

**AGREEMENT BY AND AMONG
Homeowners Loan Corp.,
Atlanta, Georgia
The Laredo National Bank,
Laredo, Texas
and
The Office of the Comptroller of the Currency**

Homeowners Loan Corp. (“HLC”), a subsidiary of The Laredo National Bank, Laredo, Texas (“Bank”) and the Office of the Comptroller of the Currency of the United States of America (“Comptroller”) wish to protect the interests of customers and prospective customers of HLC and, toward that end, wish HLC and the Bank to operate in accordance with all applicable laws, rules and regulations.

Pursuant to 12 C.F.R. § 5.34(e)(3), the Comptroller has the same examination and enforcement authority over HLC as it does over the Bank, and, pursuant to 12 U.S.C. §§ 1818(b)(3) and (6), the Comptroller is authorized to require HLC to make reimbursement as set forth herein.

In consideration of the above premises, it is agreed, among HLC, by and through its duly elected and acting Board of Directors (“HLC Board”), the Bank, by and through its duly elected and acting Board of Directors (“Bank Board”), and the Comptroller, through its authorized representative, that HLC and the Bank shall operate at all times in compliance with the articles of this Agreement and shall establish a reserve of fourteen million dollars (\$14,000,000) as a reserve for the reimbursement required by 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 HLC, the HLC Board, the Bank or the Bank Board has agreed to submit to the Assistant Deputy Comptroller pursuant to this Agreement shall be forwarded to the:

Assistant Deputy Comptroller for Midsize Banks
Office of the Comptroller of the Currency
One Financial Place
Suite 2700
440 South LaSalle Street
Chicago, IL 60605

ARTICLE II

COMPLIANCE COMMITTEE AND QUARTERLY PROGRESS REPORTING

(1) Within thirty (30) days of the effective date of this Agreement, the Bank Board shall appoint a Compliance Committee of at least five (5) directors, of which no more than two (2) shall be employees 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. The Compliance Committee shall be responsible for

monitoring and coordinating the Bank's and HLC's adherence to the provisions of this Agreement.

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

(3) Within sixty (60) days of the appointment of the Compliance Committee, the Compliance Committee shall assess whether HLC's program of internal controls is adequate to ensure compliance with all applicable consumer protection laws, regulations, and OCC guidance, including, but not limited to, the Federal Trade Commission Act ("FTC Act", (hereinafter, "all applicable consumer protection laws")), in light of HLC's loan products, targeted markets, and business practices, including HLC's incentive based compensation system and loan pricing system.

(4) The Compliance Committee shall recommend any changes in internal controls, business practices, or other matters that it finds to be necessary or reasonably appropriate to ensure that HLC's internal controls are sufficient to ensure compliance with all applicable consumer protection laws. The Compliance Committee shall submit a written assessment to the Bank Board and HLC Board ("Boards") along with any recommended changes to be made to HLC's compensation system, loan pricing system, or to other matters for the Boards' approval. Prior to implementing the Boards' approved changes, the Bank Board shall submit the Compliance Committee's written assessments and recommendations along with the Boards' approved changes to the OCC for review and determination of no supervisory objection. Immediately upon receiving the OCC's determination of no supervisory objection, HLC shall implement the Boards' approved changes.

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

- (a) actions taken since the prior report (if any) to comply with each Article of this Agreement;
- (b) the results of those actions; and
- (c) a description of the actions needed and the anticipated time frame to achieve full compliance with each Article of this Agreement.

(6) Within thirty (30) days after the end of each calendar quarter, the Bank Board shall submit quarterly progress reports to the Assistant Deputy Comptroller. These progress reports shall include the Compliance Committee's report to the Boards for the applicable quarter, with any additional comments by the Boards.

ARTICLE III

HLC ADVERTISEMENTS

(1) HLC shall not make any misleading or deceptive representation, statement, or omission, expressly or by implication, in the materials used to solicit any borrower or in any other communication, in connection with loans available from HLC.

(2) HLC's advertisements shall meet the following criteria:

- (a) with respect to direct mail and its website, the advertisement or solicitation shall contain a reference to the limitation or condition in font that continues to be in at least 10 point type size (other than on the outside of a

direct mail envelope, where the text shall be in at least 8 point type size) either in close proximity to the claim or, if indicated by an asterisk affixed to the claim, on the page where the claim is stated;

- (b) the reference shall call attention to the fact that the disclosure contains limitation or condition information, by using the terms “limitation” or “condition” or their substantial equivalents;
- (c) the reference shall direct the consumer to the specific location of the disclosure, which shall be in or with the advertisement or solicitation; and
- (d) the actual disclosure of limitation or condition information shall itself be readable and reasonably understandable and designed to call attention to the nature and significance of the information in the disclosure. For example, if the specific disclosure of limitation or condition information is located within a written document that contains numerous provisions, the specific disclosure shall be presented in a manner that, through heading, format, and/or type size, is designed to call attention to the nature and significance of the specific disclosure.

