SEARS NATIONAL BANK SEARS CARD" ACCOUNT SEARS PREMIER CARD" ACCOUNT

CARDHOLDER ACCOUNT AND SECURITY AGREEMENT

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This Basis Card Account and Sears Premise Card Account Cardholder Account
and Searsity Agreement, (Agreement) governs the use of your Sears Card
Account and Bears Premise Card Account (Account). You agree to use your
Account and you promote I lamily or household purposes.
Section 1. DEPINITIONS; ACCEPTANCE. In this Agreement (a) the words "your,
"your," yours' and "accountholder men any poron rateod on the credit
application or acceptance certificate as an accountholder, applicant, or coapplicant and any person in whose name on account has been opened, (b) "Sears"
means Sears, Roobuck and Co., its participating affiliates and Ecenseos, and
anticipating entries that accept the Sears Cards", (c) "External" purchase or
transaction means any purchase or transaction invoking a non-Sears entiry (d) the
words "we," "us" and "our" means Sears Mallored Bank (an affiliate of Sears) or any
subsequent holder of the Account or any bolmeous arising under the Account or
any service or your Account authorized by us; and (a) "Grat" moore a credit card
based by Sears National Bank for use with this Account, you agree that

By Keeping or Spring the Cord, or by using the Card or Account, you agree that

By keeping or signing the Card, or by using the Card or Account, you agree that the farms and conditions of the Agreement apply to your use of your Account. You also agree that the terms and conditions apply to you when you slow any other person to use your Account.

Bordon 2. DAMS AND LIABILITY.

- (a) Loss. You surjoints us to make loses and extend credit to you to pay for transactions of several hypost (1) purchases of poods and zervices made using the Card or the Account; (2) each access. (Cash Access.) transactions, including cash obtained from financial installations, suctorated teller metalines, or otherwise through use of the Card or Account; and including transactions made through the use of otherwise checks. (Convenience Chocks.) to access your Account and quasi-cash transactions white american or service provider Mountfold by us, but excluding blasnes transfer transactions; and (i) balance transfer transactions, and (ii) balance transfer transactions may not be registed to the approval. (but may be explained, but excluding those made using Convenience Chocks. Balance transfer transactions and Cash Access transactions may not be registed to the first of 2001. Convenience Chocks may not be used to pay your bill with us. All transactions are subject to our approval, (but may be registed to selar a sales after or the written authoritation for Imposactions. You agree that your authorization, unharakation, or historicism by mail, relopnous or electronic meets is effective as your as your segment.
- as your signature.

 Libatilly, they agroe to pay oil amounts awed on the Account whether incurred by you, any other accounthalises, anyone you allow to use the Account or any person from whom you mentive a borroll. By keeping or signing the Card, or by using the Card or Account to warp stream who uses the Card or Account is Salon for that persons own use of the Card and Account according to the terms of the Administration. By keeping or signing the Card, or by using the Card or Account sach Authorized User agrees that the terms and contributes of the Card or Account sach Authorized User agrees that the terms and contributes of the Card or Account sach Authorized they are agreed the Card or Account. Count of the terms and contributes of the time of the Account Count decreas the devotes or separation do not affect faithful for any use of the Card or Account, You promise to use your Account only if you have the Internal and financial capacity when the transaction occurs to repay the amount in full pursuant to this Agreement.

 Abilt Account, It the Account is a joint Account, Joseph account holder is bound.
- Abst Accounts, if the Account is a joint Account, each account-holder is bound by the terms of this Agreement and is jointly and individually fields for all amounts own of under this Agreement. The different of notices or Account Statements (see Section 3 of this Agreement) to any Account-bolder will be constitute delivery to all occount-holders. We may may on instructions given by you and will not be sable to any account-holder or other person for honoring any such instructions it amy account-holder or other person for honoring any such instructions. If any account-holder or other person for honoring any such instructions of any account-holder of your as noticed discharing liability for synouries owned under this Agreement, we may close title Account.

(d) Falkure to Honor Cord or Authorize Transaction. We are not responsible for the falkure of any occasin or only to honor a Card or the Account. We will not be Sable 3, for any mation and is any time, we do not outhorize a transaction on the Account, even right that sufficient impatible crook. Section 3, ACCOUNT STATEMENT Was without you are account statement. "Account Statement of Sable or more, where the pursues active on the Account, there is a balance of \$1.00 or more, or a France Charge is imposed unlock we down your Account unsafeloid or defragancy colorisin proceedings have been instituted against you. The Account Statement (including the reverse skid) contains important blomation and should be carefully need and reviewed oot him it is received.

Section 4. AUTHORIZED AND UNAUTHORIZED USE.

Socion 4. AUTHORIZED AND UNAUTHORIZED USE.

(a) Authorized Users: You may eak that an insividual be added, deleted or changed as an authorized user ("Authorized User") by calling us at the adoptions namines, or withing to us at the address; indicated on your Account Statement. You understand wit will seas a Card to each Authorized User, if you terminate this authority, you will relative the Card from the Authorized User and easily the Card. Any Aldrorized User may use the Account, and may take any acation on the Account that you could take, other on borish of yourself or the Authorized User in may use the may take any mechanists purchased on the Account from Sarve in accordance with Socion 6 of this Agreement. You understand that if this Agreement controls at changes made on the Account by the Authorized User; (i) you are responsible for and will pay all changes must be by the Authorized User; (ii) we may disclose afformation about the Authorized User (ii) we may disclose afformation about the Authorized User (ii) the Authorized User is not may be a formation about the Authorized User (ii) the Authorized User is not manage the Account, subject to such Emiliations as we may impose.

You understand that we do not oncourage the use of the Account by people who

You understand that we do not oncourage the use of the Account by people who are not accountfelders or Authorized Users. If you allow shother person to use the Account but do not tell us, we will have all of long per made by that person as if the changes were made by an Authorized User, it is your responsibility to control or leminate the use of your Account by each persons, and you will remain lights for any and all use by such persons.

- for any and all use by such persons.

 (i) Unautherized Lies, it you discover or believe that any charge on the Account is structure from the Lie of the such as the telephone number, or write to us at the selects, indicated on your Account Statement and to ecoperate with us in making a neucroble investigation of your chair. If you give us call notice concerning loss or that, we may ask you to confirm it in wisting.

 (I Liabity for Unautherized Lies, You will can be listed for unautherized use of your Account it; If you have exercised reasonable care in satisquarding the Cert; If you have next-closed reasonable care in satisquarding the Cert; If you have not reported two or more incidents of unautherized use in the truncatority preceding which of 12 month person, and of your Account is in pood standing, if you have not complied with any of those conditions you may be liable for unautherized use of your Account lier in mount in tot to accord \$50.

 Section 6, CREDIT LINE, if a credit line, Including a Cash Access Line ("Credit Line"),

complied with any of those conditions you may be liable for unauthorized use of your Account for an amount not to accord \$50. Section 6, CREDIT LINE, if a credit line, Industing a Cash Access line ("Credit Line"), is not currently scalened to your Account for an end of the line. We may ledenly the Credit Line is say time of the control of the line is say time whiten he credit line is say time without he control of the may be used for purchase of goods or services. A person of your Credit line may be used for purchase of goods or services. A person of your Credit line may be used for purchase of goods or services. A person of your Credit line may be declosed in your Account Statement as auxiliable for Cash Acress, it is oned that a sestigned to the Account, in the amount switched for use is rectived by impair believes, special promotions and transactions authorized but not posted. The understand them may be a delay after you make a payment belone the amounts report are available for not-borrowing, the agree not to acceed any available for credit line. We may authorize purchases or bransactions that acceed a Credit Line. For agree to the responsibility of the credit Line. We may authorize purchases or bransactions that acceed a Credit Line. Not agree to be responsible for at charges made on the Account whether or not they acceed your Credit Line. Socion 6, SECURITY INTEREST. Each account blood fands ach Authorized User) grants as a purchase money socurity hiterast under the Uniform Corrapproal Code is each item of marchandise purchased on the Account from Sears, to the extent permitted by law, to secure only the purchase price of the merchandise facilities.

ECCUS 02/01

installition costs and sales tas) until that encount is poid in full. We, man, at our sole discretion, elect not in take a society interest in a particular hern of menchandisty prioritised from an entity, other then Beers; Reducid, and Co., he attended prioritised from an entity, other then Beers; Reducid, and Co., he attended prioritised from an entity control then beer on that allicer our right to take and informed a society interest in any other litem of monthandise, considered a water of any of our rights, or be deamed to establish a custom to counts of dealing or performence with your if you do not make payments as agreed, this society interest allows it is in proposable, to the senting herest allows it is in proposable, to the senting homeling the senting here a feature, our society interest is effective before the full of the senting here a feature, our society interest is effective before securities account that may also by operation of less or that pints rise to a right of rectaling made the deal flight in Londing Act However, we do not willow any large control and cate, you understand and appear that you are responsible for any loss or damage to the merchandisd until the purchase price is fairly paid.

REYMENTS

Seellon 7. PAYMENT OFTICKS. To determine the Total Account Sattence on your

Section 7. PAYMENT OPTIONS. To determine the Total Account Science on your Account, we take the provious before at the beginning of your billing cycle, outstruct any payments or order and odd any purchases, betance structure, and count terractions, debits, other changes, fees and France Changes, if you do not pay the Total Account Battance on your Account in As each month by the time and in the manner specified in cection 19th to be credited as of the Ministrum Payment Due Data, you agree to be pay to lost the "Ministrum Payment Due Salo, you agree to be pay to lost the "Ministrum Payment Due Salo, who is the Changes of the "Ministrum Payment Due and the control Science to the "Ministrum Payment Due Salo," so to the section 30th to the oradited as of the "Ministrum Payment, Due Data" shown on that Account Science is the section 30th to the oradited as of the "Ministrum Payment, Due Data" shown on that Account Science and the section 30th the se

pay your Yorld Account Balance in fat or any fina.

Section 8. HIMIMUM PAYMENTS. The Maintern Paymont Due is based on the current Total Account Balance, as shown on your Account Statement, less any Datemed Paymont Balances and the Northern Paymont Due each balance (serional in Section 10 of the Agreement, The Maintern Paymont Due each balling cycle will expect the calculated withinson paymont (Midnism Paymont Due each balling cycle will expect the calculated withinson paymont Accounting hose assessment of the large or Section Accounting Accounting Accounting the Maintern Paymont Due, we take your fast Account Balance, subjudged any Defeator Paymont Balance subjudged any Defeator Paymont Balance Homese, the Maintern Paymont Due, we take your fast Account Balance, subjudged any Defeator Paymont Defeator, Indiance (happendicularly 145 bit) and nough the recurs to the new higher whole dollar anceunt, Homese, the Maintern Paymont Due with not be less than \$10,00 unless the Total Account Balance and the Company of the Paymont Balance and the Paymont Balance are professor and paymont Balances are professor and paymont Balances and Paymont Balances (ARBONT).

Chargo Buelices. Socyon R. Credits and Payments.

