

**#2003-142**

AGREEMENT BY AND BETWEEN  
Dillard National Bank  
Gilbert, Arizona  
and  
The Office of the Comptroller of the Currency

Dillard National Bank, Gilbert, Arizona (“Bank”) and the Comptroller of the Currency of the United States of America (“Comptroller”) wish to protect the interests of the depositors, other customers, and shareholders of the Bank, and, toward that end, wish the Bank to operate safely and soundly and in accordance with all applicable laws, rules and regulations.

The Comptroller, through his National Bank Examiner, has examined the Bank, and his findings are contained in the Report of Examination for the examination that commenced on April 1, 2002 (“ROE”).

The Bank, by executing this Agreement through its duly elected and acting Board of Directors (the “Board”), neither admits nor denies any wrongdoing in connection with the matters that are the subject of this Agreement.

In consideration of the above premises, it is agreed, between the Bank, by and through its Board, and the Comptroller, through his authorized representative, that the Bank shall operate at all times in compliance with the articles of this Agreement.

ARTICLE I

JURISDICTION

(1) This Agreement shall be construed to be a “written agreement entered into with the agency” within the meaning of 12 U.S.C. § 1818(b)(1).

(2) This Agreement shall be construed to be a “written agreement between such depository institution and such agency” within the meaning of 12 U.S.C. § 1818(e)(1) and 12 U.S.C. § 1818(i)(2).

(3) This Agreement shall be construed to be a “formal written agreement” within the meaning of 12 C.F.R. § 5.51(c)(6)(ii). See 12 U.S.C. § 1831i.

(4) This Agreement shall be construed to be a “written agreement” within the meaning of 12 U.S.C. § 1818(u)(1)(A).

(5) All reports or plans which the Bank or Board has agreed to submit to the Assistant Deputy Comptroller pursuant to this Agreement shall be forwarded to:

John F. Curtis  
Assistant Deputy Comptroller  
Credit Card Bank Supervision  
Office of the Comptroller of the Currency  
50 Fremont Street, Suite 3900  
San Francisco, California 94105

With a copy to:

National Bank Examiners  
Office of the Comptroller of the Currency  
9633 S. 48<sup>th</sup> Street, Suite 265  
Phoenix, Arizona 85044

## ARTICLE II

### COMPLIANCE COMMITTEE

(1) Within five (5) days, the Board shall appoint a Compliance Committee of at least three (3) directors, which shall consist of the Chairman, the Chief Executive Officer, and another director who is not an employee of the Bank. Upon appointment, the names of the members of the Compliance Committee shall be submitted in writing to the Assistant Deputy Comptroller.

The Compliance Committee shall be responsible for monitoring and coordinating the Bank's adherence to the provisions of this Agreement.

(2) The Compliance Committee shall meet at least monthly.

(3) Within thirty (30) days of the appointment of the Committee and every thirty (30) days thereafter, the Compliance Committee shall submit a written progress report to the Board setting forth in detail:

(a) actions taken to comply with each Article of this Agreement; and

(b) the results of those actions.

(4) The Board shall forward a copy of the Compliance Committee's report, with any additional comments by the Board, to the Assistant Deputy Comptroller.

### ARTICLE III

#### GENERAL PURPOSE CO-BRAND INITIATIVE

(1) The Bank may not implement a general purpose co-brand initiative without the prior written supervisory non-objection of the Office of the Comptroller of the Currency ("OCC").

### ARTICLE IV

#### STRATEGIC PLANNING

(1) Within sixty (60) days, the Board shall adopt, implement, and thereafter ensure Bank adherence to a written formal strategic planning process for significant business initiatives. The process will require that, before undertaking any significant business initiative, representatives from all affected areas of the Bank will be engaged to prepare a detailed written business plan that addresses, as relevant, how the initiative will affect the Bank's overall risk profile, earnings

performance, growth, balance sheet mix, off-balance sheet activities, liability structure, capital adequacy, and asset quality. At a minimum, the plan for any significant business initiative should include:

- (a) a statement of how the business initiative is consistent with the Bank's strategic goals and objectives;
- (b) specific goals and objectives for the business initiative over the short and long term, including how those goals and objectives are expected to impact earnings and any major capital expenditures that will be required to achieve those objectives;
- (c) projections of whether the business initiative will affect the Bank's capital or funding requirements, and what measures will be taken to meet any increased requirements;
- (d) an evaluation of whether the Bank's internal operations and controls, staffing, board and management information systems and written policies and procedures are adequate for the business initiative and any enhancements that are needed;
- (e) a description of how the Bank will secure any additional processes, personnel, and control systems necessary to safely and soundly implement the business initiative;
- (f) an evaluation of the adequacy of the Bank's risk management systems to identify, measure, monitor and control the risks associated with the business initiative and any enhancements that are needed;
- (g) an evaluation of any legal, accounting, or operations issues raised by the business initiative;

- (h) an action plan to implement the goals and objectives for the business initiative, including individual responsibilities, accountability and specific time frames;
- (i) a written profit plan and a detailed budget for the business initiative with accompanying assumptions;
- (j) procedures and systems to monitor the Bank's actual results with the business initiative, and to provide appropriate adjustments to the budget and profit plans; and
- (k) a formal reporting system to monitor, measure and convey the expected and actual results of significant business initiatives to the Board.

