

**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 agree to use your Account only for personal, family or household purposes.

Section 1. DEFINITIONS; ACCEPTANCE. In this Agreement (a) the words "you", "your", "yours" and "accountholder" mean any person named on the credit application or acceptance certificate as an accountholder, applicant, or co-applicant and any person in whose name an account has been opened; (b) "Sears" means Sears, Roebuck and Co., its participating affiliates and licensees, and participating entities that accept the Sears Card™; (c) "External" purchase or transaction means any purchase or transaction involving a non-Sears entity; (d) the words "we", "us" and "our" mean Sears National Bank (an affiliate of Sears) or any subsequent holder of the Account or any balances arising under the Account or any transfer of your Account authorized by us; and (e) "Card" means a credit card issued by Sears National Bank for use with the Account.

By keeping or signing the Card, or by using the Card or 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.

Section 2. LOANS AND LIABILITY.

- (a) **Loans.** You authorize us to make loans and extend credit to you to pay for transactions of several types: (1) purchases of goods and services made using the Card or the Account; (2) cash access ("Cash Access") transactions, including cash obtained from financial institutions, automated teller machines, or otherwise through use of the Card or Account, and including transactions made through the use of convenience checks ("Convenience Checks") to access your Account and quasi-cash transactions with a merchant or service provider identified by us, but excluding balance transfer transactions; and (3) balance transfer transactions whether made using special balance transfer forms or otherwise as may be authorized, but excluding those made using Convenience Checks. Balance transfer transactions and Cash Access transactions may not be available until the Fall or Winter of 2001. Convenience Checks may not be used to pay your bill with us. All transactions are subject to our approval. You may be required to sign a sales slip or other written authorization for transactions. You agree that your authorization, authorization, 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 whom you receive a benefit. By keeping or signing the Card, or by using the Card or Account, every person who uses the Card or Account is liable for that person's own use of the Card and Account according to the terms of this Agreement. By keeping or signing the Card, or by using the Card or Account each Authorized User agrees that the terms and conditions of this Agreement apply to his or her use of the Account. 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. The delivery of notices or Account Statements (see Section 3 of this Agreement) to any accountholder will constitute delivery to all accountholders. We may rely on instructions given by you and will not be liable to any accountholder or other person 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 or entity 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 billing cycle, where there is purchase activity on the Account, there is a balance of \$1.00 or more, or a Finance Charge is imposed unless we deem your Account uncollectible or delinquency collection proceedings have been instituted against you. The Account Statement (including the reverse side) contains important information and should be carefully read and reviewed each time it is received.

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 retrieve 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. You and each Authorized User grant us a security interest in any merchandise purchased on the Account from Sears 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) we 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.

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 tell 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 oral notice concerning loss or theft, we may ask you to confirm it in writing.

- (c) **Liability for Unauthorized Use.** You will not be liable for unauthorized use of your Account if: (1) you have exercised reasonable care in safeguarding the Card; (2) you have notified us of the loss, theft, or possible unauthorized use; (3) you have not reported two or more incidents of unauthorized use in the immediately preceding twelve (12) month period; and (4) your Account is in good standing. If you have not complied with any of these conditions you may be liable for unauthorized use of your Account for an amount not to exceed \$50.

Section 5. CREDIT LINE. If a credit line, including a Cash Access line ("Credit Line"), is not currently assigned to your Account we may assign one at any time. We may identify the Credit Line when your Account is opened or on any Account Statement. We may increase, decrease, suspend or terminate a Credit Line at any time without notice to you and without affecting your obligations (including payment) under this Agreement. Your entire Credit Line may be used for purchases of goods or services. A portion of your Credit Line may be disclosed in your Account Statement as available for Cash Access. If a Credit Line 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 Line established by us. An overpayment or credit balance will not increase the Credit Line. We may authorize purchases or transactions that exceed a Credit Line. You agree to be responsible for all charges made on the Account whether or not they exceed your Credit Line.

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 from Sears, 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. We, may, at our sole discretion, elect not to take a security interest in a particular item of merchandise purchased from an entity, other than Sears, Roebuck and Co., its affiliates and businesses, that accept the Sears Card; however, no such election shall affect our right to take and enforce a security interest in any other item of merchandise, constitute a waiver of any of our rights, or be deemed to establish a custom or course of dealing or performance with you. 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 rescission 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. To determine the Total Account Balance on your Account, we take the previous balance at the beginning of your billing cycle, subtract any payments or credits and add any purchases, balance transfers, Cash Access transactions, debts, other charges, fees and Finance Charges. If you do not pay the Total Account Balance on your Account in full each month by the time and in the manner specified in section 9(b) to be credited as of the Minimum Payment Due Date, you agree to pay at least the "Minimum Payment Due" shown on each Account Statement by the time and in the manner specified in section 9(b) to be credited as of the "Minimum Payment Due Date" shown on that Account Statement. You may always pay more than the required Minimum 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 and/or No Finance Charge Balances (defined in Section 10 of this Agreement). The Minimum Payment Due each billing cycle will equal the calculated minimum payment ("Minimum Payment Due"), plus: (a) any applicable insurance charges or Sears AccountCare fees assessed that billing cycle; and (b) any past due amounts. To determine the Minimum Payment Due, we take your Total Account Balance, subtract any Deferred Payment Balances and/or No Finance Charge Balances and multiply that amount by .0222 (approximately 1/45th) and round the result to the next higher whole dollar amount. However, the Minimum Payment Due will not be less than \$10.00 unless the Total Account Balance, less any Deferred Payment Balances and/or No Finance Charge Balances, is less than \$10.00 but more than \$0, in which case you must pay the Total Account Balance less any Deferred Payment Balances and/or No Finance Charge Balances.

Section 9. CREDITS AND PAYMENTS.

(a) **Refunds.** Cash refunds will not be made for goods 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 and to make all payments in Proper Form. A payment is in Proper Form if it is (a) made in U.S. dollars drawn on a federally insured depository financial institution located in the U.S. or Puerto Rico, (b) sent to the processing address specified on your Account Statement, and (c) accompanied by the remittance portion of your Account Statement. Payments in Proper Form received by us by 1:00 p.m. local time, on a business day, will be credited as of the day of receipt. Payments in Proper Form received after that time will be considered not to have been received as of that date for all purposes of this Agreement, and will instead be considered to have been received as of the next business day. Our business days are Monday through Friday, excluding federal holidays. Crediting to your Account may be delayed up to five days if payment is not in Proper Form, including if it is received at any location other than the processing address specified on your Account Statement (including payments made at Sears stores).

In addition to any applicable Finance Charges, we may charge a late payment fee 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 tendered with a restrictive endorsement or as full satisfaction of a disputed debt must be sent to our address for billing error notices, 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.** The order in which payments are applied to individual charges on your Account is determined by the timing and type of the charge. Generally, payments received will be applied in the following order: Sears Credit Protection Plan charges or Sears AccountCare fees, assessed Finance Charges, returned payment fees, previous balances, current balances, and then No Finance Charge Balances in the order in which No Finance Charge Balances occur. Payments will be applied within previous and current balances in the following order: Sears promotional balances, Sears regular balances, insurance charges, External promotional balances, Cash Access promotional balances, External regular balances, fees excluding Cash Access fees and returned payment fees, Cash Access fees, Cash Access regular balances, and then Deferred Payment Balances. Within each purchase type category, payments will be applied to charges in the order that they were made. If more than one charge in any purchase type category is made to your account on the same date, payments that are allocated to that category will be applied first to the lowest priced item(s) in that category. However, certain promotions that we may offer from time to time may provide a special method of allocating payments. Any such special allocation method will be explained in the materials relating to a particular promotion. If you take advantage of any such promotion, then we will apply payments in the manner described in the materials relating to that promotion.

(e) **Skip a Payment.** Under the Skip a Payment promotion, when offered by us, you may elect not to make the Minimum Payment Due 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 goods or services, balance transfers, or Cash Access transactions, may be billed to your Account with special promotional terms. The Finance Charges, minimum payment, application of payments, 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. Except to the extent modified by the terms of 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 unpaid balance related to the special promotion will be subject to the standard terms for Sears regular or External regular purchases (see Section 14) 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 canceled at any time you are in default under this Agreement (see Section 18). 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 that are not included in the calculation of the Minimum Payment Due and on which there are no Finance Charges assessed or payment required during the promotional period are referred to as "No Finance Charge Balances" in this Agreement.

Section 11. REWARDS PROGRAMS. From time to time, bonus points, rebates, merchandise certificates or other incentive programs may be offered by us or others in conjunction with the Account ("Rewards Programs"). These programs may include a participation fee. 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 canceled if at

any time you are in default under this Agreement. You also agree that the Rewards Program points or credits may 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 periodic rate "Finance Charges" that will apply to your Account.