[4] Rahinds. Cach refunds will not be made for goods or carrious purchased with the Account. Refunds will be made only by a credit to the Account.

In Account. Refunds will be made only by a credit to the Account. Method of Payment. The agree is popy all emports owned on the Account and to make at payments in Proper Form. A payment is in Proper Form if it is payment in in Proper Form if it is payment in in Proper Form if it is passed in U.S. dollars drawn on a hodorsty issued depository limands institution located in the U.S. of Purior is Rico., (a) cann to it is passessing invarious specified on your Account Statement, and (a) accompanied by the remittance by the purior of your Account Statement, Propriets in Proper Form received by to by 100 p.m. local time, on a business day, will be credited so of the day on except. Payment in Proper Form received state that have will be creatisted not to livre boar interies as of that date for all purposes of this Agreement, and will lastead to considered to have been received as of the six of the six of the crediting to your Account in may be delayed up to fine days if payment is not in Proper Form, including if it is received at they located not other than the processing address specified on your Account Statemoot (Including payments made at Soem stored).

In addition to any applicable Finance Charges, we may change a late payment fee if any payment is not received or credited by the required time and date.

Abbough we will could your payments as described in this accion, you walcould Could Linu, if coals assigned to the Account, may not be instanced for several days where we receive your payment.

- terrora days until we necessary our payment.

 (c) Conditional Physinents: Any conditional check, aroncy circle or any other instrument handword with a nustrictive endorsement for as full statistication of a disputed circle must be sent to our activous the billing near notices; there or such account Statement, and must conspicuously State on the fine of that payment or in an accompanying latter that is to include for this purpose. If you make payment in any other way and we except it, we will not leave wated our right to colocia any amount from you ending under this Agreement.
- ingly to colocia any amount harm you wide actually it. When that many wanted any find to colocia any amount harm you wide princip the Waltershall and Agrimment.

 Application of Payments. The order in which polyments are applied to individual charges on your Account in the otherwise and they out the charge. Gonerally, payments resolved will be applied in the following order. Sours Consider the Colocial and the Colocial and the Colocial and the Colocial and Colocial and
- (c) Stip a Paymont Under this Stip a Paymont promotion, when offered by us, you may clock not to make the Minimum Paymont Due for the designated bifred cycle, Hawayor, France Chargest will continue to section during the period of paymont defenal and you still must pay any hausenone artifred to SPECIAL PROGRAMS

psymbol deferral and you still must pay any insurance charges due.

SPECIAL PROGRAMS

Section 10. SPECIAL PROMOTIONS. From the la little, we saw ofter special promotion, under which promises of groots or services, believes treather, or Cesh Access transform, under which promises of groots or services, believes treather, or Cesh Access transform, in the promotion of the product promotion, the promotion of the special promotion, and the promotion of the product promotion, and conducted the transform of the special promotion of the product promotion, and conducted the transform of the special promotion, and conducted the transform of the product promotion, and conducted the second transform of the product promotion, while the promotion and conducted the second transform of the product of the second the second transform of the promotion and conducted the second transform of the promotion and conducted the second transform of the promotion of the promotion of the promotion of the promotion of the second transform of the promotion of the second transform of the promotion of the second transform of the promotion of the second of the second transform of the second of the seco

EXHIBIT 2 Page 24 of 42 - 617 - any time you are in detait, under this Agreement. You also some that the Revisaris Program peints or credits may have no menstury value and may only be used an specified under the Revisaris Program. We may, at any time and subject to explicable law, change any term or condition, or aidd any term or condition, to any Revents Programs without notice to you. You understand and agree that any Revents Program points or credits will be findfuled immediately upon closure of the Account by you or its.

FINANCE CHARGES AND OTHER CHARGES

Finance Charles and Other CKARGES

Socilon 12 FINANCE CHARGES. So the enclosed explanation of periodic rate "Finance Charges" that will apply to your Account.

Socilon 13 LATE PAYMENT FEE. If you fail to pay any Micharum Paymont bus by the little and in the matter specified in section 6(b) to be credited as at its Micharum Paymont Due Date, we may charge, and you agree to pay, a late payment (low of 850 bill your balance is \$50.00 or greater, \$10.00 if your balance is less than \$50.00.

your manner is less man \$50,000. Section 14. RETURNED PAYMENT FEE. If you make a payment, including an electronic payment, that is not inoncred or its returned payment for any massen, we may charge, and you agree to pay, a returned payment for of \$55,00. At or option, we may seems this charge the first time your paymont is not henced or insurred, even if it is paid upon resultmission. Section 15 OTHER FEES.

- 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) Convenionac Chock Stap Payment Fee. If a Convenionac Cheek is abaged at your request, we may charge, and you agree to pay a slap symmethe of \$25.00.

 (c) Resum Consymbono Cheek Fee. If we decline to honor a Commissionac Cheek the amount of the cheek would cause the behave to access the amount of the cheek would cause the behave to access the amount of the cheek would cause the behave to access the amount of the cheek would cause the behave to access the amount of the cheek would cause the behave to access the amount of the cheek would cause the behave of the cheek foother access the pay of the control from the detail the section fit is, you did as a behave transfer, we may charge and you spree to pay a RHAMCE CHARGE of 35 of the amount of the transfer, but not less than \$5.00.
- Carcelon Fees, if you are in default and left to pay what you owe up, we may charge you mascenable allomoy's fees, collection costs (including expenses learned in masking on a socially interest and court costs if permitted by applicable law. Reasonable attorney's feer will be considered to be 35% of the outstanding between anyour Account when it is inferred to an attorney's for collection. State law may brill what collection costs and feer we may enarge.
- (5) Sandro Feb. We reserve the dight to charge a service los of \$3.00 per flow. It is the extent permitted by law, for requests that you make to us, such as assiding for copies of sales stips or providing other documentation reperting your Account (other than in connection with billing errors).

PHONE CALLS, CREDIT INVESTIGATION REPORTING

PHONE CALLS, CREDIT INVESTIGATION REPORTING

Social on 18. PHONE CALLS. We and our services or openits may contact you by telephone or electroric means regarding the Account. Including this use of an automatic dislang-conneunding device. We and our services or agents may stron to and record any phone connectations with you for training purposes or to evaluate the quietly of service, or as otherwise permitted by law, You signed that we may contact you about your Account Without others permitted from us.

Section 12. Comment of the Account Without others on the from us.

Section 17. CREDIT INVESTIGATION AND DISCLOSURE OF RE-ORNATION, We have the right to investigate your credit, employment and house records, and to verify your credit reference for the purposes of credit-siring your explanion for the Account and, subsequently, inconnection with any products, monovale or anteniors of broad or review, in connection with any products, monovale or anteniors of broad or review, in crediting

The Account. We also tray report our transactions or experiences with you, including the may you toy the Account, and otherwise declare information stock you to ereal reporting apprecies and others, including our altition and altition are altitionally altition and altition are altition at a consistency and altition are altition and altition are altition and altition are altition at a consistency are altition and altition are altit

It any lime thereafter.

It you victors any of the terms of this Agreement, you understand and agree that a negative report may be submitted to credit reporting agercles and tentered on your credit records. If you believe we have reported agreement interest on your credit records and retered on your credit records to a credit reporting agercles and entered on your credit records to the most reported interested interested interested and describe why you believe its incorrect. If you have a copy of a credit report that includes the incorrect information, you have a copy of a credit report that includes the incorrect 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 understanding the product of the credit reporting agencies to the Account. You agree that we, while acting in good rists, with not be lightly for the science of internation to anywork who, without your ansolutions or perificially, but not without in your personal identification cumbor, Account number or social security number.

DEFAULT, TERMINATION AND OTHER

Section 18 EVENTS OF DEFAULT. You will be in detault of this Agreement If any of the lobering events occurs:

- We do not receive payment of any Minimum Payment Due on the According to first and manner specified in section 9(b) to be credited as of Minimum Payment Due Date as shown on each Account Statement
- You violate any term or condition of this Agreement!
- The provide us with any late or mislearing internation or signatures in conjunction with the cauch application or the Account, or fist to provide material information on the credit application, takes licitoris or other documents and instruments:
- You fill a patition or someone flor a position against you tricks the federal bankingstoy code or any state insolvency statest, or our shally to enforce our rights against you or your listness in any property, including any construedy property, is advised by the patition field by or against
- We need a triangulor or have a reasonable boild that you are unwaing or unable to perform the terms or conditions of this Agreement;
- We receive information from third parties which indicates a serious distinguished or charge-off against you with other excellans or other advance or negation information about you which, in our delemination, advancely affects your ability to made the obligations of this Agreement;
- You became the subject of attachment, forcefesters, representation, lien, judgment or garnishment proceedings; or
- You are in defect under any other agreement you may have with us. Seems or any Seem Athena.

if any of you are in debut under this Agreement, then 23 of you will be in debut.

default.

Section 19, OUR REMEDIES AND ENFORCEMENT, if you are in default or in the month of your destri, in addition to any Finance Charge increase under Section [2](i) of this Agricoment, we may justice to applicable two, including any required notice and right to entry let the record, in which case the terms of the Agricoment will continue to apply until the Agricoment to report until the Agricoment to report until the application of the analysis of the analysis of the analysis of the agricoment of the agricoment (a) month of the agricoment (a) company of the agricoment (b) mother any Credit Line applicable to the Account (d) change the letters of the Account and this Agricoment (e) withdraw the terms of any special promotion (f) require

Immodule paymon of your entire Total Actions Batance, lechuling special ring promotion balances (see Section 10 of this Agreement), at accrued but unpaid the Finnes Charges, and all less and other charges listed in the Agreement [8] see this you for what you over or end/our pay seems in the granted in the mechanistic payof for what you do not end/our pay seems in the finness in Section 21; or you for what you will not end to end the payof of the Agreement according to the seems of the finness of the finness of the Agreement according to the statement according to the statement according to the statement according to the statement and any of our ships shall apply to those persons. If we first-during our Year agents in postess one or more firms of machinedade, but it is east rate on the first of the statement and the first to the statement of the statement of the payof the proceeds for the firms of the statement of the statement

Approximate users, wen your spouse any error general as permaned of pare. Special PATA PATLINE TO ESHFORCE IS NOT A MAYORA I WE may choose to using or not to extend any term in this Approximatif producing rates and food subtook object our sixth. Any fabras or debut by the neutrody strict porterments of this Agreement (robusting, but not literature, as expending later or partial payments or to reprove profess marked "payments" in 10° to lendrous with other coordinates or initiational shall not be considered a walver of any of the terms of this Agreement or any of our rights. Any valvary of rights by us must bis in uniting and aligned by one of our authorized representatives.

or any or cut regist. Any waters of ingries by is frust to it who the good by me of our authoritied representatives.

Section 21. ARBITRATION. Any and all dains, disputes or contriversities of any to the motion who become who there is nearly and all dains, disputes or contriversities of any to the contributes, but a rising out of stalking, or otherwise) as which put of, relating (e. or in controlled with (e) that Appearant (b) lary prior crodit and appearant (or may there had with us, Secur, or with any of their prodicessors, and successors, and succes

within the scope of the jurisdiction of the irmal claims count.

