

## Memorandum 76-1

## Study 39 - Creditors' Remedies (Use of Credit Cards in Attachment and Execution Sales)

The Commission has requested that the staff consider the question of whether proposed provisions of the law regarding prejudgment attachment and enforcement of judgments should be modified to contain a provision permitting sales by use of credit cards when a keeper has been placed on the premises under an attachment pursuant to Code of Civil Procedure Section 488.360, or when a levying officer presides over an execution sale.

General Background With Regard to Attachment Law

Under prior law, the provisions setting out the procedure to be followed when a keeper was placed on the premises contained no reference to any payment other than by cash. Prior Code of Civil Procedure Section 542(3) permitted a defendant to continue to operate his business with a keeper in charge for a period of two days provided all sales were for cash. The levying officers interpreted this provision as prohibiting them from accepting the receipts from credit card sales but as allowing the merchant to transact such sales if the creditor specifically authorized such sales to be made. The Sheriff's Manual which set out the Sheriff's Association's interpretation of prior law stated as follows:

## (1) [§15.22] Credit Card Sales

The creditor may also authorize credit card sales since defendant may not wish to damage his reputation in the community and would rather close the business than let his customers know they must pay cash. This is frequently true of some restaurants. Without express permission from the creditor the keeper has no authority to do this on his own.

[Cal. State Sheriff's Assn., Civil Procedural Manual, Edited and Revised 1975.]

Discussions by the Commission staff with representatives from several sheriff's and marshal's offices throughout the state indicates that, although they have

had situations in which creditors have specifically authorized the levying officer to allow credit card sales to go on during an attachment, the general practice is not to permit such sales. More significantly, even if the instructions to the levying officer specifically permit such sales, the levying officers do not take possession of the credit card receipts. The staff has been advised that, in some isolated situations, there have been private agreements whereby the debtor, in order to maintain his business in operation (i.e., a restaurant or gas station which has a high percentage of credit card sales), has been permitted to conduct business by credit cards and has tendered the money received from these sales to the levying officers after receiving the cash from the credit card issuer. However, these have been unique informal agreements based on the officer or the creditor's confidence in the promise by the debtor, and there have not been provisions in either prior or proposed law specifically permitting such procedure.

Under the attachment law, as originally recommended, the Commission Section 488.360 provided that, to attach inventory of a going business if the defendant consented, the levying officer placed a keeper in charge of the property for a period not to exceed 10 days. The section further provided that:

During such period, the defendant may continue to operate his farm or business at his own expense provided all sales are final and are for cash or the equivalent of cash. For the purposes of this subdivision, payment by check or a credit card issued by a person other than the defendant shall be deemed the equivalent of a cash payment. The levying officer shall incur no liability for accepting payment in the form of a cash equivalent. [Code Civ. Proc. § 488.360.]

The Commission received a number of comments both from levying officers and from the practicing bar indicating that it would be necessary to establish a comprehensive method for dealing with sales by credit card such as the specific provisions dealing with checks or other commercial paper set out in Code of Civil Procedure Section 488.520 before such legislation would be acceptable. The Commission proposed to eliminate the provision allowing credit card sales pending implementing legislation.

Inclusion of a provision permitting the levying officer to accept or permit credit card sales raises a number of problems which must be examined to determine whether such legislation would be worthwhile.

(1) Defenses. One of the major objections to permitting receipts from credit card sales to be collected by the levying officer and the resulting cash to be transmitted to the creditor is raised by the problem of defenses which the cardholder might have and later be able to raise against the card issuer. The Song-Beverly Credit Card Act of 1971 (Exhibit I attached) and the new federal legislation, P.L. 93-495 (Exhibit II attached), make the right of the card issuer (i.e., Mastercharge et cetera) subject to the defenses which the cardholder (buyer) has against the retailer (the debtor in the attachment situation) from whom the cardholder made the purchase. The right to assert the defenses which the cardholder retains is limited to certain fact situations [(1) the purchase price of the item must exceed \$50; (2) the purchase must be within the state (or within 100 miles under the federal bill); (3) the cardholder must first make written demand on the retailer attempting in good faith to obtain satisfaction from the retailer; (4) the amount with respect to which a defense may be asserted shall not exceed the amount outstanding with respect to the purchase involved.] However, most significant is the fact that the statute contains no specific limitations period. As a practical matter, in situations in which the statute is applicable there is no actual period after which a claim is eliminated. If the retailer fails to satisfy the buyer's claim or goes out of business and the buyer has not paid the outstanding amount of the purchase price to the card issuer, the buyer may assert his defenses against the issuer. In the case of the purchase of a large item such as a TV set or an appliance, this may mean that the buyer retains a defense for as long as 72 months for an installment contract. If the levying officer has distributed the funds received on the credit card sale to the creditor, the issuer would be left bearing the loss.

