

#2003-161

AMENDMENT TO THE 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 Comptroller, through his authorized representative, and the Bank, by and through its duly elected and acting Board of Directors (“Board”), executed a Formal Agreement (“Agreement”) on November 13, 2003.

The Comptroller, through his authorized representative, and the Bank, by and through its Board, have mutually agreed that an amendment to the Agreement is now warranted. This Amendment to the Agreement (“Amendment”) is incorporated by reference into the Agreement as if fully set forth therein, and is agreed upon by and between the Bank and the Comptroller.

The Bank, by executing this Amendment, neither admits nor denies any wrongdoing in connection with the matters that are the subject of this Amendment.

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 Amendment.

ARTICLE I

JURISDICTION

(1) This Amendment 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 Amendment 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 Amendment 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 Amendment 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 Amendment 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. 48th Street, Suite 265
Phoenix, Arizona 85044

ARTICLE II

Replaces in its entirety Article V of the November 13, 2003 Agreement.

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 (15th) 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 the 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 (iii) or (iv) 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 (“LRD Requirement”) 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 year, adjusted by the Adjustment Factor. The LRD Requirement shall be calculated and the LRD Account established on the day the LRD Agreement is entered into. The LRD Account shall be adjusted on the first (1st) day of each calendar month. The LRD Requirement for each upcoming calendar month shall be calculated on or before the fifteenth (15th) day of the month preceding the upcoming month (“Calculation Date”). Notwithstanding the above, 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 (1st) 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 Account is less than the requirement for the upcoming month, then the Bank shall, by the first (1st) 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) Type I Securities under 12 C.F.R. Part 1; and (iv) 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 from the preceding twelve (12) month period ending with the month end prior to the Calculation Date minus (-) total credit card receivables for the same twelve (12) month period 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, the LRD Requirement is adjusted downward by the resulting percentage. If the Adjustment Factor is a positive number, then the LRD Requirement is adjusted upward by the resulting percentage.

ARTICLE III

Replaces in its entirety Article XVI of the November 13, 2003 Agreement:

FAILURE TO COMPLY WITH THE FORMAL AGREEMENT

(1) If the OCC determines, in its sole discretion, that the Bank has failed to achieve material compliance 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 IV

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 Amendment 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 Amendment shall begin to run from the effective date of the 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 Amendment 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 Amendment or excepted, waived, or terminated in writing by the Comptroller.

(5) In each instance in this Amendment 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 Amendment;
- (b) require the timely reporting by Bank management of such actions directed by the Board to be taken under the terms of this Amendment;
- (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 Amendment 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 Amendment, 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

12/15/03

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

Dec 10, 2003
Date

Signed
James I. Freeman

12/10/03
Date

Signed
Randal L. Hankins

Dec 10, 2003
Date

Signed
Julie A. Taylor

12/10/03
Date

Signed
Charles O. Unfried

12-10-03
Date