Authorition may be elected at any time, appealties of whether a baseath has been find into or not twices such a laws in her modified in a judgment of the other peny would saider a state of the provided saider should be supported by the provided saider should be substituted by the provided said said of the state of t

to corector the master of interestinated by the Hatboral Antituation Forum (FMAP) in occordance with at Code of Procedure in office of the time the claim is Bed. As of 1 a July, 1999, the Code of Procedure, tyles and forms of the NAP may be obtained by our outlying 1-400-474-271, or by visiting NAP's Web size at www.arb-forum.com. At Web claims may be first at any NAP-alties or at P.O. Box 50101, Minneapots, N.M. 55405, bith if you object to the NAP, you may propose an attenditive arbitation or arbitration organization to us. We will either accept your proposed or provide you with a first or

EXHIBIT 2 Page 26 of 42 - 619 -

nations or authoración arganizations from Which you sited sedect com. were quanted grounders of altro-zoon negatizations from which you shall seed the Any subtractive which you stated wit false place at a location within the hydral jurisdict district that includes your billing address at the firms the claim is filled, the will adverse any feet conjected of you by the NAFF or any alternative stated prior extraction experience of your send as a written request. The intrinsic short apply relevant substantive law and exists testings of the filled in case could first got of send privilege recordance of law. And exist provide written, rescenced frustings of fact and conclusions of law. The totherate may entire the related or my fosts adversard by us only if the arthritistic distinsics that your relatins to defend a were knotour.

only if the arbitrator determines that your estants or enforces were involved.

The arbitration section of this Appreciment is must pursuant to a transaction involving intentiate commitmes and shall be generated by the Federal Arbitration Act, 8 U.S.C. sections 1, etc. seq. budgment on the award rendered by the arbitrator may be settlered in any court bay-hig presidents. This arbitrator section shall survive repeated of your least or extension of most and termination of your account if any proportion of this arbitration section is depressed funding or underdocable, if a shall not knowledge that the control of any between section. This arbitration section and shall have to the benefit of and be bracking on each of the persons and existent mentioned in this section.

**Out INVICEDITATION AND ARRIVE THAT UNDER THIS AGREEMENT. IF

MENTIONED IN THE SECTION.

YOU UHDERSTAND 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 SHALL CLAMS COURT) ON THAT CLAIM, OR TO HAVE A JUST THAL ON THAT CLAIM, IF ARBITRATION IS CHOSEN, YOU ALSO WILL HOT DE ABLE TO PARTICIPATE AS A REPRESENTATIVE ON MEMBER OF ANY CLASS OF CLAIMANTS PETITAINED TO THAT CLAIM, AND YOU WILL HAVE ONLY THOSE RIGHTS THAT ABE AVAILABLE BY ARBITRATION. THE DECISION OF THE REPRESENTATION WILL BE THALL AND BYMOING EXCEPT AS PROVIDED IN THE FEDERAL ARBITRATION ACT.

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

- . Change my Credit Line applicable to the Account;
- Change any form or condition of this Agreement relating to your Account, including the Annual Percentage Rate applicable to outstanding and future between, and the fees or other charges applicable to the Account; and
- Add any navy term or condition to this Agreement relating to your Account.

Our right to change or add terms or conditions to this Agreement applies both for function to change or add terms or conditions to this Agreement applies both for function terms, such as Finance Charges and feet, and to non-financial terms, such as our molecoment rights and other configuration providens. We may apply any changed or now terms or conditions to any current andor future between considered miter that date. We will send you a written notice of any such change(s) or addition(s) as required by law.

Changels) or addition(s) as required by law.

Section 23. TERMINATION, the may terminate this Account at any time by saying all stams 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. Institute this Agreement or terminate your right to note father outchases or other transactions on the Account, if we reminate your Account, you will humodistely also 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 constanting beforeas, including changes or amendments by ter from time to time into the termination, which romain in effect until the entire Total Account Balance is paid in fact, or (b) your fability for amounts owned on the Account according to the terms of this Agreement Returned in the termination.

Agreement Returning as it may be amended.

Agreement interlong as it may be amended. Section 24. YOUR NOTICE OF CHANGES, You will promatly inform us if you change your name, residence or plaze of employment or if there is a malerial adverse change in your instants condition. We may and will continue to send Account Statements and either 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 accountingfor appoints the others; is a agent(s) to designate the address to which me Account Statement (and any other notices) may be sent.

Section 25. ASSIGNMENT. You understand that the Account or any interest.

belance or amount enved under the Accessed including any security internst securing such belance or present may be sold, essigned or transferred by us without refee to you. Any precisence, assigned or transferred is cultilated to the benefits of the Agreement (including any security internst arising under it), the may not sell, transfer or assign any of your rights or obligations under this Agreement.

this Agraement.

Section 25. FOREIGN TRANSACTIONS. If you use the Account in a surrously other han U.S. dotars, we, or our affisites will convert the charge into a U.S. dotar amount. The amount posted to your Account will be at the exchange rate determined by us for Seas transactions, using current Sease curroncy converted rate procedures. Currently, the currency converted rate procedures. Currently, the currency conversion rate is generally either a wholesale market rate or a government-inhadated rate in direct on the date conversion, increased by one procent. The currency conversion rate used on the date or Account.

of Apount.

Section 27. OTHER SERVICES, From time to brue, third porties may effer eddificual features, services and enhancements misted to the Account. We zerror liable for lines, and they are the soft respectively of these third porties. You gree to held as harmless from any claims, eclarest or damages resulting from the use of these teatures, enhancements or services. If you purchase creating or their types of treatment, you understand that he cast of such hazance may be based upon the leasures and you understand that the cast of such hazance may be based upon the leasures and you understand that the cast of such hazance may be based upon the later and you maked or failed on your credit application when you displicitly applied for the insurance and that these costs may not change even if you nove. You will not be failed on your ready and present of the present of you are not display insurance or harpes until you are not display for any failed and may be referred to then your account becomes contrain or is no lenger in default. LAW This attractions and your fail be powered.

Section 22. GOYERNING LAW. This Agreement and your Account will be poverted by and interperted in accordance with Federal law and, to the extent governed by also law and, to the extent governed by also law, the laws of the State of Arteans, negardless of whome you than a where you use the Account. This Agreement is entered into in Arteans and all credit under the agreement with be extended from Autorus.

agreement will be extended from Automa.
Section 29. ENFORCEASILITY. If any term or provision of this Agreement is found to be uperforceasible, it will not make any other term or provision unanforceasible, it likes is any conflict between any term of this Agreement and applicable law, this Agreement will be concluded to the section 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 Section 10. SPANISH Contains to the service accept you may what to use at Po. Box 315002, Cerebrard, OH. 44181-5002, or as yet at 1-800-569-8488, and registed a Spanish bargerage copy of this Agreement.

Como un sovicio a nuestras cliantas, lo proviercimos uma copia de este Acuerdo on español si usted así lo solicita. Para obtenor dicha copia, puede asolibinos si P.O. Box 818002, Claveland, OH, 44181-8002, o Esmamos al 1-800-059-848, y solicitar una versión en español de este Acuerdo.

y sometar that oversion on displaint to distribute of this document, any other pages or materials that may be provided to you in the same envelope as the document that the death plotted to show that they relate to this document, and any written notices fredering changes or deditions to the terms or conditions of the Agreement, which may be provided to you from their to time.

STATEMENT OF CREDIT BILLING RIGHTS PRESP THIS NOTICE FOR PUTURE USQ This notice contains important information about your rights and our responsibilities under the Feir Credit Billing Act.

HOTIFY 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 for a separate should be the address listed on your bill where it any "Mail Billing Error Nellicos to." Write us us so on a possible, We must hour from you no later than 60 days after we sent you the first bill on which

9

If you need more information, describe the item you are not sure about. If you have authorized us-to pay your credit card bit guteratifying from your savings of checklog account, you can cloop the payment of a my smearit you take to work the payment of the paym

the matter has been settled behaviour a when it family is.

If we don't collaw these meet, we can't explor't the first \$50 of the questioned amount, near it your bill was contect.

SPECIAL RULE FOR ORIENT CARD PURCHASES.

If you have a croblem with the questify of properly or services that you purchased with a credit card, and you have tided in good faith to connect the problem with he merchant, you may have the right not to pay the mornating amount due on the properly or services. There are had furtherine on this right:

(a) You must have made the purchase in your hame state or, it not within your topic state within 100 miles of your carnot mailing address; and

Exhibit 4

EXHIBIT 2 Page 29 of 42 - 622 -

SEARS NATIONAL BANK SEARS CARD" ACCOUNT SEARS PREMIER CARD" ACCOUNT CARDHOLDER ACCOUNT AND SECURITY AGREEMENT

This Baurs Card Account and Stars Promier Card Account Cordhalder Account and Security Agreement ("Agreement") powers the use of your Sears Card Account and Bauth Printing Card Account J. Account and Bauth Printing Card Account J. Account and Bauth Printing Card Account and Sears Card Account only for parsonal, family or household purposes.

Account only for parsonal, family or household purposes.

Section 1.05PHIRDOLS, ACCEPTANCE, in the Approximation of the words your, your, yours and section 1.05PHIRDOLS, ACCEPTANCE, in the Approximation of the creok application or suboplatance certificate as an account incident application or suboplatance certificate as an account in the short application of applications in whose areas an account has book applicate on the applications are substantially applicated and the applications are substantially purposed participation, satisfare that account to the provident purpose or the account on the application and applications are substantially as an account and applications are substantially as a substantial by the account or they account on the year for a company and applications are substantially that are substantially that and if "Cord" has account or any self-account and applications are substantially that and if "Cord" has account an account and account the account and account any account and account the account and account and account the account on a which the account and account the account and account and account and account and account account and account and account account and account and account account account account and account account account and account account account account account and account ac

By kerding or signing the Caud, or by using the Card or Account, you agree that the terms and conditions of this Agreement apply to your use of your Account, the terms and conditions of this Agreement apply to you when you stow any out or some that the terms and conditions apply to you when you stow any out or some to use your Account.

Section 2. LOAKS AND LIABILITY.

- Section 2. LOAKS AND LIABILITY.

 [2] LOAKS, You activate us to make loans and extend anoth to you to pay for transactions of expend types (1) purchases of poods and services much using the Card or the Account; (2) each access (1 Carl Account) introductions, including casts platford from the access (1 Carl Account, and introductions to the Card or Account, and introductions to the card or Account, and introductions to the card or Account, and introductions to the card of the Card or Account, and introductions to the Card or Account, and card or Account and card-order to the Card or Card-order towards to the Card or Account, and (2) before the Card of Card-order towards to the Card or another towards to the Card of the
- effective as your signature.