(2) For purposes of this Article, the term "significant business initiative" includes any significant deviation or change to the Bank's business plan involving:

- (a) current business strategy, for example, entrance into a new product or service, or exiting from a business segment;
- (b) marketing strategies, marketing partners, or acquisition channels that are designed to address credit risk issues and growth initiatives;
- (c) underwriting practices and standards for account and/or portfolio acquisitions;
- (d) account management strategies and test programs;
- (e) collection strategies, partners, or operations;
- (f) fee structure or fee application methods;
- (g) accounting processes and practices; or
- (h) funding strategies and capital maintenance.

(3) A copy of the written formal strategic planning process shall be forwarded to the Assistant Deputy Comptroller.

## ARTICLE V

### LIQUIDITY

(1) Within thirty (30) days, the Board shall establish a written process to assess the adequacy of the Bank's funding sources on an ongoing basis. This process shall produce a written liquidity report that includes:

- (a) an assessment of the Bank's needs and sources of liquidity;
- (b) an assessment of the ability of the parent, Dillard's, Inc., to continue to fund the daily purchase of receivables, including an analysis of the parent's access to current sources of funding and the parent's access to contingency sources of funding; and
- (c) an assessment of the performance of the receivables originated and serviced by the Bank, with an analysis of its impact on the parent's funding sources, such as access to the securitization markets.

(2) The Board shall require that the written liquidity report be prepared on at least a monthly basis, and more frequently if any event has occurred that might significantly affect the ability of the parent to continue to fund the daily purchase of receivables.

(3) The Board shall immediately take any measures indicated by the liquidity assessment to assure that the Bank has adequate sources of liquidity, including contingent sources, for the Bank's needs.

(4) To the extent that the Bank relies on the exemption for "intraday" extensions of credit to comply with 12 U.S.C. § 371c, as implemented by Regulation W (12 C.F.R. Part 223), the Bank shall document in the written liquidity report facts that demonstrate the Bank's compliance with 12 C.F.R. §§ 223.3(j) and 223.42(l) of Regulation W.

(5) The Bank shall provide to the OCC copies of the monthly servicing reports for Dillard's, Inc.'s securitization activities and credit quality reports for off-book credit card receivables. The reports to be provided under this paragraph also include reports providing credit performance metrics, for example delinquencies and charge-offs, and any other asset quality reports that management uses to monitor the performance of the credit card receivables serviced by the Bank.

(6) The Board shall by the fifteenth (15<sup>th</sup>) of each month forward to the OCC a copy of the liquidity report, and a description of any actions to be taken in response to that report, along with copies of the reports described in paragraph (5) of this Article.

(7) Within thirty (30) days, the Bank shall make good faith, reasonable efforts to enter into a Capital Assurance and Liquidity Maintenance Agreement ("CALMA") with Dillard's, Inc., in a form to which the OCC has no supervisory objection, that: (i) ensures that the Bank establishes and maintains the minimum capital required pursuant to 12 C.F.R. Part 3, Appendix A; and (ii) ensures that the Bank establishes and maintains the Liquidity Reserve Deposit ("LRD") Requirement described in paragraph (9) of this Article. The Bank shall immediately provide the OCC with a copy of all board minutes, notes, correspondence, and e-mails evidencing its good faith, reasonable efforts to enter into a CALMA with Dillard's, Inc., including all communications, in any form, received from Dillard's, Inc.

