

Decl., Exh. 3. Thus, Defendant had the right to, and did, change the terms of Plaintiff's credit card account when it mailed Plaintiff the 2006 cardholder agreement in September 2006. Accordingly, Plaintiff failed to demonstrate that the arbitration provision in the 2006 cardholder agreement is invalid on the ground that Defendant did not have the right to change the terms of Plaintiff's credit card agreement.

b. Plaintiff's Cancellation of his Account

Plaintiff contends that the arbitration provision contained in the 2006 cardholder agreement is not binding because he cancelled his account before the agreement became effective. In support of his position, Plaintiff cites South Dakota Codified Laws § 54-11-10, which provides, in relevant part:

Any . . . change to the credit card agreement modifying the manner in which the issuer and card holder resolve disputes arising out of their relationship do not become binding on the parties if the card holder, within twenty-five days of the effective date of the change, furnishes written notice to the issuer, at the address designated by the issuer, that the card holder does not agree to abide by such changes.

Here, the evidence in the record indicates that the 2006 cardholder agreement was mailed to Plaintiff on September 12, 2006, and specifically states: "[t]his Agreement is binding on you unless you cancel your account within 30 days after receiving the card." See Barnette Supp. Decl. ¶ 8, Exh. 4. The evidence in the record further indicates that Plaintiff did not send a letter cancelling his account until November 16, 2006 – sixty-five (65) days after Defendant mailed the 2006 cardholder agreement. *Id.* ¶ 11, Exh. 5; Pl.'s Decl. Ex. A. Plaintiff, for his part, speculates that "[i]f in fact the 'Card Agreement' was sent to Plaintiff after September 2006, his letter canceling may have effectively disclaimed the 'Card Agreement,' and the arbitration agreement along with it." Pl.'s Opp. at 5.

Although it is unclear when Plaintiff actually received the 2006 cardholder agreement, the Court presumes that it was received by Plaintiff in the usual time. See Schikore v. Bank of America Supplemental Ret. Plan, 269 F.3d 956, 961 (9th Cir. 2001) ("The mailbox rule provides that the proper and timely mailing of a document raises a rebuttable presumption that the document has been received by the addressee in the usual

time.”). Plaintiff did not offer any evidence to rebut the presumption raised by the mailbox rule. Thus, Plaintiff is deemed to have received 2006 cardholder agreement shortly after it was mailed on September 12, 2006. Because Plaintiff’s letter cancelling his account was mailed more than 30 days later on November 16, 2006, Plaintiff did not cancel his account before the 2006 cardholder agreement became effective. Accordingly, Plaintiff failed to demonstrate that the arbitration clause in the 2006 cardholder agreement is invalid on ground that he cancelled his credit card account before the agreement became effective.<sup>5</sup>

In sum, because a valid arbitration agreement exists, and because the arbitration agreement encompasses the dispute between Plaintiff and Defendant, the Court directs the parties to arbitration. Accordingly, Defendant’s motion to compel arbitration is GRANTED.

#### D. Motion to Stay Proceedings

Defendant has moved for a stay of this action until the arbitration proceeding is completed. The FAA provides that when a court is satisfied that issues involved in a lawsuit are referable to arbitration, the court “shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement.” 9 U.S.C. § 3. Thus, the FAA “requires that the court stay judicial proceedings until the matter has been arbitrated according to the terms of the arbitration agreement.” Leicht v. Bateman Eichler, Hill Richards, Inc., 848 F.2d 130, 133 (9th Cir. 1988). In light of the Court’s conclusion that arbitration is warranted, Defendant’s request to stay the instant action pending arbitration is GRANTED.

### III. CONCLUSION

For the reasons set forth above, IT IS HEREBY ORDERED THAT:

1. Defendant’s motion to compel arbitration is GRANTED.

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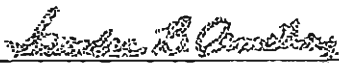
<sup>5</sup> The Court notes that even assuming that Plaintiff could demonstrate that the 2006 cardholder agreement is not binding on him, he would still be bound by the terms of the 2003 change-in-terms notice, which contains an arbitration provision that is similar in all relevant respects to the arbitration provision in the 2006 cardholder agreement.

1           2.     Defendant's motion to stay proceedings is GRANTED. This action is stayed  
2 pending arbitration. Defendant is required to file quarterly reports with the Court on the  
3 status of the arbitration proceedings beginning on June 8, 2012.

4           3.     This Order terminates Docket 23.

5           IT IS SO ORDERED.

6 Dated: 3/8/12

  
SAUNDRA BROWN ARMSTRONG  
United States District Judge

TOMIO B. NARITA (SBN 156576)  
tnarita@snllp.com  
R. TRAVIS CAMPBELL (SBN 271580)  
tcampbell@snllp.com  
SIMMONDS & NARITA LLP  
44 Montgomery Street, Suite 3010  
San Francisco, CA 94104-4816  
Telephone: (415) 283-1000  
Facsimile: (415) 352-2625

Attorneys for Defendants,  
Citibank, N.A., successor in interest to  
Citibank (South Dakota), N.A.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

BYRON D. DAUGHERTY,

Plaintiff,

vs.

EXPERIAN INFORMATION  
SOLUTIONS, INC.; TRANS UNION  
LLC; EQUIFAX INFORMATION  
SERVICES LLC; CITIBANK (SOUTH  
DAKOTA), N.A.; and DOES 1 through  
30, inclusive,

Defendants.

CASE NO.: C 11-01285-SBA

DECLARATION OF ADAM R.  
POGWIST IN SUPPORT OF  
MOTION TO COMPEL  
ARBITRATION

Date: January 24, 2012  
Time: 1:00 p.m.  
Location: Courtroom 1

The Honorable Sandra B. Armstrong

Action Filed: March 16, 2011  
Trial Date: None

I, ADAM R. POGWIST, hereby declare:

1. My name is Adam R. Pogwist. I am over 21 years of age, have never been convicted of a felony, and am competent to testify to the statements set forth in this Declaration.

2. I am a paralegal employed by Citigroup Management Corp. ("CMC"), an affiliate of Citibank, N.A., successor in interest to Citibank (South Dakota), N.A.

DAUGHERTY V. EXPERIAN INFORMATION SOLUTIONS, INC., ET AL. (CASE NO. C 11-01285-SBA)  
DECLARATION OF ADAM R. POGWIST

EXHIBIT 2

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1 ("Citibank"). Citibank (South Dakota), N.A. merged into Citibank, N.A. effective  
2 July 1, 2011. Citibank is a national banking association with its principal place of  
3 business in Sioux Falls, South Dakota.

4 3. I have been employed by CMC or its affiliates in different capacities for  
5 approximately 8 years. Prior to that, I was a Director of Compliance for Sears  
6 Roebuck & Co. ("Sears") and was employed by Sears for approximately 6 years.  
7 Sears National Bank ("SNB") -- a national banking association -- was an affiliate of  
8 Sears and was the issuer of the Sears credit card portfolio. As a result of my prior  
9 capacity at Sears, I have personal knowledge of the credit card business operations  
10 and practices of SNB and Sears and am familiar with the business records relating to  
11 the credit card accounts including, in particular, the records of cardmember accounts.

12 4. The exhibits to this declaration are all true and correct business records  
13 created and maintained by SNB, or its affiliates, in the course of regularly conducted  
14 business activity, and as part of the regular practice of SNB to create and maintain  
15 such records. The statements set forth in this Declaration are true and correct to the  
16 best of my knowledge, information, and belief based on either personal knowledge or  
17 review of SNB's and/or Citibank's records and the attached documents.