These requirements would apply to situations where, for example, a claim is made regarding the cost or availability of a feature, benefit, or credit term, but such claim is subject to material conditions or limitations, or where a claim, explicitly or by implication, indicates that the borrower will receive the feature, benefit, or credit term.

(3) HLC shall disclose all credit terms as required by Regulation Z, 12 C.F.R. Part 226, in any advertisement, including, but not limited to, its website.

(4) HLC's compliance officer or legal counsel, as appropriate, shall review HLC's direct mail solicitations and advertisements to assess compliance with this Article. This assessment shall include review of borrower complaints to determine if there is a pattern of complaints indicating that there is deception and/or misleading information in HLC's solicitations and advertisements. Results of this assessment shall be provided to the Bank Board along with any modifications or revisions to the solicitations and advertisements, and responses to borrower complaints deemed appropriate as a result of the assessment and the Bank Board shall cause copies of the same to be forwarded to the Assistant Deputy Comptroller. HLC's compliance officer or legal counsel shall also report their findings and make any recommendations for modifications or revisions to the Bank Board. Periodic assessment of solicitations and borrower complaints should also be performed as required by Paragraph (1)(f) and (g) of Article VII.

(5) "Communication" shall include, unless the context indicates otherwise, communications in oral, written, or electronic form, including over the Internet.

(6) "Misleading" and "deceptive" shall have the same meaning as those terms are interpreted under the Federal Trade Commission Act.

(7) "Advertisement" shall mean a commercial message in any medium that promotes, directly or indirectly, a credit transaction.

ARTICLE IV

CONSUMER COMPLIANCE PROGRAM

(1) Within sixty (60) days of the effective date of the Agreement, the Bank Board shall cause HLC to develop and implement a written program of policies and procedures to

ensure compliance with Section 5 of the Federal Trade Commission Act (“FTC Act”) (15 U.S.C. § 45); Regulation X, the regulation implementing the Real Estate Settlement Procedures Act, (24 C.F.R. § 3500.7); OCC Guidelines Establishing Standards for Residential Mortgage Lending Practices (12 C.F.R. Part 30, App. C); and OCC’s issuances regarding abusive and predatory lending and unfair or deceptive practices (*see* AL 2000-7; AL 2002-3; and AL 2003-2). At a minimum, this written program shall establish:

- (a) A written description of the duties and responsibilities of HLC compliance officer.
- (b) A system of internal controls and independent testing and monitoring to:
 - (i) ensure on-going compliance with all applicable consumer protection laws, including those specified in Paragraph (1) of this Article, and HLC’s anti-predatory lending policy, as described in Paragraph (2) of this Article;
 - (ii) verify that the procedures described in Paragraphs (1)(e) through (n) of this Article are being followed and are effective; and
 - (iii) verify that the disclosures required by Articles III and V are being provided to borrowers.
- (c) Periodic reporting of the results of the internal testing and monitoring to the Compliance Committee or the Bank Board.

- (d) Procedures for monitoring telephone calls between loan officers and borrowers. These procedures, at a minimum, shall include:
 - (i) procedures for monitoring a random sample of recorded calls for purposes of assessing compliance with established policies and procedures, and all applicable consumer protection laws.
 - (ii) procedures for monitoring telephone calls in real time.
- (e) Comprehensive procedures for providing adequate training to employees monitoring telephone calls, and identifying and reporting, in a timely manner, to an executive risk manager at the Bank any violation of policies and procedures, and applicable consumer protection laws. The executive risk manager to whom such statements or communications are reported shall be independent of the marketing and production staff at HLC.
- (f) Procedures for collecting and analyzing borrower complaints in a centralized unit which is independent of the loan officer/production side of HLC's business. For purposes of this subparagraph, the term "borrower complaints" shall mean any expression of dissatisfaction with the costs, terms, benefits, or risks of, or the disclosures or other information provided in connection with, the borrower's transaction that is made in writing or orally by the borrower or someone on the borrower's behalf and that alleges or could imply harm to or unfair treatment of the borrower.