Section 13. **LATE PAYMENT FEE.** If you fail to pay any Minimum Payment Due by the time, and in the manner specified in section 8(b) to be credited as of 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) **Cash Access Transaction Fee.** If you utilize Cash Access, we may charge, and you agree to pay a FINANCE CHARGE of 3% of the Cash Access transaction, but not less than \$5.00.

(b) **Convenience Check Stop Payment Fee.** If a Convenience Check is stopped at your request, we may charge, and you agree to pay a stop payment fee of \$25.00.

(c) **Return Convenience Check Fee.** If we decline to honor a Convenience Check because the amount of the check would cause the balance to exceed your Cash Access limit, you are in default (see Section 18), you did not comply with our instructions regarding the check, your Account has been closed, or your Card has expired, we may charge, and you agree to pay a return Convenience Check fee of \$25.00.

(d) **Balance Transfer Fee.** If you utilize a balance transfer, we may charge, and you agree to pay a FINANCE CHARGE of 3% of the amount of the transfer, but not less than \$5.00.

(e) **Collection Fees.** If you are in default and fail to pay what you owe us, we may charge you reasonable attorney's fees, collection costs (including expenses incurred in realizing 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.

(f) **Service Fee.** We reserve the right to charge a service fee of \$3.00 per item, 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 billing errors).

PHONE CALLS, CREDIT INVESTIGATION REPORTING

Section 16. **PHONE CALLS.** We and our services or agents may contact you by telephone or electronic means regarding the Account, including the use of an automatic dialing/announcing device. We and our services or agents may listen to and record any phone conversations with you for training purposes or to evaluate the quality of service, or as otherwise permitted by law. You agree that we may contact 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 Roebuck. 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 others 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 818002, Cleveland, OH 44181-8002. 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 assume 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.

DEFAULT, TERMINATION AND OTHER

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

- We do not receive payment of any Minimum Payment Due on the Account by the time and manner specified in section 6(b) to be credited as of 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 documents 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 19. 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(a) of this Agreement, we may (subject to applicable laws, including any required 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 Line applicable to the Account; (d) change the terms of the Account and this Agreement; (e) withdraw the terms of any special promotions; (f) require

immediate payment of your entire Total Account Balance, including special promotion balances (see Section 10 of this Agreement), as accrued but unpaid Finance Charges, and all fees and other charges. Elected in this Agreement (g) sue you for what you owe and enforce any security interest granted in the merchandise purchased on the Account, consistent with the arbitration clause in Section 21; 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 (not 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 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 as permitted by law.

Section 20. FAILURE TO ENFORCE IS NOT A WAIVER. We may choose to delay or 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, making "payment in full" or leniency with other conditions, or forbearance) 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 21. ARBITRATION. Any and all claims, disputes or controversies of any nature whatsoever (whether in contract, tort, arising out of statute, or otherwise) arising out of, relating to, or in connection with (a) this Agreement; (b) any prior credit card agreement you may have had with us, Sears, or with any of their predecessors, successors, and assigns; (c) the application for and statements, disclosures, or other documents or communications relating to the Account; (d) the relationships which result from this Agreement or any prior credit card agreement, including any relationship with us or Sears; (e) the establishment, operation, handling or termination of the Account; (f) any transaction or attempted transaction relating to the Account; or (g) the validity, scope or enforceability of this arbitration section of this Agreement or any prior credit card agreement (file immediately preceding paragraph (a) through (g) shall be referred to in this section, collectively, as "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 state claims court, on an individual basis without resort to any form of class action, for claims within the scope of the jurisdiction of the small claims court.

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 any individual claims you filed in a lawsuit prior to the effective date of this Agreement, including individual claims that are later re-opened in such a lawsuit, nor to the claims of a class certified prior to the effective date of this Agreement. The arbitration section will apply to all other claims, including class claims where a class has not yet been certified, 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 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).

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 1, 2009, the Code of Procedure, rules and forms of the NAF may be obtained by calling 1-800-474-7371, or by visiting NAF's Web site at www.naf-forum.com. All claims may be filed at any NAF office or at P.O. Box 50101, Minneapolis, MN 55405. If you object to the NAF, you may propose an alternative arbitrator or arbitration organization to us. We will either accept your proposal or provide you with a list of

three qualified arbitrators or arbitration organizations from which you shall select one. 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 any fees required of you by the UAF or any alternate arbitrator or arbitration organization if you send us a written request. The arbitrator shall apply relevant substantive law and applicable statutes of limitation, honor claims of privilege recognized at law, and shall provide written, reasoned findings of fact and conclusions of law. The arbitrator may order the refund of any fees advanced by us only if the arbitrator determines that your claims or defenses were frivolous.

The arbitration section of this Agreement is made pursuant to a transaction involving interstate commerce and shall be governed by the Federal Arbitration Act, a 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 payment 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 inure to the benefit of and be binding on each of the persons and entities mentioned in this section.

YOU UNDERSTAND AND AGREE THAT, UNDER THIS AGREEMENT, IF ARBITRATION IS CHOSEN BY YOU OR US, YOU WILL NOT HAVE THE RIGHT TO GO TO COURT (EXCEPT FOR SMALL CLAIMS COURT) ON THAT CLAIM OR TO HAVE A JURY TRIAL ON THAT CLAIM. IF ARBITRATION IS CHOSEN, YOU ALSO WILL NOT BE ABLE TO PARTICIPATE AS A REPRESENTATIVE OR MEMBER OF ANY CLASS OF CLAIMANTS PERTAINING TO THAT CLAIM AND YOU WILL HAVE ONLY THOSE RIGHTS THAT ARE AVAILABLE IN ARBITRATION. THE DECISION OF THE ARBITRATOR WILL BE FINAL AND BINDING EXCEPT AS PROVIDED IN THE FEDERAL ARBITRATION ACT.

Section 22. CHANGE OF TERMS. We may, at any time and subject to applicable law:

- Change any Credit Line 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 23. 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, and with or without cause, 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 charges or amendments by us from time to time after termination, which remain in effect until the entire Total 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 24. 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 25. ASSIGNMENT. You understand that the Account or any interest,

balance or amount owed under the Account including any security interest securing such balance or amount 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 arising under it). You may not sell, transfer or assign any of your rights or obligations under this Agreement.

Section 26. 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 amount posted to your Account will be at the exchange rate determined by us for Sears transactions, using current Sears currency conversion rate procedures. Currently, the currency conversion rate is generally either a wholesale market rate or a government-mandated rate in effect on the date of conversion, increased by one percent. The currency conversion rate used on the conversion date may differ from the rate in effect on the date you used your Card or Account.

Section 27. 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 these 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 on your credit application when you originally applied for the insurance and that those 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 28. GOVERNING LAW. This Agreement and your Account will be governed by and interpreted in accordance with Federal law 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 and all credit under the agreement will be extended from Arizona.

Section 29. 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 30. 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 818002, Cleveland, OH, 44181-0002, or call us at 1-800-668-8488, and request a Spanish language copy of this Agreement.

Como un servicio a nuestros clientes, le proporcionaremos una copia de este Acuerdo en español si usted así lo solicita. Para obtener dicha copia, puede escribirnos a P.O. Box 818002, Cleveland, OH, 44181-0002, o llamarnos al 1-800-668-8488, y solicitar una versión en español de este Acuerdo.

Section 31. 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 where 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 right.

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 Line, 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 100 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.

Exhibit 4

**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 agree to use your Account only for personal, family or household purposes.

Section 1. DEFINITIONS; ACCEPTANCE. In this Agreement (a) the words "you", "your", "yours" and "accountholder" mean any person named on the credit application or acceptance certificate as an accountholder, applicant or co-applicant and any person in whose name an account has been opened; (b) "Sears" means Sears, Roebuck and Co., its participating affiliates and licensees, and participating offices that accept the Sears Card; (c) "Card" means a payment card issued by Sears National Bank for use with the Account; (d) the words "we", "us" and "our" mean Sears National Bank (an affiliate of Sears) or any subsequent holder of the Account or any business acting under the Account or any holder of your Account authorized by us; and (e) "Card" means a credit card issued by Sears National Bank for use with the Account.

By keeping or signing the Card, or by taking the Card or 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.

Section 2. LOANS AND LIABILITY.

