

1 SIDNEY H. MICKELL, ESQ. (CA Bar # 120027)
Law Office of Sidney Mickell
2 5050 Palo Verde Street Ste. 113
Montclair, CA 91763
3 Phone No.: (909) 568-0752
Fax No.: (909) 568-0766
4

FILED
LOS ANGELES SUPERIOR COURT

5 Attorney for Plaintiff
6 CACH, LLC.

2009
JOHN A. CLARKE, CLERK
BY _____ DEPUTY

7
8 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**
9 **COURTHOUSE—LIMITED JURISDICTION**

10
11 CACH, LLC

12 Plaintiff,

13 vs.

14 FRANK and DOES 1
THROUGH 10, INCLUSIVE,

15 Defendants.
16

Case No.: 363

COMPLAINT FOR BREACH OF
CONTRACT, COMMON COUNTS,
AND ACCOUNT STATED

LIMITED JURISDICTION
The amount demanded
does not exceed \$10,000.00

5. 234

17 1. Plaintiff CACH, LLC (hereinafter, "Plaintiff"), is a limited liability Company
18 organized and existing in the State of Colorado. Plaintiff is authorized to do business in the State
19 of California.

20 2. Plaintiff may be contacted through its undersigned attorney of record.

21 3. Plaintiff alleges that Defendant, FRANK (hereinafter
22 "Defendant") is a natural person, resident of the County of Los Angeles, residing a
23 Los Angeles, CA

24 4. Plaintiff does not know either the true names or capacities of the Defendants sued
25 herein as DOES 1 through 10, and therefore, sues these Defendants by such fictitious names.

26 Plaintiff will amend this Complaint to allege their true names and capacities when they are
27 ascertained. Plaintiff is informed and believes and thereon alleges that each of these fictitiously
28 named Defendants are responsible in some manner for the occurrences herein alleged and that

Rule 3.740 Collections

1 Plaintiff's losses as herein alleged were proximately caused by Defendant's acts. Plaintiff is
2 informed and believes and thereon alleges that at all times herein mentioned, each of the
3 remaining Defendants were acting in the course and scope of such relationship and/or with the
4 permission, consent, authority and ratification of each of the other Defendants.

5 5. The allegations of this complaint stated under information and belief have
6 evidentiary support, or are likely to have evidentiary support after a reasonable opportunity for
7 further investigation or discovery.

8 SPECIFIC ALLEGATIONS

9 6. Plaintiff alleges that on or about September 30, 1999, Washington Mutual and/or
10 Provident Bank, (hereinafter, collectively, "Original Creditor"), issued a credit card in the
11 Defendant's name under its account number identified as 4031 Defendant
12 received and used the card and thereby became obligated to pay for the charges incurred with the
13 card. A true and correct copy of the original credit card agreement is attached herewith as
14 Exhibit "A".

15 7. Plaintiff is informed and believes that the essential terms of the agreement were
16 that Original Creditor would allow Defendant to use a revolving credit card for charges, with a
17 pre-set spending limit, and monthly interest charges, in exchange for Defendant's promise to pay
18 timely for the use of said card.

19 8. Plaintiff is informed and believes that on or about May 7, 2008, Defendant
20 defaulted on the obligation by failing and refusing to pay the monthly charges as agreed and card
21 charging privileges were cancelled. Defendant made a final payment on February 7, 2008, and
22 has refused, despite demands, to make payment since that date. The entire balance on the credit
23 card is presently due and payable in full.

24 9. On August 29, 2008, the credit card account was "charged off" by the Original
25 Creditor. On or about September 26, 2008, the credit card account was purchased in full by
26 Plaintiff. All of the rights and interests of the Original Creditor were transferred to Plaintiff.
27 The total account balance purchased by Plaintiff was \$5,726.63. The transfer was memorialized
28 in writing.

1 Plaintiff is informed and believes that Defendant did not provide Original Creditor or Plaintiff
2 any disputes of the monthly bills or the charges reflected thereon. Defendant's failure to submit
3 such disputes constitutes an admission of the account balance.

4 17. Defendant defaulted in the payment obligation on the credit card. Such breach of
5 contract proximately caused Original Creditor damages in the amount of the balance due on the
6 credit card account. That obligation has been assigned to the Plaintiff, who is the party entitled
7 to enforce the contract and receive the payment of the credit card balance due.

8 18. Defendant is liable to Plaintiff in the amount of \$5,726.63, that being the amount
9 due as of 10/08/2008, 5 days after the initial demand letter was sent to Defendant; plus interest,
10 at the contract rate of 31.990% per annum, to the date of judgment. Plaintiff seeks judgment for
11 such sums.

12 **SECOND CAUSE OF ACTION—COMMON COUNTS**

13 19. Plaintiff re-pleads all previous paragraphs of this Complaint, and incorporates
14 them by reference, as if they were fully said forth herein.

15 20. Defendant received and used the credit card, together with interest thereon. With
16 each use of the credit card the Original Creditor paid money on Defendant's behalf to the
17 merchant with whom the credit card was used. The Defendant is liable for repayment of such
18 sums under the doctrine of money had and received.

19 21. Plaintiff is assignee of the Original Creditor's right to be repaid by Defendant for
20 such money had and received, and Plaintiff is entitled to recover from Defendant the balance
21 due. Plaintiff is also entitled to recover the contractual interest at a rate of 31.990% per annum.
22 Plaintiff seeks judgment for such sums, together with post-judgment interest at the maximum
23 rate allowed by law.