- (g) Procedures that require periodic review of customer solicitations to determine whether solicitations comply with all applicable consumer protection laws. In conducting this periodic review, HLC shall consider the results of the review of customer complaints concerning solicitations.
- (h) Procedures and standards to ensure that the loan costs listed on the GFE provided to the borrower bear a reasonable relationship to the loan costs that the borrower is likely to pay at settlement, as required under 24 C.F.R. 3500.7. If there is a material difference between the actual cost of the loan and the estimates disclosed on the GFE, the reason for this difference shall be documented in the borrower's loan file.
- (i) Policies and procedures for ensuring that loan officers provide timely information to borrowers regarding the interest rate and other loan terms. These policies and procedures shall require loan officers to document in writing any discussions and correspondence between HLC and the borrower regarding any changes in the interest rate and/or loan terms from those disclosed on the GFE, and to document in writing the reasons for any such changes. This documentation shall be maintained in the borrower's loan file.
- (j) Policies and procedures for ensuring that loan officers are complying with HLC's loan underwriting and loan pricing guidelines, including the requirement that all loans be based upon the borrower's ability to repay the loan in accordance with its terms, without resort to the collateral.

These policies and procedures shall be updated as necessary in order to remain consistent with any applicable OCC issuances.

- (k) Policies and procedures for the review and approval of any exceptions to HLC's loan underwriting guidelines and the stated underwriting guidelines of the investors. Any exceptions to these guidelines must be approved in writing by an executive officer of HLC prior to the origination of the loan.
- (l) Policies and procedures regarding the development and maintenance of complete and accurate loan records and documents. These policies and procedures shall, at a minimum, include the requirements that:
 - (i) loan applications accurately state the type and terms of the loan for which the borrower is applying; and
 - (ii) the loan file clearly indicates which GFE was provided to the borrower and the date on which it was sent.
- (m) Policies and procedures regarding the "stated income" and "no documentation" loan programs at a minimum shall include the requirements that these loans are allowed only for borrowers whose past credit history demonstrates that they have not had significant difficulty making previous payments on their primary residence unless the loan would reduce the borrower's total monthly debt payments and that there are no unexplained increases in the borrower's stated income between the time the initial application is taken and the time the loan is closed.

- (n) Policies and procedures for selecting real estate appraisers, and ordering and reviewing real estate appraisals and evaluations, in conformance with the requirements listed in the *Interagency Appraisal Review and Evaluation Guidelines* and in compliance with Advisory Letter 2003-9, *Independent Appraisal and Evaluation Functions*, and OCC Bulletin 2005-6, *Frequently Asked Questions on the Appraisal Regulations and the Interagency Statement on Independent Appraisal and Evaluation Functions*.
- (o) Policies and procedures to provide adequate disclosures to borrowers as required by law and by Articles III and V.

(2) Within sixty (60) days of the effective date of the Agreement, the Bank and HLC Boards shall cause HLC to review and update HLC's written anti-predatory lending program to ensure that the program complies with the standards set forth in 12 C.F.R. Part 30, App. C. This written program, at a minimum, shall include:

- (a) A description of mortgage lending practices that are prohibited because they are abusive, predatory, unfair or deceptive, including those practices noted in 12 C.F.R. Part 30, App. C, Section IIIA.
- (b) Policies and procedures relating to the loan terms, conditions, and features noted in 12 C.F.R. Part 30, App. C, Section IIIB that demonstrate prudent consideration of the circumstances in which loans with such terms, conditions, and features will be made to ensure consistency with safety

and soundness considerations and to address appropriately any risks of abusive, predatory, unfair or deceptive practices.

- (c) Policies and procedures to implement 12 C.F.R. Part 30, App. C, Section III C regarding exercise of enhanced care and heightened internal controls and monitoring in certain circumstances, and
- (d) Policies and procedures to ensure avoidance of borrower misunderstanding in a manner consistent with 12 C.F.R. Part 30, App. C, Section III D.

(3) Prior to implementation of the programs described in Paragraphs (1) and (2) of this Article, the Bank shall submit them to the OCC for review and determination of no supervisory objection, and shall not materially alter or amend the implemented programs without prior OCC review and determination of no supervisory objection. In the event the Assistant Deputy Comptroller recommends changes to either of the programs required by this Article, the Bank Board shall promptly address such recommended changes and draft amendments to such programs that take account of the recommendations and submit the amendments to the OCC for review and determination of no supervisory objection.

(4) The Bank and HLC Boards shall ensure that HLC has the processes, personnel, and control systems to ensure implementation of and adherence to the programs developed pursuant to Paragraphs (1) and (2) of this Article.