(8) The Bank shall be required to comply with the requirements of paragraph (9) of this Article upon the occurrence of any of the following (hereinafter "Liquidity Triggering Events"):

- (i) Dillard's, Inc. does not maintain a long-term unsecured debt rating of A3 or higher assigned by Moody's;
- (ii) Dillard's, Inc. does not maintain a long-term unsecured debt rating of A- or higher assigned by Standard & Poor's;
- (iii) Dillard's, Inc. does not maintain a long-term

unsecured debt rating of A- or higher assigned by Fitch Ratings; (iv) Dillard's, Inc. does not maintain a short-term debt rating of P-1 from Moody's; (v) Dillard's, Inc. does not maintain a short-term debt rating of A-1 from Standard & Poor's; (vi) Dillard's, Inc. does not maintain a short-term debt rating of F-1 from Fitch Ratings; or (vii) any event related to declining performance in the receivables that results in an early amortization event or the reallocation of excess spread for the benefit of the certificate holders in a spread account or cash collateral account. Subject to prior written supervisory non-objection, a Liquidity Triggering Event may be cured when: the relevant debt ratings of Dillard's, Inc. have sufficiently improved and are sustained for a consecutive six (6) month period; there has been no early amortization or reallocation of excess spread occurring for a consecutive six (6) month period; and no other Liquidity Triggering Event has occurred for a consecutive six (6) month period, after which the Bank is not required to comply with the requirements of paragraph (9) of this Article. In the case of a Liquidity Triggering Event under item (vii) above, the Bank shall comply with the requirements of paragraph (9) of this Article prior to the placement or setting aside of funds for a spread account or cash collateral account. Due to the debt rating of Dillard's, Inc. as of the date of this Agreement, a Liquidity Triggering Event has occurred and has not been cured.

(9) Within twenty (20) days, because a Liquidity Triggering Event has occurred as of the date of the Agreement and has not been cured, and within ten (10) days after the occurrence of any subsequent Liquidity Triggering Event, the Bank shall enter into an agreement (hereinafter the "LRD Agreement") with a third party insured depository institution or a Federal Reserve Bank ("Depository Bank") and the OCC, whereby the Bank will maintain Liquid Assets, as defined in paragraph (13) of this Article, in an amount (for Liquid Assets in Categories (IV) or (V) of paragraph (13) of this Article) and type acceptable to the OCC, in the Depository Bank



(“LRD Account”), to be used to support the Bank’s funding needs and requirements in the event Dillard Asset Funding Corporation (“DAFCO”) or any successor or replacement entity fails to purchase and pay for credit card receivables in accordance with the “DNB Receivables Purchase Agreement” dated August 14, 1998, as amended. The terms of the LRD Agreement and the Depository Bank shall be subject to the OCC’s prior written supervisory non-objection. The amount of Liquid Assets required to be maintained under this paragraph shall be determined and adjusted on the day the LRD Agreement is entered into, and thereafter on the first (1<sup>st</sup>) day of each calendar month, and shall be maintained, at a minimum, in an amount at least equal to three (3) times the daily average of credit card receivables (as defined in paragraph (14) of this Article) originated during the same calendar month of the prior calendar year, adjusted by the Adjustment Factor (“LRD Requirement”). Notwithstanding the previous sentence, on the day prior to any period of three (3) consecutive days that are not Business Days, the Bank shall add to the LRD Account an amount equal to one (1) times the daily average of credit card receivables originated during the same month of the prior calendar year, adjusted by the Adjustment Factor (the “Additional Deposit Amount”). The Bank shall provide e-mail confirmation to the OCC that the Additional Deposit Amount has been added to the LRD Account by no later than 5:00 P.M. PST (or PDT) of the day prior to the beginning of the period of three (3) consecutive days that are not Business Days. The e-mail confirmation shall specify the total dollar amount of the Additional Deposit Amount and the total dollar amount of the LRD Account for the period of three (3) consecutive days that are not Business Days. On the first (1<sup>st</sup>) day after the period of three (3) consecutive days that are not Business days, the Bank may withdraw from the LRD Account the Additional Deposit Amount, subject to the requirement above that the LRD Account shall be maintained at all times in an amount at least equal to the LRD Requirement following such

withdrawal. By no later than 5:00 P.M. PST (or PDT) on the day of the withdrawal of the Additional Deposit Amount, the Bank shall provide e-mail confirmation to the OCC of the withdrawal and that the total remaining balance in the LRD Account complies with the LRD Requirement specified above. Except as noted above regarding the Additional Deposit Amount, in the event the balance of the LRD Accounts exceeds the LRD Requirement, the Bank may reduce the balance in the LRD Account in accordance with paragraph (10) of this Article and the terms of the LRD Agreement.

(10) The Bank shall at all times maintain the following information in written form, which may include electronic, that is readily accessible to OCC personnel upon request: (i) the LRD Requirement for the current and upcoming month; (ii) the supporting documentation used in calculating the LRD Requirement; (iii) the value of the Liquid Assets currently in the LRD Account; and (iv) the necessary documentation for the Comptroller's concurrence of any reduction to be made to the LRD Account. All changes to the LRD Account shall be made pursuant to the terms of the LRD Agreement.