18 5. I have reviewed the Complaint filed by plaintiff Byron Daugherty, in  
19 which he alleges claims against Citibank relating to a "Sears credit card," which is  
20 hereafter referred to as the "Daugherty Account."

21 6. The Daugherty Account was issued by SNB and branded with the  
22 "Sears" name. The Daugherty Account was opened in June 1998. Pursuant to  
23 practices at the time, Sears (acting as a service provider to SNB) mailed to Daugherty  
24 a card agreement governing the Daugherty Account when it was opened. An  
25 exemplar card agreement in effect at the time that the Daugherty Account was  
26 opened is attached hereto as Exhibit 1 (the "1998 Agreement"). The 1998  
27 Agreement includes a "Change of Terms" provision, which permitted SNB to change  
28 any term of the Daugherty Account by sending out a change-in-terms notice to Mr.

DAUGHERTY V. EXPERIAN INFORMATION SOLUTIONS, INC., ET AL. (CASE NO. C 11-01285-SBA)  
DECLARATION OF ADAM R. POWWIST

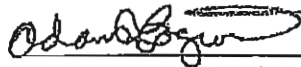
Daugherty. *See* Exhibit 1 at 7. The 1998 Agreement also includes an "Assignment of Account" provision, which permitted SNB to assign any account, including the Daugherty Account, to another creditor without further notice to Daugherty. *See id.* at 8.

7. When SNB did change the terms of its credit card agreements, it was SNB's practice to send to its cardholders new complete card agreements. Attached hereto as Exhibits 2 through 5 are exemplar card agreements utilized by SNB in 1999, 2001, 2002 and 2003, respectively. Each of these card agreements contains a "Change of Terms" provision. In addition, each of these card agreements contains an arbitration provision.

8. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND IT IS MADE FOR USE AS EVIDENCE IN COURT AND IS SUBJECT TO PENALTY FOR PERJURY.

Executed on this 1<sup>st</sup> day of December 2011 at Elk Grove Village, Illinois.

 12/1/2011  
Adam R. Pogwist

# Exhibit 1

JUN-01-2007 08:30 FROM:

TO: 919049548716

P. 2/11

**ACCOUNT AND SECURITY AGREEMENT  
RETAIL INSTALLMENT CONTRACT  
AND SECURITY AGREEMENT (OT)  
RETAIL INSTALLMENT CREDIT AGREEMENT (NY)**

**BASIC AGREEMENT**

1. **DEFINITIONS.** In the agreement, "SNB" means Sears National Bank or any subsequent holder of my account or any balances arising under my account and "I," "me," "my," refers to all persons named on the credit application or acceptance certificate, as an account holder. SNB is a wholly-owned subsidiary of Sears Financial Holding Company (SFHC). SFHC is a wholly-owned subsidiary of Sears, Roebuck and Co.
2. **ACCEPTANCE AND LIABILITY.** I am responsible for all amounts owed on my account. I agree to repay all amounts owed on my account according to the terms of this agreement. This agreement is effective when any account holder or authorized user either uses the account, activates the card, or takes any other action which indicates acceptance of the account or card.
3. **OPTION TO PAY IN FULL EACH MONTH; GRACE PERIOD.** I have the right each month to pay the total New Balance on my account. If I do so within 30 days (28 days for February statements) of my billing date, no Finance Charge will be added for that month. The due date will be shown on my monthly statement. The total balance on my billing date will be called the New Balance on my monthly statement.
4. **OPTION TO PAY IN INSTALLMENTS.** If I do not pay the total balance in full each month, I agree to pay at least the minimum payment within 30 days (28 days for February statements) of my billing date.
5. **ACCOUNT CHARGES SUBJECT TO APPROVAL.** This agreement and all charges on the account are subject to SNB's approval. The agreement will be considered approved when SNB provides notice of approval to me. SNB will not be liable to me if SNB is unable to authorize a transaction on my account, even if I have sufficient available credit, due to a malfunction in SNB's authorization system.
6. **AUTHORIZED AND UNAUTHORIZED USE.**
  - (a) **Purchases.** I may authorize or permit others to make purchases and use the account. I agree that this Agreement controls all charges made by those persons, that I am responsible for all purchases and charges made by those persons and I agree to pay all such pur-

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JUN-01-2007 08:30 FROM:

- charges and charges. I authorize SNB to act at the request of those persons and I will not hold SNB responsible or liable for such action.
- (b) **Authorized Users.** Any person whom I have designated as an authorized user ("authorized user") as provided below may use the account and take any action with respect to the account that I could take. I may make this designation by notifying SNB of such authorized user(s) by contacting the number written below or providing written notice at the address written below. In making this designation, I request that a credit card be issued to the authorized user, and I understand and agree that (a) this agreement controls all charges made on the account by the person(s) designated by me as an authorized user and I understand that I am responsible for all purchases and charges made by authorized users and I agree to pay all such charges, (b) SNB may disclose information about the account to the persons I designate as an authorized user of the account and (c) by making such designation, I appoint any authorized user to be my agent for purposes of dealing with the account in the same manner as I can, and SNB may, without any liability, accept the directions or requests of any person designated as an authorized user of the account and SNB may act upon such directions or requests, including to process requests to raise the credit limit applicable to the account. I may add, terminate or change authorized users of the account by calling 1-800-347-8480 or by providing written notice to SNB at P.O. Box 555, Columbus, OH 43216. If I terminate this authority, I will attempt to retrieve the credit card from the person designated, permitted or authorized to use the account and have the card destroyed.
- (c) **Unauthorized Use.** If I believe or claim that any charges on the account are unauthorized, I agree to notify SNB immediately at the address indicated on my monthly statement, upon discovery and to cooperate with SNB in making a reasonable investigation of my claim. Unauthorized use does not include use by an authorized user or a person to whom I have given the credit card or authority, permission or designation to use the account, including without limitation anyone I have designated as an authorized user pursuant to the previous paragraph, and I will remain liable for any and all use by such persons.
7. **CONSUMER ACCOUNT.** I agree to use this account only for personal, family or household purposes and all transactions will be deemed to be for personal, family or household purposes.
8. **CREDIT LIMIT.** SNB will disclose my credit limit to me when the account is opened and on each monthly statement, and may increase or decrease my credit limit from time to time. I agree not to exceed the credit limit established by SNB. I understand and agree that my credit limit can be increased or decreased at the request of a

JUN-01-2007 08:32 FROM:

- designated authorized user. SNB is not obligated to but may, in its discretion, authorize purchases that exceed my credit limit from time to time. I agree to pay such charges and if requested by SNB to pay amounts in excess of my credit limit immediately. I agree that I am responsible for all charges made on my account whether up to or exceeding my credit limit and regardless of whether my credit limit has been increased, including at my request, at the request of an authorized buyer or a designated authorized user, or without request.
9. **SECURITY INTEREST: SNB WILL TAKE A SECURITY INTEREST IN ALL PURCHASES.** I grant SNB a security interest under the Uniform Commercial Code in each item of merchandise purchased from Sears, Roebuck and Co., its affiliates and licensees to the extent permitted by law, to secure only the purchase price of that item of merchandise. If I do not make payments as agreed, the security interest allows SNB to repossess only the merchandise which has not been paid for in full. I am responsible for any loss or damage to the merchandise until the price is fully paid.
10. **APPLICATION OF PAYMENTS.** For the purposes of determining SNB's security interest, payments received will be deemed to apply first to pay any unpaid insurance, returned payment charges or Finance Charge(s), and then to pay for the purchases on the account in the order in which they were made, and then to pay for any late charges. If more than one item is charged to my account on the same date, my payment will apply first to the lowest priced item(s) or as required by law.
11. **GOVERNING LAW.** This agreement and my account will be governed by and interpreted in accordance with the laws of the State of Arizona and the United States, regardless of where I live or where I use my account, except that the laws of my state of residence will apply to the security interest granted herein. This agreement is entered into in Arizona and all credit under the agreement will be extended from Arizona. All the terms and conditions of this agreement (including the change of terms provision, or governing law provision and the finance charge, late payment charge, returned payment charge) are deemed to be interest and material to the determination of the finance charge. This agreement is governed by Arizona Revised Statutes 44-1205 (C), (D) and (E) as amended. If any term or provision of this agreement is found to be unenforceable, it will not make any other term or provision unenforceable. Accountholders with foreign or APO/FPO addresses will be deemed to be residents of the state of Arizona. In CA, to the extent applicable; the provisions of the Unruh Act, Cal. Civ. Code §1801 et. seq., shall apply. In NY to the extent applicable, the provisions of the Retail Installment Sales Act, N.Y. Personal Property Law §401 et. seq., shall apply.

