incentive Plan, or split, combine or reclassify any shares of capital stock, or declare, set aside or pay any dividend or other distribution in respect of capital stock, or redeem or otherwise acquire any shares of capital stock, except that Commerce (i) may permit the vesting of awards previously made under the Commerce Long-Term Incentive Plan, (ii) shall continue to declare and pay regular quarterly cash dividends of no more than \$0.11 per share with payment and record dates consistent with past practice (provided that the declaration of the last quarterly dividend by Commerce prior to the Effective Time and the payment thereof shall be coordinated with BHLB so that holders of Commerce Common Stock do not receive dividends on both Commerce Common Stock and BHLB Common Stock received in the Merger in respect of such quarter or fail to receive a dividend on at least one of the Commerce Common Stock or BHLB Common Stock received in the Merger in respect of such quarter) and (iii) any Commerce Subsidiary may pay dividends to its parent company (as permitted under applicable law or regulations).

(D) enter into, amend in any material respect or terminate any material contract or agreement (including without limitation any settlement agreement with respect to litigation) involving payments to or from Commerce in excess of \$200,000, except as set forth on Commerce Disclosure Schedule 6.1.2(F) or otherwise as contemplated by this Agreement;

(E) make application for the opening or closing of any, or open or close any, branch or automated banking facility;

(F) grant or agree to pay any bonus (discretionary or otherwise), severance or termination to, or enter into, renew or amend any employment agreement, severance agreement and/or supplemental executive agreement with, or increase in any manner the compensation or fringe benefits of, any of its directors, officers, employees or consultants, except (i) as required by applicable law, (ii) as may be required pursuant to commitments existing on the date hereof and set forth on Commerce Disclosure Schedules 4.9.1 and 4.13.1, (iii) for salary adjustments in the ordinary course of business consistent with past practice provided that any increases to such amounts shall not exceed four percent (4%) in the aggregate or (iv) as otherwise contemplated by this Agreement, or (v) as set forth on Commerce Disclosure Schedule 6.1.2(F). Neither Commerce nor any Commerce Subsidiary shall hire or promote any employee to a rank having a title of vice president or other more senior rank or hire any new employee at an annual rate of compensation in excess of \$100,000; *provided, however*, that that neither Commerce nor any Commerce Subsidiary shall hire any new employee without first seeking to fill any position internally;

(G) except as set forth on Commerce Disclosure Schedule 6.1.2(G), enter into or, except as may be required by law or any such plan or agreement or by the terms of this Agreement and the transactions contemplated herein, modify any pension, retirement, phantom stock award, stock option, stock purchase, stock appreciation right, stock grant, savings, profit sharing, deferred compensation, supplemental retirement, consulting, bonus, group insurance or other employee benefit, incentive or welfare contract, plan or arrangement, or any trust agreement related thereto, in respect of any of its directors, officers or employees, or make any contributions to any defined contribution or defined benefit plan not in the ordinary course of business consistent with past practice;

(H) merge or consolidate Commerce or any Commerce Subsidiary with any other Person; sell or lease all or any substantial portion of the assets or business of Commerce or any Commerce Subsidiary; make any acquisition of all or any substantial portion of the business or assets of any other Person other than in connection with foreclosures, settlements in lieu of foreclosure, troubled loan or debt restructuring, or the collection of any loan or credit arrangement between Commerce or CBTC and any other Person; enter into a purchase and assumption transaction with respect to deposits and liabilities; incur deposit liabilities, other than liabilities incurred in the ordinary course of business consistent with past practice and in keeping with prevailing competitive rates; permit the revocation or surrender by CBTC of its certificate of authority to maintain, or file an application for the relocation of, any existing branch office, or file an application for a certificate of authority to establish a new branch office;

(I) except as set forth on Commerce Disclosure Schedule 6.1.2(I), sell or otherwise dispose of any asset of Commerce or of any Commerce Subsidiary other than in the ordinary course of business consistent with past practice; except for transactions with the FHLB, subject any asset of Commerce or of any Commerce Subsidiary to a lien, pledge, security interest or other encumbrance (other than in connection with deposits,

repurchase agreements, bankers acceptances, pledges in connection with acceptance of governmental deposits, and transactions in “federal funds” and the satisfaction of legal requirements in the exercise of trust powers) other than in the ordinary course of business consistent with past practice; incur any indebtedness for borrowed money (or guarantee any indebtedness for borrowed money), except in the ordinary course of business consistent with past practice;

(J) change its method, practice or principle of accounting, except as may be required from time to time by GAAP (without regard to any optional early adoption date) or regulatory accounting principles or by any Bank Regulator responsible for regulating Commerce or CBTC;

(K) waive, release, grant or transfer any rights of value or modify or change any existing agreement or indebtedness to which Commerce or any Commerce Subsidiary is a party other than in the ordinary course of business consistent with past practice;

(L) purchase any securities except securities (i) rated “A” or higher by either Standard & Poor’s Ratings Services or Moody’s Investors Service, (ii) having a face amount in the aggregate of not more than \$1,000,000, (iii) with a duration of not more than five (5) years and (iv) otherwise in the ordinary course of business consistent with past practice; provided that Commerce or its Subsidiaries may purchase United States Treasury Bills (x) having a face amount in the aggregate of not more than \$5,000,000, (y) with a duration of not more than nine (9) months and (z) otherwise in the ordinary course of business consistent with past practice;