(a) **Loans.** You authorize us to make loans and extend credit to you to pay for transactions of several types: (i) purchases of goods and services made using the Card or the Account; (ii) cash advances ("Cash Advances") transactions, including cash obtained from financial institutions, automated teller machines, or otherwise through use of the Card or Account; and (iii) transactions made through the use of convenience checks ("Convenience Checks") to access your Account and cash-cash transactions with a merchant or service provider identified by us, but excluding business transfer transactions; and (iv) business transfer transactions whether made using special business transfer forms or otherwise as may be authorized, but excluding those made using Convenience Checks. Convenience Checks may not be used to pay your bill with us. All transactions are subject to our approval. You may be required to sign a sales slip or other written authorization for transactions. 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 whom you receive a benefit. By keeping or signing the Card, or by using the Card or Account, every person who uses the Card or Account is liable for that person's own use of the Card and Account according to the terms of this Agreement. By keeping or signing the Card, or by using the Card or Account each Authorized User agrees that the terms and conditions of this Agreement apply to the use of the Card or Account. 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 legal 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. The delivery of notices or Account Statements (see Section 3 of this Agreement) to any accountholder will constitute delivery to all accountholders. We may rely on instructions given by you and will not be liable to any accountholder or other person for honoring any such instructions, if any accountholder gives us notice disavowing liability for amounts owed under this Agreement. We may close the Account.

(d) **Fiduciary Honor Card or Authority Transaction.** We are not responsible for the failure of any person or entity 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 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 unless we deem your Account uncollectible or delinquent. Collection proceedings have been instituted against you. The Account Statement (including the reverse side) contains important information and should be carefully read and reviewed each time it is received.

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 adding 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 suspend the 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. You and each Authorized User grant us a security interest in any merchandise purchased on the Account from Sears 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) we 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.

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 tell 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 change 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 oral notice concerning loss or theft, we may ask you to confirm it in writing.

(c) **Liability for Unauthorized Use.** You will not be liable for unauthorized use of your Account if: (i) you have exercised reasonable care in safeguarding the Card; (ii) you have notified us of the loss, theft, or possible unauthorized use; (iii) you have not reported two or more incidents of unauthorized use in the immediately preceding twelve (12) month period; and (iv) your Account is in good standing. If you have not complied with any of these conditions you may be liable for unauthorized use of your Account for an amount not to exceed \$50.

Section 5. CREDIT LINE. If a credit line, including a Cash Access Line ("Credit Line"), is not currently assigned to your Account we may assign one at any time. We may identify the Credit Line when your Account is opened or on any Account Statement. We may increase, decrease, suspend or terminate a Credit Line at any time without notice to you and without affecting your obligations (including payment) under this Agreement. Your entire Credit Line may be used for purchases of goods or services. A portion of your Credit Line may be disclosed in your Account Statement as available for Cash Access. If a Credit Line 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 when you make a payment before the amount posted is available for re-financing. You agree not to exceed any available Credit Line established by us. An overpayment or credit balance will not increase the Credit Line. We may authorize purchases or transactions that exceed a Credit Line. You agree to be responsible for all charges made on the Account whether or not they exceed your Credit Line.

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 from

SECURUS 2/02

Sears, in 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. We may, at our sole discretion, elect not to take a security interest in a particular item of merchandise purchased from an entity other than Sears, Roebuck and Co., its affiliates and licensees, that accepts the Sears Card; however, no such election shall affect our right to take and enforce a security interest in any other item of merchandise, constitute a waiver of any of our rights, or be deemed to establish a custom or course of dealing or performance with you. 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 reserve any right to a security interest or lien on your driving to secure this Account that may arise by operation of law or that gives rise to a right of retention 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. To determine the Total Account Balance on your Account, we take the previous balance at the beginning of your billing cycle, subtract any payments or credits and add any purchases, balance transfers, Cash Access transactions, debts, other charges, fees and Finance Charges. If you do not pay the Total Account Balance on your Account in full each month by the time and in the manner specified in section 10(a) to be credited as of the Minimum Payment Due Date, you agree to pay at least the "Minimum Payment Due" shown on each Account Statement by the time and in the manner specified in section 10(a) to be credited as of 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 and/or No Finance Charge Balances (defined in Section 10 of this Agreement). The Minimum Payment Due each billing cycle will equal the calculated minimum payment, plus: (a) any applicable insurance charges or Sears AccountCare fees assessed that billing cycle; and (b) any past due amounts. Your Minimum Payment Due each billing cycle will be the greatest of: (i) \$10.00; (ii) your Total Account Balance, minus any Deferred Payment Balances and/or No Finance Charge Balances, the result multiplied by .0222 (approximately 2.22%) then rounded to the next higher whole dollar amount; or (iii) billed Finance Charges on your Account, rounded to the next whole dollar amount, plus \$1.00. However, if your Total Account Balance, less any Deferred Payment Balances and/or No Finance Charge Balances, is less than \$10.00, your Minimum Payment Due will be your Total Account Balance, less any Deferred Payment Balances and/or No Finance Charge Balances.

Section 9. CREDITS AND PAYMENTS.

- (a) **Refunds.** Cash refunds will not be made for goods 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 and to make all payments in Proper Form. A payment is in Proper Form if it is (i) made in U.S. dollars drawn on a federally insured depository financial institution located in the U.S. or Puerto Rico, (ii) sent to the processing address specified on your Account Statement and (iii) accompanied by the remittance portion of your Account Statement. Payments in Proper Form received by us by 1:00 p.m. local time, on a business day, will be credited as of the day of receipt. Payments in Proper Form received after that time will be considered not to have been received as of that date for all purposes of this Agreement, and will instead be considered to have been received as of the next business day. Our business days are Monday through Friday, excluding federal holidays. Crediting to your Account may be delayed up to five days if payment is not in Proper Form, including if it is received at any location other than the processing address specified on your Account Statement (including payments made at Sears stores).

In addition to any applicable Finance Charges, we may charge a late payment fee 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 Line, 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 tendered with a restrictive endorsement or a full satisfaction of a disputed debt must be sent to our address for billing error notices, 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.** The order in which payments are applied to individual transactions on your Account is determined by the timing and type of charge. Generally, payments received will be applied in the following order: Sears Credit Protection Plan transactions or Sears AccountCare fees, billed Finance Charges, returned payment fees, previous balances, current balances, Deferred Payment Balances in the order in which Deferred Payment Balances expire and then No Finance Charge Balances in the order in which No Finance Charge Balances expire. Payments will be applied within payment and current balances in the following order: Sears promotional balances, Old Balances, Sears regular balances, insurance charges, External promotional balances, Cash Access promotional balances, External regular balances, fees including Cash Access fees and returned payment fees, Cash Access fees, and then Cash Access regular balances. Within each purchase type category, payments will be applied to charges in the order that they were made. If more than one charge in any purchase type category is made to your account on the same date, payments that are allocated to that category will be applied first to the lowest priced item(s) in that category. However, certain promotions that we may offer from time to time may provide a special method of allocating payments. Any such special allocation method will be explained in the materials relating to a particular promotion. If you take advantage of any such promotion, then we will apply payments in the manner described in the materials relating to that promotion.
- (e) **Skip a Payment.** Under the Skip a Payment promotion, when offered by us, you may elect not to make the Minimum Payment Due 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 goods or services, balance transfers, or Cash Access transactions, may be billed to your Account with special promotional terms. The Finance Charges, minimum payment, application of payments 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 in any special promotion, except when changed by the special promotion. Except to the extent modified by the terms of 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 unpaid balance related to the special promotion will be subject to the standard terms for Sears regular purchases, External regular purchases or Cash Access transactions (see Section 12) when the promotional period ends. We are not required to give you advance notice before running 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 canceled if at any time you are in default under this Agreement (see Section 16). 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 that are not included in the calculation of the Minimum Payment Due and are on which there are no Finance Charges assessed or payment required during the promotional period are referred to as "No Finance Charge Balances" in this Agreement.

Section 11. REWARDS PROGRAMS. From time to time, bonus point, rebate, merchandise certificate or other incentive programs may be offered by us or others in conjunction with the Account ("Rewards Programs"). These programs may include a participation fee. You agree that a Rewards Program only applies

during the period specified by us for the Rewards program, and only for the transactions specified. Rewards Program participation may be canceled if at any time you are in default under this Agreement. You also agree that the Rewards Program points or credits may 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 periodic rate "Finance Charges" that will apply to your account.

Section 13. **LATE PAYMENT FEE.** If you fail to pay any Minimum Payment Due by the time and in the manner specified in section 9(b) to be credited as of its Minimum Payment Due Date, we may charge, and you agree to pay, a late payment fee of \$20.00 if your balance is \$1,000.00 or greater, \$25.00 if your balance is \$500.00 to \$999.99, \$10.00 if your balance is less than \$500.00.