(11) If the amount of the LRD is less than the requirement for the upcoming month, then the Bank shall, by the first (1<sup>st</sup>) day of the upcoming month, add Liquid Assets sufficient to cover the LRD Requirement for the upcoming month, and notify the OCC that the dollar amount of the LRD Account has been increased accordingly.

(12) If the Bank becomes aware, or is otherwise informed, that assets maintained in the LRD Account become ineligible to be considered Liquid Assets following deposit to the LRD Account, the Bank shall replace such assets with Liquid Assets of equal value within ten (10) business days of notice of such ineligibility.

(13) The term “Liquid Assets” shall include only: (i) cash deposits; (ii) federal funds sold; (iii) deposits at insured depository institutions; (iv) Type I Securities under 12 C.F.R. Part 1; and (v) such other assets as to which the OCC has no prior written supervisory non-objection. The term Liquid Assets shall not include encumbered or pledged assets by lien, right of setoff, preference or otherwise; any credit card receivable due and owing to the Bank; nor any other asset pledged as security in any financial transaction with the Bank or any subsidiary, affiliate, related party, or institution-affiliated party.

(14) The term “credit card receivables” shall mean, for any day, the principal amount of all purchases, cash advances, balance transfers, convenience checks and other charges, less any merchandise returns, processed on such day on a credit card issued by the Bank. However, such amount is to be calculated prior to the application of or deducting any payments received or expected on such day.

(15) The term “Business Day” means any day other than Saturday, Sunday, or a “legal public holiday,” as listed in 5 U.S.C. § 6103(a) or any successor statute, as either may be amended or modified. If January 1, July 4, November 11, or December 25 falls on a Sunday, the next Monday is not a business day.

(16) The term “Adjustment Factor” means the percentage that results from the following calculation: (total credit card receivables for the immediately preceding twelve (12) month period minus (-) total credit card receivables for the twelve (12) month period ending one year earlier (the “Year Earlier Period”)) divided by (/) (total credit card receivables for the Year Earlier Period) multiplied by (\*) one hundred (100). If the Adjustment Factor is a negative number, then the amount of Liquid Assets is adjusted downward by the resulting percentage. If

the Adjustment Factor is a positive number, then the amount of Liquid Assets is adjusted upward by the resulting percentage.

## ARTICLE VI

### TRANSACTIONS WITH AFFILIATES

(1) The Bank shall comply in all respects with the requirements of 12 U.S.C. § 371c and 12 U.S.C. § 371c-1, as implemented by Regulation W (12 C.F.R. Part 223) (hereinafter referred to as “affiliate laws”).

(2) To ensure compliance with applicable affiliate laws, within forty-five (45) days, the Bank shall review existing contracts, agreements, or arrangements, written or otherwise, with any and all of its affiliate companies, or with a non-affiliate company, that involve a transaction covered by the affiliate laws. Upon completion of this review, the Bank shall:

- (a) determine and document the basis for its conclusions:
  - (i) whether the written contract governing the transaction accurately reflects the actual practices, terms, and conditions between the parties to the contract;  
and
  - (ii) considering all the facts and circumstances, including the benefit to any affiliate, whether each contract, agreement, or arrangement, represents an arm’s length transaction whose terms and conditions are fair and reasonable to the Bank.
- (b) terminate or amend all contracts, agreements, or arrangements covered by this paragraph that do not accurately reflect the actual practices, terms, and conditions

between affiliated entities, are not on an arm's length basis, or whose terms and conditions are not demonstrably fair and reasonable to the Bank; and

- (c) to the extent a contract, agreement, or arrangement is determined not to have been on an arm's length basis, or under terms and conditions not demonstrably fair and reasonable to the Bank, the Bank shall request appropriate reimbursement from the affiliate of excess fees or costs paid to the affiliate or for the benefit of the affiliate, throughout the life of the contract, agreement, or arrangement. The Bank may make a written request to the OCC for prior written supervisory non-objection to seek alternative restitution from the affiliate.

(3) Upon completion of the review required by paragraph (2) of this Article, the Bank shall forward a copy of the review to the Assistant Deputy Comptroller.