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**PAYMENT OPTIONS**

12. **MINIMUM PAYMENTS.** The scheduled monthly payment is based on the current New Balance on the account. The scheduled monthly payment will increase and decrease along with the balance. The minimum payment each month will equal the scheduled monthly payment plus any past due amounts appearing on my statement. I understand that the required minimum payment shown due on my monthly statement may vary from the scheduled monthly payment described below.

When the current New Balance is:

The Scheduled Monthly Payment will be:

\$	to \$	
.01	to	10.00
10.01	to	250.00
250.01	to	300.00
300.01	to	350.00
350.01	to	410.00
410.01	to	470.00
470.01	to	550.00
550.01	to	605.00
605.01	to	660.00
660.01	to	720.00
720.01	to	780.00
780.01	to	840.00
Over 840.00	—	

The Balance

\$10.00

11.00

12.00

13.00

14.00

15.00

16.00

17.00

18.00

19.00

20.00

1/42nd of the Current New Balance rounded to the next higher whole dollar amount

I can always pay more than the required minimum payment.

13. **PAYMENTS.** All payments made by mail should be made by negotiable instruments drawn on federally or state chartered U.S. financial institutions. Payments received at the payment processing location specified on my monthly statement by 1:00 p.m. local time, on a business day, will be posted as of the date of receipt. Payments received at that location after 1:00 p.m. local time will be posted to my account the next business day. The business days of SNB are Monday through Friday, excluding federal holidays. Payments received at any other location may be delayed in posting up to five days. Any conditional check, money order or any other instrument tendered as full satisfaction of a disputed debt or containing a restrictive endorsement must be sent to SNB's address for billing error notices, shown on the front of the monthly statement.

14. **DEFERRED PAYMENT, DELAYED BILLING OPTIONS.** Deferred Payment Option. Under the Deferred Payment Option when offered,

JUN-01-2007 09:32 FROM:

I may purchase and charge selected merchandise or services to my account and I will not have to make monthly payments on these services or merchandise for a specified period of time; however, I will have to pay regular Finance Charges on those purchases during the period of the deferral.

**Delayed Billing Option.** Under the Delayed Billing Option when offered, purchases of merchandise or services will not be billed to my account until the end of the delayed billing period. No finance charges will accrue and no minimum payment will be due on the amount of my delayed billing purchase until the end of the promotional period. If I elect this option when offered, SNB will not be required to give me advance notice before resuming or starting to bill me for regular monthly payments or Finance Charges.

#### **FINANCE CHARGES**

15. **FINANCE CHARGES.** If I do not pay the New Balance in full by the due date, a Finance Charge will be added to the account for the current monthly billing period. There will be no Finance Charge if the New Balance is paid in full each month. The Finance Charge will be the greater of: the minimum Finance Charge, or an amount determined by multiplying the Daily Periodic Rate of .0576% (corresponding ANNUAL PERCENTAGE RATE of 21%) by the Daily Balances (including new purchases) and adding together any such Finance Charges for each day in the billing period. For residents of PR: The daily periodic rate is .0559% (corresponding ANNUAL PERCENTAGE RATE of 20.4%).
16. **MINIMUM FINANCE CHARGE.** There will be a minimum Finance Charge of \$.50 for each billing period in which a Finance Charge is payable.
17. **HOW TO DETERMINE THE DAILY BALANCES.** To determine each day's Daily Balance SNB will take the beginning balance on the account each day (including any unpaid Finance Charges—except in PR), add any new purchases, late payment charges, returned payment charges and insurance charges, if any, and subtract any payments and credits.

#### **OTHER FEES AND CHARGES**

18. **NO ANNUAL FEE.**
19. **LATE PAYMENT CHARGE.** If I fail to pay any required minimum payment by its due date, SNB may charge and I agree to pay a late payment charge of \$20 if my balance is \$50 or more, or \$10 if my balance is less than \$50.
20. **RETURNED PAYMENT CHARGE.** If I make a payment that is returned unpaid for any reason, SNB may charge and I agree to pay a returned payment charge of \$15.00. At its option, SNB will assess

this charge the first time my payment is not honored, even if it is paid upon resubmission.

- 21. ATTORNEY'S FEES.** Upon my default, SNB may charge me reasonable attorney's fees, collection costs (including expenses incurred in realizing on a security interest), and court costs where permitted by law in the state where I reside. Unless limited by law, reasonable attorney's fees will be considered to be 35% of the outstanding balance on my account when it is referred to an attorney for collection. In the following states, attorney's fees may not exceed: CO and OK: 15% of the unpaid debt, LA: 25% of the unpaid debt. In AL, SNB may charge reasonable attorney's fees when the unpaid balance exceeds \$300.00.

**PHONE CALLS, CREDIT INVESTIGATION  
REPORTING & INFORMATION SHARING**

- 22. PHONE CALLS.** SNB may call me by telephone regarding this account. I agree that SNB may place such phone calls using an automatic dialing-announcing device. SNB's managers may listen to and record phone conversations between SNB's associates and me for training purposes or to evaluate the quality of SNB's service.
- 23. CREDIT INVESTIGATION AND DISCLOSURE OF INFORMATION.** SNB has the right to investigate my credit, employment and income records, to verify my credit references, to report the way I pay the account to credit bureaus and other interested parties. I understand that a consumer report prepared by a consumer reporting agency may be obtained at the time I apply for my account and, if my account is approved, at any time thereafter. I have the right at any time to ask SNB whether a report was obtained and, if so, to have SNB furnish me with the name and address of the consumer reporting agency that prepared the report. If I fail to fulfill the terms of this agreement, a negative report reflecting on my credit record may be submitted to a credit reporting agency. I may notify SNB by telephone at 1-800-347-8480, if I believe SNB has reported inaccurate information regarding my account to a credit reporting agency.
- 24. INFORMATION SHARING / FAIR CREDIT REPORTING ACT.** SNB and its affiliates, including Sears, may share information about me (including information obtained from credit reporting agencies) among themselves and with companies doing business for SNB or its affiliates. After Sept. 29, 1997, I may prohibit that sharing of such information (except for the sharing of information about transactions or experiences between SNB or its affiliates and me) by contacting SNB at 1-800-347-8480 and making a request.