Section 14. **RETURNED PAYMENT FEE.** If you make a payment, including an electronic payment, that is not honored or is rejected in whole or in part, 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) **Cash Access Transaction Fee.** If you utilize Cash Access or Balance Transfer, we may charge, and you agree to pay a **FINANCE CHARGE** of 3% of the Cash Access or Balance Transfer transaction, but not less than \$5.00.

(b) **Convenience Check Stop Payment Fee.** If a Convenience Check is stopped at your request, we may charge, and you agree to pay, a stop payment fee of \$25.00.

(c) **Return Convenience Check Fee.** If we decline to honor a Convenience Check because the amount of the check would cause the balance to exceed your Cash Access limit, you are in default (see Section 16), you did not comply with our instructions regarding the check, your Account has been closed, or your Card has expired, we may charge, and you agree to pay, a return Convenience Check fee of \$25.00.

(d) **Collection Fees.** If you are in default and fail to pay what you owe us, we may charge you reasonable attorney's fees, collection costs (including expenses incurred in reaching on a security interest) and court costs if permitted by applicable law. Reasonable attorney's fees will be calculated to be 25% 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.

(e) **Service Fee.** We reserve the right to charge a service fee of \$3.00 per item, to the extent permitted by law, for requests that you make to us, such as asking for copies of sales slips or providing either documentation regarding your Account (either then in connection with being closed).

PHONE CALLS, CREDIT INVESTIGATION REPORTING

Section 16. **PHONE CALLS.** We and our service or agents may contact you by telephone or electronic means regarding the Account, including the use of an automatic dialing/recording 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, or as otherwise permitted by law. You agree that we may contact 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 818002, Cleveland, OH, 44181-8002. 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 misuse 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.

DEFAULT, TERMINATION AND OTHER

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

- We do not receive payment of any Minimum Payment Due on the Account by the time and manner specified in section 5(b) to be credited as of 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 19. 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(c) of this Agreement, we may (subject to applicable laws, including any required 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 Line 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), of account 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, consistent with the arbitration clause in Section 21; 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 that apply to those persons. If we (including our special repossession 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 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 as permitted by law.

Section 20. FAILURE TO ENFORCE IS NOT A WAIVER. We may choose to delay or not to enforce any term in this Agreement (including rules 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 payments in full or tenders 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 21. ARBITRATION. Any and all claims, disputes or controversies of any nature whatsoever (whether in contract, tort, arising out of statute, or otherwise) arising out of, relating to, or in connection with: (a) this Agreement; (b) any prior credit card agreement you may have had with us, Sears, or with any of their predecessors, successors and assigns; (c) the application for and statements, disclosures, or other documents or communications relating to the Account; (d) the relationships which result from this Agreement or any prior credit card agreement, including any relationship with us or Sears; (e) the establishment, operation, handling or termination of the Account; (f) any transaction or attempted transaction relating to the Account; or (g) the validity, scope or enforceability of this arbitration section or this Agreement or any prior credit card agreement (the immediately preceding subsections (a) through (g) shall be referred to in this section, collectively, as "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 the jurisdiction of the small claims court.

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 10 years experience in the practice of law. This arbitration section will not apply to any individual claims you filed in a lawsuit prior to the effective date of this Agreement, including individual claims that are later asserted in such a lawsuit, nor to the claims of a class certified prior to the effective date of this Agreement. The 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.

Arbitrations shall be administered by one of the following three arbitration firms: American Arbitration Association, JAMS, and National Arbitration Forum in accordance with their respective rules and procedures in effect at the time the claim is filed. You may obtain copies of the current rules of each of the three arbitration firms and forms and instructions for initiating an arbitration by contacting them as follows:

American Arbitration Association (Web site: www.adr.com)
233 Madison Avenue, Floor 10
New York, NY 10017-4605

JALIS (web site: www.jalisp.com)
1920 Main Street, Suite 303
Irvine, CA 92610

National Arbitration Forum (web site: www.national-arbitration.com)
P.O. Box 30181
Minneapolis, MN 55403

Any arbitration that you attend will be held at a place chosen by the arbitration firm in the same city as the U.S. District Court closest to your then-current billing address, or at some other place to which you and we agree in writing.

Whoever files the arbitration pays the initial filing fee. If we file, we pay; if you file, you pay, unless you get a fee waiver under the applicable rules of the arbitration firm. If you have paid the initial filing fee and you prevail, we will reimburse you for that fee. If there is a hearing, we will pay any fees of the arbitrator and arbitration firm for the first day of that hearing. All other fees will be allocated as provided by the rules of the arbitration firm and applicable law. However, we will advance or reimburse your fees if the arbitration firm or arbitrator determines there is good reason for us to do so, or if you ask us in writing and we determine that there is a good reason for doing so. Each party will bear the expense of that party's attorneys, experts, and witnesses, and other expenses, regardless of which party prevails, but a party may recover any or all expenses from another party if the arbitrator, applying applicable law so determines.

The arbitrator shall apply relevant substantive law and applicable statutes of limitation, honor claims of privilege recognized at law, and shall provide written, reasoned findings of fact and conclusions of law.

The 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 payment 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 inure to the benefit of and be binding on each of the parties and entities mentioned in this section.

YOU UNDERSTAND AND AGREE THAT UNDER THIS AGREEMENT, IF ARBITRATION IS CHOSEN BY YOU OR US, YOU WILL NOT HAVE THE RIGHT TO GO TO COURT (EXCEPT FOR SMALL CLAIMS COURT) ON THAT CLAIM OR TO HAVE A JURY TRIAL ON THAT CLAIM. IF ARBITRATION IS CHOSEN, YOU ALSO WILL NOT BE ABLE TO PARTICIPATE AS A REPRESENTATIVE OR MEMBER OF ANY CLASS OF CLAIMANTS PERTAINING TO THAT CLAIM AND YOU WILL HAVE ONLY THOSE RIGHTS THAT ARE AVAILABLE IN ARBITRATION. THE DECISION OF THE ARBITRATOR WILL BE FINAL AND BINDING EXCEPT AS PROVIDED IN THE FEDERAL ARBITRATION ACT.

Section 22. CHANGE OF TERMS. We may, at any time and subject to applicable law:

- Change any Credit Line 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 changes 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 23. 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, and with or without

cause, 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 charges or assessments by us from time to time, after termination, which remain in effect until the entire Your 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 24. 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 25. ASSIGNMENT. You understand that the Account or any interest, balance or amount owed under the Account including any security interest securing loan balances or amount may be sold, assigned or transferred by us without notice to you. Any purchase, assignee or transferee is entitled to the benefits of this Agreement (including any security interest arising under it). You may not sell, transfer or assign any of your rights or obligations under this Agreement.

Section 26. FOREIGN TRANSACTIONS. If you use the Account in a currency other than U.S. dollars, we, our affiliates will convert the charge into a U.S. dollar amount. The amount posted to your Account will be at the exchange rate determined by us for foreign transactions, using current Bank currency conversion rate procedures. Currently, the currency conversion rate is generally either a wholesale market rate or a government-regulated rate in effect on the date of conversion, increased by one percent. The currency conversion rate used on the conversion date may differ from the rate in effect on the date you used your Card or Account.

Section 27. 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 these 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 filed an your credit application when you originally applied for the insurance and that these calls 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 28. GOVERNING LAW. This Agreement and your Account will be governed by and interpreted in accordance with Federal law 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 and all credit under the agreement will be extended from Arizona.

Section 29. 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 30. 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 818002, Cleveland, OH, 44181-8002, or call us at 1-800-688-6488, 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 una copia, puede escribirnos al P.O. Box 818002, Cleveland, OH, 44181-8002, o llamarnos al 1-800-688-6488, y solicitar una versión en español de este Acuerdo.

Section 31, 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 addendums 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 where 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 Line, 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 other cases, 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 90 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.

Exhibit 5

**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 agree to use your Account only for personal, family or household purposes.

Section 1. DEFINITIONS; ACCEPTANCE. In this Agreement: (a) the words "you", "your", "yours" and "accountholder" mean any person named on the credit application or acceptance certificate as an accountholder, applicant, or co-applicant and any person in whose name an account has been opened; (b) "Sears" means Sears, Roebuck and Co. and its participating affiliates, subsidiaries and licensees; (c) "External" purchase or transaction means any purchase or transaction involving a non-Sears entity; (d) the words "we", "us" and "our" mean Sears National Bank (an affiliate of Sears) or any subsequent holder of the Account or any balances arising under the Account or any service of your Account authorized by us; and (e) "Card" means a credit card issued by Sears National Bank for use with the Account.

By keeping or signing the Card, or by using the Card or 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.

Section 2. LOANS AND LIABILITY.