24 **THIRD CAUSE OF ACTION-ACCOUNT STATED**

25 22. Plaintiff re-pleads all previous paragraphs of this Complaint, and incorporates
26 them by reference, as if they were fully said forth herein.

27 23. Plaintiff asserts that Defendant's use of the credit card to purchase goods and
28 services represented a periodic account, for which the Original Creditor generated regular

1 monthly statements. Defendant is liable to Plaintiff, the assignee of the account, for the account
2 balance, together with the interest thereon at a rate allowed by law.

3 CONDITIONS PRECEDENT

4 24. Plaintiff has demanded payment from Defendant, but Defendant has not satisfied
5 such demand. Plaintiff has performed all conditions precedent to the filing of this action, or all
6 such conditions precedent have occurred.

7 ATTORNEY FEES

8 25. Pursuant to the credit card agreement and California Code of Civil Procedure
9 §1717.5, Plaintiff is entitled to recover reasonable attorney's fee and court costs for the pursuit of
10 this action. Such amount is subject to determination by the Court, and Plaintiff requests that the
11 Court award attorney's fees in the amount that it determines to be reasonable in this action,
12 together with costs.

13 PRAYER

14 Plaintiff prays for the following on all causes of action:

- 15 1. An award of damages in the amount of \$5,726.63, which is the unpaid amount
16 owed by Defendant
- 17 2. Interest at the rate of 31.990% per year, from October 8, 2008 to the date of
18 Judgment.
- 19 3. Costs of suit herein;
- 20 4. Reasonable Attorney's fees pursuant to contract and California Code of Civil
21 Procedure §1717.5, in the amount determined by court to be reasonable;
- 22 5. All such other and further relief to which Plaintiff may be justly entitled.

24 Dated: 08

25 Law Office of Sidney Mickeli

26
27 By: _____
28 Sidney I. Mickeli
Attorney for Plaintiff

DECLARATION OF VENUE:

1
2 I, Sidney H. Mickell, state:

3 1. I am the attorney for the Plaintiff. This judicial district is appropriate venue for
4 this action because:

5 -At least one defendant resides in this judicial district.

6 -The obligation was incurred in this judicial district

7 2. This action is subject to:

8 -Civil Code Section 1812.10

9 I declare under penalty of perjury pursuant to the laws of the State of California
10 that the foregoing is true and correct.

11
12 Dated: 1108

13 Law Offices of Sidney Mickell

14
15 By Sidney H. Mickell
16
17
18
19
20
21
22
23
24
25
26
27
28

VERIFICATION

I, Sidney H. Mickell, am the attorney for Plaintiff in the above entitled action. Plaintiff is absent from the county in which I have my office, and I therefore, verify the pleading pursuant to CCP Section 466 (a), on Plaintiff's behalf. I have read the foregoing complaint and am familiar with its contents. I am informed and believe that the matters contained within it are true and on that ground allege that the matters stated are true.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Dated 2/10/08

Law Offices of Sidney Mickell

By: _____
Sidney H. Mickell
Attorney for Plaintiff

EXHIBIT A

PROVIDIAN NATIONAL BANK TRUST AND MASTERCARD® ACCOUNT AGREEMENT

Please review the Agreement and read it with your other important papers. The Account Agreement contains the terms that govern your Providian National Bank Mastecard Account (the "Account"). The Account allows you to make purchases by using your VISA or MasterCard credit card (the "Card") whenever it is approved and to get cash advances from us or any other participating financial institution and from Automatic Bill Payment services. Convenience checks may also be provided to you in an optional way to use the Account. In this agreement, "you" and "your" mean each person for whom we have opened a credit card Account. "We," "our," "ours," and "us" mean Providian National Bank, or its successor, as issuer of your billing statements. This Account may be used only for personal, family, investment, and charitable purposes, and not for any business or commercial purpose. Any use of this Account that constitutes a violation of the terms of this Agreement. You and we agree as follows:

Payments. You will receive a monthly statement showing your outstanding balance. Payment on this Account is required by U.S. courts (which may be liable if U.S. courts of law have the check or draft or) for at least the payment due as shown on your statement by the payment due date in accordance with payment instructions or your account statement. The date of your monthly statement indicates the date we follow when we post payments to your Account. Convenience checks and other checks we may issue to you may not be used to make payments on your Account or to make payments on any other account you have with us or our affiliates. The payment due will be 2% of the past balance shown on your statement (not the amount of any past due payment), and may include the amount by which the new balance exceeds your credit line. However, the payment due will not be less than \$15 (unless you have accepted a new limit on your credit line, in which case the payment due will be the amount of the new balance). If your Account is over due or above the credit line, we may require a higher minimum payment, and we will notify you before doing so. If your payment is more than the payment due, it will be treated as a single payment and each of it will be applied to future payments due. We may accept late or partial payments, or payments credited "in full" or credited with interest-free, without losing our right to collect a month's penalty under this Agreement.