(4) Within thirty (30) days, the Board shall develop, approve, and implement a written affiliate policy and procedures to govern the initiation, approval, and ongoing oversight of all transactions entered into by the Bank that are covered by the affiliate laws (hereinafter, "affiliate transactions"). At a minimum, the policy shall:

- (a) identify transactions covered by the policy, and require that all affiliate transactions entered into by the Bank be in accordance with the affiliate laws and the Bank's affiliate policy;
- (b) specify the legal requirements governing affiliate transactions, including that the transaction be in the best interests of the Bank and conform, as applicable, to the requirements of affiliate laws;
- (c) require that any affiliate service contract be structured and administered in accordance with the standards in *OCC Bulletin 2001-47*;

- (d) specify the review process that the Bank will follow in considering, and approving or rejecting, an affiliate transaction, and as part of the procedures:
  - (i) specifically address the potential for conflicts of interest when a Bank employee, manager, or Board member involved in the consideration, implementation, or monitoring of an affiliate transaction also has a separate relationship or role with an affiliate. The policy should describe what measures will be taken in such a situation, so that the interests of the Bank are protected and the transaction complies with the affiliate laws;
- (e) require, before entering into any affiliate transaction, that the Bank document the basis for the determination that the transaction conforms, as applicable, to the requirements of the affiliate laws including documentation that the affiliate transaction is demonstrably fair and reasonable to the Bank;
- (f) require that all accounting and book entries for affiliate transactions be consistent with applicable accounting issuances, reporting requirements, and regulatory guidance;
- (g) require the maintenance of an accurate list of all affiliate transactions engaged in by the Bank;
- (h) provide for effective ongoing oversight of affiliate transactions;
  - (i) to determine whether the affiliate transaction continues to conform to the requirements, as applicable, of the affiliate laws; and
  - (ii) to evaluate the counterparty's performance under the contract, to verify that the Bank is receiving the performance promised under the contract.

(i) provide for an independent review by a qualified internal or external third party to evaluate, on at least an annual basis, the Bank's compliance with this affiliate policy and the affiliate laws.

(5) Within sixty (60) days, the Bank shall bring all existing affiliate transactions into compliance with the affiliate policy developed pursuant to paragraph (4) of this Article.

(6) The Bank shall forward a copy of the affiliate policy to the Assistant Deputy Comptroller.

## ARTICLE VII

### BOOKS AND RECORDS

(1) The Bank shall maintain its books, records and management information systems ("MIS") in a complete and accurate condition, and the Bank's files shall contain all records and information necessary to allow the Comptroller to determine the details or purposes of each of the Bank's transactions. These books and records shall be maintained to ensure and preserve the separate corporate identity of the Bank from its affiliates. At a minimum, the Bank shall immediately develop, document and implement policies, procedures, systems and controls to ensure that, on an ongoing basis, the books and records of the Bank:

- (a) are under the control of the Bank and are kept separate and apart from those of an affiliate;
- (b) utilize a chart of accounts that contains account descriptions consistent with the activity in the account;

- (c) reflect all of the assets, liabilities, capital, income and expenses of the Bank in accordance with applicable accounting issuances, reporting requirements, and regulatory guidance;
- (d) provide references from the general ledger to the journal entries and, in turn, reference to the supporting source documents;
- (e) reflect readily available documentation to adequately support all general ledger entries;
- (f) reflect a Bank authorization or approval process for all general ledger entries before being recorded in the books and records; and
- (g) include account analyses and/or reconciliations where appropriate or useful to evaluate or understand amounts recorded in the account;

(2) The Bank shall engage a qualified independent party to provide a written report to the Board evaluating the Bank’s compliance with paragraph (1) of this Article. Prior to beginning work, the identity and qualifications of the independent party shall be submitted to the OCC for its prior written supervisory non-objection. A copy of the report shall be provided to the Assistant Deputy Comptroller.

(3) The Bank shall provide all federal financial regulatory agency personnel (“agency personnel”) with prompt and unrestricted access to the Bank’s books, records and staff, and provide full and complete details or purposes of the Bank’s transactions to agency personnel upon inquiry.

## ARTICLE VIII

### INTERNAL AUDIT



(1) Within forty-five (45) days, the Board shall review and update the existing audit policy, incorporating a formal risk assessment of the Bank's audit needs, and determining an adequate scope and frequency for internal audit based on the risks inherent in the Bank's operations, including the risks inherent in the Bank's role as servicer for the Master Trust. The revised audit policy shall establish an independent, internal audit program that complies with guidelines set forth in the *OCC's Handbook on Internal and External Audit* and related issuances. The internal audit program shall:

- (a) describe the organization and function of the Bank's audit function, including duties and responsibilities;
- (b) provide for a formal risk assessment process of the Bank's significant business activities and inherent risks;
- (c) ensure adequate audit coverage of all functional areas of Bank operations that are impacted as a result of the Bank's role as originator of the extensions of credit and servicer for the Master Trust assets, including credit operations, marketing, account management, customer service and underwriting;
- (d) detail the development of an adequate audit plan and audit cycle;
- (e) detect irregularities in the Bank's operations;
- (f) determine the Bank's level of compliance with all applicable laws, rules and regulations;
- (g) evaluate the Bank's adherence to established policies, procedures, and internal controls in all functional areas of the Bank;

- (h) provide a formal follow-up process to ensure that deficiencies and recommendations identified by internal audit are corrected and implemented in a timely manner, and that the corrective actions are documented;
- (i) require that the Board receive status reports regarding any outstanding deficiencies and recommendations identified by internal audit; and
- (j) require that the Board formally review and update the Bank's audit programs, policies, and procedures, at a minimum, on an annual basis.