(a) **Loans.** You authorize us to make loans and extend credit to you to pay for transactions of several types: (1) purchases of goods and services made using the Card or the Account; (2) cash access ("Cash Access") transactions, or otherwise through use of the Card or Account, and including transactions made through the use of convenience checks ("Convenience Checks") to access your Account, but excluding balance transfer transactions; and (3) balance transfer transactions whether made using special balance transfer forms or otherwise as may be authorized, but excluding those made using Convenience Checks. Convenience Checks may not be used to pay your bill with us. All transactions are subject to our approval. You may be required to sign a sales slip or other written authorization for transactions. You agree that your authorization, authorization, 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 whom you receive a benefit. By keeping or signing the Card, or by using the Card or Account, every person who uses the Card or Account is liable for that person's own use of the Card and Account according to the terms of this Agreement. By keeping or signing the Card, or by using the Card or Account, each Authorized User agrees that the terms and conditions of this Agreement apply to his or her use of the Account. 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. The delivery of notices or Account Statements (see Section 3 of this Agreement) to any accountholder will constitute delivery to all accountholders. We may rely on instructions given by you and will not be liable to any accountholder or other person 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 or entity 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.

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Section 3. ACCOUNT STATEMENT. We will send you an account statement ("Account Statement") for each billing cycle where there is purchases or Cash Access transaction activity on the Account. There is a balance of \$1.00 or more, or a Finance Charge is imposed unless we deem your Account uncollectible or delinquency collection proceedings have been instituted against you. The Account Statement (including the reverse side) contains important information and should be carefully read and retained each time it is received.

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 return 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. You and each Authorized User grant us a security interest in any merchandise purchased on the Account from Sears in accordance with Section 8 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) we 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.

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 tell 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 oral notice concerning loss or theft, we may ask you to confirm it in writing.

(c) **Liability for Unauthorized Use.** You will not be liable for unauthorized use of your Account if: (i) you have exercised reasonable care in safeguarding the Card; (ii) you have notified us of the loss, theft, or possible unauthorized use; (iii) you have not reported two or more incidents of unauthorized use in the immediately preceding twelve (12) month period; and (iv) your Account is in good standing. If you have not complied with any of these conditions you may be liable for unauthorized use of your Account for an amount not to exceed \$50.

Section 5. CREDIT LINE. If a credit line, including a Cash Access line ("Credit Line"), is not currently assigned to your Account we may assign one at any time. We may identify the Credit Line when your Account is opened or on any Account Statement. We may increase, decrease, suspend or terminate a Credit Line at any time without notice to you and without affecting your obligations (including payment) under this Agreement. Your entire Credit Line may be used for purchases of goods or services. A portion of your Credit Line may be disclosed in your Account Statement as available for Cash Access. If a Credit Line 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 amount repaid is available for re-borrowing. You agree not to exceed any available Credit Line established by us. An overpayment or credit balance will not increase the Credit Line. We may authorize purchases or transactions that exceed a Credit Line. You agree to be responsible for all charges made on the Account whether or not they exceed your Credit Line.

PAYMENTS

Section 6. PAYMENT OPTIONS. To determine the Total Account Balance on your Account, we take the previous balance at the beginning of your billing cycle, subtract any payments or credits and add any purchases, balance transfers, Cash Access transactions, debts, other charges, fees and Finance Charges. If you do not pay the Total Account Balance on your Account in full each month by the time and in the manner specified in Section 8(b) it will be credited as of the

Minimum Payment Due Date, you agree to pay at least the "Minimum Payment Due" shown on each Account Statement by the time and in the manner specified in Section 8(a). To be credited as of 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. Any amount paid in excess of the Minimum Payment Due may be applied to future Minimum Payment Due amounts. If as a result of any amount paid in excess of the Minimum Payment Due we do not require a Minimum Payment Due on a future Account Statement, you still must pay any insurance charges or AccountCare fees due and Finance Charges will continue to accrue.

Section 7. 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 and/or No Finance Charge Balances (defined in Section 9 of this Agreement). The Minimum Payment Due each billing cycle will equal the calculated minimum payment, plus: (a) any applicable insurance charges or Sears AccountCare fees assessed that billing cycle; and (b) any past due amount. Your Minimum Payment Due each billing cycle will be the greatest of: (i) \$10.00; (ii) your Total Account Balance, minus any Deferred Payment Balances and/or No Finance Charge Balances, the result multiplied by 0.0222 (approximately 2.22%) then rounded in the next higher whole dollar amount; or (iii) billed Finance Charges on your Account, rounded to the next whole dollar amount, plus \$1.00. However, if your Total Account Balance, less any Deferred Payment Balances and/or No Finance Charge Balances, is less than \$10.00, your Minimum Payment Due will be your Total Account Balance, less any Deferred Payment Balances and/or No Finance Charge Balances.

Section 8. CREDITS AND PAYMENTS.

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

(b) **Method of Payment.** You agree to repay all amounts owed on the Account and to make all payments in Proper Form. A payment is in Proper Form if it is (i) made in U.S. dollars drawn on a federally insured depository financial institution located in the U.S. or Puerto Rico, (ii) sent to the processing address specified on your Account Statement, and (iii) accompanied by the remittance portion of your Account Statement. We may at our discretion accept payments drawn on funds on deposit outside of the United States or Puerto Rico. If we do, we will select the effective currency conversion rate at our discretion and credit your Account in U.S. dollars after deducting any fees or costs incurred in connection with processing your payment. Payments in Proper Form received by us by 4:00 p.m. local time, on a business day, will be credited as of the day of receipt. Payments in Proper Form received after that time will be considered not to have been received as of that date for all purposes of this Agreement, and will instead be considered to have been received as of the next business day. Generally, we will process your check through an automated imaging process that will result in your original check not being returned to your bank. Our business days are Monday through Friday, including federal holidays. Crediting to your Account may be delayed up to five days if payment is not in Proper Form, including if it is received at any location other than the processing address specified on your Account Statement (including payments made at Sears stores, made by electronic processes or online).

In addition to any applicable Finance Charges, we may charge a Late Payment Fee 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 Line, 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 tendered with a restrictive endorsement or as full satisfaction of a disputed debt must be sent to our address for billing error notices, 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.** Generally, payments received will be applied in the following order: Sears Credit Protection Plan transactions or Sears AccountCare fees, billed Finance Charges, Returned Payment Fees, previous balances, current balances, Deferred Payment Balances in the

order in which Deferred Payment Balances accrue, and then No Finance Charge Balances in the order in which No Finance Charge Balances accrue. Payments will be applied within previous and current balances in the following order: Sears promotional balances, Old Balances, Sears regular balances, insurance charges, External promotional balances, Cash promotional balances, External regular balances, fees excluding Cash Access fees and Returned Payment Fees, Cash Access fees and then Cash Access regular balances. Within each of these balance categories, payments will be applied in the order we determine in our sole discretion. You agree that we have this discretion and that we may exercise it to suit our own convenience and interests, without further notice to you. Depending on the circumstances and usage of the Account, and our exercise of discretion, this will result in cases in which payments are allocated to balances with longer APRs before balances with higher APRs, and/or to balances with longer promotional periods before balances with shorter promotional periods.

(e) **Stop a Payment.** Under the Stop a Payment provision, when offered by us, you may elect not to make the Minimum Payment Due for the designated billing cycle. However, Finance Charges will continue to accrue during the period of payment default and you still must pay any insurance charges or AccountCare fees due.

SPECIAL PROGRAMS

Section 9. SPECIAL PROMOTIONS. From time to time, we may offer special promotions, under which purchases of goods or services, balance transfers, or Cash Access transactions, may be billed to your Account with special promotional terms. The Finance Charges, minimum payment, application of payments, 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. Except to the extent modified by the terms of 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 unpaid balance related to the special promotion will be subject to the standard terms for Sears regular purchases, External regular purchases, or Cash Access transactions (see Section 11) when the promotional period ends. We are not required to give you advance notice before raising 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 12). 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. Deferred Payment Balances accrue Finance Charges during the promotional period. Special promotion balances that are not included in the calculation of the Minimum Payment Due and on which there are no Finance Charges assessed or payment required during the promotional period are referred to as "No Finance Charge Balances" in this Agreement.

Section 10. REWARDS PROGRAMS. From time to time, bonus point, rebate, merchandise certificate or other incentive programs may be offered by us or others in conjunction with the Account ("Rewards Programs"). These programs may include a participation fee. 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 may 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 11. FINANCE CHARGES. See the enclosed explanation of periodic rate "Finance Charges" that will apply to your account.

Section 12. LATE PAYMENT FEE. If you fail to pay any Minimum Payment Due by the time and in the manner specified in Section 8(a) to be credited as of the Minimum Payment Due Date, we may charge, and you agree to pay, a

Late Payment Fee of \$35.00 if your balance is \$1,000.00 or greater, \$25.00 if your balance is \$50.00 to \$999.99, \$10.00 if your balance is less than \$50.00.

