

TRADEMARK ASSIGNMENT

Electronic Version v1.1

Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	NUNC PRO TUNC ASSIGNMENT		
EFFECTIVE DATE:	08/27/2013		
CONVEYING PARTY DATA			
	Name	Formerly	Execution Date
	Fifth Third Bancorp		08/27/2013
			Entity Type
			CORPORATION: OHIO
RECEIVING PARTY DATA			
Name:	Capital One Financial Corporation		
Street Address:	1680 Capital One Drive		
City:	McLean		
State/Country:	VIRGINIA		
Postal Code:	22102		
Entity Type:	CORPORATION: DELAWARE		
PROPERTY NUMBERS Total: 1			
	Property Type	Number	Word Mark
	Registration Number:	4265676	ACCESS 360
CORRESPONDENCE DATA			
Fax Number:	8042846924		
	<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent via US Mail.</i>		
Phone:	804-284-1155		
Email:	becky.dimmett@capitalone.com		
Correspondent Name:	Capital One Financial Corporation		
Address Line 1:	15000 Capital One Drive		
Address Line 2:	12077-0270 / Becky Dimmett		
Address Line 4:	Richmond, VIRGINIA 23238		
ATTORNEY DOCKET NUMBER:	ACCESS 360 ASSIGNMENT		
NAME OF SUBMITTER:	DENNIS BROWNE		

Signature:	/dennisbrowne/
Date:	09/19/2013
Total Attachments: 11 source=ACCESS 360_Assignment and License Agreement with Fifth Third Bancorp#page1.tif source=ACCESS 360_Assignment and License Agreement with Fifth Third Bancorp#page2.tif source=ACCESS 360_Assignment and License Agreement with Fifth Third Bancorp#page3.tif source=ACCESS 360_Assignment and License Agreement with Fifth Third Bancorp#page4.tif source=ACCESS 360_Assignment and License Agreement with Fifth Third Bancorp#page5.tif source=ACCESS 360_Assignment and License Agreement with Fifth Third Bancorp#page6.tif source=ACCESS 360_Assignment and License Agreement with Fifth Third Bancorp#page7.tif source=ACCESS 360_Assignment and License Agreement with Fifth Third Bancorp#page8.tif source=ACCESS 360_Assignment and License Agreement with Fifth Third Bancorp#page9.tif source=ACCESS 360_Assignment and License Agreement with Fifth Third Bancorp#page10.tif source=ACCESS 360_Assignment and License Agreement with Fifth Third Bancorp#page11.tif	

ASSIGNMENT AND LICENSE AGREEMENT

This Agreement ("Agreement"), effective as of the date of the last signature below (the "Effective Date"), is entered into by and between Fifth Third Bancorp, an Ohio Corporation located at 38 Fountain Square Plaza, Cincinnati, Ohio 45263 ("Fifth Third"), on its own behalf and on behalf of its affiliates and subsidiaries, including, without limitation, Fifth Third Bank (collectively, "Fifth Third"), and Capital One Financial Corporation, a Delaware corporation located at 1680 Capital One Drive, McLean, Virginia 22102 ("Capital One").

WHEREAS, Capital One owns the name and trademark BANK 360, the corresponding U.S. Trademark Registration Nos. 3,715,177 and 3,715,176, and other 360-formative marks, including 360, CAPITAL ONE 360, 360 CHECKING, and 360 SAVINGS.

WHEREAS, Fifth Third has been using the mark ACCESS 360 since at least as early as September 6, 2012 in connection with a reloadable prepaid banking debit card.

WHEREAS, Fifth Third obtained U.S. Trademark Registration No. 4,265,676 for the mark ACCESS 360 for "banking services, namely, prepaid debit card services," a copy of which is attached as Exhibit A.

WHEREAS, Capital One desires that Fifth Third assign its rights in the ACCESS 360 trademark to Capital One, including any and all goodwill associated with the ACCESS 360 trademark, and to continue using the ACCESS 360 mark for the services defined below under license from Capital One.

NOW, THEREFORE, in consideration of the promises and the mutual covenants of the parties, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. Assignment.

