

AGREEMENT BY AND BETWEEN

#2003-77

**FIRST CONSUMERS NATIONAL BANK,
BEAVERTON, OREGON**

and

THE OFFICE OF THE COMPTROLLER OF THE CURRENCY

First Consumers National Bank, Beaverton, Oregon (the “Bank”) and the Comptroller of the Currency of the United States of America (the “Comptroller”) wish to protect the interests of certain former customers of the Bank, and, toward that end, wish the Bank to continue to operate in accordance with all applicable laws, rules and regulations.

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

FORCE AND EFFECT OF AGREEMENT

(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 constitute a written agreement, order or

directive within the meaning of 12 C.F.R. § 6.4(b)(iv) (2002).

(5) All reports the Bank is required to submit to the Office of the Comptroller of the Currency (the "OCC") pursuant to this Agreement, shall be submitted to:

Ronald G. Schneck
Director, Special Supervision
Office of the Comptroller of the Currency
250 E Street, SW
Mail Stop 6-4
Washington, DC 20219
202-874-4450
202-874-5214 (fax)

ARTICLE II

ANNUAL FEES RESTITUTION

(1) The Bank shall provide refunds to all consumers who were charged an annual fee for Bank-issued VISA and MasterCard credit cards ("Bankcards") on or after December 28, 2002 (each, an "Eligible Consumer"). In accordance with the formula set forth in paragraph (2) of this Article, the Bank shall provide aggregate annual fee refunds in the amount of approximately \$1,650,038.00 to all Eligible Consumers.

(2) The annual fee refund to be paid to each Eligible Consumer shall be calculated as follows: The amount of the refund shall equal the annual fee assessed to the Eligible Consumer less a *pro rata* reduction based on the amount of time the Bankcard was available for use by such Eligible Consumer (i.e., the number of months from when the Eligible Consumer was charged an annual fee until March 7, 2003, when the Bank stopped accepting new Bankcard charges). For example, for those Eligible Consumers who were charged an annual fee on or about January 1, 2003, the Bank shall refund approximately 10/12ths of their annual fee. For those Eligible Consumers who were charged an annual fee on or about February 1, 2003, the Bank shall refund approximately 11/12ths of their annual fee. For purposes of this Article, the date that a

consumer was “charged” an annual fee is the date that the Bank posted the annual fee charge to the consumer’s account.

(3) For each Eligible Consumer entitled to a refund pursuant to this Article, the Bank shall cause appropriate adjustments to be made to such Eligible Consumer’s account information, to the extent such information has not been previously adjusted, that is supplied to credit reporting agencies.

ARTICLE III

OVERLIMIT FEES RESTITUTION

(1) The Bank shall provide refunds to each Eligible Consumer who was also charged an overlimit fee where the Bank’s charging of an annual fee, during the time period described in paragraph (1) of Article II, caused such Eligible Consumer’s account to exceed the Eligible Consumer’s credit limit.

(2) The amount of refunds required to be paid to each Eligible Consumer described in paragraph (1) of this Article shall be the total amount of such overlimit fees charged to each such Eligible Consumer. The aggregate amount to be refunded pursuant to this paragraph (2) shall be approximately \$255,685.00.

(3) For each Eligible Consumer entitled to a refund pursuant to this Article, the Bank shall cause appropriate adjustments to be made to such Eligible Consumer’s account information, to the extent such information has not been previously adjusted, that is supplied to credit reporting agencies.

ARTICLE IV

METHOD OF PAYMENT

(1) The Bank shall make the refund payments required by this Agreement in conformity with this Article.

(2) In order to effectuate the refunds required by this Agreement, to the extent not previously credited, the Bank shall credit each Eligible Consumer's Bankcard account for the required amount. In the event that such credit results in a net credit balance on an Eligible Consumer's account, the Bank shall, to the extent not previously accomplished, immediately mail a refund check to the Eligible Consumer for the credit balance amount; provided that the Bank's obligation to mail such a refund check shall only arise if the Eligible Consumer's account is not being serviced by a successor servicer to the Bank. For those Eligible Consumer accounts that are being serviced by a successor servicer, the Bank shall comply with the requirements in paragraph (3) of this Article. For an Eligible Consumer's account that has been charged-off, the Bank shall post the refund amount required by this Agreement to such Eligible Consumer's unpaid balance as a partial recovery.

(3) Within ten (10) days of the effective date of this Agreement, the Bank shall provide written evidence to the Comptroller that the Bank has transferred sufficient funds, either directly or by setoff, to the Bankcard securitization trust(s) and/or the successor servicer to ensure that all Eligible Consumers whose accounts are being serviced by a successor servicer receive refund payments required by this Agreement.

(4) Within ten (10) days of the effective date of this Agreement, the Bank shall provide written evidence to the Comptroller that the refunds (including credits as described in this Article) required by Articles II and III of this Agreement have been processed. Such written evidence, including any computer tape or file, shall include the following information:

(a) a Report of Adjustments for the period when the refunds were processed, which Report shall include for each Eligible Consumer:

- (i) accountholder name;
- (ii) account number(s);
- (iii) applicable transaction code(s);
- (iv) dollar amounts credited and date(s) of credit;
- (v) dates on or after December 28, 2002, when the accountholder was assessed an annual fee;
- (vi) dollar amounts of the annual fee charged to the accountholder on or after December 28, 2002; and
- (vii) dollar amounts of overlimit fees charged to the accountholder that were assessed as described in paragraph (1) of Article III; and

(b) such financial records as reasonably required by the Comptroller demonstrating that the Bank has caused all necessary credits and refund checks to be adequately funded.

(5) The Bank shall notify each Eligible Consumer that their Bankcard account was credited with a full or partial refund of annual and/or overlimit fees. Such notification may be provided on the Eligible Consumer's cardholder statement or, for those Eligible Consumers no longer receiving cardholder statements, on the Eligible Consumer's refund check stub, which refund check stub shall reference the appropriate credit balance refund due to the Eligible Consumer after all refunds are credited.

(6) Upon the written request of any Eligible Consumer entitled to a refund pursuant to this Agreement, provided that the Bank receives any such Eligible Consumer's request on or prior to September 14, 2003, the Bank shall send to the Eligible Consumer a letter confirming that the Eligible Consumer's account was credited with a full or partial refund of annual and/or overlimit fees, provided that the Bank's obligation to send such a letter shall only arise if the Eligible Consumer's account is not being serviced by a successor servicer to the Bank. The Bank shall submit the form of such letter to the Comptroller for review and prior supervisory non-objection within ten (10) days of the effective date of this Agreement.

ARTICLE V

CONCLUDING PROVISIONS

(1) 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.

(2) 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 Comptroller or his duly authorized representative for good cause upon written application by the Board.

(3) This Agreement 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, 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(i), 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 arrangements, or negotiations between the parties, whether oral or written.

(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.

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

/s/

Ronald G. Schneck
Director, Special Supervision

July 31, 2003

Date