Section 12. 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 14. OTHER FEES.

- (a) **Cash Access Transaction Fee.** If you utilize Cash Access or balance transfers, we may charge, and you agree to pay, a FINANCE CHARGE of 3% of the Cash Access or balance transfer transaction, but not less than \$5.00.
- (b) **Convenience Check Stop Payment Fee.** If a Convenience Check is stopped at your request, we may charge, and you agree to pay, a stop payment fee of \$25.00.
- (c) **Returned Convenience Check Fee.** If we decline to honor a Convenience Check because the amount of the check would cause the balance to exceed your Cash Access line, you are in default (see Section 17), you did not comply with our instructions regarding the check, your Account has been closed, or your Card has expired, we may charge, and you agree to pay, a Returned Convenience Check Fee of \$25.00.
- (d) **Collection Fees.** If you are in default and fail to pay what you owe us, we may charge you reasonable attorney's fees, collection costs and court costs if permitted by applicable law. Reasonable attorney's fees will be considered to be 25% 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.
- (e) **Service Fee.** We reserve the right to charge a service fee of \$3.00 per item, to the extent permitted by law, for requests that you make to us, such as asking for copies of error slips or providing other documentation regarding your Account (other than in connection with billing errors).
- (f) **Phone Pay Fee.** We may charge, and you agree to pay, a fee in the amount of \$10.00 in the event that we offer and each time you use the ability to make payments on your Account by telephone.

PHONE CALLS, CREDIT INVESTIGATION REPORTING

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

Section 16. 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 purpose 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 816002, Cleveland, OH 44181-8002. 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

will 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 located other identifying characteristics about you including, but not limited to, your personal identification number, Account number or social security number.

DEFAULT, TERMINATION AND OTHER

Section 17. EVENTS OF DEFAULT. You will be in default of this Agreement if any of the following events occurs:

- We do not receive payment of any Minimum Payment Due on the Account by the time and manner specified in Section 8(b) to be credited as of 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 connection 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 commence litigation against you under the federal bankruptcy code or any state bankruptcy 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 unwell 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 18. OUR REMEDIES AND ENFORCEMENT. If you are in default or in the event of your death, in addition to any Finance Charge increases under Section 11(f) of this Agreement, we may subject to applicable laws, including any required 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 Line applicable to the Account; (d) change the terms of the Account and this Agreement; (e) withdraw the terms of any special promotions; (f) require immediate payment of your entire Total Account Balance, including special promotion balances (see Section 3 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 on the Account, consistent with the arbitration clause in Section 20, 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 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 as permitted by law.

Section 19. FAILURE TO ENFORCE IS NOT A WAIVER. We may choose to delay or 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 bonded 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 20. ARBITRATION. Any and all claims, disputes or controversies of any nature whatsoever (whether in contract, tort, arising out of statute, or otherwise) arising out of, relating to, or in connection with (a) this Agreement; (b) any prior credit card agreement you may have had with us, Sears, or with any of their predecessors, successors, and assigns; (c) the application for and statements, disclosures, or other documents or communications relating to the Account; (d) the relationships which result from this Agreement or any prior credit card agreement, including any relationship with us or Sears; (e) the establishment, operating, handling or termination of the Account; (f) any transaction or attempted transaction relating to the Account; or (g) the validity, scope or enforceability of this arbitration section or this Agreement or any prior credit card agreement (the immediately preceding subsections (a) through (g) shall be referred to in this section, collectively, as "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 participate in a small claims court, on an individual basis without resort to any form of class action, for claims within the scope of the jurisdiction of the small claims court.

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 commencing arbitration. The arbitrator shall be a lawyer or retired judge with not less than 10 years experience in the practice of law. This arbitration section will not apply to any individual claims you filed in a lawsuit prior to the effective date of this Agreement, including individual claims that are later asserted in such a lawsuit, nor to the claims of a class certified prior to the effective date of this Agreement. The arbitration section will apply to all other claims, including class claims where a class has not yet been certified, 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.

Arbitrations shall be administered by one of the following three arbitration firms: American Arbitration Association, JAMS, and National Arbitration Forum in accordance with their respective rules and procedures in effect at the time the claim is filed. You may obtain copies of the current rules of each of the three arbitration firms and forms and instructions for initiating an arbitration by contacting them as follows:

American Arbitration Association (web site: www.adr.org)
835 Madison Avenue, Floor 10
New York, NY 10017-4605

JAMS (web site: www.jamsadr.com)
1520 Main Street, Suite 300
Irvine, CA 92614

National Arbitration Forum (web site: www.arbitration-forum.com)
P.O. Box 50181
Minneapolis, MN 55405

Any arbitration that you attend will be held at a place chosen by the arbitration firm in the same city as the U.S. District Court closest to your then current billing address, or at some other place to which you and we agree in writing.

Whoever files the arbitration pays the initial filing fee. If we file, we pay; if you file, you pay, unless you get a fee waiver under the applicable rules of the arbitration firm. If you have paid the initial filing fee and you prevail, we will reimburse you for that fee. If there is a hearing, we will pay any fees of the arbitrator and arbitrator fee for the first day of that hearing. All other fees will be allocated as provided by the rules of the arbitration firm and applicable law. However, we will advance or reimburse your fees if the arbitration firm or arbitrator determines there is good reason for us to do so, or if you ask us in writing and we determine

that there is a good reason for doing so. Each party will bear the expense of that party's attorneys, experts, and witnesses, and other expenses, regardless of which party prevails, but a party may recover any or all expenses from another party if the arbitrator, applying applicable law, so determines.

The arbitrator shall apply relevant substantive law and applicable statutes of limitation, honor claims of privilege recognized at law, and shall provide written, reasoned findings of fact and conclusions of law.

The 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 reorganization, merger 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. The arbitration section shall inure to the benefit of and be binding on each of the persons and entities mentioned in this section.

YOU UNDERSTAND AND AGREE THAT, UNDER THIS AGREEMENT, IF ARBITRATION IS CHOSEN BY YOU OR US, YOU WILL NOT HAVE THE RIGHT TO GO TO COURT (EXCEPT FOR SMALL CLAIMS COURT) ON THAT CLAIM OR TO HAVE A JURY TRIAL ON THAT CLAIM. IF ARBITRATION IS CHOSEN, YOU ALSO WILL NOT BE ABLE TO PARTICIPATE AS A REPRESENTATIVE OR MEMBER OF ANY CLASS OF CLAIMANTS PERTAINING TO THAT CLAIM AND YOU WILL HAVE ONLY THOSE RIGHTS THAT ARE AVAILABLE IN ARBITRATION. THE DECISION OF THE ARBITRATOR WILL BE FINAL AND BINDING EXCEPT AS PROVIDED IN THE FEDERAL ARBITRATION ACT.

Section 21. CHANGE OF TERMS. We may, at any time and subject to applicable law:

- Change any Credit Line 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 22. 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, and with or without cause, 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 charges or amendments by us from time to time after termination, which remain in effect until the entire total 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 23. 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 account holder appoints the other(s) as agent(s) to designate the address to which the Account Statement (and any other notices) may be sent.

Section 24. ASSIGNMENT. You understand that the Account of any highest balance or amount owed may be sold, assigned or transferred by us without notice to you. Any purchases, assignee or transferee is entitled to the benefits of this Agreement. You may not sell, transfer or assign any of your rights or obligations under this Agreement.

Section 25. FOREIGN TRANSACTIONS. If you use the Account in a currency other than U.S. dollars, we or our advisors will convert the charge into a U.S. dollar amount. The amount posted to your Account will be at the exchange rate determined by us for Sears transactions, using current Bank currency conversion rate procedures. Currently, the currency conversion rate is generally either a wholesale market rate or a government-maintained rate in effect on the date of conversion, increased by one percent. The currency conversion rate used on the conversion date may differ from the rate in effect on the date you used your Card or Account.

Section 26. 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, losses or damages resulting from the use of these 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 lived on 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 canceled if you are in default and may be reinstated when your Account becomes current or is no longer in default.

Section 27. GOVERNING LAW. This Agreement and your Account will be governed by and interpreted in accordance with Federal law 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 and all credit under the agreement will be extended from Arizona.

Section 28. 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 29. SPANISH LANGUAGE TRANSLATION. As a customer service, we will provide you with a copy of this Agreement in Spanish upon request. To obtain such a copy, you may write to us at R.O. Box 816002, Cleveland, OH 44181-8002, 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 R.O. Box 816002, Cleveland, OH 44181-8002, o llamarnos al 1-800-917-7700, y solicitar una versión en español de este Acuerdo.