**DEFAULT AND TERMINATION**

25. **EVENTS OF DEFAULT.** I will be in default of this agreement if any one of the following events occurs: (a) I do not make the required minimum payment on the account by the payment due date; (b) I provide SNB with any false or misleading information or signatures on the credit application, sales tickets or other documents and instruments; or (c) I file or someone else files on my behalf a petition under the federal bankruptcy code or any state insolvency statute; (d) SNB receives information that I am unwilling or unable to perform the terms or conditions of this agreement; (e) SNB receives information from third parties, including credit reporting agencies, which indicate a serious delinquency or charge-off against me with other creditors; or (f) I become the subject of attachment, foreclosure, repossession, lien, judgment or garnishment proceedings.
26. **ENFORCEMENT.** If I default, SNB may (subject to applicable laws) terminate or suspend my credit privileges under this agreement; change the terms of my account and this agreement; require me to pay my entire account balance including all accrued but unpaid charges immediately; and sue me for what I owe.
27. **FAILURE TO ENFORCE IS NOT A WAIVER.** Any failure or delay by SNB in enforcing strict performance of this agreement, including, but not limited to, accepting late or partial payments, shall not be considered a waiver of any of the terms of this agreement or any of SNB's rights.
28. **WAIVER OF LIEN ON DWELLING.** SNB gives up any right to retain or acquire any lien which SNB might be automatically entitled to by law on my principal dwelling. This does not apply to a lien created by a court judgment.
29. **SNB'S REMEDIES IN EVENT OF DEFAULT.** If I default in my obligations under this agreement, SNB may utilize any and all remedies to which it is entitled by law; SNB may also refer my account to a collection agency or attorney.
- FUTURE CHANGES**
30. **CHANGE OF TERMS - CANCELLATION.** As permitted by law, SNB has the right to change any term or part of this agreement, including the rate of Finance Charge, applicable to current and future balances. SNB will send me a written notice of any such changes when required by law. SNB also has the right to cancel this agreement as it relates to future purchases or other charges at any time. I agree to return all credit cards to SNB upon notice of such cancellation.
31. **CHANGE OF RESIDENCE.** If I change my residence, I will inform SNB.

JUN-01-2007 08:34 FROM:

**ASSIGNMENT**

32. **ASSIGNMENT OF ACCOUNT - PROTECTION OF BUYER'S RIGHTS.** I understand this account or any interest or amount owed under this account may be sold or assigned by SNB to another creditor without further notice to me. If so, the notice below, which is required by Federal law, is intended to protect any claim or right I have against SNB and such holder or assignee.

**CONSUMER NOTICES**

33. **NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF THE GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.**
34. **LIABILITY FOR UNAUTHORIZED USE.** I may be liable for the unauthorized use of my account. I will not be liable for unauthorized use that occurs after I notify SNB of the loss, theft or possible unauthorized use. I must give notification immediately upon discovery of the loss, theft or possible unauthorized use by calling SNB or writing SNB at the address indicated on my periodic statement. My liability for unauthorized use of my account will not exceed \$50.
35. **NOTICES TO BUYERS: 1. DO NOT SIGN THIS AGREEMENT BEFORE YOU READ IT OR IF IT CONTAINS ANY BLANK SPACES. 2. YOU ARE ENTITLED TO AN EXACT COPY OF THE AGREEMENT YOU SIGN. 3. YOU HAVE THE RIGHT TO PAY IN ADVANCE THE FULL AMOUNT DUE. 4. KEEP THIS AGREEMENT TO PROTECT YOUR LEGAL RIGHTS.**
36. **CA—A TRANSLATION OF THIS AGREEMENT IN THE SPANISH LANGUAGE IS AVAILABLE UPON REQUEST. UNA TRADUCCION DE ESTE CONVENIO EN EL LENGUAJE ESPANOL ESTA A SU DISPOSICION SI LA SOLICITA.**
37. **CT—UNDER THE LAW YOU HAVE THE FOLLOWING RIGHTS, AMONG OTHERS: (A) TO REDEEM THE PROPERTY IF REPOSSESSED FOR A DEFAULT; (B) TO REQUIRE, UNDER CERTAIN CONDITIONS, A RESALE OF THE PROPERTY IF REPOSSESSED.**  
SEARS NATIONAL BANK, TEMPE, AZ 85282

JUN-01-2007 08:35 FROM:

**I HAVE RECEIVED A COPY OF THIS ACCOUNT AND SECURITY AGREEMENT (CT-RETAIL INSTALLMENT CONTRACT, AND SECURITY AGREEMENT; NY-RETAIL INSTALLMENT CREDIT AGREEMENT)**

**STATEMENT OF CREDIT BILLING RIGHTS  
(KEEP THIS NOTICE FOR FUTURE USE)**

This notice contains important information about your rights and our responsibilities under the Fair Credit Billing Act.

**NOTIFY US IN CASE OF ERRORS OR QUESTIONS ABOUT YOUR BILL**

If you think your bill is wrong, or if you need more information about a transaction on your bill, write to us on a separate sheet at the address listed on your bill where it says, "Mail billing error notice to." Write as soon as possible. We must hear from you no later than 60 days after we sent you the first bill on which the error or problem appeared. You can telephone us, but doing so will not preserve your rights.

In your letter, give us the following information:

- Your name and account number.
  - The dollar amount of the suspected error.
  - Describe the error and explain, if you can, why you believe there is an error.
- If you need more information, describe the item you are not sure about.

**YOUR RIGHTS AND OUR RESPONSIBILITIES AFTER WE RECEIVE YOUR WRITTEN NOTICE**

We must acknowledge your letter within 30 days, unless we have corrected the error by then. Within 90 days, we must either correct the error or explain why we believe the bill was correct.

After we receive your letter, we cannot try to collect any amount you question, or report you as delinquent. We can continue to bill you for the amount you question, including finance charges, and we can apply any unpaid amount against your credit limit. You do not have to pay any questioned amount while we are investigating, but you are still obligated to pay the parts of your bill that are not in question.

If we find that we made a mistake on your bill, you will not have to pay any finance charges related to any questioned amount. If we didn't make a mistake, you may have to pay finance charges, and you will have to make up any missed payments on the questioned amount. In either case, we will send you a statement of the amount you owe and the date that it is due.

If you fail to pay the amount that we think you owe, we may report you as delinquent. However, if our explanation does not satisfy you and you write to us within ten days telling us that you still refuse to pay, we must tell anyone we report you to that you have a question about your bill, and we must tell you the name of anyone we reported you to. We must tell anyone we report you to that the matter has been settled between us when it finally is settled.



If we don't follow these rules, we can't collect the first \$50 of the questioned amount, even if your bill was correct.

### SPECIAL RULE FOR CREDIT CARD PURCHASES

If you have a problem with the quality of property or services that you purchased with a credit card, and you have filed in good faith to correct the problem with us, you may have the right not to pay the remaining amount due on the property or services.

### AT SEARS YOUR SATISFACTION IS GUARANTEED

If you have a billing error or question on a monthly statement, we'd be happy to have you phone us. However, if you wish to take advantage of your rights under the Fair Credit Billing Act, you must write us on a separate sheet. Include your name, account number, dollar amount and explanation of the suspected error and mail it to the Sears address shown on your current monthly statement.

### IMPORTANT CREDIT TERMS

You are not required to accept the account and are not required to pay any fee or charge unless you use the account.

Annual Percentage Rate	The annual percentage rate is 21%.
Minimum Finance Charge	A minimum monthly finance charge of \$.50 for each month a finance charge is due.
Late Payment Fees	\$20.00 if my balance is \$50.00 or greater, and \$10.00 if my balance is less than \$50.00.
Grace Period to Repay Balance	You have 30 days from your billing date to repay your balance before being charged a finance charge.
Balance Calculation Method For Purchases	The Average Daily Balance method (including new purchases.)
Annual Fees	None

# Exhibit 2

**SEARS NATIONAL BANK  
SEARS CARD ACCOUNT  
SEARS PREMIER CARD™ ACCOUNT  
CARDHOLDER ACCOUNT AND SECURITY AGREEMENT**

This Sears Card Account and Sears Premier Card Account Cardholder Account and Security Agreement ("Agreement") governs the use of your Sears Card Account and Sears Premier Card Account ("Account"). You should read and keep this Agreement for your records. You agree to use your Account only for personal, family or household purposes, and you intend to keep all merchandise purchased on the Account in your principal residence.