ARTICLE V

CERTAIN DISCLOSURES TO BORROWERS

(1) Within three (3) business days of receiving a loan application, HLC shall provide the borrower with written disclosures explaining that s/he has the option of choosing between an adjustable or fixed rate mortgage, if available, and the option of choosing between a loan with or without a prepayment penalty. Furthermore, this disclosure shall explain:

- (a) in general terms, the pricing differences between each of these options;
- (b) the Annual Percentage Rate (“APR”) and how the APR may differ from the interest rate on the loan note;
- (c) that the borrower may have to pay a prepayment penalty and other fees to his or her current lender and the borrower should contact that lender to determine if that is the case; and
- (d) that, at the time of closing, there will not be an HLC representative present who can answer any questions regarding the loan terms and that, therefore, the borrower has the right to select and retain an attorney, at his or her cost, to represent him or her and be present at the closing of the loan which would take place at a mutually agreeable location.

ARTICLE VI

COMPREHENSIVE COMPLIANCE AUDIT PROGRAM

(1) Within sixty (60) days of the effective date of this Agreement, the HLC Board and the Bank Board shall cause HLC to adopt a written comprehensive compliance audit program for HLC, which shall include, at a minimum, the following:

- (a) Develop an audit schedule and ensure that compliance audits are performed in conformity with this schedule;
- (b) Ensure that the audits cover the issues required by Paragraph (1)(b) of Article IV;
- (c) Employ only qualified and trained compliance auditors for compliance audits;
- (d) Require timely and complete HLC and Bank management response to adverse audit findings;
- (e) Ensure timely review of all compliance audit reports, management responses, and follow-up audit reports and appropriate resolution of all identified deficiencies, which review may be delegated to a committee of the Bank Board, such as the Audit Committee or the Compliance Committee; and
- (f) Promptly notify the Bank Board (or designated committee) and HLC Board (or designated committee) of any planned material changes to or material deviations from the approved audit schedule.

(2) The Bank and HLC Boards shall ensure that the compliance audit program is independent. The persons responsible for implementing HLC's internal compliance audit program described in Paragraph (1) of this Article shall report to the Bank Board (or designated committee) and the HLC Board (or designated committee), which shall have the sole power to direct the audit staff's activities. All reports prepared by the audit staff shall be filed with the

Bank Board (or designated committee) and the HLC Board (or designated committee). Reports filed by the HLC audit staff may be filed and coordinated through the Bank's compliance department. However, HLC auditors shall have the authority to report directly to the Bank Board and HLC Board.

(3) All audit reports shall be in writing. The Bank and HLC Boards shall take measures designed to ensure that immediate actions are undertaken to remedy deficiencies cited in audit reports, and that auditors maintain a written record describing those actions.

(4) The audit staff shall have access to any 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.

(5) Upon adoption, a copy of the internal compliance audit program shall be promptly submitted to the Assistant Deputy Comptroller for review.

ARTICLE VI

COMPLIANCE AND AUDIT STAFFING PLAN

(1) Within sixty (60) days of the effective date of this Agreement, the Bank Board shall cause HLC management or the Consultant described in Article X to perform a staffing study of the HLC compliance and audit departments, to be presented to the Bank and HLC Boards within ninety (90) days of the effective date of this Agreement. The study shall determine whether HLC personnel in the compliance and audit areas have sufficient staffing, time, skills, expertise, and independence to complete all required duties. Those duties shall include the responsibility to:

- (a) correct violations cited at any review of HLC loan files by the Comptroller and those violations identified by internal auditors;
- (b) provide ongoing annual and task-specific training to HLC personnel;
- (c) perform comprehensive monitoring to ensure that training remains effective between audit cycles;
- (d) complete compliance audits in accordance with the Bank and HLC Boards approved audit schedule;
- (e) review management responses to audit reports in a timely manner;
- (f) conduct timely follow-up reviews of corrective actions;
- (g) update policies, procedures, and forms as needed;
- (h) provide resources and information support to HLC staff;
- (i) review regulatory compliance for proposed products and services; and
- (j) report periodically to the Bank Board (or a designated committee thereof) and HLC Board (or a designated committee thereof).

(2) The Bank Board shall forward the staffing study to the Assistant Deputy Comptroller for review.

(3) Within fifteen (15) days of receipt of the staffing study, the Bank and HLC Boards shall cause HLC management to develop a staffing plan for the compliance and audit areas to ensure that HLC has a sufficient number of adequately trained personnel to complete

required duties and to report to the Bank and HLC Boards within thirty (30) days. The staffing plan shall, at a minimum, consist of the following:

- (a) identification of the time, skills, and expertise needed to complete required duties;
- (b) identification of the number, skills, and expertise of HLC's current compliance and audit personnel; and
- (c) an action plan to hire new personnel, reassign or train existing personnel, or make other changes identified in the staffing plan necessary to correct any deficiencies in the numbers, skills, or expertise of the compliance and audit staff.

(4) Within five (5) days of the completion of the staffing plan, the Bank and HLC Boards shall cause HLC to implement the plan and thereafter ensure HLC adherence to the plan.