Fifth Third assigns to Capital One, *nunc pro tunc*, its entire right, title, and interest in and to the ACCESS 360 mark—together with U.S. Registration No. 4,265,676, all goodwill associated with the ACCESS 360 mark, and all common-law rights relating to and arising from all use of ACCESS 360 (alone and with other elements) in any form—and the right to sue and recover for past infringements and other violations. Fifth Third will execute the confirmation of such assignment attached as Exhibit B contemporaneously with the execution of this Agreement. If needed, Fifth Third will prepare and file any other papers and/or take any other action required to reflect or record the assignment of the ACCESS 360 mark and/or U.S. Trademark Registration No. 4,265,676. Capital One shall reimburse Fifth Third for any and all reasonable costs associated with this assignment, not to exceed \$5,000.00.

2. License.

Subject to the terms and conditions set forth in this Agreement, Capital One grants to Fifth Third a non-exclusive, royalty-free, perpetual (subject to Section 8 of this Agreement and

Fifth Third's compliance with this Agreement) non-transferable, non-sublicensable (except as to Fifth Third's subsidiary, Fifth Third Bank) license to use the ACCESS 360 trademark in the United States for a reloadable prepaid card marketed only through: physical Fifth Third retail branch bank locations, direct mail from Fifth Third, Fifth Third's website at www.53.com, and other websites that Fifth Third owns or controls (the "Licensed Product"). Notwithstanding the foregoing, Fifth Third may also use the ACCESS 360 trademark, subject to the other terms of this Agreement, for a reloadable prepaid card offered in connection with employee benefit banking services on behalf of institutions whose principal place of business is within fifty (50) miles of a Fifth Third retail branch bank. Fifth Third must obtain Capital One's prior written approval prior to offering reloadable prepaid cards under the ACCESS 360 trademark on behalf of any institution whose principal place of business is more than fifty (50) miles away from a Fifth Third retail branch bank, and such approval shall not be unreasonably withheld. Fifth Third's use of the ACCESS 360 Mark shall be in a manner substantially identical to that conducted prior to the Effective Date, provided further that Fifth Third will also use the ACCESS 360 Mark adjacent to its FIFTH THIRD mark, which combined use must commence by no later than 120 days of the Effective Date. This license does not include the right to use the ACCESS 360 trademark (or any other marks comprised of or containing 360—in numeric or alpha-numeric format) for any other goods, services, purpose, or activity, and Fifth Third will not make any such use. Moreover, Fifth Third will not use the ACCESS 360 trademark in stylizations or color schemes used by Capital One for its marks, logos, and/or business including, without limitation, the marks/logos shown in Exhibit C.

3. Use of the Licensed Mark.

- a. Except as provided in Paragraph 2 above, Fifth Third will not use, register, or attempt to use or register (directly or indirectly) the ACCESS 360 Mark (or any variations thereof, including 360 standing alone or as part of a formative phrase (e.g., 360, 360 CHECKING) in any form (e.g., as, or as part of, a product name or logo, company name or logo, trademark, service mark, ornamentation, trade name, business name, fictitious name, slogan, tagline, domain name, e-mail address, URL, social-media name, screen name, keyword, metatag, favicon, or other name or identifier), in any medium (e.g., print, television, radio, Internet, or other electronic or online means), for any goods or services.
- b. Fifth Third will use the ACCESS 360 trademark only in a manner and form approved by Capital One. Capital One approves the uses of ACCESS 360 that exist as of the Effective Date, provided that within 120 days of the Effective date, Fifth Third uses such mark adjacent to its FIFTH THIRD mark, as set forth in Section 2 of this Agreement.

4. Ownership of Licensed Mark.

- a. Capital One will own the ACCESS 360 trademark and will be responsible for prosecuting and maintaining any trademark applications and/or registrations for the ACCESS 360 trademark. Fifth Third will not file or obtain any trademark applications or registrations, or Internet domain name registrations comprised of or containing the ACCESS 360 trademark, 360, or any variation(s) thereof.

- b. Fifth Third, by this Agreement or by use of the ACCESS 360 trademark, acquires no right, title, or interest in or to the ACCESS 360 trademark or the goodwill associated with the ACCESS 360 trademark.
- c. Fifth Third recognizes and acknowledges the validity and enforceability of, and will not directly or indirectly contest, challenge, or attack: (a) Capital One's ownership of the assigned rights, including U.S. Registration No. 4,265,676, or the validity of such rights; (b) any of Capital One's uses of, or registrations for, any mark comprised of or containing 360, in numeric or alphanumeric form (or variations thereof, including but not limited to CAPITAL ONE 360, BANK 360, 360 CHECKING, 360 SAVINGS, 360 CD, 360 REWARDS CHECKING, 360 INTEREST CHECKING, 360 BANKING, etc.) in connection with any goods or services; and/or (c) the validity of this Agreement.

