

**#2003-17**

**FORMAL AGREEMENT BY AND BETWEEN**

**Household Bank (SB), National Association  
Las Vegas, Nevada  
and  
The Office of the Comptroller of the Currency**

Household Bank (SB), National Association, Las Vegas, Nevada (Bank) and the Comptroller of the Currency of the United States of America (Comptroller) wish to protect the interests of the depositors, borrowers, 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, regulations.

The Comptroller, in connection with its supervision and examination of the Bank, has conducted a review of the Bank's credit card program involving customers of Hispanic Air Conditioning and Heating, a former dealer under several of the Bank's private label credit card programs, and issues raised therein.

Pursuant to Federal law and regulation, including 12 U.S.C. § 484 and 12 C.F.R. § 7.4000, no national bank, including the Bank, shall be subject to any visitorial powers except as authorized by Federal law, vested in the courts of justice or such as shall be, or have been exercised or directed by Congress or by either House thereof or by any committee of Congress or of either House duly authorized.

The Bank neither admits nor denies, and nothing in this Formal Agreement shall be construed to constitute or imply that the Bank is admitting or denying, that the Bank has engaged in any unsafe or unsound banking practices or in any violations of state or federal law, rule or regulation.

In consideration of the above premises, it is agreed, between the Bank, by and through its duly elected and acting Board of Directors (the “Board”), and the Comptroller, through his authorized representative, that the Bank shall operate at all times in compliance with the articles of this Formal Agreement.

**ARTICLE I**  
**JURISDICTION**

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

(5) All correspondence related to this Formal Agreement, and any information, documentation, reports, plans and/or other written submissions which the Bank or Board has agreed to submit pursuant to this Formal Agreement shall be forwarded by overnight mail to the “Assistant Deputy Comptroller” as follows:

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 94105-2292

with copies sent by overnight mail to:

Warren Fujii  
Examiner-in-Charge (Household Bank)  
Office of the Comptroller of the Currency  
50 Fremont Street  
Suite 3900  
San Francisco, California 94105-2292

## **ARTICLE II**

### **COMPLIANCE COMMITTEE AND MONTHLY PROGRESS REPORTING**

(1) Within fifteen (15) calendar days (“days”) of the effective date of this Formal Agreement, the Board shall appoint a Compliance Committee to be responsible for monitoring and coordinating the Bank’s adherence to the provisions of this Formal Agreement. The Compliance Committee shall comprise at least three (3) directors, of which no more than one (1) shall be an employee of the Bank or any of its affiliates (as the term “affiliate” is defined in 12 U.S.C. § 371c(b)(1)), or a family member of any such person. Upon appointment, the names of the members of the Compliance Committee shall be submitted in writing to the Assistant Deputy Comptroller for supervisory non-objection.

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

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

(a) actions taken since the prior report (if any) to comply with each Article of this Formal Agreement;

(b) the results of those actions;

(c) a description of the actions needed and the anticipated time frame to achieve full compliance with each Article of this Formal Agreement.

(4) The written report under paragraph (3) shall separately specify, for each element of restitution under Article III, the number of complaints received and processed, the type and cost of remedies, and a description of any problems or disputes that have arisen in administering the restitution provisions and of how the Bank has addressed (or proposes to address) each such problem or dispute.

(5) The Board shall submit monthly progress reports to the Assistant Deputy Comptroller that shall include the Compliance Committee's report to the Board for the applicable reporting period, along with any additional comments by the Board.

(6) The Bank may submit a request to the Assistant Deputy Comptroller that the meetings and reports required by this Article occur less frequently than monthly.

### **ARTICLE III**

#### **CREDIT CARDS – RESTITUTION**

(1) A consumer is eligible for restitution under this Formal Agreement (“eligible consumer”) if, between April 1997 and August 1999, the consumer used a private label credit card issued by the Bank to pay for the purchase of heating, ventilating, and air conditioning (HVAC) goods or services from Hispanic Air Conditioning and Heating, Inc. (“Hispanic Air”).

(2)

(a) Within twenty (20) days following the effective date of this Formal Agreement, the Bank shall submit to the Assistant Deputy Comptroller for prior approval a letter packet and phone script. The form and content of the letter packet will notify each eligible consumer of the restitution that is available, as well as the basis on which a consumer may receive such restitution, under this Formal Agreement. The letter packet shall be written in both English and Spanish and shall include a “Customer Information Form” that provides an opportunity for eligible consumers to provide written complaints regarding Hispanic Air or the financing by the Bank of goods or services sold by Hispanic Air. The letter packet shall also include a dedicated toll free number provided by the Bank to receive oral complaints regarding Hispanic Air or the financing by the Bank of goods or services sold by Hispanic Air.

(b) After receiving approval, the Bank shall within fifteen (15) days send to each eligible consumer the letter packet in the form and content approved by the Assistant Deputy Comptroller. The letter packet shall be sent certified mail, return

receipt requested. Before sending the letter packet, the Bank shall update the addresses for all eligible consumers by conducting a standard address search using the National Change of Address System. The Bank shall make reasonable attempts to locate any eligible consumer whose letter packet is returned for any reason, and remail the packet to that consumer.