If the issuer retains the right to trace the funds through the sheriff to the creditor, there would be awkward and difficult cases involving parties who may be far removed both in time and knowledge from the facts of any particular sale. The Commission has previously approved legislation which immunizes the levying officer when he accepts checks by proving that "the levying officer shall incur no liability for accepting payment in the form of a cash equivalent." As a practical matter, it would seem quite cumbersome and also impractical to involve the levying officer in an action to recover funds by the issuer against the third-party creditor where the issue involved is the defense which the cardholder has against the original retailer.

It has been suggested that these matters might be dealt with by permitting or requiring the creditor to purchase a fiduciary bond which would cover such a situation. However, the lack of a precise period when such defenses would have to be asserted against the issuer and the desirability of terminating liability on such a bond makes this an impractical solution.

On the other hand, it would seem unfair to leave the card issuer to bear this loss without a right to trace the funds to the party who ultimately receives them.

It has been suggested that a provision could be enacted permitting a levying officer or a keeper to make or authorize credit card sales for less than \$50. Such sales are basically excluded from the Song-Beverly Act and the new federal legislation. Such a provision would eliminate concern that the card issuer might be unable to collect from the cardholder funds that the issuer has paid over to the levying officer who has distributed the funds to the creditor. The provision would also assist small companies such as restaurants and service stations which often do the bulk of their business through credit card sales for small amounts. There are, however, other objections to such legislation which would mitigate against such a recommendation.

(2) Collection of funds from issuer by levying officer. At the outset, it should be pointed out that, although heretofore the generic term "sale by credit card" has been used to describe all credit card transactions, such sales fall within several distinguishable categories. One category consists of bank credit cards such as Mastercharge and BankAmericard. Sales slips from the use of these cards are dealt with in much the same manner as checks. However, they are not negotiable instruments. Thus, they are subject to the specific provisions of the particular agreement between the merchant and the card issuer as well as between the card holder and the card issuer. In the case of bank credit cards, the levying officer must deal with a particular bank in order to obtain collection. (See Exhibit III for an example of a typical merchant agreement with a Mastercharge bank.) The officer would, generally speaking, be acting as a merchant, and it would be necessary for some agreement to be reached between the levying officer and a local bank (one for each type of bank credit card) in order to allow collection.

A second category of credit cards consist of those cards issued by companies which are also suppliers of the merchant such as the oil companies. The suppliers who issue these cards often retain the right to set off the cost of the merchandise supplied to the merchant against credit card slips. Any statute allowing the levying officer to collect directly from the card issuer would interfere with the issuer's contract with the merchant. It is precisely in those situations when the merchant is in financial difficulty and his merchandise is under attachment that the card issuer would want to assert his right to set off against the credit card slips.

It seems clear that even a provision which avoids the problems arising as a result of current federal and state legislation regarding credit cards by dealing only with sales under \$50 would be complex and cumbersome to administer. Different rules would be needed for different types of cards yet the legislation would only be useful in limited situations.

(3) Limited territorial power of levying officers. An entirely different problem is raised by the fact that each levying officer has jurisdiction to require payment only within his own county. Many credit card issuers do not have disbursal offices within each county. Of course, no problem arises if the issuer voluntarily agrees to pay the levying officer upon presentation of the receipts. Absent such an agreement, it would be necessary to provide a procedure permitting collection from an out-of-county disbursing office. Such special provisions would also have to deal with card issuers having offices only in other states. Once again, the limited benefits to be gained from permitting credit card sales when there is a keeper under an attachment or in an execution sale appear to be offset by the complexity of the necessary legislation and the incumbent difficulties in its administration.

Respectfully submitted,

Jo Anne Friedenthal  
Legal Counsel

EXHIBIT I

**§ 1747.90 Recovery by card issuer subject to defenses of cardholder as buyer against retailer**

(a) The right of a card issuer to recover any credit extended through use by the cardholder of a credit card in making purchases from a retailer shall be subject to the defenses which the cardholder has as a buyer against the retailer from whom the cardholder made the purchases if:

(1) The purchase price of the item as to which a defense is asserted exceeds fifty dollars (\$50).