5. Quality Control.

- a. Capital One is familiar with the current standard of quality for the Licensed Products currently offered under the ACCESS 360 trademark. Capital One approves and adopts, and Fifth Third agrees to maintain, that general standard as the overall standard of quality for the Licensed Products offered under the ACCESS 360 trademark.
- b. Fifth Third will comply with all applicable federal, state, and local laws and regulations in connection with advertising, promoting, offering, and rendering the Licensed Products and/or the ACCESS 360 trademark.
- c. Fifth Third will not use the ACCESS 360 trademark in any manner or take any action that would be reasonably likely to disparage, tarnish, or otherwise adversely affect the reputation or image of Capital One, its products or services, or any of its names or marks (including but not limited to the 360 name and mark) in any way.
- d. Upon Capital One's reasonable requests, Fifth Third will provide Capital One with representative samples of the Licensed Products and/or representative materials showing Fifth Third's use of the ACCESS 360 trademark (e.g., packaging, labels, tags, advertising, promotions, and displays).

6. Indemnification.

Each party agrees to indemnify the other party and its officers, directors, agents, licensees, distributors, related companies, affiliates, employees, and independent contractors and to hold each of them harmless in all respects from and against any claims, demands, suits, or causes of action (including but not limited to those for product liability and/or those arising from defects or alleged defects in the Licensed Products) and resulting settlements, awards, or judgments (including but not limited to any and all types of damages, profit awards, costs, and attorneys' fees) arising out of any act or alleged activity of that party, its officers, directors, agents, licensees, distributors, related companies, affiliates, employees, and independent contractors in any way connected to the ACCESS 360 trademark or the Licensed Products. This indemnity will survive the termination of this Agreement. The

indemnity is conditioned upon prompt notice to a party of any claim which the party seeking indemnification believes is subject to indemnification by the other party.

7. Enforcement.

- a. Capital One has the sole and exclusive right to take action against any third-party uses of or attempts to register marks, names, domain names, and other designation(s) that may infringe or otherwise violate the ACCESS 360 trademark at its own cost and to retain any and all damages and settlement proceeds recovered as a result. Fifth Third will reasonably cooperate with and assist Capital One with any such action that Capital One decides to take, at Capital One's expense. Moreover, if Fifth Third becomes aware of any third party activity that it believes infringes or otherwise violates the ACCESS 360 trademark, Fifth Third will promptly notify Capital One.
- b. The parties agree that they have a community of interest with respect to enforcing the ACCESS 360 trademark, that they may exchange opinions from inside and outside counsel concerning such enforcement, and that such exchanges and related communications will not constitute a waiver of the attorney-client or work-product privilege or similar privileges and protections.

8. Termination.

- a. In the case of any breach of this Agreement, Capital One will provide Fifth Third with written notice of the breach, after which time Fifth Third will have thirty (30) days to cure such breach.
- b. Capital One may terminate the license set forth in Section 2 of this Agreement in the event a breach by Fifth Third is not cured pursuant to the terms of Paragraph 8(a).
- c. If, during the Term, Fifth Third either: (1) becomes a top ten (10) U.S. bank based on either (a) consolidated holding company assets, based on data provided by bank holding companies in the Federal Reserve's Form Y-9C and savings and loan holding companies in the Federal Reserve's Form FR 2320, or (b) deposits, as reported by the Federal Deposit Insurance Corporation on its Summary of Deposits; or (2) holds consolidated holding company assets of more than \$200 billion based on Y-9 data (in either or both cases, a "Large National Bank"), then the Term of the License set forth in Section 2 will convert to a twelve (12) month term following the earliest date on which Fifth Third became a Large National Bank, and all other license terms remain in full force and effect.
- d. If, during the Term, Fifth Third experiences a Change of Control (as defined below), then the Term of the license set forth in Section 2 will convert to a twelve (12) month term following the effective date of such Change of Control, and all other license terms remain in full force and effect. "Change of Control" means (a) any merger, acquisition, or any other transaction that results in any unaffiliated third party or "group" (within the meaning of Section 13(d)(3) of the Securities Exchange Act of 1934 ("Exchange Act")) of third parties acquiring Beneficial Ownership (as defined under the Exchange Act),

directly or indirectly, a majority of the then issued and outstanding shares of common stock of Fifth Third; or (b) the sale, lease, exchange, conveyance, transfer or other disposition of all or substantially all of the property and assets of Fifth Third and its subsidiaries, on a consolidated basis, to any unaffiliated third party or "group" of third parties.