(2) Within sixty (60) days, the Board shall adopt, implement, and thereafter ensure Bank adherence to the revised audit policy.

(3) In connection with development of the revised audit policy, the Board shall reassess the structure and reconfirm the role of the audit committee. To the extent the audit committee overlaps with the audit committee for the Bank's parent, the Board shall ensure that the audit committee provides sufficient priority and attention to specific needs of the Bank so that the audit committee effectively functions as an audit committee on behalf of the Bank.

(4) The Board shall ensure the engagement of audit staff qualified to assess, and who are experienced in, the risks posed by the Bank's operations, including the risks in servicing the Master Trust assets, and vendor management. The Board shall ensure that the audit function is supported by an adequately staffed department or outside firm, with respect to both the experience level and number of individuals employed.

(5) The Board shall ensure that the audit program is independent. The persons responsible for implementing the internal audit program described above shall report directly to the Board, which shall have the sole power to direct their activities. All reports prepared by the audit staff shall be filed directly with the Board and not through any intervening party.

(6) The audit staff shall have access to any books and records necessary for the proper conduct of its activities. National bank examiners shall have access to all reports and work papers of the audit staff and any other parties working on its behalf.

(7) As part of this audit program, the Bank shall receive audit reports from all affiliated service providers and material nonaffiliated third-party service providers that review the service provider's internal control environment and compliance program as it relates to the service(s) or product(s) being provided to the Bank. The Board shall evaluate these audit reports and shall assess the impact on the Bank of any audit deficiencies cited in such reports, including which, if any, of the service provider's operations violate applicable laws and regulations, or are inconsistent with the Bank's policies and procedures. The Bank's audit program shall provide a formal follow-up process to ensure the deficiencies identified in the audit reports relating to the service(s) or product(s) provided to the Bank are corrected in a timely manner, and the corrective action is documented.

(8) The Bank may rely on audit services provided by Dillard's, Inc., or any other affiliate, in connection with the Bank's audit program, only after the Board has determined that those audit services to be provided are adequate to meet the Bank's audit needs, and comply with the requirements of this Article. The Board's determination shall be adequately documented in the Bank's revised audit policy.

(9) The Board shall ensure that the Bank has processes, personnel, and control systems to ensure implementation of and adherence to the program developed pursuant to this Article.

(10) Upon adoption, a copy of the revised audit policy shall be submitted to the Assistant Deputy Comptroller.

## ARTICLE IX

### INFORMATION SECURITY PROGRAM

(1) The Board shall ensure compliance with 12 C.F.R. Part 30, Appendix B, by approving and overseeing the development, implementation, and maintenance of the Bank's information security program.

(2) Within thirty (30) days, the Board shall adopt and implement a written, formal information security program that includes, at a minimum:

- (a) written corporate information security policy and procedures;
- (b) a risk assessment process reviewed and approved annually by the Board;
- (c) staff training to implement the Bank's information security program;
- (d) testing of key controls, systems, and procedures of the information security program;
- (e) implementation of a formal vendor management program to oversee information security with regard to service providers; and
- (f) ongoing adjustments to the program in light of relevant changes in technology, the sensitivity of customer information, threats to information, business arrangements, and customer information systems.

(3) The Bank shall report to the Board at least annually on the overall status of the information security program and the Bank's compliance with the Guidelines in 12 C.F.R. Part 30, Appendix B.

## ARTICLE X

### BANK INFORMATION TECHNOLOGY

(1) The Board shall immediately take all steps necessary to improve the management of the Bank's Information Technology ("IT") activities and correct each deficiency cited in the ROE.

(2) The Board shall immediately by contract require its affiliated service provider, Dillard Store Services, Inc. ("DSSI"), to address and correct the deficiencies cited in the ROE, or any internal or external IT report. The Board shall require DSSI to submit a detailed written Action Plan, including a timeline, to correct the deficiencies cited in the ROE, or any internal or external IT report within thirty (30) days. The Board shall require DSSI to provide monthly reports describing the status of corrective action on these deficiencies and compliance with the Action Plan. The Board shall forward a copy of the Action Plan and the monthly reports to the Assistant Deputy Comptroller. If DSSI fails to address and correct these deficiencies in a satisfactory manner, or otherwise fails to submit or comply with the Action Plan, the Board shall submit a Contingency Plan to the Assistant Deputy Comptroller within thirty (30) days of DSSI's failure to submit or comply with the Action Plan to transfer the services provided by DSSI to another service provider.