(2) The purchase was made within this state.

(3) The cardholder shall have made a written demand on the retailer with respect to the purchase and attempted in good faith to obtain reasonable satisfaction from the retailer.

(4) The cardholder gives written notice to the card issuer specifying the retailer, date of purchase, amount thereof, the goods or service purchased, the nature of the cardholder's defense with respect thereto, and those acts, if any, that the cardholder has taken in attempting to obtain satisfaction from the retailer.

(b) The amount with respect to which a defense may be asserted under this section shall not exceed the amount outstanding with respect to the purchase involved, and any late charges or finance charges on such amount, determined as of the time the retailer receives the written demand required from the cardholder pursuant to paragraph (3) of subdivision (a) or the card issuer receives the written notice from the cardholder pursuant to paragraph (4) of subdivision (a), whichever is received first. For the purpose of determining the amount outstanding, the payments and credits to the cardholder's account are deemed to have been applied, in the order indicated, to the payment of:

(1) Late charges in the order of their entry to the account.

(2) Finance charges in order of their entry to the account.

(3) Debits to the account other than those set forth above, in the order in which each debit entry to the account was made.

(c) Use by the cardholder of a credit card, for purposes of this section, shall include only an authorized use and shall be deemed to include both:

(1) Purchases with cash obtained through use of a credit card.

(2) Payment by check, whether or not such a payment results in a credit extension to the cardholder by the card issuer and whether or not a credit card was used to induce the seller to accept the check.

(d) Rights of the cardholder under this section can be asserted only as a matter of defense to or set off against a claim by the card issuer under its agreement with the cardholder. The rights provided are exclusive with respect to card issuer responsibility for acts or omissions of a retailer; a card issuer shall not otherwise be subject to defenses or claims which the cardholder has as a buyer against a retailer.

§ 1747.90 OBLIGATIONS IMPOSED BY LAW

Div. 3

(e) Notwithstanding any other provision of this section, where a card issuer knows or has reason to know of willful or repeated unlawful acts of a retailer in connection with retail sales, the rights granted under this section shall not be exclusive but shall be in addition to any other remedies provided by law.

(f) Within 90 days after the effective date of this act to each cardholder whose account was active on the effective date of this act, and prior to the first use of the credit card to each new cardholder who is issued a credit card after the effective date of this act, the card issuer shall send a written notice which cites this act and describes the procedure to be followed under subdivision (a) of this section.

(g) This section shall not apply to card issuers who operate retail outlets where use of the credit card is limited exclusively to such retail outlets.

(Added by Stats.1971, c. 1019, p. 1962, § 4.)



EXHIBIT II

[93rd Cong. H.R. 11221.]

89 STAT. 1515 Pub. Law 93-495 - 16 - October 28, 1974

15 USC 1666f. **§ 167. Use of cash discounts**  
“(a) With respect to credit card which may be used for extensions of credit in sales transactions in which the seller is a person other than the card issuer, the card issuer may not, by contract or otherwise, prohibit any such seller from offering a discount to a cardholder to induce the cardholder to pay by cash, check, or similar means rather than use a credit card.

“(b) With respect to any sales transaction, any discount not in excess of 5 per centum offered by the seller for the purpose of inducing payment by cash, check, or other means not involving the use of a credit card shall not constitute a finance charge as determined under section 106, if such discount is offered to all prospective buyers and its availability is disclosed to all prospective buyers clearly and conspicuously in accordance with regulations of the Board.

15 USC 1666g. **§ 168. Prohibition of tie-in services**  
“Notwithstanding any agreement to the contrary, a card issuer may not require a seller, as a condition to participating in a credit card plan, to open an account with or procure any other service from the card issuer or its subsidiary or agent.

15 USC 1666h. **§ 169. Prohibition of offsets**  
“(a) A card issuer may not take any action to offset a cardholder's indebtedness arising in connection with a consumer credit transaction under the relevant credit card plan against funds of the cardholder held on deposit with the card issuer unless—

“(1) such action was previously authorized in writing by the cardholder in accordance with a credit plan whereby the cardholder agrees periodically to pay debts incurred in his open end credit account by permitting the card issuer periodically to deduct all or a portion of such debt from the cardholder's deposit account, and

“(2) such action with respect to any outstanding disputed amount not be taken by the card issuer upon request of the cardholder.