- e. The license in Section 2 of this Agreement terminates immediately if Fifth Third ceases use of the mark ACCESS 360 for six (6) consecutive months (the "Non-Use Period"). At the conclusion of the Non-Use Period, Fifth Third shall promptly notify Capital One that it has ceased using the ACCESS 360 mark.
- f. Upon termination of the license set forth in Section 2 of this Agreement (other than termination under Section 8(c) or 8(d)), Fifth Third will immediately and permanently cease all use of the ACCESS 360 trademark. Fifth Third will have sixty (60) days from the termination date to remove all materials in its possession, custody, or control bearing the ACCESS 360 trademark from public access. Notwithstanding the above, Fifth Third may keep non-public materials bearing the ACCESS 360 trademark, such as business records, for historical, archival, and business reporting purposes.

9. Successors and Assigns.

The terms and conditions of this Agreement and the rights and license granted inures to the benefit of the parties and to Capital One's related companies, successors, and assigns. This Agreement is assignable by Capital One to any of its current or prospective affiliates or subsidiaries without the consent of Fifth Third. Capital One agrees to provide notice to Fifth Third of any such assignment. It is understood, however, that the rights and obligations of Fifth Third are personal to Fifth Third and may not be assigned, sublicensed, or otherwise transferred in whole or in part in any manner whatsoever, by operation of law or otherwise, without Capital One's prior written consent. Any attempted assignment, sale, encumbrance, or transfer of any interest in the Agreement or the licensed rights by Fifth Third will be null and void, and may, at Capital One's sole discretion, result in the termination of the license pursuant to Section 8(b).

10. Representations and Warranties.

Fifth Third represents and warrants to the best of its actual knowledge, as of the date of the execution of this Agreement, that:

- a. The ACCESS 360 trademark is not subject to any order, decree, judgment, stipulation, written restriction, undertaking, or agreement that would prevent Fifth Third from complying with any of its obligations under this Agreement (nor is there anything else that would prevent Fifth Third from complying with any of its obligations under the Agreement);
- b. Other than U.S. Trademark Registration No. 4,265,676, Fifth Third does not own any trademark registrations or applications for the ACCESS 360 trademark, any other trademark comprised of or containing 360, or any variations thereof;

- c. There are no existing or threatened proceedings by any third party relating to Fifth Third's use of the ACCESS 360 trademark;
- d. Fifth Third has not granted any licenses to use the ACCESS 360 trademark any other trademark comprised of or containing 360, or any variations thereof to any third parties; and
- e. Fifth Third has never used any name or mark comprised of or containing 360 for any products other than the Licensed Products.

11. Notices.

All notices and communications made in connection with this Agreement will be in writing and delivered by facsimile, hand, certified mail, or overnight courier service (such as FedEx), addressed as follows:

If to Capital One:

Peter D. Horst
Senior Vice President, Brand
Capital One Services, LLC
1680 Capital One Drive
McLean, Virginia 22102
peter.horst@capitalone.com

With a copy, which does not constitute notice, to:

Dennis A. Browne, Esq.
Senior Associate General Counsel
Capital One Services, LLC
15000 Capital One Drive
Attn: 12077-0270
Richmond, Virginia 23238
dennis.browne@capitalone.com

If to Fifth Third:

Paul L. Reynolds, Esq.
Chief Risk Officer and Executive Vice President
Fifth Third Bancorp
38 Fountain Square Plaza
Cincinnati, Ohio 45263
paul.reynolds@53.com

With a copy, which does not constitute notice, to:

Therese M. Paul, Esq.
Fifth Third Bancorp
38 Fountain Square Plaza
Cincinnati, Ohio 45263
therese.paul@53.com

Any change of address or identification of parties will be effective when sent in accordance with the provisions of this Paragraph.

12. Scope.

This Agreement is worldwide in scope.

13. Entire Agreement.

This Agreement comprises the entire understanding and agreement between the parties with respect to its subject matter and supersedes and makes void any related prior understandings or agreements that may have previously existed between the parties. Any modifications or amendments to this Agreement will be binding upon the parties only if they are made in writing and properly executed on behalf of the respective parties.

14. Waiver.

Failure of any party to require the performance of any term in this Agreement will not prevent subsequent enforcement of that or any other term or be deemed a waiver of any breach.