Finance Charges. Finance charges begin to accrue on a date when it is possible in fact of your daily balances and continue to accrue until that balance is reduced by a payment or debit. Your Account has two daily balances: the **Original Balance**, which consists of purchases you make with your Card and fees, other than cash advance transaction fees, charged to your Account, including fees for automatic services and the **Cash Advance Balance**, which consists of all cash advances and cash advance transaction fees. Any payment amount we receive that exceeds the finance charges and less than due will automatically be applied first to the balance with the lower APR (APR) until that balance is zero, and then to the remaining balance. We reserve the right to apply payments differently without notice. The Purchase and Cash Advance balances are reduced by payments as of the date received, and by credits as of the date posted. Payments are included in your Purchase Balance as of the date made, fees are included in your Purchase Balance as of the transaction date. Cash advances are included in your Cash Advance Balance as follows: cash advances made over financial institutions and through Automated Teller Machines as of the date cash is made; advances made by check as of the date cashed; cash advances made payable to you that are deposited in a clearing account, which we may send to you in your check; as of the date after the date we bill on the check of your credit, including any subsequent checks, as of the date presented to us. Cash advance transactions are included in the Cash Advance balance as of the transaction date. Other fees are included in your Purchase or Cash Advance Balance as of the date billed. Finance charges are added to your Purchase and Cash Advance balances each day and are then posted on the last day of the billing cycle. There is no period within which or will included may be rolled without incurring a finance charge.

To figure the daily finance charges for purchases and the daily finance charge for cash advances, we start with your previous day's Purchase Balance and Cash Advance Balance, add or subtract all credits for the previous day to the applicable balance as appeared in the paragraph above, and multiply the sum by the applicable daily periodic rate (see following paragraph). The finance charge for purchases is then added to and reported in that day's Purchase Balance, and the finance charge for cash advances is then added to and reported in that day's Cash Advance Balance. We treat a credit as zero for any day at all. We describe the total finance charge on your balance for the billing cycle by adding together the finance charges for purchases for each day within the billing cycle and the finance charges for cash advances for each day within the billing cycle. In calculating finance charges, an advance will be added by any transaction or payment that would have affected the finance charge calculation in a prior billing cycle but has been posted in that cycle. The applicable daily periodic rate for a transaction will be the rate in effect for the current billing cycle unless the rate has changed since the date of the transaction.

The term "Finance Rate" as used in the Agreement means the price rate published in The Wall Street Journal on the first business day of the previous calendar month. Any increase or decrease in the APR will take effect on the first day of your billing cycle and may result in a slight increase or decrease in the amount of your minimum payment.

The **APR for PURCHASES** for purchases will vary but will be indicated on your billing cycle up to 18.99% (plus 1% Fee). Using this formula, the APR for purchases is 17.99% (April 2000 billing cycle) to 17.99%, corresponding to a daily periodic rate of 0.00049%. And your APR for purchases will never be below 11.99%.

The **APR for CASH ADVANCES** for cash advances will vary and may be adjusted each billing cycle up to 17.99% (plus 1% Fee). Using this formula, the APR for cash advances is 17.99% (April 2000 billing cycle) to 17.99%, corresponding to a daily periodic rate of 0.00049%. And your APR for cash advances will not be below 11.99%.

To calculate the average daily finance charge on your statement for purchases, add each day's Purchase Balance (including daily finance charges) in the billing cycle and divide by the number of days in the billing cycle. To calculate the average daily finance charge on your statement for cash advances, add each day's Cash Advance Balance (including daily finance charges) in the billing cycle and divide by the number of days in the billing cycle. You can multiply each of these average daily balances by the number of days in the billing cycle and by the applicable daily periodic rate to figure actual finance charges. We will bill you for the actual finance charges on the last day of the billing cycle. If a cash advance transaction fee, credit line increase fee, or other fee is applied to a purchase or cash advance, those amounts are also included in the finance charges.

Fee. A maintenance fee of \$7.95 will be charged to your Account for each year. If you request and we issue an additional Card on your Account for an authorized user, a fee of \$20 for each additional Card will be charged to your Account. This fee will be charged to your Account when the additional Card is issued and every 12 months thereafter for as long as such additional Card is outstanding. If you request and we issue a replacement Card for an existing Card, a replacement charge will be charged to your Account. In some cases, express postcarding may not be available. We may charge your Account for each year for a **Service Fee**. This fee is a **FINANCE CHARGE**, and will be charged to your Account for each year. Each card approval order or renewal of such an order, each time you use your Account in a foreign country, and each billing cycle when which you finance across your credit line from your Account is charged. If you request credit line increases, we will charge you a **Service Fee** for each credit line increase. For each credit line increase, you may be charged a fee, which is a **FINANCE CHARGE**, the amount of which will be disclosed to you before you accept the line increase. If you request that we make a one-time automatic payment from your personal checking account, we may charge your Account a fee of \$4.95 for each request. This fee is a **FINANCE CHARGE**, and it will likely increase or not be available if your personal checking account is not the primary.

Default. You will be in default if any information you provided to prove to be inaccurate or untrue. If you do not comply with any part of this Agreement, such as your debt, bankruptcy, or insolvency if you do not pay other debts when due or if a bankruptcy petition is filed by or against you, if we believe a good faith that you may not pay to perform your obligations under this Agreement, if you are in default, we may, without further demand or notice, suspend your credit privileges, declare your Account in arrears immediately and sue to collect and sue you directly or sue your guarantor, in the event of your default, the outstanding balance on your Account will continue to accrue interest at the APR(s) disclosed in the Finance Charge section of the Agreement even if you have not yet received the amount you owe.