 Liability, You approx by pay oil amounts creed on the Account whether included by you, any other accounts due, anyone you allow in use the Account by you, any other accounts are boroth. By looping or allowed the Card or by uning the Card or Account a local feet that are a limit to the Card of the Card or Account and Archael and Card or By uning the Card or Account and the Card of Account and the Card or Account and the Card of Account and the Account
- the amount is his pursuant to this Agreement.

 (z) John Account is the Account is a john Account, each account leder to bound by the forms of this Agreement and is phethy and individually table for oil unions in most under this Agreement. The delivery of notices or Account Statement is per Section 3 of this Agreement is vary accountholder will constitute delivery for all accountholders. We may not necessary the person given by you and with not be Rable to any accountholder of other person in transcriber any such technicions, if any accountholder of the person in transcribe grows such technicions, if any accountholder of the person in the transcriber may such technicions, if any accountholder of the person is related allocationing Tableity for amountain article allocations. If the provider of the Advantage Transcribion, We are not responsible for the filters of any person or entity to hoop a Card or the Account. We will not

be foole it, for any reason and at any time, we do not sufficient a bransustion on the Account, even if you have sufficient malable credit.

Section 3. ACCOUNT STATEMENT, Vie will send you an account statement ("Account Bisloment") for each being spots, when here is purchase, sething on the Account, thorn is a balance of \$1,00 or men, or a Financia Chargo single-tive Account, them is a balance of \$1,00 or men, or a Financia Chargo single-turilets are deam your Account uncolpecture or desinguished, collection proceedings them been instituted apparting the Account Statement (including the process stict) contains important information and abouted the carefully used said reviewed said time it is moreled.

Sociled 4. AUTHORIZED AND UNAUTHORIZED USE.

cition 4. ALTHORIZED AND UNAUTHORIZED USE.

Authorized Libera, You may ask that an individual be acided, deleted or changed as an authorized user ("Authorized Clear") by acting as at the sleephone manifer or writing to be at all the actinate, lardicaled on your Account States of the second states of th

You understand that we do not encourage the use of the Account by people who are not accountables or Authorized Users. If you allow enotine parties the Account but a not is a not accountable of a not site, an well there is through made by that person as if the aburgate users made by an Authorized User, it is your trapposability is caused or incomisate the use of your Account by that persons and you will remain allots for any and at use by sock persons.

- Uparthorized this, if you discover to begive that any change as the Account is transchorized, you agree to can be interpreted by an the Litesphore number, or wide to us at the address, indicated on your Account Blainment and to cooperate with us in making a reasonable investigation of your claim. If you give us call nonzee, concerning loss or their, we may ask you to conform it in writing.
- Comments and the second second

Section 5. Officially LINE. If a credit line, including a Cleak Access the Credit Line, is not currently easigned to your Accessin two may easign one at any time. We may identify the Credit Line where your Accessin two spoked or is entirely any Accessin two may easign one at any time. We may identify the Credit Line where your Accessin to opened or on any Accessin Schemens, We may become, decrease, assepand or isometime a Credit Line at the accessing the purchases of spoods or invident. A portion of your Credit Line may be disclosed in your Account Buttermort as makebale for Chair Access, if a Credit Line is assigned in the Account the amount inviduals for transitional than accessing the assigned to the Account the amounts of the accessing the acce

Section 6. SECURITY INTEREST. Each accommended (and each Authorized Urro) grants to a purchase many security interest under the Uniform Commendat Code in sech item of merchandise purchased on the Account from

SCCVLIS 2/02

Sears, to the extinct pormitted by law, to secure only the porchase price of the mark-ordes (including instation) mosts and sales text (intil that smooth is position). In J. We may, it can not describe, elect not to tide a security interest in a portional team of merinanties purchased from an entity, other than Sears, floature, and Co., to talkets and formouse, that positions that describe the desar Complete the sears of the search of the s

PAYMENTS

Reaction 7, PAYMENT OPTIONS. To determine the Total Account Balance on your Account, we take the provious trained at the beginning of your billing cycle, subtract say proposed to creedly and odd any particular, bullance translated as remarked, to the control of the provious translated. Evaluations to receive the format Congres. If you do not pay the "folial Account Balance on your Account in this case in month by the laters and in the majors predided in section 8(b) to be credited as at the Marinam Payment Due Date, you agree to pay at least the "Marinam Payment as at the Marinam Payment Due to the credited as of the "Marinam Payment Due Date" above no each Account Statement by the fine and in the majories predided in section 5(b) to be credited as of the "Marinam Payment Due to based white the payment Due and may pay year Total Account Balance in Art at a large time."

Payment Due and may pay you' fotal Account Balance in Ail at any time.

Section B. MINIMUM PAYMERTS. The Minimum Payment Our is based on the
current Total Account Balance, as sharing your Account Statement, least only
Balance Payment Belancers and/or No Phankoc Charge Salancers (defined in
Section 10 of the Agreement). The Minimum Payment Oue seath bifting cycle wid
equal the calculated minimum payment, plact (a) any applicable Datament
changes are Sectar Account(Barrent Ceta assessant that bifting cycle) and (a) any past
dive amounts. Your Mainmum Payment Date each bifting cycle wid be the greatest
et (ii) 3100.00° (ii) your Total Account Balances, notes any Deletmed Payment
Balances tradict Note Plannes Charge Balances, the runtil multiplied by J0722
(Approximately 1105th them rounded to the adult Mainmum teledites among the
province, past \$100.0, Notework (i) your Total Account Balance, less any Deletmed
Paymont Balances and/or No Frances Charge Balanceis, is less than \$10.00

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Control No CREDITE NO PAYMENTS.

Section 9. CREDITS AND PAYMENTS.

- (ii) Relands. 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.
- with the Account. Refunds will be made only by a trooft to the Account. Method of Pryment, four agrees to people at mercurist wood on the Account and its make to payments in Proper Form III. In It is made in U.S. delicate drawn on a todoraty instrued depository financial institution located in the U.S. of Pureris Rich. (b) seek to the processing editions specified on your Account Statement and (c) accompanied by the continuous proting of your Account Statement and (c) accompanied by the continuous by the processing statement and (c) accompanied by the continuous by the processing and the proper Form monthed by us by 150 p.m. boal fine, on a backness day, will be excelled as of the day of needs; Prymends in Proper Form monthed effect that time will be contiduous of to ravie book shootwarf as of the day and account of the Acquested, and will heread be considered to have been received as of the days and the state of the state of the Acquested and the Acquested and the state of the Acquested and the Acquested and the state of the Acquested and Acquested and the Acquested and Acquested and Acquested Acquested

In addition to any applicable Pinance Dranged, we may change a fate payment feel 2 any payment is not received or credited by the required time and date. Although we will credit your payments as described in this

- eaction, your anniable Credit Lina; if one is estatued to the Account, may not be restood for eaveral days after we receive your payment.

 (c) Constituted Programms, Any obreditors obest, money order or any order inclument is solved with a restation enforcement or as fall statusfactor of a displaced chair most be sent to our subthess to being error readers, shown on each Account Statement, and must constitue the being the or the face of the payment or in an occurrencepting state or the face of the payment or in an occurrencepting state or the face of the payment or in an occurrencepting state what it is uncleared for this purpose. If you make approach is subject on your sent or each of the wife not have read or right to colors any amount from you white under this Approach.
- you make paymont to any other very and we account, we will not have wested our right to colour any amount soon you throug carlor that Aprenount.

 Application of Promonts, The endor in which paymonts by applied in the high-day manner of the paymonts to the paymonts of the paymonts received will be applied in the following orders: Saars Credit Protection Plan transactions or Saars AccountCare feet, bailed Phonone Charges, mitured payment lest, previous thehances, current balances of Charges, mitured payment lest, previous thehances, current balances and then the Phance Charges Stances in the order in which the fraunce Charge Balances in the active in which Deleance that the theory of the Balances in the active in which Deleances, Carlo Balances, Saars region balances, External proteodicus believes, Carlo Access required balances, currents of the paymont them, Carlo Balances, Carlo Balances, Saars region balances, in the colours of the paymont the second free and the carlo free accessing the payment that the paymont them, Carlo Balances, Extend proteodicus balances, and the carlo free accessing the paymonts of the carlo free accessing the paymont to the paymont in the manner described in the materials relating to a promotion, whose others about the paymont to the paymont, whose others are paymonts in the manner described in the materials relating to a principle promotion, then we will apply paymonts in the manner described in the materials relating to a principle promotion.
- Silve a Psymmet. Under the Silve a Psymmet promotion, when extended in Silve a Psymmet promotion, when extend by its, you may eight not to the make the Minimum Psymmet Des for the assignated bibling cycle, Novervor, France Charges will confinue to account of the great period of payment defends and you still study by any featuract charges of the

SPECIAL PRODUCTIONS. From time to time, we may tifer appoint promotions, under which provides or to goods or services, balance transfers, or Cash Access trainactions, may be billed to your Account with special promotional lemms. The France Charges, infrients in pryment, optication of phyments and other terms for special promotions may differ from the transfers terms described in this Appendix promotions may differ from the transfers terms described in this Appendix promotion, supply to any special promotion, standard terms of this Appendix popular promotion standard terms of this Appendix promotion, standard terms of this special promotion, standard terms will continue to apply to any appedix promotion in the special promotion. Standard terms will continue to apply to any appedix promotion that are not cateford to the open promotion. The standard terms are designed promotion and the special promotion will be student or the special promotion will be student to the special promotion will be student to the special promotion will be student to the special promotion will be student or the special promotion will be student to the special promotion to the student to the special promotion to the student to the student to the special promotion to the student to the student to the special promotion to the student to the student to the student to the student to the special promotion to the student to t

Section 11. REWARDS PROGRAMS. From time to time, bonts point, robuts, nonthander certificate or other hearthra programs may be offered by us of others in confunction with the Account ("Revents Programs"). These programs may include a porticipation too. You spreamed a newards Program only applies.

MILANCE CHARGES AND OTHER CHARGES

12. PINANCE CHARGES, 506 the enclosed explanation of rate Tinance Charges' that will apply to your exposent.

Section 15, LATE PAYMENT FEEL if you list begun you Michael Proposed Law by the time and in the market specified in section 9(t) to be considered in section 9(t) to be considered in the Mehram Reprint Dou Date, we array change, the section 9(t) of the Mehram Reprint Dou Date, we array change the proposed to pay, a felt payment fee of \$25,00 ff your balance in \$1,000.00 or greater, \$2,300 ff your balance in \$1,000.00 or greater, \$2,300 ff your balance in \$1,000.00 or greater, \$2,300 ff your balance in \$4,000 ff your balance in \$4,000.00 or \$4,000

Section 14, RETURNED PAYMENT FEE. If you make a paymin-chating an electrode payment, that is not become or is required to for they reason, we may change, and you spring the pay, a spamped paymin for of \$25,00, 40 or opfort, we may assess this change to fort time a payment is not honored or returned, even if it is post upon recutorities

- Cash Access Renestion Fee. If you utilize Cash Access or Balance Transfers, wa may charge, and you agree to pay a FARAICE CHARGE of 3M of two Cash Access or Balance Transfer transaction, but not less than 65.00.
- but not less than \$5.00.
 Committees Check Step Payment Fig., if a Committee Check is stopped at your requiret, we may charge, and you agree to pay, a stop payment foe of \$25.00.
 From Committee Check Secure the mount of the check would could be absence to perfect your Check Payment of the check would could be absence to perfect your Check Payment of the check would could be absence to perfect the perfect of the check would could be absence to perfect of the check would could be absence to perfect of the check would could be absenced to perfect of the check would not be absenced to perfect of the check would not be absenced to perfect of the check would not be absenced to perfect of the check would not be absenced to perfect the perfect of \$25.00.
- Service Pee. We reserve the light to charge a service fee of \$3,00 per liters, to the extent permitted by low, for recovering that you make to us, such as satisfy for copies of sales sizes or providing after communities regulation regulating your Account (either than in connection with lessing around.)