Section 30. 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, where 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 Line, 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 60 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 service.

You can manage your Account online at www.EssexCard.com.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ERIC HERSHLER, Individually and on Behalf of All Others Similarly Situated, Plaintiff, v. CITIBANK (SOUTH DAKOTA), N.A., and Does 1 through 100, Defendant.	} Case No. CV08-6363 R (JWJx) Assigned to the Hon. Manuel L. Real ORDER GRANTING CITIBANK'S MOTION TO COMPEL ARBITRATION Complaint Filed: July 31, 2008
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Plaintiff filed this action on July 31, 2008 in California state court alleging in principal part that defendant Citibank (South Dakota), N.A. ("Citibank") failed to comply with Civil Code Section 11 (relating to the effect of deadlines falling on holidays on transactions governed by California law). In the Complaint, Plaintiff alleges three Counts for: (1) violation of California Civil Code Section 11; (2) violation of the Consumers Legal Remedies Act, California Civil Code Section 1750, et seq. ("CLRA"); and (2) violation of the Unfair Competition Law, California Business & Professions Code Section 17200, et seq. (the "UCL").

[PROPOSED] ORDER

1 Citibank appeared, removed the action to federal court pursuant to 28
2 U.S.C. §§ 1331, 1332 and 1446, as amended in relevant part by the Class Action
3 Fairness Act of 2005, and filed a motion to compel arbitration and stay proceedings.
4 Plaintiff opposed the motion.

5 BACKGROUND

6 Plaintiff's credit card account with Citibank is subject to a written credit
7 card agreement (the "Card Agreement"). Plaintiff's Card Agreement provides that
8 "[the] terms and enforcement of this Agreement shall be governed by federal law and
9 the law of South Dakota, where we are located." Declaration of Cathleen Walters,
10 filed October 3, 2008 ("Walters Decl."), ¶ 5, Ex. 1, p. 10 (provision entitled
11 "Applicable Law"). In addition, the Card Agreement sent to Plaintiff prior to the
12 addition of the arbitration provision expressly authorized Citibank to change the terms
13 of the agreement by following certain specific procedures. Id. ¶ 5, Ex. 1, p. 10
14 (provision entitled "Changing this Agreement"). Pursuant to those procedures,
15 Citibank mailed a "Notice of Change in Terms Regarding Binding Arbitration to Your
16 Citibank Card Agreement" (the "Arbitration Change-in-Terms") to Plaintiff with his
17 October 2001 billing statement. Id. ¶¶ 6-7, Exs. 2, 4. The Arbitration Agreement
18 includes specific language (underlined above) that requires that any arbitration may
19 resolve only individual claims. Id. Ex. 2. The Arbitration Agreement also includes
20 terms: (i) excluding small claims court actions; (ii) allowing for the parties to choose
21 between nationally recognized arbitration firms, including the American Arbitration
22 Association and the National Arbitration Forum; and (iii) allowing for the
23 reimbursement and/or advancement of arbitration fees. Id. Ex. 2 at pp. 2-4.

24 Citibank printed the following message on Plaintiff's October 2001
25 account statement alerting him to the enclosed Arbitration Change-in-Terms:

26 PLEASE SEE THE ENCLOSED CHANGE IN TERMS
27 NOTICE FOR IMPORTANT INFORMATION ABOUT THE
28 BINDING ARBITRATION PROVISION WE ARE ADDING
TO YOUR CITIBANK CARD AGREEMENT.

1 seq.) ("FAA"), which mandates a liberal policy favoring the enforcement of
2 arbitration agreements. See Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.,
3 460 U.S. 1, 24, 103 S. Ct. 927, 74 L. Ed. 2d 765 (1983). Rather, Plaintiff argues that
4 the parties' arbitration agreement is unconscionable and unenforceable under
5 California law. This Court disagrees, and concludes that Plaintiff has not met his
6 burden to show that the arbitration agreement is invalid or does not encompass the
7 claims at issue. See Green Tree Fin. Corp.-Ala. v. Randolph, 531 U.S. 79, 92, 121 S.
8 Ct. 513, 148 L. Ed. 2d 373 (2000).

9 The Ninth Circuit's decision in Hoffman v. Citibank (South Dakota), N.A., ---
10 F.3d ---, 2008 WL 4554925 (9th Cir. Oct. 14, 2008), provides the proper framework
11 for analyzing plaintiff's arguments. Hoffman instructs that "[w]hen an agreement
12 contains a choice of law provision, California courts apply the parties' choice of law
13 unless the analytical approach articulated in § 187(2) of the Restatement (Second) of
14 Conflict of Laws ... dictates a different result." Id., at *3. Under Restatement §
15 187(2), the court must first determine "whether the chosen state has a substantial
16 relationship to the parties or their transaction, or ... whether there is any other
17 reasonable basis for the parties' choice of law." Hoffman, 2008 WL 4554925, at *3
18 (quoting Nedlloyd Lines B.V. v. Superior Court, 3 Cal. 4th 459, 11 Cal. Rptr. 2d 330,
19 834 P.2d 1148, 1152 (1992)). Plaintiff does not dispute that this first step is satisfied.
20 See Opp. at 18:1-6.

21 The second step is whether the "chosen state's law is contrary to a
22 *fundamental* policy of California." Id. (quoting Nedlloyd) (emphasis in original). "If
23 there is no such conflict, the court shall enforce the parties' choice of law." Discover
24 Bank v. Superior Court, 36 Cal. 4th 148, 174, 30 Cal. Rptr. 3d 76, ___, 113 P.3d
25 1100, 1117 (2005). On the other hand, if a conflict of fundamental public policy
26 exists, a third step then requires that the court "determine whether California has a
27 materially greater interest than the chosen state in the determination of the particular
28 issue." Hoffman, 2008 WL 4554925, at *3 (quoting Nedlloyd). As set forth below,

1 Plaintiff cannot satisfy the second and third prongs of this test and, therefore,
2 Citibank's arbitration agreement is enforceable.

3 The Hoffman Court opined that "California has a fundamental policy
4 against unconscionable class arbitration waivers." Hoffman, 2008 WL 4554925, *5.
5 Thus, according to Hoffman, "if Citibank's class arbitration waiver is unconscionable
6 under California law, enforcement of the waiver under South Dakota law would be
7 contrary to a fundamental policy of California." Id. Here, the class arbitration waiver
8 is not unconscionable under California law because Plaintiff had a meaningful choice
9 to opt out of the Arbitration Agreement. He, however, chose not to do so, thus
10 defeating any claim of procedural unconscionability. In arguing whether he had a
11 "meaningful choice" to opt out of the Arbitration Agreement, Plaintiff ignores a
12 relatively unique feature of the Arbitration Change-in-Terms. Had Plaintiff elected to
13 assert his opt-out rights, *he could have continued using his card until the end of his*
14 *membership year or the expiration date on his card, whichever came later.* Walters
15 Decl., Ex. 2. That is, he could have continued to use his card during this period and
16 litigate any claims that arose from such use. Although Plaintiff bears the burden of
17 proof on this issue, see Washington Mut. Bank v. Superior Court, 24 Cal. 4th 906,
18 917, 103 Cal. Rptr. 2d 320, 15 P.3d 1071 (2001)), plaintiff submitted no declaration
19 indicating that he lacked a meaningful opt-out right.¹

20 Even if the Arbitration Agreement were found to be unconscionable
21 under California law – thus, creating a conflict of policy per Hoffman – the inquiry
22 would not end there. Plaintiff still does not, and cannot, establish that California has a
23
24

25 ¹ Moreover, the Court notes that plaintiff is a licensed member of the California bar
26 who renegotiated the terms of his Citibank agreement after the arbitration terms had
27 been disclosed to him. Indeed, his status as a lawyer, at least under the record
28 presented here, does not make him a reasonable representative under Fed. R. Civ. P.
23 because there does not appear to be a class in the same situation that he presently is
in, particularly when he is lawyer who renegotiated part of his contract with Citibank.

1 materially greater interest than South Dakota in a determination of this issue, and the
2 contractual choice of South Dakota law therefore must be enforced.

3 Plaintiff focuses on the fact that he is a California resident, asserting
4 claims based on California law, allegedly on behalf of a California class to argue that
5 California's interest is materially greater than South Dakota's interest. Plaintiff also
6 maintains that he applied for and received his card in California, and paid his bill and
7 primarily used the card in California. See Opp. 20:6-10. These arguments are not
8 compelling.