**Section 1. DEFINITIONS; ACCEPTANCE.** In this Agreement: (a) the words "you," "your" and "yours" mean any person named on the credit application or supplementary certificate as an accountholder, applicant, or co-applicant; (b) "Sears" means Sears, Roebuck and Co.; (c) the words "we," "us" and "our" mean Sears National Bank (an affiliate of Sears) or any subsequent holder of the Account or any balance arising under the Account; and (d) "Card" means a credit card issued by Sears National Bank for use with the Account.

You agree that the terms and conditions of this Agreement apply to your use of your Account. You also agree that the terms and conditions apply to you when you allow any other person to use your account. Your acceptance of this Agreement is effective when you receive this Agreement. It will also be considered effective the first time any accountholder, or other person you allow, uses the Account.

**Section 2. LOANS AND LIABILITY.**

(a) **Loans.** You authorize us to make loans and extend credit to you to pay for purchases of goods and services made using the Card or the Account. All transactions are subject to our approval. You may be required to sign a sales slip or other written authorization for purchases. You agree that your authorization, authentication, or instruction by mail, telephone or electronic means is effective as your signature.

(b) **Liability.** You agree to pay all amounts owed on the Account whether incurred by you, any other accountholder, anyone you allow to use the Account or any person from which you receive a benefit. Every person who uses the Card or Account is liable for the use of the Card and Account according to the terms of this Agreement. Court decrees for divorce or separation do not affect liability for any use of the Card or Account. You promise to use your Account only if you have the intent and financial capacity when the transaction occurs to repay the amount in full pursuant to this Agreement.

(c) **Joint Accounts.** If the Account is a joint Account, each accountholder is bound by the terms of this Agreement and is jointly and individually liable for all amounts owed under this Agreement, even when they do not use the Account themselves. The delivery of notices or Account Statements (see Section 3 of this Agreement) to any accountholder or Authorized User (see Section 4) will constitute delivery to all accountholders. We may rely on instructions given by you and will not be liable for honoring any such instructions. If any accountholder gives us notice disclaiming liability for amounts owed under this Agreement, we may close the Account.

(d) **Failure to Honor Card or Authorized Transaction.** We are not responsible for the failure of any person to honor a Card or the Account. We will not be liable if, for any reason and at any time, we do not authorize a transaction on the Account, even if you have sufficient available credit.

**Section 3. ACCOUNT STATEMENT.** We will send you an account statement ("Account Statement") for each period (a "Billing Cycle") when there is purchase activity on the Account, there is a balance of \$1.00 or more, or a finance charge is imposed. The Account Statement (including the reverse side) contains important information and should be carefully read and reviewed each time it is received.

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**Section 4. AUTHORIZED AND UNAUTHORIZED USE.**

(a) **Authorized Users.** You may ask that an individual be added, deleted or changed as an authorized user ("Authorized User") by calling us at the telephone number, or writing to us at the address, indicated on your Account Statement. You understand we will issue a Card to each Authorized User. If you terminate this authority, you will remove the Card from the Authorized User and destroy the Card. Any Authorized User may use the Account, and may take any action on the Account that you could take, either on behalf of yourself or the Authorized User. Each Authorized User grants us a security interest in any property purchased with the Account in accordance with Section 6 of this Agreement. You understand that: (i) this Agreement controls all charges made on the Account by the Authorized User; (ii) you are responsible for and will pay all charges made by the Authorized User; (iii) you may disclose information about the Account to the Authorized User; (iv) the Authorized User is your agent for purposes of managing the Account to the same extent you can manage the Account, subject to such limitations as we may impose; and (v) we may, without any liability, accept and act upon the directions or requests of any Authorized User, including to process requests to raise or lower a Credit Limit (see Section 5 of this Agreement) applicable to the Account.

You understand that we do not encourage the use of the Account by people who are not accountholders or Authorized Users. If you allow another person to use the Account but do not let us, we will treat all charges made by that person as if the charges were made by an Authorized User. It is your responsibility to control or terminate the use of your Account by such persons, and you will remain liable for any and all use by such persons.

(b) **Unauthorized Use.** If you discover or believe that any charge on the Account is unauthorized, you agree to call us immediately at the telephone number, or write to us at the address, indicated on your Account Statement and to cooperate with us in making a reasonable investigation of your claim. If you give us and notice concerning loss or theft, we may ask you to confirm it in writing.

(c) **Liability for Unauthorized Use.** You may be liable for the unauthorized use of the Account. You will not be liable for unauthorized use that occurs after you notify us of the loss, theft or possible unauthorized use. Your liability for unauthorized use of the Account will not exceed \$50.

**Section 5. CREDIT LIMIT.** We may identify your credit limit ("Credit Limit") when the Account is opened and on each Account Statement. If a Credit Limit is not currently assigned to your Account, we may assign one at any time. We may increase, decrease, suspend or terminate a Credit Limit at any time without notice to you and without affecting your obligations (including payment) under this Agreement. If a Credit Limit is assigned to the Account, the amount available for use is reduced by unpaid balances, special promotions and transactions authorized but not posted. You understand there may be a delay after you make a payment before the amounts repaid are available for re-borrowing. You agree not to exceed any available Credit Limit established by us. An overpayment or credit balance will not increase the Credit Limit. We may authorize purchases that exceed a Credit Limit. You agree to be responsible for all charges made on the Account whether or not they exceed your Credit Limit.

**Section 6. SECURITY INTEREST.** Each accountholder (and each Authorized User) grants us a purchase money security interest under the Uniform Commercial Code in each item of merchandise purchased on the Account, to the extent permitted by law, to secure only the purchase price of the merchandise (including installation costs and sales tax) until that amount is paid in full. If you do not make payments as agreed, this security interest allows us to repossess, to the extent permitted by law, only the merchandise which has not been paid in full. If the merchandise is intended to be installed as a fixture, our security interest is effective before installation. We waive any right to a security interest or lien on your dwelling to secure this Account that may arise by operation of law, or that gives rise to a right of redemption under the Federal Truth in Lending Act. However, we do not waive any lien created,

obtained or granted in a collection proceeding or by judgment or other court order. You understand and agree that you are responsible for any loss or damage to the merchandise until the purchase price is fully paid.

#### PAYMENTS

**Section 7. PAYMENT OPTIONS.** You may pay the "Total Account Balance" shown on your Account Statement each month. If you do not pay the Total Account Balance on your Account in full each month, you agree to pay at least the "Minimum Payment Due" shown on each Account Statement by the "Minimum Payment Due Date" shown on that Account Statement. You may always pay more than the required Minimum Payment Due and may pay your Total Account Balance in full at any time.

**Section 8. MINIMUM PAYMENTS.** The Minimum Payment Due is based on the current Total Account Balance, as shown on your Account Statement, less any Deferred Payment Balances (defined in Section 10 of this Agreement). The Minimum Payment Due each Billing Cycle will equal the scheduled monthly minimum payment ("Scheduled Monthly Payment"), plus: (a) any applicable insurance charges assessed that Billing Cycle; and (b) any past due amounts. The Scheduled Monthly Payment will equal .0238 (approximately 1/42nd) of the Total Account Balance less any Deferred Payment Balances, rounded to the next higher or whole dollar amount, but not less than \$10.00. If, however, the Total Account Balance less any Deferred Payment Balances is less than \$10.00 but more than \$0, you must pay the Total Account Balance less any Deferred Payment Balances.