(3) The Board shall ensure that business continuity preparation is improved by:

- (a) ensuring the development and implementation of a revised business resumption contingency plan;
- (b) ensuring that a corporate-wide system recovery test is completed and the results of that test reviewed to identify any potential risks to the Bank's operations; and
- (c) ensuring the annual review and approval of the Bank's and DSSI's, or successor service provider's, contingency plans and recovery testing.

## ARTICLE XI

### VENDOR MANAGEMENT

(1) The Board shall within thirty (30) days develop a written comprehensive vendor management program in accordance with *OCC Bulletin 2001-47* and *OCC Advisory Letter 2000-12*. Consistent with the above-referenced OCC guidance, the vendor management program shall cover affiliated and non-affiliated service providers and include, at a minimum:

- (a) a designated individual responsible for the program, and delegated the authority necessary for its effective administration;
- (b) a risk assessment of the Bank's needs and requirements;
- (c) a process to maintain a complete list of all affiliated and non-affiliated third-party vendors, identifying those vendors deemed critical to the Bank's operations or to whom the Bank makes substantial payments;
- (d) proper due diligence to identify and select a third-party provider;
- (e) written contracts that outline duties, obligations, and responsibilities of the parties involved; and
- (f) ongoing oversight of the service providers and service provider activities.

(2) Upon completion, the Bank shall submit the written program to the Assistant Deputy Comptroller.

## ARTICLE XII

### VIOLATIONS OF LAW

(1) The Board shall immediately take all necessary steps to ensure that Bank management corrects each violation of law, rule or regulation cited in the ROE and in any

subsequent Report of Examination. The monthly progress reports required by Article XIV of this Agreement shall include the date and manner in which each correction has been effected during that reporting period.

(2) Within thirty (30) days, the Board shall adopt, implement, and thereafter ensure Bank adherence to specific procedures to prevent future violations as cited in the ROE and shall adopt, implement, and ensure Bank adherence to general procedures addressing compliance management which incorporate internal control systems and education of employees regarding laws, rules and regulations applicable to their areas of responsibility to prevent future violations.

(3) Upon adoption, a copy of these procedures shall be promptly forwarded to the Assistant Deputy Comptroller.

(4) The Board shall ensure that the Bank has policies, processes, personnel, and control systems to ensure implementation of and adherence to the procedures developed pursuant to this Article.

### ARTICLE XIII

#### VOLUNTARY LIQUIDATION OF DILLARD NATIONAL BANK (LOUISIANA)

(1) In accordance with a corporate restructuring, within thirty (30) days, the Bank shall file with the OCC an application meeting the requirements of 12 C.F.R. § 5.48 to purchase all the assets, and assume all the liabilities, including contingent liabilities, of Dillard National Bank, Baton Rouge, Louisiana (“DNB-Louisiana”), which application shall provide that after receiving approval, DNB-Louisiana will be dissolved.

(2) The Bank shall consummate the above purchase transaction and dissolve DNB-Louisiana, within thirty (30) days after the application is approved by the OCC.

## ARTICLE XIV

### PROGRESS REPORTING - MONTHLY

- (1) The Board shall submit monthly progress reports to the Assistant Deputy Comptroller. These reports shall set forth in detail:
- (a) actions taken since the prior progress report to comply with each Article of the Agreement;
  - (b) results of those actions; and
  - (c) a description of the actions needed to achieve full compliance with each Article of this Agreement.
- (2) The progress reports should also include any actions initiated by the Board and the Bank pursuant to the criticisms and comments in the ROE or in any future Report of Examination.
- (3) The first progress report shall be submitted within forty-five (45) days. Thereafter, progress reports will be due within five (5) days after the end of each calendar month.

## ARTICLE XV

### ADMINISTRATIVE APPEALS AND EXTENSIONS OF TIME

- (1) If the Bank determines that an exception to any provision of this Agreement is in the best interests of the Bank, or requires an extension of any time frame within this Agreement, the Board shall submit a written request to the Assistant Deputy Comptroller asking for relief.
- (2) Any written requests submitted pursuant to this Article shall include a statement setting forth in detail the special circumstances that prevent the Bank from complying with any provision, that require the Assistant Deputy Comptroller to exempt the Bank from any provision,



or that require an extension of any time frame within this Agreement. All such requests shall be accompanied by relevant supporting documentation.