9 To begin, the terms of credit between Plaintiff and Citibank – a national
10 bank organized under federal law – are governed by the National Bank Act, 12 U.S.C.
11 § 21 et seq., and its regulations, and not by California law. This is illustrated by
12 Plaintiff's claims in this case. Plaintiff cannot engraft a California law regarding the
13 effect of a holiday on a contractual duty to perform on a credit card transaction
14 between a national bank whose credit terms are governed by South Dakota law.
15 Federal banking regulations make clear that a national bank may lend "*without regard*
16 *to state law limitations*" that purport to govern, *inter alia*: "The terms of credit,
17 including the *schedule for repayment of principal and interest*, amortization of loans,
18 balance, *payments due*, [or] minimum payments...." 12 C.F.R. § 7.4008(d)(2)(iv)
19 (emphases added). Thus, federal law, and not state law, govern the payment schedule
20 and payment due dates of a national bank's loans. See, e.g., Rose v. Chase Bank
21 USA, 513 F.3d 1032, 1038 (9th Cir. 2008) (National Bank Act preempted California
22 law claims involving national bank's credit card loans). Moreover, to the extent that
23 state law applies, the parties' agreement is governed by South Dakota law, not
24 California law. And Plaintiff has not advanced, nor could he advance, an argument
25 that Section 11 raises a fundamental public policy of California that would require
26 rejecting application of the law chosen by the parties.

27 More generally, South Dakota, where Citibank is located, has a
28 compelling interest in applying its laws to regulate businesses operating within its

1 borders, while the bank has an equally compelling need to ensure that its transactions
2 are governed by a common set of laws. "Probably the most important function of
3 choice-of-law rules is to make the interstate and international systems work well."
4 Restatement § 6, cmt. d. Even more so than other interstate businesses, the national
5 banking system fundamentally depends on allowing national banks to operate under a
6 uniform set of laws. This policy is reflected in the extensive federal oversight of
7 national banks², as well as federal laws allowing national banks to "export" their
8 home-state interest rates so that a single state's usury laws will apply to the bank's
9 customers nationwide. See Marquette Nat'l Bank of Minneapolis v. First of Omaha
10 Serv. Corp., 439 U.S. 299, 308, 99 S. Ct. 540, 545, 58 L. Ed. 2d 534 (1978); Smiley v.
11 Citibank (South Dakota). N.A., 517 U.S. 735, 737-38, 116 S. Ct. 1730, 1732, 135 L.
12 Ed. 2d 25 (1996). As the Office of the Comptroller of the Currency ("OCC") has
13 further explained,

14 When national banks are unable to operate under uniform, consistent,
15 and predictable standards, their business suffers, which negatively
16 affects their safety and soundness. The application of multiple, often
17 unpredictable, different state or local restrictions and requirements
18 prevents them from operating in the manner authorized under Federal
19 law, is costly and burdensome, interferes with their ability to plan
20 their business and manage their risks, and subjects them to uncertain
21 liabilities and potential exposure.

19 OCC Final Rule, Bank Activities and Operations, 69 Fed. Reg. 1904, 1908 (Jan. 13,
20 2004). In light of these concerns, it would make little sense for a court to require
21 application of 50 states' laws (including various state statutes, regulations, judicial
22 decisions, and common law) on something as fundamental to the banking business as
23 which state's contract law will apply. Put differently, because preemptive federal law

24 ² See, e.g., 12 C.F.R. § 7.4008 (setting forth preemption standards for non-real estate
25 lending activities); 12 C.F.R. § 7.4009 (preemption standards for national bank
26 operations); OCC Final Rule, 69 Fed. Reg. 1904 (Jan. 13, 2004) (discussing Final
27 Rule regarding OCC preemption); Rose v. Chase Bank, N.A., 513 F.3d 1032 (9th Cir.
28 2008); American Bankers Ass'n v. Lockyer, 239 F. Supp. 2d 1000 (E.D. Cal. 2002)
(finding OCC preemption of California statute which required certain disclosures to
be placed on credit-card billing statements).

1 exclusively governs and regulates the lending operations of national banks, like
2 Citibank, California has no greater interest than a national bank's home state with
3 respect to the terms of consumer credit contracts.

4 Accordingly, the foregoing choice of law analysis compels the conclusion that
5 South Dakota law, not California law, should be applied in determining the validity of
6 the parties' arbitration agreement. Plaintiff does not dispute, and essentially concedes,
7 that Citibank's arbitration agreement is valid and enforceable under South Dakota law,
8 which is also confirmed by the Ninth Circuit in Hoffman. See Hoffman, 2008 WL
9 4554925, n.2 ("We agree with the district court's conclusion that Citibank's class
10 arbitration waiver is not procedurally unconscionable under South Dakota law and
11 therefore is enforceable if South Dakota law controls." (citations omitted)).

12 CONCLUSION

13 For the reasons set forth above, the Court GRANTS defendant Citibank's
14 motion to compel and to stay this action pending the resolution of the arbitration
15 proceedings.

16 IT IS SO ORDERED.

17
18 Dated: Dec. 19, 2008


The Honorable Manuel L. Real
United States District Court
Central District

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES -- GENERAL

Case No. CV 11-2190-VBF (FFMx)

Dated: June 10, 2011

Title: Yonis Yaqub -v- Experian Information Solutions, Inc., et al.

PRESENT: HONORABLE VALERIE BAKER FAIRBANK, U.S. DISTRICT JUDGE

Joseph Remigio
Courtroom Deputy

None Present
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

ATTORNEYS PRESENT FOR DEFENDANTS:

None Present

None Present

PROCEEDINGS (IN CHAMBERS):

COURT ORDER RE MOTION OF DEFENDANT
CITIBANK (SOUTH DAKOTA), N.A. AND HOME
DEPOT, U.S.A. INC. TO COMPEL
ARBITRATION AND STAY ACTION (DKT. 18) ;
SETTING OSC RE DISMISSAL IN LIGHT OF
ARBITRATION

Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court finds that this matter is appropriate for decision without oral argument. The hearing set on this Motion for June 20, 2011 at 1:30 p.m. is hereby vacated and the matter is taken off calendar.

I. Ruling And OSC Re Dismissal In Light Of Arbitration

The Court has received, read, and considered the Motion of Defendant Citibank (South Dakota), N.A. ("Citibank") and Home Depot, U.S.A. Inc. ("Home Depot") (collectively, "Defendants") To Compel Arbitration And Stay Action (dkt. 18), Plaintiff Yonis Yaqub's Opposition (dkt. 24), the Reply (dkt. 28), and related papers.

For reasons stated below, the Court hereby GRANTS the Motion as follows: all of the claims between plaintiff Yonis Yaqub and Citibank

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CIVIL - GEN

Initials of Deputy Clerk ire

and Home Depot in the instant action are ordered to be arbitrated on an individual basis consistent with the parties' written agreement to arbitrate.

In light of the Court's order compelling arbitration above, the Court hereby sets an Order to Show Cause why the claims against Citibank and Home Depot should not be dismissed due to contractual arbitration for June 27, 2011 at 1:30 p.m. on the non-appearance calendar. See *Sparling v. Hoffman Constr. Co., Inc.*, 864 F.2d 635, 638 (9th Cir. 1988) (court may dismiss claims subject to arbitration instead of staying). Each party should file a written response no later than June 20, 2011.

II. Background

Plaintiff alleges that he made a purchase at Home Depot on a deferred payment basis, and later discovered that Home Depot reported him late on his credit profile. Compl. ¶ 12. Plaintiff asserts that the reporting was inaccurate and that he subsequently disputed the reporting with the credit bureaus. Compl. ¶¶ 12, 17-20.

Plaintiff alleges violations of (1) the federal Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq. ("FCRA"); (2) the Rosenthal Fair Debt Collection Practices Act, California Civil Code § 1788, et seq. ("RFDCPA"); and (3) the California Consumer Credit Reporting Agencies Act, California Civil Code § 1785.25, et seq. ("CCRAA").

On or around January 2009, Plaintiff submitted an application (the "Application") to open a Home Depot credit card issued by Citibank (the "Account"). Moilanen Decl., ¶ 4, Ex. A. Directly above Plaintiff's signature, the Application states:

By signing below, I certify that I . . . agree to be bound by the terms and conditions of the Citibank Card Agreement that will be provided to me if credit is granted.

Plaintiff used the Account to make a purchase, which posted to the Account on or about January 7, 2009. Moilanen Decl. ¶ 6; Compl. ¶ 12.

The Card Agreement sent to Plaintiff at the time the Account was opened contains an Arbitration Agreement. Moilanen Decl. ¶ 5 & Ex. B. The Arbitration Agreement provides that "[e]ither you or we may, without the other's consent, elect mandatory, binding arbitration for any claim, dispute, or controversy between you and us." The Arbitration Agreement covers "[a]ll Claims relating to your account, a prior related account, or our relationship." The Arbitration Agreement also covers claims made

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