Credit Line. Your credit line and credit advance limit are disclosed when you open your Account and on your statement 45th month. Your credit advance limit is a portion of your credit line. We may increase or decrease your credit line under your cash advance limit based on information we obtained from you or your credit records. Your credit advance limit consists of normally the difference between your credit line and your Account balance (including transactions made or authorized but not yet posted). Your available credit for a cash advance is normally the difference between your cash advance limit and your Cash Advance balance (including transactions made or authorized but not yet posted). However, if you have a large negative balance, we may also your available credit while we wait for the check to clear. For certain transactions, available credit may be less. You will not use your Account for, and we may refuse to finance, any transaction that would cause you to exceed your credit line or your credit advance limit. Your credit line may be reduced if you attempt to go over your credit advance limit.

Reserve to Pay. You agree to pay at least the amount shown when you or someone else uses your Account (even if the reserve charge exceeds your permitted) in other transactions and charges to your Account, and all collection costs we incur including, but not limited to, reasonable attorney's fees and court costs. If you are the card, we will pay your reasonable attorney's fees and court costs.

Changes. After we provide you any notice required by law, we may change any part of this Agreement and add or remove any terms, conditions, or requirements. If a change is made to the Finance Charge section of the Agreement, the new finance charge will apply to your entire Account balance from the effective date of the change. Changes will apply to balances that include finance charges on your Account before the date of the change, and will apply whether or not you continue to use the Account.

Foreign Exchange Conversion Transactions. If you use your Card for transactions in a country other than U.S. dollars, the transactions will be converted to U.S. dollars, generally using either a Government-authorized rate or (if authorized) market rate, which may differ from the balance if processed, increased by 3%. If a credit is subsequently given for a transaction, it will be deducted by the same percentage. The currency conversion fee used on the conversion will differ from the rate in effect on the date you used your Card. We agree to accept the converted amount in U.S. dollars.

The Card Description. You may cancel your credit privileges at any time by notifying us in writing and destroying the Card. Upon the date of cancellation, the card will be voided. If we require the right to reuse the Card, we may charge the Card and your credit privileges at any time after 12 days after to you, or request to you, or request to you, if permitted by law. If your Card is cancelled or not renewed, finance charges and other fees will continue to be assessed, payments will continue to be due, and all other applicable provisions of this Agreement will continue to apply. If you surrender your credit privileges, or if we cancel or do not renew the Card, we may no longer verify checks at your Account, and you should destroy any unmailed checks we have that should be void.

(Continued on reverse)

VISA CLASSIC[®] PROVIDIAN NATIONAL BANK ACCOUNT AGREEMENT

Your VISA Classic credit account (the "Credit Card Account") allows you to make purchases by using your VISA Classic card (the "Card") whenever it is honored and to get cash advances from any participating financial institution. In this Agreement, "you" and "your" mean each person for whom we have opened a Credit Card Account. "We," "our," "ours," and "us" mean Providian National Bank or its Affiliate. Any use of a Credit Card Account constitutes acceptance of this Agreement. The Credit Card Account may be used only for personal, family, household, or charitable purposes, and not for any business or commercial purpose. You and we agree as follows:

1. **Security Interest in Savings Account.** If we require you to open and maintain a Savings Account, you grant us a security interest in the Savings Account to the full extent of the balance in that account (the "Pledged Balance"). The Pledged Balance funds will remain yours as long as your Credit Card Account is in good standing and you comply with this Agreement. The security interest will secure the payment of all your obligations under and your compliance with all of the provisions of this Agreement. In case of default, we may, without notice, apply all or any portion of your Pledged Balance against any outstanding balance due on your Credit Card Account. You will not be able to withdraw funds from the Pledged Balance until we no longer require you to maintain a Savings Account or you close your Credit Card Account. Provided your Credit Card Account has been paid in full, you will be able to withdraw all remaining funds from the Pledged Balance, except for (1) any fees you owe us or (2) any other debts you owe us, including, but not limited to, reasonable attorney's fees and court costs. If we use you to collect the debt and you win the suit, we will pay you the attorney's fees and court costs.

2. **Payment of Debt.** You promise to pay us when due all amounts borrowed when you or anyone else uses your Credit Card Account (even if the original charged account was not yours), all other amounts due and charges to your Credit Card Account, and all amounts due we invoice, including, but not limited to, reasonable attorney's fees and court costs. If we use you to collect the debt and you win the suit, we will pay you the attorney's fees and court costs.

3. **Payment.** We will provide you a monthly statement showing your outstanding balance. You will pay us the amount due by the date stated as payable on a U.S. office of the bank the check is drawn on. Payment due as shown on your statement by the payor on the date of the charge with payment instructions to your account is acceptable. The payment due is 1% of the new balance shown on your statement plus the amount of any past due payment, plus the amount by which the new balance exceeds your credit limit, plus fees for certain optional services. However, the payment due will not be less than \$15 (unless your new balance is less than \$15, in which case the payment due will be the amount of the new balance). If your payment is more than the payment due, it will be treated as a single payment and none of it will be applied as future payment due.

When we receive your payment check, we may, at our discretion, keep the check and payment of disbursements to the financial institution on which the check is drawn. If we do so, we will provide you with a copy of the check at your request.

If you send us money without specifying whether it is a deposit to your Savings Account or a payment on your Credit Card Account, we will determine, at our discretion, which account(s) the money will be applied to. We may accept late or partial payment on payments marked "paid in full" or payment with other restrictions, without losing our right to collect all amounts owing under this Agreement.