(5) Within five (5) days of the completion of the staffing plan, the Bank Board shall provide a copy of its staffing plan to the Assistant Deputy Comptroller for review.

ARTICLE VII

REIMBURSEMENT AND RESERVE

(1) HLC shall reimburse all borrowers who, between January 1, 2003 and the effective date of this Agreement, applied for a loan in response to a "pre-approved" direct mail solicitation, paid appraisal fees out-of-pocket, but then had their loan application denied. The amount of reimbursement payable by HLC to all borrowers described in this paragraph shall be

the amount of the appraisal fee, plus five percent (5%) interest per annum from the date of the borrower's loan application to the date the reimbursement is made to the borrower.

(2) HLC shall also make reimbursement to all eligible borrowers, as defined in and required by this paragraph.

- (a) For the purposes of this paragraph, "eligible borrower" shall mean all HLC borrowers who received a loan from HLC between January 1, 2003 and the effective date of this Agreement and whose cost was higher than represented to the borrower on the Good Faith Estimate ("GFE") because:
- (i) loan origination fees at closing were higher than the amount disclosed on the GFE provided to the borrower and for which there is no documentation in the loan file that the increase resulted from a borrower-requested change in loan terms, decrease in the value of the loan collateral, or a materially negative change to the customer's credit qualification; and/or
 - (ii) the interest rate was higher than the rate disclosed on or derived from the principal and interest payment disclosed on the GFE and for which there is no documentation in the loan file that the increase resulted from a borrower-requested change in loan terms, decrease in the value of the loan collateral, a materially negative change to the customer's credit qualification, or an increase in an applicable underlying index.

- (b) In order to determine whether the borrower's cost increased, HLC shall calculate the net increase in cost to the borrower resulting from changes in the interest rate (determined through the loan payment amount disclosed on the GFE) and/or loan origination fee on the GFE.
- (i) If the origination fee increased and there was no change in the interest rate, the net increase in cost shall be the amount of the origination fee increase.
- (ii) If both the origination fee and interest rate were higher than disclosed on the GFE, the net increase in cost shall be the increase in the loan origination fee plus the increase in interest payments incurred by the borrower for the lesser of the fixed rate period of an adjustable rate mortgage ("ARM"), three (3) years, or the period of time from the origination date of the loan to the time it was refinanced.
- (iii) If the interest rate was higher than disclosed on the GFE and the origination fee was lower than disclosed on the GFE; or conversely, the interest rate was lower than disclosed on the GFE and the origination fee was higher than disclosed on the GFE, any net increase in cost shall be the sum of the change in interest payments for the lesser of the fixed rate period of an ARM, three (3) years, or the period of time from the origination date of the loan

to the time it was refinanced and the change in loan origination fees.

- (c) Reimbursement shall be made for all borrowers who received loans wherein the borrower's net cost increased by greater than 0.3% of the original loan amount and shall be made in accordance with this paragraph. HLC shall develop a methodology for determining the amount of reimbursement to be paid to each borrower. HLC shall submit this methodology to the Assistant Deputy Comptroller for prior supervisory non-objection. Reimbursement shall be in an amount to compensate the borrower for the increase in the net cost and shall include interest on the amount of the net cost increase from the date the loan was originated to the date reimbursement is made to the borrower.

(3) HLC shall also perform an analysis of all loans originated to borrowers between March 25, 2003 and the effective date of this Agreement wherein the loan proceeds were used to payoff loans subsidized by a governmental, non-profit, community development, or other similar organization and shall make reimbursement in accordance with the practices of this paragraph. As a part of this assessment, HLC shall develop a methodology to determine whether borrowers who refinanced subsidized mortgages with HLC received a tangible economic benefit from the HLC loan relative to the refinanced loan. HLC shall submit this methodology to the Assistant Deputy Comptroller for prior supervisory non-objection. In cases in which the borrower did not receive a tangible economic benefit, reimbursement shall be in an amount to compensate the borrower for the increased cost associated with the HLC loan and shall include reimbursement of all fees, costs, and benefits that were lost as a result of the refinancing of the loan with HLC.

HLC shall pay interest on the reimbursement amount at the same rate as the rate on the borrower's loan from the date the loan was originated to the date of reimbursement.

(4) HLC shall also make reimbursement to all borrowers who, between March 25, 2003 and the effective date of this Agreement, received loans but, based on the documentation in the loan file, the borrowers' creditworthiness was not adequately considered by HLC. HLC shall develop a plan that sets forth the criteria and procedures HLC will use to review its loan files to determine, which, if any, borrowers were harmed by HLC's failure to adequately consider creditworthiness based on the documentation in the loan file, and submit this plan to the Assistant Deputy Comptroller for prior supervisory non-objection. Reimbursement shall be in an amount that will compensate the borrower for the harm, if any, caused by HLC's failure to adequately consider creditworthiness based on the documentation in the loan file. HLC shall pay interest on the reimbursement amount at the same rate as the rate on the borrower's loan from the date the loan was originated to the date of reimbursement.