15. Miscellaneous.

- a. None of the provisions of this Agreement will be construed to place the parties in the relationship of partners or joint venturers and neither party will have the power to obligate the other in any manner whatsoever.
- b. This Agreement is signed voluntarily and without any duress or undue influence on the parties or their officers, employees, agents, or attorneys and no party is relying on any inducements, statements, promises, or representations made by any other party or any of its officers, employees, agents, or attorneys other than as expressly set forth in this Agreement. The parties acknowledge that they have been represented in the negotiations for and in the preparation of this Agreement by counsel, that they have had this Agreement fully explained to them by counsel, and that they are aware of the contents of this Agreement and of its legal effect.
- c. None of the provisions of this Agreement will be construed against either party.

- d. If for any reason any provision or term of this Agreement is deemed invalid, illegal, or unenforceable, the parties will cooperate to lawfully effectuate the parties' intent as to that provision and the remaining provisions and terms of this Agreement will be valid and enforceable. If the invalidity, illegality, or unenforceability of any provision of this Agreement substantially deprives any party of the benefits to be provided by this Agreement, the deprived party will have the option of keeping this Agreement in effect or terminating it.
- e. The parties agree to cooperate fully and execute any documents and to take all additional actions that may be necessary or appropriate to carry out the duties and intended results expressed in this Agreement, including but not limited to signing any documents that may be needed or desired to record in various jurisdictions the assignment and/or license provided for in this Agreement.
- f. Each party warrants and represents that the person signing this Agreement has full power and actual authority to enter into this Agreement and to bind its respective directors, officers, agents, employees, representatives, subsidiaries, affiliates, assigns, and successors to the Agreement. Capital One shall reimburse Fifth Third for any and all reasonable costs associated with this assignment, not to exceed \$5,000.00.

16. Execution and Effective Date.

This Agreement may be signed using one or more counterparts, each of which when signed will be deemed to be an original and all of which when taken together will constitute one and the same agreement. This Agreement will be enforceable upon the exchange of facsimile or electronically scanned signatures and will be effective on the date of the last signature.

IN WITNESS THERETO, the parties have caused the authorized officers to execute this Agreement below.

CAPITAL ONE FINANCIAL CORPORATION

FIFTH THIRD BANCORP

By: Frank G. LaPrade
 Name: Frank G. LaPrade
 Title: Chief Enterprise Services Officer / Chief of Staff to the CEO
 Date: 7/12/13

By: James R. Hubbard
 Name: James R. Hubbard
 Title: SVP & Chief Legal Officer
 Date: 8/27/13

EXHIBIT A

United States of America
United States Patent and Trademark Office

ACCESS 360

Reg. No. 4,265,676

Registered Dec. 25, 2012

Int. Cl.: 36

SERVICE MARK

PRINCIPAL REGISTER

FIFTH THIRD BANCORP (OHIO CORPORATION)
38 FOUNTAIN SQUARE PLAZA
CINCINNATI, OH 45267

FOR: BANKING SERVICES, NAMELY, PREPAID DEBIT CARD SERVICES, IN CLASS 36
(U.S. CLS. 109, 101 AND 102).

FIRST USE 9-6-2012; IN COMMERCE 9-6-2012

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SN 85-504.963, FILED 12-28-2011.

ALLISON SCHRODY, EXAMINING ATTORNEY



David J. Kyjas

Director of the United States Patent and Trademark Office

EXHIBIT B

ASSIGNMENT

Fifth Third Bancorp, an Ohio Corporation with a place of business at 38 Fountain Square Plaza, Cincinnati Ohio 45263 ("Assignor") owns the trademark ACCESS 360 ("the Trademark") and the corresponding U.S. Trademark Registration No. 4,265,676 for that mark ("the Registration").

Capital One Financial Corporation, a Delaware corporation with a place of business at 1608 Capital One Drive, McLean, Virginia 22102 ("Assignee") wishes to acquire the Registration together with all goodwill and common-law rights relating to and arising from Assignor's use of the Trademark.

In consideration of the foregoing and for other good and valuable consideration, receipt of which is hereby acknowledged, Assignor hereby assigns to Assignee all its right, title, and interest in and to the Registration and all common-law rights relating to and arising from all use of the Trademark in any form, together with the goodwill associated with the Trademark and the right to sue and recover for past infringements and other violations.

FIFTH THIRD BANCORP

By: _____

Name: _____

Title: _____

Date: _____

[Handwritten Signature]
James L. Hubbard
Senior Vice President - CLO
9/13/10

EXHIBIT C