(M) except as specifically provided below, and except for commitments issued prior to the date of this Agreement which have not yet expired and which have been disclosed on Commerce Disclosure Schedule 6.1.2(M) (which schedule need not include any individual commitment which is less than \$200,000 in amount provided that such schedule includes the aggregate amount of individual commitments which are less than \$200,000 that have been excluded from the schedule), and the renewal of existing lines of credit, make any new loan or other credit facility commitment (including without limitation, lines of credit and letters of credit) (i) in an amount in excess of \$7.5 million for commercial real estate loans, \$5.0 million for commercial and industrial loans, \$500,000 for residential loans and \$250,000 for home equity loans and lines of credit, (ii) that involves an exception to policy or (iii) for a one-to four-family residential real estate loan that is not eligible for sale in the secondary market to Fannie Mae or Freddie Mac; provided that BHLB shall have been deemed to have consented to any loan in excess of such amount or otherwise not permitted by this section if BHLB does not object to any such proposed loan within three business days of receipt by BHLB of a request by Commerce to exceed such limit along with all financial or other data that BHLB may reasonably request in order to evaluate such loan;

(N) enter into, renew, extend or modify any other transaction (other than a deposit transaction) with any Affiliate;

(O) enter into any futures contracts, options, interest rate caps, interest rate floors, interest rate exchange agreements or other agreements or take any other action for purposes of hedging the exposure of its interest-earning assets and interest-bearing liabilities to changes in market rates of interest;

(P) except for the execution of this Agreement, and actions taken or which will be taken in accordance with this Agreement and performance hereunder, take any action that would give rise to a right of payment to any individual under any employment agreement;

(Q) make any change in policies in existence on the date of this Agreement with regard to: the extension of credit, or the establishment of reserves with respect to the possible loss thereon or the charge off of losses incurred thereon; investments; asset/liability management; or other banking policies except as may be required by changes in applicable law or regulations, GAAP or regulatory accounting principles or by a Bank Regulator;

(R) except for the execution of this Agreement, and the transactions contemplated herein and any terminations of employment, take any action that would give rise to an acceleration of the right to payment to any individual under any Commerce Benefit Plan;

(S) make any capital expenditures in excess of \$40,000 individually or \$80,000 in the aggregate, other than pursuant to binding commitments existing on the date hereof which are set forth on Commerce Disclosure Schedule 6.1.2(R) which includes the budget for each such pre-existing commitment.

(T) except as set forth on Commerce Disclosure Schedule 6.1.2(S), purchase or otherwise acquire, or sell or otherwise dispose of, any assets or incur any liabilities other than in the ordinary course of business consistent with past practices and policies;

(U) except for existing commitments to sell any participation interest in any loan, sell any participation interest in any loan (other than sales of loans secured by one- to four-family real estate that are consistent with past practice) unless BHLB has been given the first opportunity and a reasonable time to purchase any loan participation being sold, or purchase any participation interest in any loan other than purchases of participation interests from BHLB;

(V) undertake or enter into any lease, contract or other commitment for its account, other than in the ordinary course of providing credit to customers as part of its banking business, involving a payment by Commerce or any Commerce Subsidiary of more than \$50,000 annually, or containing any financial commitment extending beyond twelve (12) months from the date hereof;

(W) pay, discharge, settle or compromise any claim, action, litigation, arbitration or proceeding, other than any such payment, discharge, settlement or compromise in the ordinary course of business consistent with past practice that involves solely money damages in the amount not in excess of \$40,000 individually or \$80,000 in the aggregate, and that does not create negative precedent for other pending or potential claims, actions, litigation, arbitration or proceedings;

(X) foreclose upon or take a deed or title to any commercial real estate without having a Phase I environmental assessment of the property conducted as of a reasonably current date and, in the event such Phase I environmental assessment of the property identifies any Recognized Environmental Conditions (as that term is used in Phase I environmental assessments), providing notice to BHLB thereof prior to final sale;

(Y) purchase or sell any mortgage loan servicing rights other than in the ordinary course of business consistent with past practice;

(Z) issue any broadly distributed communication of a general nature to employees (including general communications relating to benefits and compensation) without prior consultation with BHLB and, to the extent relating to post-Closing employment, benefit or compensation information without the prior consent of BHLB (which shall not be unreasonably withheld, conditioned or delayed) or issue any broadly distributed communication of a general nature to customers without the prior approval of BHLB (which shall not be unreasonably withheld, conditioned or delayed), except as required by law or for communications in the ordinary course of business consistent with past practice that do not relate to the Merger or other transactions contemplated hereby;

(AA) make, change or rescind any material election concerning Taxes or Tax Returns, file any amended Tax Return, enter into any closing agreement with respect to Taxes, settle or compromise any material Tax claim or assessment or surrender any right to claim a refund of Taxes or obtain any Tax ruling; or

(BB) enter into any contract with respect to, or otherwise agree or commit to do, any of the foregoing.

6.2 Subsidiaries.

Commerce shall cause the proper and lawful dissolution of any of its Subsidiaries that are inactive as of the date of this Agreement.