PHONE CALLS, CREDIT INVESTIGATION REPORTING

From small, castant intrastitutation REPORTING
Sociol 18, PHONE CIALLE. We and our envisors or openia may
posited you by talophone or electrics means regarding the Account,
inclusing the use of an enterestic altage-immensing device. We and our
sorticers or appears may facts to and record any phone conversables with
you for braking purposes or to create the quality of carriers, or as
otherwise permitted by time. You agree that we may confact you about
your Account without obvance notice from us.

YOUR ACCOUNT WINDESTIGATION AND DISCLOSURE OF INFORMATION. We have the right to knowledgels your credit omployment and income records, and to write your credit references for

The purposes of Consisteing your application for the Account and, subsequently, in connection with any updates, remember or extensions of cooks or reviewing or coheciting the Account. We also may report our breakcoins or suportiones with you, lacking the way you pay from Account, and otherwise disclose telemention about you to credit reporting agencies and others, including our affishes and Some Reserves. We used others, including our affishes and Some Reserves. The understand we may obtain a consumer report prepared by a credit reporting agency when you specify for the Account and stry time threatters. If you violate any of the terms of this Agencient, you understand and bytes that a negotian report may be submitted to credit reporting agencies and missed on your credit report. If you believe we have reported inscrumed information reporting the Account to a credit reporting agency, cochact or at P.O. Box 5100Z. Curveland, OH, 4110-502. You fortion must identify the inaccounts before the most described with you before it is inaccount, if you have it copy of a credit reporting species in the Account formation may be reported to the credit reporting agencies. Account feformation may be reported to the credit reporting agencies. Both authorized User's name a well any your relations of the authorized User's name a well any your relation. The submitted in the count of the submitted on ampose who, without your such critical to, your personal identification number, Account rumber or codal security number.

DEFAULT, TERMINATION AND OTHER

Suction 18 EVENTS OF DEFAULT. You will be in details of this Agreement if any of the lowering events occurs:

- We do not receive payment of any Molman Paymont Due on the Account by the dime 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 Agreeme
- You provide us with any take or midestring information or denatures in conjunction with the ensit application or the Account, or lait is provide material information on the ensit application, sales tickets or other documents and instruments;
- You like a polition or someone-fits a polition against you under the federal bankruptcy code or any state insolvency statute, or our ability to enforce our fights against you or your informets it any proposity, including any community proposity, is adversely affected by a polition field by or against someone olisi;
- Ye nocky information or have a mesonoble based that you are unwiting or unable to perform the terms or conditions of this Agreement;
- We mookly information from third parder which indicates a surface defrapolitically one charge-off against your with other modificer or other advance or negative information about you which, in our determination subversely safects your easily so meet the obligations of this Agreement;
- You become the subject of attachment, tenedours, repassission, Sen, judgment or gardishment proceedings; or
- You are in default under any other agreement you may have with us, Spars or any Sears Africate.

If any of you are in default under this Aprenment, then at of you will be in distant.

if any of you are in default under this Approximant, there is only you will be in default. Section 19. DUR REPLECTED ALTO EXPENDENTE. If you are in default or in this event of your death, in addition to any France Charge increase under Section 12(a) of this Approximant, we may faithful to applicable barro, including any required notice and right to curry (a) immirate the Account, in which case the immirate of Approximant Williams to apply with left permet in acceived oil the encount owing on the Account, including Pletunes Charges which we will confirm to improve the the data of the payment (a) suspend your credit philosophers and the Approximate (a) processing the plants on any of the data of the payment (a) suspend your credit philosophers with the Approximate (a) withdraw the Lerine of any the forms of the Account and this Agreement (a) withdraw the Lerine of any

Especial promotion; (i) require immediate payment of your writes Total Account Balance, including special promotion behances (see Section 10 of this Agreement), at account but unputed Frences Changes, and of loca and other changes listed in this Agreement (g) son you for what you were and enforce only security interest granted in the mandrandese politicated on the Account, constitutes with the arribration dates in Section 21; or (g) you offer lands amount on section; when interest the appreciate in Section 21; or (g) you offer lands and you of your injure what is not to the promotion in Section 21; or (g) you offer lands and you of your injure what accounts of the control of the promotion is exceeding in the forms and any of our rights what account of morbands, we have the right to sell from a public of physics sale and gooly the promotion of our promotion of the promotion of the promotion of our promotion of promotion of the promotion of our promotion of the promotion of the promotion of the supposite promotion of the supposite promotion of the promotion of the promotion of the supposite promotion of the promo

pomizated by twe.

Section 20. FAILURE TO ENFORCE IS NOT A WAIVER. We may choose to delay or not to enforce any term in this Agreement (encluding rates and heat) wishout being not rights. Any failure of delay by us in enforcing rates and property of the partial payments or manay orders anadroscipayment in Alf or tendered with other conditions or immediately partial payments and the partial payments are manay orders anadroscipayment in Alf or tendered with other conditions or immediately land her be conditioned as waiver of any of the terms of lith Agreement or any of our pitch, any valvoer of the bids by us must be las without and bigrated by one of our authorized representatives.

In writing and signed by one of our unfinished representatives.

Seetlen 21. ARBITRATION. Any and all dairrs, disputes or controversies of any return whatsover (whether in contract, ton, stelling and all sistums, or otherwise) arising out of, relating to it is statum, or otherwise) arising out of, relating to it on my takes to did this Agreement; (b) any prior and card agreement you may have took with us. Soon, or with any of their prodecessors, successors and assigner; (c) the application for and statements or commenced to the statement of the december of the artificial control of the Account; or (g) the vestign, stope or enforcedability of this artificial oscillation of the Account; or (g) the vestign, stope or enforcedability of this artificial oscillation of the Account; or any prior credit and agreement (the Introductably preceding subsections (e) through (g) shall be offered to it this section, collectively, as "datama", shall be teached, upon your dection or our election, by final and binding arbitration before a single arbitration an instinctual backs without result to any form of class as storic, suspect that such party relative the digital backs without result to any form of class as storic, suspect that is can be applied to care from or class action, for claim exists the me copie of the plantication of the small claims count, or which the scool of the third claims count for the small claims count, or whether the scoon of the small claims count, or whether the scoon of the small claims count, or whether the scoon of the small claims count, or whether the scoon of the small claims count or whether the scoon of the small claims count or whether the scoon of the small claims count, or whether the scoon of the small claims count or whether the scoon of the small claims count or whether the scoon of the small claims count or whether

institution of the small observations could.

Arthresion may be skelad at any time, regardiscs of whether a lawrati has been filled on my lines such a threating has resulted in a judgment or the other party would staller substantial projectics as a mustic of the delay in demanding arthresion. The arthresion has the alwayer or relieful judge with not less than 10 years expedience in the practice of law. This arthrition section with not specify to any larkfullad claims you fixed in a lawrati point to the affective date of this Agreement, including individual datus that the little nascreted in such a lawration to the claims of a class has relieful price to the effective date of this Agreement. The arthrition excition will apply to did other claims, lackeding class chims where a class has not yet been contified, own if the lacked reformations upon which he elisting are based added before the effective date of this Agreement. The arthrition provides does not prevent of other party from cooking interim injuriely my later than the arthrition has been commonded and the arthrition the sales and the arthrition has been commonded and the arthrition the above the matter of latering relief.

opportunity to account the most or internstitute. Authorities that be administered by one of the following three arthration American Architecture Association, JMAS, and National Architecture Forum to accordance which their respective nulses and procedures to which all the internst securities with their procedure of which all the limits claim is filed. You may obtain copies of the current rules of each of the time arthration from and forms and featurelies. In highlightness as total and contacting them as total re-

a serie are engagement.

American Arbitration Association (web site; www.adcorg) 235 Madicon Avenue, Floor 10 New York, NY 15017-4605

National Arbitesian Forum (wob alto: theme.exhitesian-terum.com) P.O. Box 50191 Mineapolis, NAV 55405

Minnespola. MN ESCOL MN ISCOLA MN STATE AND A STATE AN

witten, reasonal facilitys of fact and conclusions of law.

The arbitration section of this Agreement is made pursuant to a transaction involving intensists commerce and shall be governed by the Federal Arbitration Act, 8 U.S.C. Sections 1, et., seq., Judgment on the sward rendemed by the arbitration way be entered in any count levels principation. This arbitration section is subtractive to the subtractive section shall survive repayment of your local or extension of credit and temperature of jour Account, if any person of this arbitration section is deepend inside or unactionestic, it shall not, irredute the prenating positions of the subtration section is deepend inside or section. This entitlation section that human to the boundit of 2nd be blooming on each of the persons and entitless mentioned in 1912 section.

SUCH THE PERSONNEL AND ADDRESS THAT, WIDDER THIS ADRESSMENT, OF YOU WINDERSTAND AND ADDRESS THAT, WIDDER THIS ADRESSMENT, OF ADRICATION IS CHOSEN BY YOU OR US, YOU WILL NOT HAVE THE PROBIT TO GO TO COURT EXCEPT FOR SMALL CLAMES COURT ON THAT CLAME ON TO HAVE A JURY TRAIL OIL THAT CLAME. COURT OF THAT CLAME YOU ALSO WELL YOU BE ADDED TO PETTAL OIL THAT CARE A REPRESSMENTING OF YOU ALSO WELL YOU SEE ADDRESSMENT OF THE ADDRESSMENT OF THE ADDRESSMENT OF THE ADDRESSMENT OF THE ADDRESSMENT AND ADDRESSMENT ON A THE FEDERAL ADDITINATION ACT.

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

- · Change any Credit Une applicable to the Account.
- Change try lorm or condition of this Agramment relating to your Account, including the Armed Paromises Rate applicable to automating and future belances, and the less or other changes applicable to the Account; and
- Add any new term or condition to the Agreement relating to your Account. Our highly to change or add terms or condition to the Agreement applies both in Braincald terms, such as Faunce Changes and feet, and to non-feetable terms, such as our extensional rights and other confectual provisions. We rays peoply any changed on the terms of conditions to any current and/or than balances created stay trail offse. We will said you a written notice of any such change(s) or addition(s) as required by two.