(3) The Assistant Deputy Comptroller's decision in granting the request is final and not subject to further review.

## ARTICLE XVI

### FAILURE TO COMPLY WITH THE FORMAL AGREEMENT

(1) If the OCC determines, in its sole discretion, that the Bank has failed to achieve material noncompliance with any of the requirements in Articles III, IV, V, VI, and XII of this Agreement, then the Bank agrees to voluntarily liquidate in conformance with Subchapter XII—Voluntary Dissolution, 12 U.S.C. § 181 *et. seq.*, and, at no loss or cost to the Bank Insurance Fund of the FDIC, if directed to do so by the OCC. The OCC will provide the Bank with written notice of any failure to comply with the foregoing requirements and will allow the Bank ten (10) days to cure the default. If the Bank fails to cure the default, in the sole discretion of the OCC, the Bank shall submit a liquidation plan that is consistent with 12 U.S.C. § 181 *et. seq.*, the Comptroller's Corporate Manual: Termination of National Bank Status, and shall provide for the Bank's liquidation at no cost or loss to the Bank Insurance Fund of the FDIC.

## ARTICLE XVII

### CLOSING

(1) Although the Board has agreed to submit certain programs and reports to the Assistant Deputy Comptroller and/or OCC for review or prior written supervisory non-objection, the Board has the ultimate responsibility for proper and sound management of the Bank.

(2) It is expressly and clearly understood that if, at any time, the Comptroller deems it appropriate in fulfilling the responsibilities placed upon him by the several laws of the United States of America to undertake any action affecting the Bank, nothing in this Agreement shall in any way inhibit, estop, bar, or otherwise prevent the Comptroller from so doing.

(3) Unless otherwise specifically stated, any time limitations imposed by this Agreement shall begin to run from the effective date of this Agreement. Such time requirements may be extended in writing by the Assistant Deputy Comptroller for good cause upon written application by the Board.

(4) The provisions of this Agreement shall be effective upon execution by the parties hereto and its provisions shall continue in full force and effect unless or until such provisions are amended in writing by mutual consent of the parties to the Agreement or excepted, waived, or terminated in writing by the Comptroller.

(5) In each instance in this Agreement in which the Board is required to ensure adherence to, and undertake to perform certain obligations of the Bank, it is intended to mean that the Board shall:

- (a) authorize and approve such actions on behalf of the Bank as may be necessary for the Bank to perform its obligations and undertakings under the terms of this Agreement;
- (b) require the timely reporting by Bank management of such actions directed by the Board to be taken under the terms of this Agreement;
- (c) follow up on any noncompliance with such actions in a timely and appropriate manner; and

(d) require corrective action be taken in a timely manner of any noncompliance with such actions.

(6) This Agreement is intended to be, and shall be construed to be, a supervisory “written agreement entered into with the agency” as contemplated by 12 U.S.C. § 1818(b)(1), and expressly does not form, and may not be construed to form, a contract binding on the OCC or the United States. Notwithstanding the absence of mutuality of obligation, or of consideration, or of a contract, the OCC may enforce any of the commitments or obligations herein undertaken by the Bank under its supervisory powers, including 12 U.S.C. § 1818(b)(1), and not as a matter of contract law. The Bank expressly acknowledges that neither the Bank nor the OCC has any intention to enter into a contract. The Bank also expressly acknowledges that no OCC officer or employee has statutory or other authority to bind the United States, the U.S. Treasury Department, the OCC, or any other federal bank regulatory agency or entity, or any officer or employee of any of those entities to a contract affecting the OCC’s exercise of its supervisory responsibilities. The terms of this Agreement, including this paragraph, are not subject to amendment or modification by any extraneous expression, prior agreements or prior arrangements between the parties, whether oral or written.

IN TESTIMONY WHEREOF, the undersigned, authorized by the Comptroller, has hereunto set his hand on behalf of the Comptroller.

/s/ John F. Curtis  
John F. Curtis  
Assistant Deputy Comptroller  
Credit Card Bank Supervision

11/13/03  
Date

IN TESTIMONY WHEREOF, the undersigned, as the duly elected and acting Board of Directors of the Bank, have hereunto set their hands on behalf of the Bank.

Signed _____ G. Kent Burnett	11/7/2003 _____ Date
Signed _____ James I. Freeman	11/7/03 _____ Date
Signed _____ Randal L. Hankins	11/7/2003 _____ Date
Signed _____ Julie A. Taylor	11/7/2003 _____ Date
Signed _____ Charles O. Unfried	11/7/2003 _____ Date