(c) The Bank shall ensure that a bilingual response team will make an accurate and comprehensive record of the written and oral complaints. The Bank shall use the phone script, as approved by the Assistant Deputy Comptroller, to identify and process complaints delivered or supplemented by telephone.

(3) The Bank shall make available restitution to each “complaining consumer.” A “complaining consumer” is an eligible consumer who:

(a) Within seventy-five (75) days following the delivery of the letter packet (as indicated by the certified mail return receipt), makes a complaint (“complains”) about Hispanic Air or the Bank pursuant to the process set forth in paragraph (2) (hereinafter “Post-Agreement Complaint”), which complaint indicates in substance that the consumer may qualify for restitution under one or more provisions of this Article; and/or

(b) Prior to the effective date of this Formal Agreement, made a complaint (“complained”) to the Bank or to the OCC -- or to a state agency or official, so long as that complaint is made available to the OCC -- about Hispanic Air or the Bank (hereinafter “Pre-Agreement Complaint”), which complaint indicates in substance that the consumer may qualify for restitution under one or more provisions of this Article.

For purposes of this Article a request to cancel or rescind the transaction will be treated as a complaint.

(4) Restitution made available to complaining consumers under this Article is subject to the following:

(a) A consumer's previous receipt of restitution from the Bank or any other source, and the signing of any waiver or "completion certificate" in connection with such restitution, does not bar restitution, except that the Bank is not obligated by the terms of the Formal Agreement to provide restitution beyond what is required by this Article.

(b) In the event that a consumer has submitted both Pre-Agreement and Post-Agreement Complaints, those complaints shall be considered together to determine eligibility for restitution.

(5) The Bank shall provide each complaining consumer with restitutionary relief as follows:

(a) In the case of such consumer who complains that the installation of the HVAC unit was substandard or faulty, the Bank shall pay for an inspection by an HVAC contractor of: (i) the HVAC system installed by Hispanic Air and (ii) the residence at which the HVAC system was installed to check for physical damage to the structure of the residence resulting from the installation. Based on the HVAC contractor's inspection report, which shall include an explicit description of items in need of repair that can potentially be traced to a faulty installation, the Bank shall offer to make such recommended repairs to the HVAC system and residence at no cost to the consumer, and

shall provide to the consumer a copy of the inspection report and the plan of work. Any HVAC contractor chosen by the Bank to perform these or other services under this Formal Agreement shall appropriately warrant their work, be licensed and bonded, and shall have a good record at the local Better Business Bureau. When the inspection and repairs are completed, the Bank shall have the HVAC contractor provide the Bank with an invoice that includes a clear and itemized description of each item repaired and the corresponding cost. The Bank may have the consumer sign a “completion certificate” to affirm that the consumer’s HVAC system and home have been repaired and that the system is functioning properly. On or about thirty (30) days after the inspection and repair is completed, the Bank shall call the consumer (i) to confirm that the repairs were made and the HVAC system is still functioning properly and (ii) to assess whether the Bank needs to take any additional remedial action regarding inspection and repair.

(b) In the case of any complaining consumer under paragraph (a) who has reasonable evidence showing that he or she has already incurred out-of-pocket expense to repair the HVAC system or physical damage to the structure of the residence, which repair was necessitated by faulty or substandard installation of the HVAC system by Hispanic Air, the Bank shall also reimburse the consumer by the amount of such charges to the extent that the charges reasonably reflect the extent of the repairs.

(c) In the case of such consumer who complains that the HVAC system installed by Hispanic Air was inappropriately oversized or undersized in relation to the size of the consumer’s home (or the area intended to be affected by the installation), the



Bank shall pay for an HVAC contractor to inspect and assess whether the unit should be replaced. If appropriate, and based on the HVAC contractor's assessment, the Bank shall pay an HVAC contractor to replace the existing HVAC system with an equivalent unit of appropriate capacity. In the case of an oversized unit that is replaced under this paragraph, the Bank shall also credit or rebate to the consumer (i) the difference between the price that the consumer paid to have the original unit installed and the price it would have cost to install an HVAC system of appropriate capacity, and (ii) finance charges related to the difference.

(d) In the case of such consumer who complains that he or she was overcharged for the HVAC system installed by Hispanic Air, the Bank shall reduce the consumer's credit card balance (or provide a rebate) in an amount equivalent to 20 percent of the price originally charged to install the HVAC system plus related finance charges, provided that the overcharge was materially inconsistent with the market for such goods and services at the time of the sale or the consumer otherwise has a reasonable basis for the complaint.

(e) In the case of such consumer who has a reasonable basis to complain that Hispanic Air made representations during the sales presentation that were relied upon by the consumer and that were materially inconsistent with the terms of the written private label credit card agreement used to finance the sale of the HVAC system, the Bank shall reduce the interest on the credit card to 13.5 percent, retroactive to the issuance of the card, and shall credit or reimburse the consumer for all finance charges in excess of that

amount.