4. **Finance Charges.** Finance charges begin to accrue on a date when it is debited or when the cash advance balance ("Purchase Balance") or the daily cash advance balance ("Cash Advance Balance") and continues to accrue until the balance is reduced by a payment or credit. The Purchase and Cash Advance Balances are reduced by payments as of the date received, and by credits as of the date posted. Normally, any payments amount we receive that exceeds the finance charges and fees then due will first be used to pay the remaining Purchase Balance, and then, after the Purchase Balance has been paid in full, will be used to pay any remaining Cash Advance Balance. However, we may apply your payments differently. Purchases we included in your Purchase Balance as of the date made (and cash advance fees) are included in the Purchase Balance as of the date posted. However, fees not

we be included in the Purchase Balance for the purpose of calculating finance charges for the billing cycle when fees are the only balance on the last day of the billing cycle. Cash advances that are included in the Cash Advance Balance as of the date posted. Cash advances from other financial institutions and through Automated Teller Machines are included in your Cash Advance Balance as of the date made. If we send you a cash advance check and you use it, it will be included in your Cash Advance Balance as of the date presented on the check. Other debts are included in your Purchase or Cash Advance Balance as of the date posted. Finance charges are added to your Purchase and Cash Advance Balances each day and are then posted on the last day of the billing cycle.

To figure the daily finance charge for purchases and the daily finance charge for cash advances we start with your previous day's Purchase Balance and Cash Advance Balance, add all debits and subtract all credits for the current day to the applicable balance (as explained in the paragraph above) and multiply the new amount by the applicable daily periodic rate. The daily periodic rate for purchases and cash advances is 0.0457% (corresponding to an ANNUAL PERCENTAGE RATE of 13.79%). The finance charge for purchases is then added to and included in that day's Purchase Balance and the finance charge for cash advances is then added to and included in that day's Cash Advance Balance. We treat a card's balance for any day as zero. We determine the total finance charges for the billing cycle by adding together the finance charge for purchases for each day within the billing cycle and the finance charge for cash advances for each day within the billing cycle. In calculating finance charges, an adjustment will be made for any transaction of payment that would have affected the finance charge calculation in a given billing cycle and a lower period in that cycle. The applicable daily periodic rate for such a transaction will be the rate in effect for the current billing cycle rather than the rate in effect on the date of the transaction. There is no period within which credit extended may be repaid without incurring a finance charge.

We determine the average daily balance shown on your statement for purchases, add each day's Purchase Balance (including daily finance charges) to the billing cycle and divide by the number of days in the billing cycle. To determine the average daily balance shown on your statement for cash advances, add each day's Cash Advance Balance (including daily finance charges) to the billing cycle and divide by the number of days in the billing cycle. You can multiply each of these average daily balances by the number of days in the billing cycle and by the applicable daily periodic rate to obtain interest, and then add the two amounts together. This total determines the total amount of your finance charges on balances for the billing cycle. If a cash advance transaction for less than \$100 is made on credit, the finance charge on that transaction is also a FINANCE CHARGE.

5. Changes We may change any part of this Agreement or add or remove requirements, terms, or conditions after notice as required by law. If any change occurs, the new finance charge calculation will apply to your whole Credit Card Account balance from the effective date of the change, whether or not the balance included items posted to your Credit Card Account before the change date and whether or not you continue to use the Credit Card Account.

6. Fees We will charge your Credit Card Account \$25 for each billing cycle within which your Credit Card Account is delinquent (late fee), each billing cycle within which your balance exceeds your credit limit (overlimit fee) and each payment late fee that is reported to us except (for example, hours of checks).

An annual fee of \$39 will be charged to your Credit Card Account every 12 months. For a second Card issued on your Credit Card Account, an additional \$25 annual fee will be charged for that Card. For each advance, a transaction fee, which is a FINANCE CHARGE, will be charged that is the greater of \$3 or 5% of the cash advance amount. For Cards used at your request through an express service, we may charge \$22 for each Card you ask us to express, we may charge \$18 for copies of bank statements that were first sent to you more than three months earlier, we may charge \$3 for each copy.

Your Credit Card Account will be reviewed regularly for increased late treatment. When an offer you a fee increase, we will tell you if there is a fee. The maximum amount of this fee was disclosed to you when you applied, and will not exceed \$95. A late charge fee is a FINANCE CHARGE.

7. Credit Line Your credit line is applied from time to time to a separate service. We may increase or decrease your credit line based on your use of your Credit Card Account and based on information we obtain from you or your credit records. Your available credit is normally the difference between your credit line and your Credit

Card Account balance (including transactions made or authorized but not yet posted). If you need to keep payment checks, we may limit your available credit. We confirm that the check will clear. For cash advances, available credit may be less. You will see the your Credit Card Account fee, and we may refuse to honor any transaction that would cause you to exceed your available credit.

8. Foreign Exchange/Currency Conversion If you use your Card for transactions in a currency other than U.S. dollars, the transactions will be converted to U.S. dollars, generally using either a (i) government-mandated rate or (ii) wholesale market rate in effect on the day before the transaction processing date, lessened by one percent (1%). If a credit, a subsequently given for a transaction, it will be determined by the person (1%). If the card has a different processing date, then the exchange rate of the card; not be greater than that of the official conversion. The foreign conversion rate on the day before the transaction processing date may differ from the rate in effect on the date of the transaction or on the date the transaction is posted to your Credit Card Account. You agree to accept the converted amount in U.S. dollars.