Section 23, TERMINATION, You may territrate this Account at any time by paying all turns due trade this Acroament and destroying all Costs is used on the Account. We may, at any time without prior notice to you, and with or wathout.

cause, terminate this Acroement or terminate your right to make filter purchases or often termination on the Account, if we terminate your Account, you will immediately stop using the Account and spone to destroy all Carde lasted on the Account. Our termination of the Account does not attract fig the termination of the Account does not attract fig the termination of the Account does not attract fig the termination of the Account does not exhibitly defined an emendmentally life from line to that either termination, which remain in affect until the action through a substance in publish that or right our labeling the speciment of around the account of the Accou

may be amencied.

Service 24. YOUR MOTICE OF CHANGES, You will promptly inform to it you change your name, residence at place of employment or if there is a market athere is true in your finabiliti condition. We may and will continue is seen Account Statements and other profess to the test address we maintained on the Account and you notify to of any change, if the Account is post another powers the other part address we maintained on the Account and you notify to of any change, if the Account is post another appears the others are agently to designate the address to which the Account Statement (and any other noticed may be sent.

use address to which the Account Statement (and any other rollind) may be seen. Scotlen SS. ASSIGNMENT: You landorstand that the Account for any interest, believes or amount owned under the Account Including any securely interest securing state includes or suncury may be seed, excipted or transferred by its whole refuse to you, they purchase, excipted or herebrook is entitled in 64-berries of Agramment functioning any security interest which you with it, from may not seed, temple or susing may of your sights or ordinations careful this Agramment.

or assign any of your rights or obligations under this Agreement.

Section 26, FOREIGH TRANSACTIONS. If you use the Account in a currency ontor then U.S. objects, we will coment the churge that a U.S. delar amount. The amount posted to your Account with the set the explange rate adjustments of by int for Seats bransactions, using current deart currency companion rate procedure. Currency, the currency convention rate is goostly either a wholeads marked into a protectional-marked rate of a potential-marked or give in a feet of the delay of conversion, iterated by one percent. The currency convertion rate used on the convention that may differ home the rate and the delay of the delay of the delay of the convention of the may differ home the rate is allect on the data you trad your Curr of a Account.

your Card or Account.

Section 27. OTHER SERVICES. From thru to thing, third positive may offer modified features, sendeds and arhanosmonts indicad to the Account. We are not table for those, and they are the sole supported to those third points, for any table to those, and they are the sole supported to those third points, for agree to hold us features if from any claims, actions or damagos resulting from the use of these leadants, enthumements or services. If you prochase credit or the use of the services are determined to the state of the services are determined to the services are services. If you are selected or Saled on your detail application when you critically applied for the interment and that these calls may not change sith if you more. You will not be fable for any includes a service the services are detailed in your more of the services are detailed in your converge of any time, instruction may be cancelled if you may bested your converge of any time, instruction may be cancelled it in the longer in distuir.

Section 28. OWEENING LAW. This Accounts and was Accounted to

no longe in distrust.

Section 22, GOVERNING LAW. This Agreement and your Account will be governed by and interpreted in accordance with Federal law and, to the affect governed by state law, the laws of the Sizza of Artison, regardless of whitee you two or whose you was the Account. This Agreement will not all Artisons and all crucks under the agreement will be extended from Artison.

as cross enter us agreement will be extended from Arizona.

Section 29. ENFORECEASILITY, if any term or provided of this Agreement is found to be transferabled, it will not inside any other form or provided uninflorection. If there is any conflict between any form of this Agreement and applicable by no, this Agreement and applicable by no, this Agreement will be complicated changed to the activit necessary to comply with the law.

necessary in comply with the law.

Soction 10. SPANISH LANGUAGE TRANSLATION. As a cutoform remote, to
with provide you with a copy of this Agreement in Standard uson your request
a better such a copy, you may write to us at P.O. Roc 818009, Cerested, CH.
4418-1802, or cells on 1-850-688-0480, and request a Spanish language copy
of this Agreement.

Como un revisio a natestroa cilonias, la provocenos una copia da este Aquerio an español di usted ad lo apicilla. Pera obligne dicha copia, puede esprisima al P.O. Bay al 18002, Covolungi (CH. 4418-2002, o Barrames ai 1-800-580-6468, y usicitar una vendin en español da esta Acuerdo.

Section 21. ACREEMENT. This Agreement consists of this document, any other pages or materials have may be provided to you in the status orthogoe as this document that no clarify labeled to share that they relate no this document, any without notices peaking changes or existing to the tour name, any without notices peaking changes or existing to the terms or conditions to the terms or conditions of the Agreement which may be provided to you through fine to the status or conditions to the terms of the term

NOTIFY US IN CASE OF ERRORS OR QUESTIONS ABOUT YOUR BILL

If you think your bit is wrong, or if you need now information about a linearaction on your bit, write us jon a reported shoot of the address fixed on your bit where it says "Mail Bitting Error Neither to go the soon as possible to "With now it as soon as possible to "With now it are from you on lock men 60 days after we sent you the fixed bill on which the error by cooling appearant, you can belophane us, but doing so will not presently gour injuries."

YOUR RIGHTS AND OUR RESPONSIBILITIES AFTER WE RECEIVE YOUR WRITTEN NOTICE

SPECIAL RULE FOR CREDIT CARD PURCHASES

If you have a problem with the quality of phoporty or services that you purchased with a crook card, and you have tried in good with to correct the problem with the members, you may have the right not (or pay the members) and the care of the property or confects. There are two limitations on this right:

- (a) You must have much the purchase in your home state or, if not within your bome state within 100 miles of your current making address; and
- (b) The purchase price must have been more than \$50. Those sinkerions do not apply it we own or operate the merchant, or if we mall you the advertisement for the property or earliest.

Exhibit 5

EXHIBIT 2 Page 36 of 42 - 629 -

SEARS NATIONAL BANK SEARS CARD, ACCOUNT SEARS PREMIER CARD ACCOUNT CARDHOLDER ACCOUNT AND SECURITY AGREEMENT

Seers Card Account and Seers Promor Cord Account Controller Account Society Agreement? Journal the users your Sears Card outh and Seers Practic Card Account? Account? Afor series to use your sunt and Seers Practic Card Account? Account? Afor series to use your sunt only for personal, family or household purposes.

Account only for personal, lamily or household purposes.

Section 1. DERIMINONE; ACCEPTANCE in this Agreement b) the worldyour, "your," yours "ord accountibation" mean any person remed on the
credit explication or exceptance certificate as an account-batics, applicant, or
e-popication and any person in whose runs as account has been opered; (a)
"Sears" means Sears. Realback and Co., and its participating affiliate,
realistations and increases; (4) "External" purchase or transaction means any
purchase or transaction involving a non-Boars entiry; (b) the wysels" "wo", "or,"
and "out" mean-Boars National, Bank (an affiliate of Sears) or any services
house of the Account or any balances arising under the Account or any services
of your Account authorized by our and (b) "Cod" means a credit card trained.

By teeping or staying 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 also any other parson to use your Account.

COOR 2 LOANS AND CLABILITY.

- cition 2. LOANS AND LUDRILITY.

 Learn, You authorize us to make loage and strond credit to you to pay for termsactions of sword types; (!) purchases of goods and swyles made using the Card or the Appoint; (?) cash account [Card-Loans]. Instruction to the control of the contro
- effective as your signature.

 Libbly, You agree to pay all amounts orror on the Account whorton incurred by you, any other accountshides, anyone you riches to use the Account or any person from whom you reaches a present person who the second and the second and the person who have the person who used the Card, or Account a Scale for that persons were used the Card and Account according to the Lerns of this Agreement. By knowing or signify, the Card, or by using the Card or Account, each Audystacted there operated that the terms and conditions of this Agreement stopy to his or her use of the Account. Court decrease the diverse of separation do not affect faithful for any use of the Card or Account. You promise to use your Account only if you have be intent and financial expectly whom the truncation excurs to septy the amount in the pursuant to this Agreement.
- tepty the amount in hall pursuant to this Agreement.

 (c) Joint Accounts, if the Account is a joint Account, each accountable is bound by the learns of this Agreement and is jeitly and individually fabric for est amounts owned under this Agreement. The different individually fabric for a Account Statements (see Section 3 of this Agreement for accounting the Agreement of the property for the Agreement of the property for the Agreement of the Accounting the Agreement, when a far and accounting the Agreement, when a far and the Agreement, when a far and the Agreement, when the Agreement is the Account. We will not be shall be for the Account. We will not be shall no

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Section S. ACCOUNT STATEMENT, We will send you an account statement ("Account Statement") for each bibling cycle where there to purchase or Cesh Access transaction scribtly on the Account there is a balance of \$1,000 or more, or a Francis Charge is imposed useless we doom your Account uncolecible or defrequency conflictation proceedings have been instituted applicat you. The Account Sistement Sections in the Account and Sistement Section in the Account in the Ac

Saction 4, AUTHORIZED AND UNAUTHORIZED LISE.

etion 4. AUTHORIZED AND UNAUTHORIZED USE.

Authorized Users, You may ask that an instructual per added, dicted or changed as an authorized were "Authorized User" by calling us at the following the an authorized wor "Authorized User" by calling us at the following manuface, or writing to us at the address, indicated on your Account Sciences. You understood was will be use a Gord to each Authorized User in your town the second of the control of the Conditions of the Condition of

- persons, analysis with referent leave for any size of suce by such persons. Unsulfinded U.S., it you decourse or before that any charge on the Account to unsulfordized, you agree to call us introdularly at the liveshmen temphor or within to us it the self-ree, indicated on your Account Statement and to cooperate with us in making a masonable investigation of your claim. If you give us oral notice concerning loss or that, we may ask you to confirm it in writing.
- content it in writing.

 Lichilly for Uncertainteed Use, You will not be listed for ensurinched use of your Account (if. 1) you have exercised restorable one in sufficiently the Cart 2) you have not reported restorable one in sufficiently the Cart 2; you have not reported two or man incidents of uncertainteed use; (1) you have not reported two or more incidents of uncertainteed use; (1) you have not reported two or more incidents of uncertainteed use it is immortably proceeding twither (12) morth point and 1) your Account is in good standing. If you have not complete with any of three conditions you may be liable for unauthorited use of your Account for an amount not to exceed \$50.

you may ou assist for unauthorized use of your Account for an amount not to accord \$50.