(5) If a borrower is eligible for reimbursement pursuant to more than one of Paragraphs (2) through (4) of this Article, then HLC shall make reimbursement to that borrower in an amount that will make them whole.

(6) Within seven (7) days of the effective date of this Agreement, HLC shall reserve or deposit into a segregated deposit account at the Bank an amount not less than fourteen million dollars (\$14,000,000) as a reserve for the reimbursement required by this Article. Within ninety (90) days of receiving the OCC's approval of the Reimbursement Plan required by Paragraph (4) of Article X, HLC shall also reserve or deposit into the segregated deposit account such additional amounts as are necessary to fund fully the reimbursement required by this Article.

ARTICLE VIII

REIMBURSEMENT—METHOD OF PAYMENT

(1) The Bank and HLC Boards shall cause HLC to make the reimbursement required by Article VIII of this Agreement in conformity with this Article.

(2) Within ninety (90) days of the effective date of this Agreement, the Bank shall cause HLC to develop a plan for making reimbursement as required by Article VIII (“Reimbursement Plan”) and submit it to the Assistant Deputy Comptroller for prior supervisory non-objection. The Reimbursement Plan shall include the following:

- (a) a description of the methods to be used and time necessary to compile the information in the Payment List described in paragraph (3) of this Article, including the formulas used to determine the amount of reimbursement to be made;
- (b) samples of all correspondence and envelopes to be sent to borrowers for the purposes of address confirmation, payment transmittal, or any other purpose related to the provisions of Article VIII and this Article;
- (c) a description of the proposed procedures, in conformity with the provisions of this Article, for:
 - (i) making and tracking reimbursement payments, including the procedures for handling undeliverable and non-negotiated reimbursement checks;

- (ii) handling address correction notices, including responses to the address confirmation letters and address correction notices from USPS; and
- (iii) a written legal analysis of the applicability of states' escheat laws to any and all amounts of the reimbursement due to borrowers under this Agreement but remaining unpaid to the borrower, the borrower's estate or the borrower's heirs one hundred eighty-seven (187) days after the payment checks are mailed ("Excess Funds").

(3) Within one hundred eighty (180) days of the effective date of this Agreement, HLC shall provide to the Consultant described in Article X a list of borrowers eligible to receive reimbursement pursuant to this Agreement ("Payment List"), which shall include for each borrower:

- (a) the name and address;
- (b) the HLC loan number; and
- (c) the amount of the reimbursement owed to borrower discussed in Paragraphs (1) through (4) of Article VIII, as determined under the Reimbursement Plan.

(4) In compiling the Payment List, addresses for all eligible borrowers should be updated through a standard address search using vendors licensed by the U.S. Postal Service's ("USPS") National Change of Address System ("NCOA"). If HLC is unable to obtain an address through the NCOA, then HLC shall attempt to obtain the borrower's address from the

purchaser of the loan. If HLC is unable to obtain an address through both of these search methods, then the borrower's address on the Payment List should be designated "Subject to Confirmation."

(5) Any changes to or deviations from the approved Reimbursement Plan shall be submitted in writing to the Assistant Deputy Comptroller for prior supervisory review and non-objection.

(6) Within seven (7) days of receipt of written supervisory non-objection of the Reimbursement Plan, HLC shall mail address confirmation letters to borrowers on the Payment List whose address is designated "Subject to Confirmation" (*see* Appendix A for model letter). If, within forty-five (45) days of HLC's receipt of written supervisory non-objection of the Reimbursement Plan, HLC receives a completed Settlement Address Confirmation Form from a borrower or an address correction notice for USPS, HLC shall remove the designation "Subject to Confirmation" from the borrower's address and shall mail to the borrower a check or letters, as appropriate pursuant to Paragraph (8) of this Article.

(7) Within forty-five (45) days of receipt of written approval of the Reimbursement Plan, HLC shall, in conformity with the approved Reimbursement Plan:

- (a) for all borrowers on the Payment List:
 - (i) produce reimbursement payment checks.
 - (ii) mail reimbursement checks to all eligible borrowers (other than those whose address is designated "Subject to Confirmation") with a payment transmittal letter (*see* Appendix B for model letter).

(8) All mailings shall be sent by USPS first-class mail, address correction service requested. The envelope shall contain no materials other than those specified in this Article.