#### Section 9. CREDITS AND PAYMENTS.

(a) **Refunds.** Cash refunds will not be made for merchandise or services purchased with the Account. Refunds will be made only by a credit to the Account.

(b) **Method of Payment.** You agree to repay all amounts owed on the Account in U.S. dollars. All payments should be made by negotiable instruments drawn on federally-insured depository institutions located in the U.S. or Puerto Rico. Payments received at the payment processing location specified on your Account Statement by 1:00 p.m. local time, on a business day, will be credited as of the day of receipt. Payments received at that location after 1:00 p.m. local time will be credited to your Account the next business day. Our business days are Monday through Friday, excluding federal holidays. Credits to your Account may be delayed up to five days if payment is: (i) received at any location other than the payment processing location specified on your Account Statement (including payments made at Sears stores); (ii) not made in U.S. dollars drawn on a federally-insured depository financial institution located in the U.S. or Puerto Rico; or (iii) not accompanied by the remittance portion of your Account Statement.

We may charge a late payment fee and/or additional Finance Charges if any payment is not received or credited by the required time and date. Although we will credit your payments as described in this section, your available Credit Limit, if one is assigned to the Account, may not be restored for several days after we receive your payment.

(c) **Conditional Payments.** Any conditional check, money order or any other instrument enclosed with a restrictive endorsement or as full satisfaction of a disputed debt must be sent to our address for billing error notice, shown on each Account Statement, and must conspicuously state on the face of that payment or in an accompanying letter that it is tendered for this purpose. If you make payment in any other way and we accept it, we will not have waived our right to collect any amount from you owing under this Agreement.

(d) **Application of Payments.** Payments received will be applied in the following order: Sears Credit Protection Plan Insurance charges, Finance Charges, returned payment charges, Regular Purchases (see Section 12) in the order in which they were made, late charges, Deferred Payment Balances (see Section 10) in the order in which they were made, and No Finance Charge Balances (see section 10) in the order in which they were made. If more than one item is

charged to your Account on the same date, your payment will apply first to the lowest priced item(s). However, we will apply payments received on the Account to special promotion purchases (see Section 10), other than Deferred Payment and No Finance Charge Balances, before applying them to Regular Purchases, regardless of the order in which purchases were made.

(e) **Skip a Payment.** Under the Skip a Payment promotion, when offered by us, you may elect not to make the Scheduled Monthly Payment for the designated Billing Cycle. However, Finance Charges will continue to accrue during the period of payment deferral and you still must pay any insurance charges due.

#### SPECIAL PROGRAMS

**Section 10. SPECIAL PROMOTIONS.** From time to time, we may offer special promotions, under which purchases of merchandise or services may be billed to your Account with special promotional terms. The Finance Charges, minimum payment, and other terms for special promotions may differ from the standard terms described in this Agreement and as may be shown on your Account Statement. The standard terms of this Agreement apply to any special promotion, except where changed by the special promotion. Standard terms will continue to apply to any and all transactions that are not subject to a special promotion. If you elect a special promotion, you agree to the terms of the promotion and understand that any special balance related to the promotion will be treated as a Regular Purchase (see Section 12) when the promotional period ends. We are not required to give you advance notice before resuming or starting to bill you according to the standard terms described in this Agreement. You understand that the terms of any special promotion may be cancelled if at any time you are in default under this Agreement (see Section 15). If you are in default under this Agreement, you may not be eligible for any special promotions. Special promotion balances on which payments are deferred are referred to as "Deferred Payment Balances" in this Agreement. Special promotion balances on which there are no Finance Charges assessed during the promotion period are referred to as "No Finance Charge Balances" in this Agreement.

**Section 11. REWARDS PROGRAMS.** From time to time, bonus points, rebate, merchandise certificate or other incentive programs may be offered by us or others in conjunction with the Account ("Rewards Programs"). You agree that a Rewards Program only applies during the period specified by us for the particular program, and only for the transaction(s) specified. Rewards Programs participation may be cancelled if at any time you are in default under this Agreement. You also agree that the Rewards Program points or credits have no monetary value and may only be used as specified under the Rewards Program. We may, at any time and subject to applicable law, change any term or condition, or add any term or condition, to any Rewards Program without notice to you. You understand and agree that any Rewards Program points or credits will be forfeited immediately upon closure of the Account by you or us.

#### FINANCE CHARGES AND OTHER CHARGES

**Section 12. FINANCE CHARGES.** See the enclosed explanation of "Finance Charges" that will apply to your Account.

**Section 13. LATE PAYMENT FEE.** If you fail to pay any Minimum Payment Due by its Minimum Payment Due Date, we may charge, and you agree to pay, a late payment fee of \$25.00 if your balance is \$50.00 or greater, \$10.00 if your balance is less than \$50.00.

**Section 14. RETURNED PAYMENT FEE.** If you make a payment, including an electronic payment, that is not honored or is returned unpaid for any reason, we may charge, and you agree to pay, a returned payment fee of \$25.00. At our option, we may assess this charge the first time your payment is not honored or returned, even if it is paid upon resubmission.

#### Section 15. OTHER FEES.

(a) **Collection Fees.** If you are in default (generally a failure to pay what you owe us; see Section 18 of this Agreement), we may charge you reasonable attorney

ney's (less collection costs (including expenses incurred in routing on a security interest) and court costs if permitted by applicable law. Reasonable attorney's fees will be considered to be 35% of the outstanding balance on your Account when it is referred to an attorney for collection. State law may limit what collection costs and fees we may charge.

- (b) **Other Fees.** We reserve the right to charge a service fee of \$3.00, to the extent permitted by law, for requests that you make to us, such as asking for copies of sales slips or providing other documentation regarding your Account (other than in connection with actual billing error).

**PHONE CALLS, CREDIT INVESTIGATION REPORTING AND INFORMATION SHARING**

**Section 16. PHONE CALLS.** We and our service or agents may call you by telephone regarding the Account, including the use of an automatic dialing-announcing device. We and our service or agents may listen to and record any phone conversations with you for training purposes or to evaluate the quality of service, as permitted by law. You agree that we may call you about your Account without advance notice from us.

**Section 17. CREDIT INVESTIGATION AND DISCLOSURE OF INFORMATION.** We have the right to investigate your credit, employment and income records, and to verify your credit references for the purposes of considering your application for the Account and, subsequently, in connection with any updates, renewals or extensions of credit or reviewing or collecting the Account. We also may report our transactions or experiences with you, including the way you pay the Account, and otherwise disclose information about you to credit reporting agencies and others, including our affiliates and Sears Licensees. You understand we may obtain a consumer report prepared by a credit reporting agency when you apply for the Account and at any time thereafter.

If you violate any of the terms of this Agreement, you understand and agree that a negative report may be submitted to credit reporting agencies and entered on your credit record. If you believe we have reported inaccurate information regarding the Account to a credit reporting agency, contact us at P.O. Box 818014, Cleveland, OH, 44181-8014. Your letter must identify the inaccurate information and describe why you believe it is incorrect. If you have a copy of a credit report that includes the inaccurate information, you should also send us a copy of that report. Account information may be reported to the credit reporting agencies in the Authorized User's name as well as your name. You understand that we cannot ensure against unauthorized inquiries about or access to the Account. You agree that we, while acting in good faith, will not be liable for the release of information to anyone who, without your authorization or permission, has gained access to the Account or has learned other identifying characteristics about you including, but not limited to, your personal identification number, Account number or social security number.