(f) In the case of such consumer who has a reasonable basis to complain that Hispanic Air promised that the consumer would receive an extended manufacturer's warranty on the HVAC system, but the consumer failed to receive such a warranty, the Bank shall credit or reimburse the consumer \$220, or an amount equivalent to the original cost of the warranty, and related finance charges.

(6) In the case of a complaining consumer who receives restitution under this Article, or would have received restitution but for the consumer's receipt of restitution prior to this Formal Agreement, the Bank shall, with regard to the private label credit card used to purchase the HVAC system from Hispanic Air:

(a) credit or reimburse the consumer for all late fees charged by the Bank; and

(b) correct any negative report that the Bank made to any credit reporting agency based on noncompliance with the private label credit card agreement used to finance the sale of the HVAC system.

(7) In any instance where, in response to a complaining consumer's complaint(s), the Bank has declined, on the basis of its review, to provide the consumer with relief under this Article that is related to the consumer's complaint(s), the Bank shall forward to the Assistant Deputy Comptroller all materials relevant to such complaint for a final determination by the Assistant Deputy Comptroller as to whether the Bank shall provide the complaining consumer with such restitutionary relief. The final determination by the Assistant Deputy Comptroller

shall be binding on the Bank. Before making a final determination, the Assistant Deputy Comptroller may require the Bank to gather additional information.

(8) To the extent that restitutionary relief under this Article modifies the private label credit card agreement between the consumer and the Bank, the Bank shall promptly issue to the consumer new disclosures that clearly and conspicuously describe the new terms.

#### **ARTICLE IV**

#### **ACTION PLAN**

(1) Within sixty (60) days, the Board shall adopt, implement, and thereafter ensure Bank adherence to a written action plan, including time frames, detailing the Board's assessment of what needs to be done in enhancing the administration of the Bank's private label credit card programs to ensure safe and sound banking practices that comply with applicable laws, rules, and regulations. The plan should address, among other things, the following:

(a) the Bank's identification and assessment of risk posed by its private label credit card programs, including credit, transaction, legal, compliance, and strategic risk factors, and specifically identifying:

(i) the risks posed if some part of the retail or finance transaction may be conducted in a language other than English; and

(ii) the risks posed by the particular context for the retail or finance transaction, for example if the transaction is a door-to-door sale;

(b) the Bank's policies, practices, procedures, control mechanisms, and contingency plans to address such risk factors;

(c) the Bank's plan to ensure merchant compliance with the Bank's policies, practices, and procedures; and

(d) issues related to marketing, disclosures, underwriting, portfolio administration, collections and -- with regard to necessary third parties, including merchants -- contractual provisions, due diligence, recourse arrangements, and account management and monitoring.

(2) The Bank shall submit the plan to the Assistant Deputy Comptroller for review.

The Board shall establish appropriate procedures for the implementation of the plan.

(3) In the event the Assistant Deputy Comptroller recommends changes or additions to the action plan, the Board shall immediately incorporate those changes or additions into the plan.

(4) Where the Board considers modifications appropriate, those modifications shall be submitted to the Assistant Deputy Comptroller for review.

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

## **ARTICLE V**

### **CONCLUDING PROVISIONS**

(1) Although the Board has agreed to submit certain reports and other items to the Comptroller for review or approval, the Board acknowledges that it 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 Formal Agreement shall in any way inhibit, estop, bar, or otherwise prevent the Comptroller from so doing.

(3) Any time limitations imposed by this Formal Agreement shall begin to run from the effective date of this Formal Agreement. Such time requirements may be extended in writing by the Comptroller or his duly authorized representative for good cause upon written application by the Board.

(4) The provisions of this Formal 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 Formal 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 adopt 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 non-compliance with such actions in a timely and appropriate manner; and

(d) require corrective action be taken in a timely manner of any non-compliance 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 the 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 arrangements, or negotiations 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*

*3/25/03*

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John F. Curtis  
Assistant Deputy Comptroller  
Credit Card Bank Supervision  
Office of the Comptroller of the Currency

\_\_\_\_\_  
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

3/18/03

\_\_\_\_\_  
Kenneth H. Robin, Chairman of the Board  
Signed

\_\_\_\_\_  
Date

3-18-03

\_\_\_\_\_  
D. Elaina Blake, Director  
Signed

\_\_\_\_\_  
Date

March 18, 2003

\_\_\_\_\_  
Richard H. Bryan, Director  
Signed

\_\_\_\_\_  
Date

3-18-03

\_\_\_\_\_  
Donald V. Digilio, Director  
Signed

\_\_\_\_\_  
Date

3/18/03

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Keith L. Lee, Director

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Date

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Signed

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3/18/2003

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Isabel A. Pfeifer, Director

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Date

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Signed

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March 18, 2003

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Edwin F. Skonicki, Director

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Date

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Signed

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3/18/03

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Sandy L. Derickson, Director

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Date

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Signed

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3/18/03

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Bobby N. Mehta, President and CEO

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Date

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