(9) The Bank and HLC shall not use, sell, share, or otherwise disclose any information about a borrower that the Bank or HLC receives in response to the address confirmation letter, for any marketing or debt collection purpose.

(10) The face of each reimbursement check shall clearly and conspicuously state “VOID IF NOT NEGOTIATED WITHIN 180 DAYS.” For the purposes of this paragraph only, “clearly and conspicuously” shall mean in a size (at least 10 point) and style of typeface that is easily readable.

(11) If HLC has information that the borrower is deceased, HLC shall make reasonable efforts to deliver the payment check in a timely fashion to the borrower’s estate or heirs, as appropriate.

(12) One hundred eighty-seven (187) days after the payment checks are mailed, HLC shall:

- (a) void all undeliverable checks and checks that have not been negotiated,
and
- (b) update the Payment List to reflect, for each eligible borrower,
 - (i) the reimbursement check number;
 - (ii) the amount of the reimbursement check;
 - (iii) the date the reimbursement check was mailed;

- (iv) the date on which the check was negotiated or the date on which the check was returned;
- (v) the date on which any check was re-mailed, if applicable;
- (vi) the date on which any address confirmation letter was mailed;
- (vii) the date on which any address correction notice was received;
- (viii) the difference between the amount of reimbursement due as determined under Article III and the amount of reimbursement paid, which should equal the amount of any voided checks.

- (c) The Bank is not obligated by or as a result of this Agreement to make any Payment to a borrower whose check has been voided pursuant to this Article.

(13) The total of the amounts of “Remaining Amount Due” across all borrowers on the Payment List should equal the total amount of Excess Funds.

(14) If the written legal analysis of the escheat law determines that such Excess Funds are payable to the borrowers’ respective states, then, within seven (7) days of voiding all undeliverable checks, HLC shall retain those funds as required by applicable state laws. If the analysis determines that such Excess Funds are not payable to the borrowers’ respective states, then, HLC or the Bank may retain those funds.

(15) Within fourteen (14) days of voiding all undeliverable checks, HLC shall provide to the Audit Department or Consultant described in Article X a summary report, including the following:

- (a) the Payment List updated in conformity with Paragraph (12) of this Article; and
- (b) documentation of HLC's disposition of Excess Funds.

ARTICLE IX

REIMBURSEMENT—MONITORING

(1) Within thirty (30) days of the effective date of this Agreement, HLC shall engage the services of an external consultant (firm or individual) ("Consultant") to monitor the compliance by the Bank and HLC with Article VIII, and Paragraphs (3) and (4) of Article IX. Prior to employment of the Consultant, the name and qualifications of the Consultant considered for employment shall be submitted to the Assistant Deputy Comptroller, who shall have the power of veto over the retention of the proposed Consultant. However, failure to exercise such veto power shall not constitute approval or endorsement of the Consultant.

(2) HLC shall require, as part of the engagement, that the Consultant provide a report that evaluates HLC's compliance with Paragraphs (3) and (4) of Article IX of this Agreement. The Consultant shall validate that HLC accurately determined which borrowers shall receive reimbursement and that the amount of reimbursement conforms to the requirements of this Agreement. The Consultant shall provide this report to the Assistant Deputy Comptroller within a reasonable time frame after the Consultant receives the Payment List from HLC pursuant to Paragraph (4) of Article IX.

(3) Within thirty (30) days of the effective date of this Agreement, HLC shall engage the services of Banco Bilbao Vizcaya Argentaria's Audit Department ("Audit Department") or the Consultant to monitor the compliance by the Bank and HLC with Paragraphs (6) through (15) of Article IX.

(4) HLC shall require, as part of the engagement of the Audit Department or Consultant, that the Audit Department or Consultant provide a report that evaluates HLC's Compliance with Paragraphs (6) through (15) of Article IX, including certification of the disposition of any Excess Funds in conformity with Paragraph (14) of Article IX. The Consultant shall provide this report to the Assistant Deputy Comptroller within a reasonable time after receiving the updated Payment List from HLC pursuant to Paragraph (12) of Article IX.

(5) The Bank and HLC shall make available to the Consultant and the Audit Department, if engaged, all records, reports, and other information necessary, in the judgment of the Consultant and under the direction of the Assistant Deputy Comptroller, to accomplish a full and complete evaluation of HLC's compliance with all provisions of this Agreement that require reimbursement payments.

(6) HLC and the Bank shall be responsible for all expenses associated with the requirements of this Article, including, but not limited to, all professional fees to the Consultant.

ARTICLE X

ADMINISTRATIVE APPEALS AND EXTENSIONS OF TIME

(1) If the Bank Board or the HLC Board determines that an exception to any provision of this Agreement is in the best interests of HLC or the Bank, or requires an extension

of any timeframe within this Agreement, the Board shall submit a written request to the Assistant Deputy Comptroller requesting for relief.