**Section 18. INFORMATION SHARING WITH AFFILIATES.** From time to time, subject to applicable law, we may use or furnish third parties information about you or your Account. Specifically, applicable law permits us to share information about our transactions or experiences with you or your Account with third parties and also with companies affiliated with us ("Sears Affiliates"). Applicable law also permits us to share additional information about you or your Account (including, but not limited to, information from applications you submit and information from credit reporting agencies) with Sears Affiliates. By entering into the Account relationship with us, you agree to this use and disclosure of information. You can prohibit us from sharing information with Sears Affiliates that does not relate solely to our transactions or experiences with you or the Account by contacting us by telephone at 1-800-977-0700 or by mail at P.O. Box 818014, Cleveland, OH, 44181-8014, and instructing us not to share such non-transaction and non-experience information with Sears Affiliates.

**DEFAULT, TERMINATION AND OTHER**

**Section 18. EVENTS OF DEFAULT.** You will be in default of this Agreement if any of the following events occur:

- You do not pay any Minimum Payment Due on the Account by the Minimum Payment Due Date as shown on each Account Statement;
- You violate any term or condition of this Agreement;
- You provide us with any false or misleading information or signatures in conjunction with the credit application or the Account, or fail to provide material information on the credit application, sales tickets or other documents and instruments;
- You file a petition or someone files a petition against you under the federal bankruptcy code or any state insolvency statute, or our ability to enforce our rights against you or your interest in any property, including any community property, is adversely affected by a petition filed by or against someone else;
- We receive information or have a reasonable belief that you are unwilling or unable to perform the terms or conditions of this Agreement;
- We receive information from third parties which indicates a serious delinquency or charge-off against you with other creditors or other adverse or negative information about you which, in our determination, adversely affects your ability to meet the obligations of this Agreement;
- You become the subject of attachment, foreclosure, repossession, lien, judgment or garnishment proceedings; or
- You are in default under any other agreement you may have with us, Sears or any Sears Affiliate.

If any of you are in default under this Agreement, then all of you will be in default.

**Section 20. OUR REMEDIES AND ENFORCEMENT.** If you are in default or in the event of your death, in addition to any Finance Charge Increase under Section 12(b) of this Agreement, we may (subject to applicable laws, including notice and right to cure) (a) terminate the Account, in which case the terms of this Agreement will continue to apply until full payment is received of the amount owing on the Account, including Finance Charges which we will continue to impose to the date of full payment; (b) suspend your credit privileges under this Agreement; (c) reduce any Credit Limit applicable to the Account; (d) change the terms of the Account and this Agreement; (e) withdraw the terms of any special promotion; (f) require immediate payment of your entire Total Account Balance, including special promotion balances (see Section 10 of this Agreement), all accrued but unpaid Finance Charges, and all fees and other charges listed in this Agreement; (g) sue you for what you owe and enforce any security interest granted in the merchandise purchased on the Account; or (h) use other lawful remedies. In addition, we may refer the Account to a collection agency or attorney, who shall be entitled to enforce this Agreement according to its terms and any of our rights shall apply to those persons. If we (including our agents) repossess one or more items of merchandise, we have the right to sell them at public or private sale and apply the proceeds (net of expenses) to the unpaid balance of each item's purchase price. If we receive more money than we are due for such goods, we will pay the difference to you. As an alternative to sale of the merchandise, we may retain the goods in satisfaction of the unpaid balance of that item's purchase price, as allowed by law. Applicable Finance Charges and fees continue to accrue at the rate specified in this Agreement (including as may be amended) until the Account is paid in full. In the event of default, we may discuss collection of the Account with Authorized Users, with your spouse and with others.

**Section 21. FAILURE TO ENFORCE IS NOT A WAIVER.** We may choose not to enforce any term in this Agreement (including rates and fees) without losing our rights. Any failure or delay by us in enforcing strict performance of this

Agreement (including, but not limited to, accepting late or partial payments or money orders marked "payment in full" or tendered with other conditions or limitations) shall not be considered a waiver of any of the terms of this Agreement or any of our rights. Any waiver of rights by us must be in writing and signed by one of our authorized representatives.

**Section 22. ARBITRATION.** Any and all claims, disputes or controversies of any nature whatsoever (whether in contract, tort, or otherwise) arising out of, relating to, or in connection with: (a) this Agreement; (b) any prior agreement you may have had with us, Sears, the Sears Affiliates, or with any of their predecessors, successors, and assigns, or with any of the dealers, contractors, franchise agents, employees, officers, directors and representatives of any of the foregoing entities; (c) the application for the Account, this Agreement or any prior agreement; (d) the relationship which results from this Agreement or any prior agreement (including any relationship with us, Sears or any of the Sears Affiliates); or (e) the validity, scope or enforceability of this arbitration section or this Agreement or any prior agreement (the "immediately preceding subsections (a) through (e)"), shall be referred to in this section, collectively, as "claims". Claims shall be resolved, upon your election or our election, by final and binding arbitration before a single arbitrator, on an individual basis without resort to any form of class action, except that each party retains the right to seek relief in a small claims court, on an individual basis without resort to any form of class action, for claims within the scope of its jurisdiction.

Arbitration may be elected at any time, regardless of whether a lawsuit has been filed or not, unless such a lawsuit has resulted in a judgment or the other party would suffer substantial prejudice as a result of the delay in demanding arbitration. The arbitrator shall be a lawyer or retired judge with not less than 15 years' experience in the practice of law. This arbitration section will not apply to claims previously asserted, or which are later asserted, in lawsuits filed before the effective date of this Agreement, but it will apply to all other claims, even if the facts and circumstances upon which the claims are based existed before the effective date of this Agreement. This arbitration provision does not prevent either party from seeking interim injunctive relief from a court in order to preserve the status quo or to protect assets until the arbitration has been commenced and the arbitrator has an opportunity to consider the matter of interim relief.

All arbitrations shall be administered by the National Arbitration Forum ("NAF") in accordance with its Code of Procedure in effect at the time the claim is filed. As of July, 1999, the Code of Procedure, rules and forms of the NAF may be obtained by calling 1-800-474-2371, or by visiting NAF's Web site at [www.narbitration.com](http://www.narbitration.com). All claims may be filed at any NAF office or at Box 50101, Minneapolis, MN, 55405.

Any arbitration which you attend will take place at a location within the federal judicial district that includes your billing address at the time the claim is filed. We will advance either all or part of the fees on your behalf to the NAF and the arbitrator if you send us a written request. The arbitrator will decide whether you, us or any other party will ultimately be responsible for those fees. You agree to return the amount of any advanced fees as finally allocated by the arbitrator. The arbitrator shall apply relevant substantive law and applicable statutes of limitation and shall provide written, reasoned findings of fact and conclusions of law.

This arbitration section of this Agreement is made pursuant to a transaction involving interstate commerce and shall be governed by the Federal Arbitration Act, 9 U.S.C. Sections 1, et. seq. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction. This arbitration section shall survive repayment of your loan or extension of credit and termination of your Account. If any portion of this arbitration section is deemed invalid or unenforceable, it shall not invalidate the remaining portions of this arbitration section. This arbitration section shall issue to the benefit of and be binding on each of the persons and entities mentioned in this section.