Section & CREDIT LINE: it a crock tine, including a Cash Accord for for for the full in a first out of the full in a first of the full in a

PAYMENTS

Section 6, PAYMENT OPTIONS. To determine the Total Account Balance or your faccount, we take the previous balance at the beginning of your Pating cycle, subtrect any perspects or credit and seld only purchases, balance bringer. Cash Accoust transactions, dolba, tither thenges, fore and Franco Charges, it you do not pay the Total Accoust Balance on your Account in the sach mention that the manner specified in Section 6(b) to be credited as of the

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Martrum Physical Dos Dalo, you stored to pay at loast the "Ministern Peptnerd Das" shown no noted Account Statement by the Sere and at the returner spootfood in Section 25th to be credited as at the "Middenne Physical Das Data" thousand no that Account Statement, You may always pay more then the required Makerum Phyment Date and crop pay your brisk Account Statement that are partial statement in the property of the Ministern Phyment Date and carry time. Any procure poid in scasses of the Ministern Physical Date amounts, it is a recent of any sendoute poid in scasses of the Ministern Physical Date amounts, it is a recent of any sendoute payed in scasses of the Ministern Physical Date and Account Statement, you still most pay give instanced changes or Accountificate feet deep and Finance Changes will considered to account.

Accountificant focus due and Finance Changes will confined to accross. Social 7. MINIMAM PAYMENTS. The Minimum Payment Due is based on the current Total Account Balance, as shown on your Account Statement, less army Defender Physmath Balances and/or No Finance Charge Balances (Softworf in Section 5 of this Agronomia.) The Minimum Payment Due such bibing option who equal the calculated official minimum payment, pluri (a) any applicable travenous changes of Section 400 and 100 and 10 BAGUON B. CRÉDITS AND PAYMENTS.

(a) findunds. 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.

(a) instruction. Cabit interfresh with the makes for good for a service purchased with the Account. Whitehas with be made only by a condit to the Account. (b) Method of Payment, You signed to repay all amounts when on the Account and to make at Domments in Proper Form. A payment is in Proper Form II in it is in made in U.S. dollars down on a heldocally insured deposition framed in U.S. dollars down on a heldocally insured deposition framed in U.S. dollars down on a heldocally insured deposition framed in U.S. dollars down on a heldocally insured deposition framed in U.S. dollars down Statement. You may all our deposition framed in U.S. dollars down on a held on deposition of the the three downs on the case of the technique of the control of the case of the technique of the case of the technique of the three down of the technique of the techniqu

- Boars vierne, made by observante processes or clinics, in addition to any expeciation Franco Charges, we may charge a Lufa Phymoral Feel Larry payment is not reached as condited by the regard time and what. Almostly not will credit your payments as described in this section, your orielable Credit Line, it cold a subjusted to the Automat, may not be materially be reached to the Automat, may not be materially represent. For conditional these, before order or any other leading and preparent. For conditional Phymorats, and conditional Phymorats are conditional these, holders are at all subjusted in the least of the department of the angeling that that is a state of a disputation with many parent more as not accompanied that will be prepared, above or a will prepared to the second buffer of the prepared, if you make paymoral in any other way and we except fit, was will not have valved our high to evided any amount from you only grade this Agreement.
- (d) Application of Phymones. Generally, payments received will be applied in the totaling order, Sears Credi Protection Plan Instructions or Sears AccountCare less, billed Ficures Charger, Returned Payment Posts, provided bulancies, current bulances, Determed Payment Bulances in the

code in which Osland Paymert Unbanest audita, and than No France Charge Balances is the order in which No France Charge Shances applied within previous and custered balances, espera Prymeris will be applied within previous and custered balances, sear require balances, increasing promotional balances, Sear require balances, increasing promotional balances, Cash promotional balances, Enghans inought balances, jear settled balances, Cash promotional balances, Enghans inought balances, jear settled hances as policies, Enghans inought balances, jear settled hances and first balances. Within each of those balances and control of the promotional balances and foreign between the cash of the promotion o

Section 9, BPECIAL PROMOTIONS. From time to time, we may ultim apachal permellions, under which guardonase STENDAR or travious, believes transfors, or Cash Access transcrions, may be billed to your Account with apachal permellions, under the standard terms. The France Changes, minimum payment, application of payments, and other terms for appearance on the many differ from the standard terms doctriond in this Agnerment and at any be them on your Account with a standard terms doctriond in the Agnerment and at any beginning to the action modified by the Lerms of the special promotion, transdard forms will be action modified by the Lerms of the special promotion, transdard forms will continue modified by the Lerms of the special promotion, standard forms will continue modified by the Lerms of the special promotion, transdard forms will promotion, the special promotion, it suddent forms and the continue modified by the Lerms of the special promotion, the subject is a special promotion, you send to the terms of the continue of the special promotion, the subject is a special promotion, and the subject is a special promotion, you send to the terms of the special promotion and the subject is a special promotion, and the subject is a special promotion and the subject is a special promotion to the terms of the special promotion and the subject is a special promotion and the subject is an accessful promotion are not returned to as "Celeford Payment Balances" to the Agnerment Leve Mortenum promition and the Agnerment Leve Mortenum promition and the subject promotion and the subject promotion and the subject promotion and the subject promotion and the subject payments are defined to a Mortenum promition and the subject promotion and the subject promotion and the subject promotion and th

are referred to as "No Pinance Churpe Bulences" in the Agreement.

Section 10. REWARDS PROGRAMS, from the to time, became point, rebate, menthandese ordificate or other treasily a program may be offered by its or other has been program; and only a continuous with the Account Princetal Program only applied a participation law, two spore that a flewards Program and only applied dowing the period specified by us for the publicular program, and only be cancaded if at any time you are helded. Programs puricipation may be cancaded if at any time you are helded in early time you are helded in any bring you are helded in a program of the participation and the program of the programs of the

FINANCE CHARGES AND OTHER CHARGES

Section 11. FIHANCE CHARGES, See the enclosed explanation of periodic rate "Finance Charges" that will apply to your occount.

Section 12. LATE PAYMENT FEE, if you fall to pay any Minimum Payment Orus by the time and in the manner specified in Section 5(6) to be credited as of its Minimum Payment Dua Date, we may charge, sad you agree to pay, a

including an obscinote payment, that is not monored or in manned unjour for any reason, we may change, and you agree to pay, a Rebarmed Payment Fee of \$25.00. At our option, we may assess this change the first thing your payment is not honered or returned, when it if it poid upon resubmission.

Section 14. OTHER FEES.

30. Cash Access Horseschor Fee. If you willte Cash Access or bulgness.

30. Cash Access Horseschor Fee. If you willte Cash Access to bulgness wareless, we may change, and you agree to pay, a FPMANCS CHANGE CHANGE of \$46 if the Cash Access to believe translation, but not less than \$5.00.

40. Commissione Chock The Paymout Fee. If a Commissione Check is stopped at your project, we may change, and you agree to pay, a stop payment fee of \$25.00.

41. Resumed Contractione Chock Fee. If we decline translation is a commissione Check because the amount of The check would chass the balance to accord your Check Access the, you are in default (too Backlers to accord your Check Access the, you are in default (too Backlers to accord your Check Access the, you are in default (too Backlers to accord your Check Access the your are indefault (too Backlers to accord your Check Access the your are indefault (too Backlers to accord your Check Access the your are indefault (too Backlers to accord your Check Access the your are indefault (too Backlers to accord your Check Access the your are indefault (too Backlers to access the your access to the pay and the payment of the

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Well as your name. You understand that we cannot ensure against seasonated inquiries about on scenar to the Account. You agree that wo, while exiting it your distinct on the bis false for the glesson of information to agree with, without your authorization or permission, has golded account to your actions of your permission of your permission of your permission to your name of the permission of your permission of your permission of your permission that you have not your permission of your permission of your permission of your permission of your permission.

DEFAULT, TERMINATION AND OTHER

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

- We do not receive payment of any Michman Payment Due on the Account by the time and memor specified in Section Bibliot by and the as of the Michaelm Payment Due Date as shown on each Account Bibliotrach;
- You provide us with my falso or misleading information or signatures or conjunction with the credit application or the Account, or half as provided and activation from also on the credit application, sales lickets or other documents and definingers;
- You five a patition or excessorie this a position applicat you under the feederd benimple; reads or any state knowners; statute, or out about enforce our depths against you or your interest is enty exceptly, releasing any community proposes, is not recently affected by a position liked by or against a someone dead;
- We receive interested or have a reasonable belief that you are towing or unable to perfore the teams of equations of this Agreemont.
- We meake incommon from third parties which fortistion a science distriguency or charge-off against you with other conditions or other activation or negative information about you whilet, in our determination, advanced placed your shifty to ment the obligations of this Agreement;
- You become the subject of intechtness, foresterms, population, the judgment or gardistrian) proceedings or
- that are in default under any either egreement you may have wha us. Sears or any Sears Alistate.

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

Section, 16, OUR REMISSIES AND EFFORESMENT, If you are in default or in the early of your death, in addition to any Phance Charge hereast under Section 11 (a) of this Agreement, any Phance Charge hereast under Section 11 (a) of this Agreement why Phance Charge hereast under Section 11 (a) of this Agreement which the card to the proceeding any required entities and right to card to the proceeding any required entities and right to card to the proceeding and high agreement will compare to apply until fall payment it is each well of the amount owing on the Account, in which case the larms of this Agreement (a) continue to impose to the date of their payment of the proceeding the agreement (a) which we will conficue to impose to the date of the proceeding the procee

Socilon 19, FAILINE TO ENFORCE IS NOT A WANVER. We may choose to delay or not to enforce any term in this Agramment (ancluding artice and topol without learly our rights. Any latime or delay by or in a solutioning particle performance of this Agreement (ancluding, but not firsted to, secuping have any partial payments or menty under membed. Dayment in this "or loodered and but conditions or limitational shall not be considered a worker of any of the terms of this Agreement or any of our rights. Any wanter of lights by us must be in writing and signed by one of our authorities appreciations.

is writing and signed by one of our authorized representatives.

Socious 20. ARBITEATION, Any and all claims, disputes or correctiveries of any notion Whitesomer (whicher in confined, fact, arising out of stebure, or otherwise). It is allowed to the confidence of the confidence of

harderdon of the profit delimit court.

Arbitrition may be elected it my time, reporting of which my it to establish be bose field or not, trokes such it is marally her resulted in a perjament or the other party would stiller substantial prejudice as it is easily to the delay has demanded, entritudion. The enhalters stated be a larger or retired judge with not less than entritudion. The enhalters stated be a larger or retired judge with not less than any individual object you filled in a laward poor to the effective state of the Agreement, ledwing less retired that is a larger to be effective on the of the Agreement, ledwing less retired that is the state of the Agreement. The arbitration section will apply to all other chims, lecturing class retirem where a data has not yet been confided, even if the facts and excumultures upon which the delimit are based outstood before the effective data of this Agreement. This arbitration provides does not propose after purple how sooking itself influence in the facts and cases are the second of the purple how sooking itself influence in the facts and cases the provided does not propose of other purple how sooking itself influence in the facts and cases the purple to a court in coder to preserve the status case or to protect assists until the arbitration has been corresponded and the arbitration has an exportantly to consider the matter of intelling that the solutions from a behavior three arbitration forms.

exponenting to occusion the matter of interim mail.