9. Merchant Refunds We will not be held liable if any merchant or Automated Teller Machine refuses to honor the Card or fails to return the Card to you. We have no responsibility for goods and services purchased with the Card except as required by law. (See Special Rules below.)

10. The Card Cancellation You will return the Card to us at our request. The Card expires at the end of the month shown on it. We have the right not to renew the Card. At any time after at least 30 days notice to you, or without notice if permitted by law, we may cancel the Card and your credit privileges. If your Card is cancelled or not renewed, finance charges and other fees will continue to be assessed, payments will continue to be due, and all other applicable payments of this Agreement will remain in effect. You may cancel your credit privileges by notifying us in writing, cancelling the Card, and paying your entire outstanding balance by the date indicated on the statement that includes your final purchase, cash advances, charges, and fees. Your credit privileges will be cancelled. You will still be responsible for paying any accrued finance charges and additional charges.

11. Personal Information Disclosure You will give us at least 30 days notice if you change your name, home or mailing address, telephone number, career, or job. You will promptly give us information about your financial status if we ask for it. We may get such information from others, including credit reporting services, and provide your address and information about your Credit Card Account to others. We may also share information with our affiliates, Meritbank, and may write to us at any time to request information under this Agreement, a negative credit report reflecting on your credit record may be submitted to credit reporting agencies.

12. Customer Service, Limitation of Your Loss, or Theft of the Card Each Card must be signed on request. You will safeguard the Card and your Personal Identification Number (PIN), which provides access to Automated Teller Machines, Cash Card. You will keep your PIN private from your Card. If you suspect or suspect that the Card is lost or stolen, or that there may be an unauthorized transaction on your Credit Card Account, you will notify us promptly by telephoning 1-800-316-0811. You will please, even though you may prefer to do so, to let us know as quickly as you can if you are not holding. Your liability for unauthorized use occurring before you notify us is limited to \$50. If you report to us suspect circumstances on your Credit Card Account, we may suspend your credit privileges until we resolve the problem to our satisfaction or issue you a new Card. To improve our card service and security, we agree that your title may be monitored or recorded.

13. Standards of Care Transactions on your Credit Card Account will be processed expeditiously without our agreement reviewing every item. Our processing system will tell you amounts on certain items that we will examine. We will examine all transactions when you report that your Card has been lost or stolen. We do not intend liability to cover all items, and we will not be responsible if we do not do so. This rule establishes the standard of ordinary care that we in good faith will exercise in administering your Credit Card Account. Because of its limited review, and because your Card transactions will not be processed to you with the greatest accuracy, you should be careful to keep a record of them. You should save your cash advances and purchase slips. You agree to check your monthly statements against your record and to notify us promptly of any unauthorized transactions or errors.

14. Default You will be in default if you were not eligible for the Credit Card Account at the time it was opened if you fail to pay any amount due to us or an authorized creditor, if you fail to comply with any part of the Agreement or the attached

PERSONAL INFORMATION
NOT TO BE RELEASED
WITHOUT YOUR
PERSONNEL ONLY

Savings Account Rules if any information you give us proves to be incomplete or false, upon your death, bankruptcy, or insolvency; if a bankruptcy petition is filed by or against you or if we believe in good faith that you have not paid or performed your obligations under this Agreement. On your default, we may without further demand or notice, cancel your credit privileges, decline your Credit Card Account balance immediately due and payable, and initiate any remedy we may have. In the event of your default, the outstanding balance on your Credit Card Account shall continue to accrue interest at the Annual Percentage Rate(s) disclosed in the Finance Charge section of this Agreement, even if we have asked you to collect the amount you owe.

15. **Waiver of Certain Rights.** We may delay or waive performance of any provision of this Agreement without losing our right to enforce it or any other provision later. You waive the right to preemption, demand, protest, or notice of dishonor; any applicable statute of limitations; and any right you may have to require us to proceed against anyone before we sue you.

16. **Applicable Law; Severability.** No matter where you live, this Agreement and your Credit Card Account are governed by federal law and by New Hampshire law. This Agreement is a final expression of the agreement between you and us and may not be considered by evidence of any other oral agreement. At any time that we determine in good faith that any proposed or enacted legislation, regulatory action, or judicial decision has or may have or may render any material provision of this Agreement invalid or unenforceable, or impose any increased tax, reporting requirement, or other burden in connection with any such provision or its enforcement, we may, after at least 30 days' notice to you, or without notice if permitted by law, cancel the Card and your credit privileges and decline your Credit Card Account balance immediately due and payable. If any provision of this Agreement is held to be invalid or unenforceable, you and we will consider that provision modified to conform to applicable law and the rest of the provisions of the Agreement will still be enforceable, but we will have the right to cancel your Credit Card Account and decline your balance immediately due, as provided in the preceding sentence. We may transfer or assign our right in all or some of your payments. If you live outside the United States, you must notify us in writing of such an address to permit the purchase or shipment. We may give you such notice by filing a forwarding statement with the post's Secretary of State.

17. **Notice.** Other notices to you shall be effective when deposited in the mail addressed to you at the address shown in our records, unless a longer notice period is specified in the Agreement or by law, which period shall start upon mailing. Notice to us shall be mailed to our address for correspondence or returned mail (for other addresses we may specify) and shall be effective when received.