YOU UNDERSTAND AND AGREE, AND WE UNDERSTAND AND AGREE, THAT BECAUSE OF THIS ARBITRATION CLAUSE NEITHER YOU NOR WE WILL HAVE THE RIGHT TO GO TO COURT EXCEPT AS PROVIDED ABOVE OR TO HAVE A JURY TRIAL, OR TO PARTICIPATE AS A REPRESENTATIVE OR MEMBER OF ANY CLASS OF CLAIMANTS PERTAINING TO ANY CLAIM.

Section 23. **CHANGE OF TERMS.** We may, at any time and subject to applicable law:

- Change any Credit Limit applicable to the Account;
- Change any term or condition of this Agreement relating to your Account, including the Annual Percentage Rate applicable to outstanding and future balances, and the fees or other charges applicable to the Account; and
- Add any new term or condition to this Agreement relating to your Account.

Our right to change or add terms or conditions to this Agreement applies both to financial terms, such as Finance Charges and fees, and to non-financial terms, such as our enforcement rights and other contractual provisions. We may apply any changed or new terms or conditions to any current and/or future balances created after that date. We will send you a written notice of any such change(s) or addition(s) as required by law.

Section 24. **TERMINATION.** You may terminate this Account at any time by paying all sums due under this Agreement and destroying all cards issued on the Account. We may, at any time without prior notice to you, terminate this Agreement or terminate your right to make future purchases or other transactions on the Account. If we terminate your Account, you will immediately stop using the Account and agree to destroy all cards issued on the Account. Our termination of the Account does not affect: (a) the terms of this Agreement as to outstanding balances, including changes or amendments by us from time to time after termination, which remain in effect until the entire Account balance is paid in full; or (b) your liability for payment of amounts owed on the Account according to the terms of this Agreement including as it may be amended.

Section 25. **YOUR NOTICE OF CHANGES.** You will promptly inform us if you change your name, residence or place of employment or if there is a material adverse change in your financial condition. We may and will continue to send Account Statements and other notices to the last address we maintained on the Account until you notify us of any change. If the Account is a joint Account, each accountholder appoints the other(s) as agent(s) to designate the address to which the Account Statement (and any other notices) may be sent.

Section 26. **ASSIGNMENT.** You understand that the Account or any interest, balance or amount owed under the Account may be sold, assigned or transferred by us without notice to you. Any purchaser, assignee or transferee is entitled to the benefits of this Agreement (including any security interest existing under it). You may not sell, transfer or assign any of your rights or obligations under this Agreement.

Section 27. **FOREIGN TRANSACTIONS.** If you use the Account in a currency other than U.S. dollars, we or our affiliates will convert the charge into a U.S. dollar amount. The currency conversion rate used to determine the transaction amount will be the currency conversion rate selected by us on the date the transaction is processed for the conversion of such foreign transactions and may differ from the transaction date or transaction posting date.

Section 28. **OTHER SERVICES.** From time to time, third parties may offer additional features, services and enhancements related to the Account. We are not liable for these, and they are the sole responsibility of those third parties. You agree to hold us harmless from any claims, actions or damages resulting from the use of those features, enhancements or services. If you purchase credit or other types of insurance, you understand that you will receive terms and conditions from the insurer and you understand that the cost of such insurance may be

based upon the state where you resided or listed as your credit application when you originally applied for the insurance and that these costs may not change even if you move. You will not be liable for any insurance charges until you receive the insurance terms and conditions and you may cancel your coverage at any time. Insurance may be cancelled if you are in default and may be reinstated when your Account becomes current or is no longer in default.

Section 29. **GOVERNING LAW.** This Agreement and your Account will be governed by and interpreted in accordance with the laws of the United States and, to the extent governed by state law, the laws of the State of Arizona, regardless of where you live or where you use the Account. This Agreement is entered into in Arizona.

Section 30. **ENFORCEABILITY.** If any term or provision of this Agreement is found to be unenforceable, it will not make any other term or provision unenforceable. If there is any conflict between any term of this Agreement and applicable law, this Agreement will be considered changed to the extent necessary to comply with the law.

Section 31. **SPANISH LANGUAGE TRANSLATION.** As a customer service, we will provide you with a copy of this Agreement in Spanish upon your request. To obtain such a copy, you may write to us at P.O. Box 818014, Cleveland, OH, 44181-8014, or call us at 1-800-917-7700, and request a Spanish language copy of this Agreement.

Como un servicio a nuestros clientes, le proporcionamos una copia de este Acuerdo en español si usted así lo solicita. Para obtener dicha copia, puede escribirnos al P.O. Box 818014, Cleveland, OH, 44181-8014, o llamarnos al 1-800-917-7700, y solicitar una versión en español de este Acuerdo.

Section 32. **AGREEMENT.** This Agreement consists of this document, any other pages or materials that may be provided to you in the same envelope as this document that are clearly labeled to show that they relate to this document, and any written notices (including changes or additions to the terms or conditions of this Agreement) which may be provided to you from time to time.

**STATEMENT OF CREDIT BILLING RIGHTS (KEEP THIS NOTICE FOR FUTURE USE)**

This notice contains important information about your rights and our responsibilities under the Fair Credit Billing Act.

**NOTIFY US IN CASE OF ERRORS OR QUESTIONS ABOUT YOUR BILL.**

If you think your bill is wrong, or if you need more information about a transaction on your bill, write us (on a separate sheet) at the address listed on your bill when it says "Mail Billing Error Notices to." Write to us as soon as possible. We must hear from you no later than 60 days after we sent you the first bill on which the error or problem appeared. You can telephone us, but doing so will not preserve your rights.

In your letter, give us the following information:

- Your name and Account number.
- The dollar amount of the suspected error.
- Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are not sure about.

If you have authorized us to pay your credit card bill automatically from your savings or checking account, you can stop the payment on any amount you think is wrong. To stop the payment your letter must reach us three business days before the automatic payment is scheduled to occur.

**YOUR RIGHTS AND OUR RESPONSIBILITIES AFTER WE  
RECEIVE YOUR WRITTEN NOTICE**

We must acknowledge your letter within 30 days, unless we have corrected the error by then. Within 90 days, we must either correct the error or explain why we believe the bill was correct.

After we receive your letter, we cannot try to collect any amount you question, or report you as delinquent. We can continue to bill you for the amount you question, including finance charges, and we can apply any unpaid amount against your Credit Limit, if one is assigned to the Account. You do not have to pay any questioned amount while we are investigating; but you are still obligated to pay the parts of your bill that are not in question.

If we find that we made a mistake on your bill, you will not have to pay any finance charges related to any questioned amount. If we didn't make a mistake, you may have to pay finance charges, and you will have to make up any missed payments on the questioned amount. In either case, we will send you a statement of the amount you owe and the date that it is due.

If you fail to pay the amount that we think you owe, we may report you as delinquent. However, if our explanation does not satisfy you and you write to us within ten days telling us that you still refuse to pay, we must tell anyone we report you to that you have a question about your bill. And, we must tell you the name of anyone we reported you to. We must tell anyone we report you to that the matter has been settled between us when it finally is.

If we don't follow these rules, we can't collect the first \$50 of the questioned amount, even if your bill was correct.

**SPECIAL RULE FOR CREDIT CARD PURCHASES**

If you have a problem with the quality of property or services that you purchased with a credit card, and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the remaining amount due on the property or services. There are two limitations on this right:

- (a) You must have made the purchase in your home state or, if not within your home state within 100 miles of your current mailing address; and
- (b) The purchase price must have been more than \$50.

These limitations do not apply if we own or operate the merchant, or if we mailed you the advertisement for the property or services.

**NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS  
SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD  
ASSERT AGAINST THE SELLER OF THE GOODS OR SERVICES  
OBTAINED WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER  
SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.**



# Exhibit 3