

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

CAPITOL BANCORP LTD.,¹

Debtor.

Chapter 11

Case No. 12-58409
(Jointly Administered)

Hon. Marci B. McIvor

STIPULATION MODIFYING THE STIPULATION RESOLVING THE STATE OF MICHIGAN DEPARTMENT OF TREASURY'S OBJECTION TO CONFIRMATION OF THE AMENDED AND RESTATED PREPACKAGED JOINT PLAN OF REORGANIZATION OF CAPITOL BANCORP LTD. AND FINANCIAL COMMERCE CORPORATION AND THE STIPULATION RESOLVING UNITED STATES CONCURRENCE TO THE STATE OF MICHIGAN DEPARTMENT OF TREASURY'S OBJECTION TO CONFIRMATION OF THE AMENDED AND RESTATED PREPACKAGED JOINT PLAN OF REORGANIZATION OF CAPITOL BANCORP LTD. AND FINANCIAL COMMERCE CORPORATION

Capitol Bancorp Ltd. ("CBC") and Financial Commerce Corporation ("FCC"), as debtors and debtors in possession in the above captioned chapter 11 cases (collectively, the "**Debtors**"), the State of Michigan Department of Treasury ("**Michigan**"), and the United States of America on behalf of the Internal Revenue Service (the "**IRS**") stipulate and agree as follows:

1. Michigan filed the State of Michigan Department of Treasury's Objection to Confirmation of the Amended and Restated Prepackaged Joint Plan of Reorganization of Capitol Bancorp Ltd. and Financial Corporation (the "**Michigan Objection**") (Docket 96).

2. The Michigan Objection was resolved by the Stipulation Resolving the State of Michigan Department of Treasury's Objection to Confirmation of the Amended and Restated Prepackaged Joint Plan of Reorganization of Capitol Bancorp Ltd. and Financial Commerce Corporation dated November 7, 2012 (the "**Michigan Stipulation**") (Docket 191) which and

¹ The Debtors in these jointly administered cases are Capitol Bancorp Ltd. (Case No. 12-58409) and Financial Commerce Corporation (Case No. 12-58406) ("**FCC**").

attached agreed language addressing tax issues for any order confirming the Debtors' plan (the "**Agreed Tax Language**") relating to taxes.

3. The IRS filed the United States' Concurrence [sic] to State of Michigan Department of Treasury's Objection to Confirmation of the Amended and Restated Prepackaged Joint Plan of Reorganization of Capitol Bancorp Ltd. and Financial Commerce Corporation (the "**IRS Objection**") (Docket 147).

4. The IRS Objection was resolved by the Stipulation Resolving United States' Concurrence to the State of Michigan Department of Treasury's Objection to Confirmation of the Amended and Restated Prepackaged Joint Plan of Reorganization of Capitol Bancorp Ltd. and Financial Commerce Corporation dated November 13, 2012 (the "**IRS Stipulation**") (Docket 216), which also attached the Agreed Tax Language.

5. The Debtors, Michigan and IRS have agreed to modify the Agreed Tax Language to be in the form of the attached Provisions To Be Included In Order Confirming Plan, which clarifies that Debtors may pay taxes owed to Michigan and/or the IRS by installments as provided in 11 U.S.C. § 1129(a)(9) or by agreement between Debtors and the applicable taxing authority.

Acknowledged and Agreed:

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Dated: November 27, 2012

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Provisions To Be Included in Order Confirming Plan

- (a) Provision relating to interest rate on taxes:
Debtors have filed an appeal of their Michigan Business Tax assessment to the Michigan Tax Tribunal. In the event it is finally determined that Debtors owe administrative and/or priority tax debt to the State of Michigan, Debtors shall pay interest as determined under applicable nonbankruptcy law, as required by 11 U.S.C. § 511. The interest rate for the State of Michigan shall be the rate in effect as of the date of confirmation, and shall accrue commencing on the Effective Date of the Plan. After the Debtors' liability for Michigan Business Tax, if any, is finally resolved, including all appeals and/or under 11 U.S.C. §505, the Debtors shall pay such taxes according to 11 U.S.C. § 1129(a)(9) or whatever payment plans may be agreed to between Debtors and Michigan.

The Joint Committee on Taxation of the U.S. Congress has approved the compromise between Debtors and the IRS relating to Source Years 2008, 2009 and Refund Years 2004, 2005, 2006, 2007. The Debtors shall pay the liabilities pursuant to 11 U.S.C. §1129(a)(9) and interest under 11 U.S.C. §511, unless otherwise agreed between the IRS and the Debtors.

- (b) Provision for Curing or Waiving Defaults:
Upon the failure of the Debtors to make any payments due on a priority or secured tax claim that is not cured within 30 days of a written notice of default by the tax creditor, such tax creditor may exercise all rights and remedies available under non-bankruptcy law for the collection of its entire claim, or seek appropriate relief in this Court.

- (c) Provision Limiting the Scope of Exculpation:
Notwithstanding any provision to the contrary in this Confirmation Order, the Disclosure Statement, the Plan or any Plan document, nothing shall (1) affect the ability of the State of Michigan or the IRS to pursue, to the extent allowed by non-bankruptcy law, *any non-debtors* for any liabilities that may be related to any tax liabilities owed by the Debtors, or (2) affect the rights of the State of Michigan or the IRS to assert setoff and recoupment, and such rights are expressly preserved. Moreover, the Debtors agree that they will timely file or cause to be filed all required state tax returns and shall otherwise comply with the provisions of the State of Michigan Tax Code and the Internal Revenue Code.

Dated: November 21, 2012