Your Billing Rights—Keep This Notice for Your Records

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

Notify Us in Case of Errors or Questions About Your Bill

If you think your bill is wrong, or if you need more information about an entry on your bill, write us on a separate sheet, or our address for Billing Support listed on your bill. Write so as soon as possible. We must have seen you or your bill 60 days after we sent you the first bill on which the error or problem appeared. You may telephone us, but doing so will not preserve your rights.

In your letter, give us the following:

- Your name and Credit Card Account number.
- The dollar amount of the disputed error.
- A description of the error and an explanation. If possible, if why you believe there is an error. If you need more information, describe the steps you are not sure about.

Your Rights and Our Responsibilities After We Receive Your Written Notice
We must acknowledge your letter within 30 days, unless we have recognized the error by then. Within 90 days, we must either correct the error or explain why we believe the bill was correct. After we receive your letter, we cannot try to collect any amounts you question or report you as delinquent. We can continue to bill you for the account, you question, including finance charges. We can apply any steps of dispute against your credit file. You do not have to pay any questioned amount while we are investigating, but you are still obligated to pay the part of your bill that we are not in question.

If we find that we made a mistake on your bill, you will not have to pay any amount charged related to any questioned amount. If we didn't make a mistake, you may have to pay finance charges, and you will have to make up the missed payments on the questioned amount. In either case, we will send you a statement of the amount you owe and the date that it is due. If you fail to pay the amount or think you owe, we may report you as delinquent. However, if our explanation does not satisfy you and you write us in within 90 days (starting on the date you send notice to pay), we must call you and we report you so that you question your bill. And we must call you the name of anyone we reported you to. We must tell you why we reported you so that the matter has been settled between us when it finally is. If we don't follow these rules, we can't collect the first \$50 of the questioned amount, even if your bill was correct.

Special Rule for Credit Card Purchases

If you have a problem with the quality of the goods or services that you purchased with our credit card and you have tried in good faith to resolve the problem with the merchant, you may not have to pay the remaining amount due on the goods or services. There are two limitations on this right: (a) you must have made the purchase in your home state or, if not within your home state, within 100 miles of your current mailing address; and (b) the purchase price must have been more than \$50. These limitations do not apply if we own or operate the merchant, or if we insured you the merchandise for the property or services.

SAVINGS ACCOUNT RULES

The following applies if you have a Savings Account with PennState National Bank. These Savings Account Rules govern the pledged Savings Account (the "Savings Account") opened by you with PennState National Bank in connection with your Credit Card Account. In these Savings Account Rules, "you" and "your" mean each person for whom we have opened a Savings Account. "We," "our," "ours" and "us" mean PennState National Bank or its assignor.

1. **Interest and Balance Computation Method.** Your deposit begins earning interest the business day after the date received. The interest accrues plus and annual percentage yields we pay on the Savings Account are shown on a separate disclosure. Your interest rates and annual percentage yields may change. At our discretion, we may change the interest rates as often as daily. We use the average daily balance method to calculate the interest on your Savings Account. This method applies a periodic rate to the average daily balance for the period. The average daily balance is calculated by adding the principal in the Savings Account to the daily of the period and dividing that figure by the number of days in the period. The interest rate and annual percentage yield depend on the amount of the balance on the last day of each assessment period. Interest accrues and is compounded monthly because it is added to your Savings Account at the end of each monthly assessment period and when your Savings Account is closed.

2. **Deposited History.** We may require a minimum balance for you to open the Savings Account; if so, the minimum opening deposit amount will be shown on a separate disclosure. To make a deposit, you may send money orders or checks drawn on U.S. financial institutions in U.S. dollars in P.O. Box 800, Harris, New Hampshire 03740-0800. Such a deposit will begin earning interest the business day after the date received. If you send us money without specifying whether it is a deposit to your Savings Account or a payment on your Credit Card Account, we will determine, at our discretion, to which Account(s) the money will be applied. We may not accept for deposit any item that is made out to a third party (other than you or us). We reserve the right to refuse deposits for any reason. We may endorse and deposit items for you that are payable for deposit. When we receive your check for deposit, we may, at our discretion, keep the check and present it electronically to the financial institution on which the check is drawn. If we do so, we will provide you with a copy of the check at your request. We reserve the right to limit the total balance in your Savings Account to \$5,000. If we receive a deposit that causes your balance to exceed \$5,000, we may, at our option, return the funds to you.

3. **Pledged Balance Restricted Withdrawal.** At the time you open the Savings Account, you give us in a security interest in all of the opening balance in the Savings Account and any subsequent deposits we accept. You may not withdraw any funds from this Savings Account except as described in these Savings Account Rules. The Savings Account balance has been pledged by you to secure your obligations on your Credit Card Account, as set forth in the Credit Card Account

FOR AUTHORIZED PERSONNEL ONLY

Agreement, in case of default, we may without notice apply your pledged Savings Account balance against your Credit Card Account balance. You may withdraw the Original Balance from the Savings Account 21 days after having received us the you wish to close your Credit Card Account, you have deposited your Cash, all amounts due have been paid in full, and we have verified to our satisfaction that all funds you have sent us are valid. In addition, under federal regulations, we must reserve the right to require seven days notice before you withdraw any money from the Savings Account.