(2) Any written requests submitted pursuant to this Article that require the Assistant Deputy Comptroller to exempt HLC or the Bank from any provision or that require an extension of any timeframe within this Agreement shall include a statement setting forth in detail the special circumstances that prevent HLC or the Bank from complying with any provision. All such requests shall be accompanied by relevant supporting documentation.

(3) The Assistant Deputy Comptroller's decision on any request submitted pursuant to this Article is final and not subject to further review.

ARTICLE XI

CLOSING

(1) Although the Boards have agreed to submit certain programs and reports to the Assistant Deputy Comptroller for review or prior determination of no supervisory objection, the Bank Board has the ultimate responsibility for proper and sound management of HLC and 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 HLC or the Bank, nothing in this Agreement shall in any way inhibit, estop, bar, or otherwise prevent the Comptroller from so doing.

(3) 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 Bank 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 Bank Board and HLC Board are required to ensure adherence to, and undertake to perform certain obligations of HLC and the Bank, it is intended to mean that the Boards shall:

- (a) authorize and adopt such actions on behalf of HLC and the Bank as may be necessary for HLC and the Bank to perform its obligations and undertakings under the terms of this Agreement;
- (b) require the timely reporting by Bank and HLC management of such actions directed by the Boards 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) Nothing in this Agreement is, or is intended to constitute any finding or conclusion as to any action taken by HLC or the Bank. By entering into this Agreement, HLC and the Bank do not admit or deny any fact, finding, conclusion, issue of law, or violation of law; nor shall compliance with this Agreement constitute or be construed as an admission or denial by HLC or the Bank as to any fact, finding, conclusion, issue of law, or violation of law. The Agreement by HLC or the Bank to institute a practice pursuant to this Agreement does not constitute an admission or denial that HLC's or the Bank's practice was otherwise prior to the date of the Agreement. Payments under the Agreement are made to compensate borrowers and do not constitute, and shall not be construed as forfeitures, fines or penalties, or payments in lieu thereof.

(7) 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 HLC or the Bank under its supervisory powers, including 12 U.S.C. § 1818(b)(1), and not as a matter of contract law. HLC and the Bank expressly acknowledge that HLC, the Bank and the OCC do not have any intention to enter into a contract. HLC and the Bank also expressly acknowledge 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.

<u>/s/</u>	<u>11/03/05</u>
Jennifer C. Kelly	Date
Deputy Comptroller	
Midsized and Credit Card Bank	
Supervision	

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.

<u>/s/</u>	<u>11/01/05</u>
Gary G. Jacobs, Chairman	Date

<u>/s/</u>	<u>11/01/05</u>
Manuel Sanchez Rodriguez	Date

<u>/s/</u>	<u>11/01/05</u>
José María García Meyer-Döhner	Date

<u>/s/</u>	<u>11/01/05</u>
Raul Santoro	Date

<u>/s/</u>	<u>11/01/05</u>
Joaquín Gortari	Date

<u>/s/</u>	<u>11/01/05</u>
Peter Paulsen	Date

<u>/s/</u>	<u>11/01/05</u>
P.R. Arguindegui Jr.	Date

<u>/s/</u>	<u>11/01/05</u>
Dr. Joaquín G. Cigarroa, Jr.	Date

<u>/s/</u>	<u>11/01/05</u>
Evan J. Quiros	Date

_____ J.C. Martín, III	_____ Date
_____ /s/	_____ 11/02/05
_____ H.E. Sames, III	_____ Date
_____ /s/	_____ 11/01/05
_____ Diana T. Garcia	_____ Date
_____ /s/	_____ 11/01/05
_____ David W. Killam	_____ Date
_____ /s/	_____ 11/01/05
_____ José Adan Treviño	_____ Date
_____ /s/	_____ 11/01/05
_____ Luis Lidsky	_____ Date
_____ /s/	_____ 11/01/05
_____ J.C. Treviño, Jr.	_____ Date
_____ /s/	_____ 11/01/05
_____ Renato Zapata, Jr.	_____ Date
_____ /s/	_____ 11/01/05
_____ Ramón Diez Barroso	_____ Date

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

_____ /s/	_____ 11/01/05
_____ Raul Santoro, Chairman	_____ Date
_____ /s/	_____ 11/02/05
_____ Antonio Renilla	_____ Date
_____ /s/	_____ 11/02/05
_____ Jaime Azcoiti	_____ Date
_____ /s/	_____ 11/02/05
_____ Agustín Berasaluce	_____ Date
_____ /s/	_____ 11/01/05
_____ Peter Paulsen	_____ Date