Arbanisons peak by a stimulational by one of the following three probations forms:

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claim is faced. You may obtain copies of the current roles of such of the three

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American Arthration Association (web site; vww.caducry) * 035 Madiona Avenue, Floor 10 New York, NY 10017-4605

JAMS (web sha: www.jamsack.com) 1920 Main Street, Suite 200 Iwina, CA 92510

Paris, or 120 to National Arbitration Fearm (web after www.arbitration-forum.com) P.C. Bart 50191 Minneapoles, NN 55405

Minnespets, NM 55-145

Any activation that you attend will be hold at a clean chosen by the utilitation from its the same city as the U.S. District Court obsest to your those current bilding activess, or all some other place to writch jour and we algore in writing, activess, or all some other place to writch jour and we algore in writing, you pay, unkess you got a time writers will be a proposed to write the proposed of the writers and writers and the pay of the place of the writers and writers and you great, we will pay any level of the writers and writers are the pay of the side of the writers and writers are the writers and writers and writers are the writers and writers and writers are the writers and writers are the writers and writers are the proposed to the writers are the writers and writers are the writers are the writers and writers are the writers and writers are the writers are the writers and writers are the

tres there is a good reason for doing so. Each party will bear time expense at littus party's bitionary, expents, and witnessers, and other expenses, imparticus of which party partyals, but a gentymany recover any on at expense items another party if the architecter, explying applicable law; so determines.

The architecter straig apply returns substantive law and applicable statutes at immassion or chiral of principles recognized at law; and shall provide written, accorded frozings of lifety and conclusions of true.

resource rectings of first paid conclusions of fave.

The arbitration section of this Agramment is mode-pursuant to a transaction methods between the concentrations and stable to provened by the Fodoral Arbitration Act, 9 U.S.G. Sections 1, cl. soq. Andigment, on the award sendered by the school of any footh family pursuaction. This arbitration section is arbitration rection in the arbitration rection in the arbitration of the arbitration section is described, finally or produced the arbitration of the

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

- · Change any Credit Line epipicable to the Account
- Change any term or consider of the Agreement relating to your Account, including the Annual Percentage flater applicable to outstanding ord four buliness, and the feet or other charges applicable to the Account; and
- Add any new term or consider to this Agreement relating to your Actount.

reusing to your Account.

Our right to change or said learns or conditions to the Agreement applies both to francial terms, such as Francia Changes and fees, and Je non-francial forms, such as our enforcement fights and other contractual protections. We may apply any changed or new terms or conditions to any purrous endior future belances created effect that date. We will send you a written notice of any such change(s) or addition(s) as recorded by law.

created effect that defen. We will send you a written notice of any such chargeful or additionally as required by law.

flection 22. TERMINATION. You may terminist this Account ait my time by young and the such and the such that the product of the property of the product of the Account. It my time by the product of the Account. We may, at any time without prior notice to you; and wish or without course, terminate that a first in the purchases or other transactions on the Account. If we terminate your first in the purchases or other transactions on the Account and the purchases or other transactions on the Account and the server of the Account of the Account does not offered by the termination of the Account does not offered by the termination of the Account does not offered by the termination of the Account does not offered by the termination of the Account does not offered by the product of the Account according to the jumps of the Account account to the Account account of the Account account of the Account account to the Account account account to the product of the Account a

Section 24, ASSIGNABETT, You undestude that the Account of any hispert, balance of emount orwed may be told; assigned or transferred by us without pation to you. Any purchase, assigned or transferred by us without stake Apprentian. You may not set, transfer or a subject to but hondit of the Apprentian. You may not set, transfer or a signal any of your rights or obligations under this Apprentian.

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Section 30, SPANIBH LANGUAGE TRADISTATION, As a curtience service, we will provide you with a copy of this Agraement in Spanish upon you'r request. To obtain such a copy, you may write to be at RO, Dea tifelder, Directard, OH 4118-18002, or call us at 1-800-917-17700, and request a Spanish language copy of this Agraement.

of this Agroement.

Coma ver scride a recestors essential to proveousness was copial de este Acusedo en español si vistod sal lo sobbila. Para obtener dicha copia, poede escribirnos si RO, Besa 816072. Givertand, DR 44181-6022, e ilamanos si 1-600-917-7070, y acticiar una tenzión en seguind de este Acusedo.

Section 30, ADREEMENT, This Agroment consists of this tocument, any exter pagas or mentrals that may be provided to you in the same anvilope as the document that are destry labeted in thorwthat they retail to this document, and any written notices finchalony changes or addition to the latter or conditions of this Agreement which may be provided to you from the time or conditions of this Agreement which may be provided to you from time to time.

STATEMENT OF CREDIT BILLING BIGHTS
(NESP THIS NOTICE FOR FUTURE USE)
This notice contains important information about your rights and our responsibilities under the Febr Coold Balloy Act.

FIGURE US IN CASE OF ERRORS OR QUESTIONS ADOUT YOUR BILL.

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hear from you no later than 60 drips after we sont you the first bill on which the
error or problem appeared. You can telephone us, but doing so will not preserve
your rights. Home's us in case of errors or questions about your bill

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

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SPECIAL RIFE FOR CREDIT CARD PURCHASES

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(b) The purchase price much have their more than \$50.

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you the advantament for the property or sequence.

Case 2:08-cv-06363-R-JWJ Document 34 Filed 12/19/2008 Page 1 of 8 I 2 3 4 5 б 7 8 UNITED STATES DISTRICT COURT 9 CENTRAL DISTRICT OF CALIFORNIA 10 ERIC HERSHLER, Individually and on Behalf of All Others Similarly Situated, 11 Case No. CV08-6363 R (JWJx) 12 Assigned to the Hon. Manuel L. Real Plaintiff, ORDER GRANTING CITIBANK'S MOTION TO COMPEL ARBITRATION 13 14 CITIBANK (SOUTH DAKOTA), N.A., and Does 1 through 100, 15 Defendant. 16 17 Complaint Filed: July 31, 2008 18 19 20 Plaintiff filed this action on July 31, 2008 in California state court 21 alleging in principal part that defendant Citibank (South Dakota), N.A. ("Citibank") 22 failed to comply with Civil Code Section 11 (relating to the effect of deadlines falling 23 on holidays on transactions governed by California law). In the Complaint, Plaintiff 24 alleges three Counts for: (1) violation of California Civil Code Section 11; (2) 25 violation of the Consumers Legal Remedies Act, California Civil Code Section 1750, 26 et seq. ("CLRA"); and (2) violation of the Unfair Competition Law, California 27 Business & Professions Code Section 17200, et seq. (the "UCL"). 28

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26 27 28 Citibank appeared, removed the action to federal court pursuant to 28 U.S.C. §§ 1331, 1332 and 1446, as amended in relevant part by the Class Action Fairness Act of 2005, and filed a motion to compel arbitration and stay proceedings. Plaintiff opposed the motion.

BACKGROUND

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

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

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

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Citibank if he wanted another copy. Id., ¶ 8, Ex. 5.

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Walters Decl., ¶ 7, Ex. 3. A second message on Plaintiff's November 2001 account statement reminded him of the Arbitration Change-in-Terms and advised him to call

Significantly, the Arbitration Change-in-Terms gave Plaintiff the opportunity to opt out of the Arbitration Agreement:

> If you do not wish to accept the binding arbitration provision contained in this change in terms notice, you must notify us in writing within 26 days after the Statement/Closing date indicated on your November 2001 billing statement stating your non acceptance... If you notify us by that time that you do not accept the binding arbitration provisions contained in this change in terms notice, you can continue to use your card(s) under your existing terms until the end of your current membership year or the expiration date on your card(s), whichever is later. At that time your account will be closed and you will be able to pay off your remaining balance under your you will be able to pay off your remaining balance under your existing terms.

Walters Decl., ¶ 10, Ex. 2. Plaintiff did not opt out of the Arbitration Agreement. Id. ¶¶ 11-13, Ex. 6.

In February 2005, Citibank mailed another change-in-terms notice, which further advised Plaintiff of additional amendments to the Arbitration Agreement, including the removal of one of the arbitration firms. Id. ¶ 15, Ex. 8. Plaintiff also had the opportunity to opt out of these changes, but did not do so. Id. Instead, Plaintiff continued using the Account. Id. ¶ 15, Ex. 11.

Finally, in September 2005, Plaintiff contacted Citibank to request a pricing change on the Account. Walters Decl., ¶ 16, Ex. 12. Citibank agreed to change the pricing for the Account and, in doing so, mailed to Plaintiff a complete Card Agreement for the Account, which included the Arbitration Agreement, along with a pricing sheet that also noted the Account is subject to arbitration. Id. ¶ 16, Ex. 13. Again, Plaintiff continued to use the Account. Id. ¶ 16, Ex. 14.

ANALYSIS

Plaintiff does not dispute the foregoing facts nor does he dispute that the instant arbitration agreement is governed by the Federal Arbitration Act (9 U.S.C. §§ 1, et

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

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

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

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27 28 Plaintiff cannot satisfy the second and third prongs of this test and, therefore,

Citibank's arbitration agreement is enforceable.

The <u>Hoffman</u> Court opined that "California has a fundamental policy

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

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

¹ Moreover, the Court notes that plaintiff is a licensed member of the California bar who renegotiated the terms of his Citibank agreement after the arbitration terms had been disclosed to him. Indeed, his status as a lawyer, at least under the record 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.

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27 28 materially greater interest than South Dakota in a determination of this issue, and the contractual choice of South Dakota law therefore must be enforced.

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

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

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

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borders, while the bank has an equally compelling need to ensure that its transactions are governed by a common set of laws. "Probably the most important function of choice-of-law rules is to make the interstate and international systems work well."

Restatement § 6, cmt. d. Even more so than other interstate businesses, the national banking system fundamentally depends on allowing national banks to operate under a uniform set of laws. This policy is reflected in the extensive federal oversight of national banks², as well as federal laws allowing national banks to "export" their home-state interest rates so that a single state's usury laws will apply to the bank's customers nationwide. See Marquette Nat'l Bank of Minneapolis v. First of Omaha Serv. Corp., 439 U.S. 299, 308, 99 S. Ct. 540, 545, 58 L. Ed. 2d 534 (1978); Smiley v. Citibank (South Dakota). N.A., 517 U.S. 735, 737-38, 116 S. Ct. 1730, 1732, 135 L. Ed. 2d 25 (1996). As the Office of the Comptroller of the Currency ("OCC") has further explained,

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

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

² See, e.g., 12 C.F.R. § 7.4008 (setting forth preemption standards for non-real estate lending activities); 12 C.F.R. § 7.4009 (preemption standards for national bank operations); OCC Final Rule, 69 Fed. Reg. 1904 (Jan. 13, 2004) (discussing Final Rule regarding OCC preemption); Rose v. Chase Bank, N.A., 513 F.3d 1032 (9th Cir. 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).

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

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

CONCLUSION

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

IT IS SO ORDERED.

Dated: _Dec. 19_, 2008

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The Honorable Manuel L. Real United States District Court

Central District

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UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES -- GENERAL

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

Dated: June 10, 2011

Title:

Yonis Yagub -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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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., \P 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 Deol. [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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