4. Statements. We will send you a monthly statement showing the interest earned during the period up to the statement date, the annual percentage yield earned, and all transactions related to the Savings Account.

5. Service. You will receive us within 30 days after you receive a statement if any discrepancy shown on it is incorrect.

6. Fees. The following fees may be assessed against your Savings Account: For payment of outstanding Credit Card Account balance a \$25 processing fee; if we must apply any funds from your Savings Account to pay any portion of the outstanding balance on your Credit Card Account; for deposited items returned unpaid: \$25 each, once on item is returned unpaid for same reason of non-payment. \$5 each for legal postage; \$25 if we must comply with a legal order returned to the Savings Account; and for Savings Account correspondence: \$13 per hour.

7. Federal Deposit Insurance. Funds on deposit in the Savings Account are covered by the Federal Deposit Insurance Corporation (FDIC). For individual accounts, the total of all deposits you have with us is limited up to \$100,000.

8. Disclosure of Account Information. At our discretion, we may disclose information about the Savings Account to our affiliates. On the request of our financial institutions, we may sell or our relationships with your Savings Account to the extent required by law, we will report earnings on the Savings Account to appropriate tax authorities. We may give information about the Savings Account to others as authorized in writing by you. We may also be required by regulatory or other legal process, to provide information about your Savings Account to a court or other state or the Savings Account.

9. Limit of Liability. You will indemnify and hold us harmless from any loss caused by our acting in accordance with these Savings Account Rules in reliance on any representation or authorization you give us. We are not liable for the accuracy of any information you give to us. Our responsibility is limited to the exercise of ordinary care.

10. No Warranties. We make no warranties or representations with respect to processing under these Savings Account Rules or the accuracy of any report or other form furnished under these Savings Account Rules. We will not be liable for our failure to act if the failure is due to your action or inaction, failure of our equipment, acts of God, governmental regulations, labor disputes, mechanical or electrical breakdowns, weather conditions, or other events beyond our control.

11. Applicable Law. This Savings Account is subject to New Hampshire law, applicable federal law and regulations, and the procedures for recovery of this type. We may change these Savings Account Rules but will give you any prior notice required by law at the address you have given us.

12. Closing Account. We may close the Savings Account if not used by written notice. Then we will send you the balance 21 days after the anniversary or termination of your Card, after paying off any unpaid balance on the Credit Card Account. You may close the Savings Account only pursuant to section 3 above.

13. Assignments. Because you have pledged this Savings Account to us as security for your obligations on your Credit Card Account, you do not pledge or assign this Savings Account to any third party. If you attempt to do so, we will close both your Savings Account and your Credit Card Account.

Electronic Fund Transfers Disclosure Statement

You may arrange for an organization (for example, a government agency or financial institution) to make automatic deposits to your Savings Account. Electronic deposits that are credited to your Savings Account will be described as your monthly payments. You may also call 1-800-355-0011 to find out whether or not an electronic deposit has been made.

For more information or questions about Electronic Transfers, you should telephone us at 1-800-355-0011, or write to us at PO Box 800, Tilton, New

Hampshire 03274-0001, as soon as possible if you think your statement is wrong or if you need more information about a transfer based on your statement. We want to know from you no later than 60 days after we send the FIRST payment on which the problem is first reported. You should:

- (1) tell us your name and Savings Account number;
 - (2) describe the error on the transfer in question and explain clearly why it may be an error or why you need more information;
 - (3) tell us the dollar amount of the suspected error.
- If you tell us orally, we may require you to send the complete or complete in writing within 10 business days.

We will tell you the results of our investigation within 10 business days after hearing from you and we will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate the complaint or question. If we decide to do this, we will credit your Savings Account within 10 business days for the amount you think is in error so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put the complete or question in writing and we do not receive it within 10 business days, we may not resolve your Savings Account.

If we decide that there was an error, we will send you a written explanation within three business days after we finish our investigation. You may ask for copies of the documents we used in our investigation.

Our Liability for Errors in Make Transfers. If we do not complete a transfer to or from your Savings Account on time or in the correct amount, we will be liable for your losses or damage. However, there are some exceptions. We will NOT be liable for losses:

- if you do not have enough money in the Savings Account to complete the transfer;
- if you do not have enough money in the Savings Account to complete the transfer;
- if you do not have enough money in the Savings Account to complete the transfer;

There may be other exceptions not specifically stated here (for example, if a person is not made due to the instructions of a person or financial institution).

Business Days. Our business days are Monday through Friday, excluding bank holidays.

Disclosure of Account Information to Third Parties. We will disclose information under the circumstances described in your Savings Account Rules, except:

Unauthorized Transfers. You may tell us at once if someone has transferred or may transfer money from your Savings Account without your permission. Telling us is the best way to have possible losses done. Call 1-800-355-0011 or write to P.O. Box 800, Tilton, New Hampshire 03274-0001.

If your statement shows electronic transfers that you did not make, tell us as soon as you do not call us within 60 days after the statement we mailed to you. You may not get back any money you lose after the 60 days if we can prove we could have stopped someone from making the transfer if you had told us in time. If a good reason (such as a long trip or a hospital stay) keeps you from telling us, we will cancel the lost posted.

For Customer Service for your Credit Card Account or Savings Account, to report lost or stolen Credit Cards, or for other questions, please call us toll-free 1-800-355-0011

Provident National Bank Member FDIC