In the case of any credit card account in existence on the effective date of this section, the previous written authorization referred to in clause (1) shall not be required until the date (after such effective date) when such account is renewed, but in no case later than one year after such effective date. Such written authorization shall be deemed to exist if the card issuer has previously notified the cardholder that the use of his credit card account will subject any funds which the card issuer holds in deposit accounts of such cardholder to offset against any amounts due and payable on his credit card account which have not been paid in accordance with the terms of the agreement between the card issuer and the cardholder.

“(b) This section does not alter or affect the right under State law of a card issuer to attach or otherwise levy upon funds of a cardholder held on deposit with the card issuer if that remedy is constitutionally available to creditors generally.

15 USC 1666i. **§ 170. Rights of credit card customers**  
“(a) Subject to the limitation contained in subsection (b), a card issuer who has issued a credit card to a cardholder pursuant to an open end consumer credit plan shall be subject to all claims (other than tort claims) and defenses arising out of any transaction in which the credit card is used as a method of payment or extension of credit if (1) the obligor has made a good faith attempt to obtain satisfactory resolution of a disagreement or problem relative to the transaction from the person honoring the credit card; (2) the amount of the initial

transaction exceeds \$50; and (3) the place where the initial transaction occurred was in the same State as the mailing address previously provided by the cardholder or was within 100 miles from such address, except that the limitations set forth in clauses (2) and (3) with respect to an obligor's right to assert claims and defenses against a card issuer shall not be applicable to any transaction in which the person honoring the credit card (A) is the same person as the card issuer, (B) is controlled by the card issuer, (C) is under direct or indirect common control with the card issuer, (D) is a franchised dealer in the card issuer's products or services, or (E) has obtained the order for such transaction through a mail solicitation made by or participated in by the card issuer in which the cardholder is solicited to enter into such transaction by using the credit card issued by the card issuer.

"(b) The amount of claims or defenses asserted by the cardholder may not exceed the amount of credit outstanding with respect to such transaction at the time the cardholder first notifies the card issuer or the person honoring the credit card of such claim or defense. For the purpose of determining the amount of credit outstanding in the preceding sentence, payments and credits to the cardholder's account are deemed to have been applied, in the order indicated, to the payment of: (1) late charges in the order of their entry to the account; (2) finance charges in order of their entry to the account; and (3) debits to the account other than those set forth above, in the order in which each debit entry to the account was made.

#### § 171. Relation to State laws

"(a) This chapter does not annul, alter, or affect, or exempt any person subject to the provisions of this chapter from complying with, the laws of any State with respect to credit billing practices, except to the extent that those laws are inconsistent with any provision of this chapter, and then only to the extent of the inconsistency. The Board is authorized to determine whether such inconsistencies exist. The Board may not determine that any State law is inconsistent with any provision of this chapter if the Board determines that such law gives greater protection to the consumer.

15 USC 1666j.

"(b) The Board shall by regulation exempt from the requirements of this chapter any class of credit transactions within any State if it determines that under the law of that State that class of transactions is subject to requirements substantially similar to those imposed under this chapter or that such law gives greater protection to the consumer, and that there is adequate provision for enforcement."

#### § 307. Conforming amendments

(a) The table of chapters of the Truth in Lending Act is amended by adding immediately under item 3 the following:

"4 CREDIT BILLING..... 161"

b) Section 111(d) of such Act (15 U.S.C. 1610(d)) is amended by striking out "and 130" and inserting in lieu thereof a comma and the following: "130, and 166".

c) Section 121(a) of such Act (15 U.S.C. 1631(a)) is amended—

(1) by striking out "and upon whom a finance charge is or may be imposed"; and

(2) by inserting "or chapter 4" immediately after "this chapter".

(d) Section 121(b) of such Act (15 U.S.C. 1631(b)) is amended by inserting "or chapter 4" immediately after "this chapter".

(e) Section 122(a) of such Act (15 U.S.C. 1632(a)) is amended by inserting "or chapter 4" immediately after "this chapter".

EXHIBIT III



## master charge participation agreement

THIS AGREEMENT, entered into the day and year below written by and between WELLS FARGO BANK, NATIONAL ASSOCIATION, ("Bank") and the undersigned ("Participant"),

### WITNESSETH:

WHEREAS, Western States Bankcard Association (the "Association") and its members (including Bank) have promulgated a multiple-member charge card system (the "MASTER CHARGE Card System") and have become affiliated with INTERBANK Card Association ("INTERBANK") and members of both Association and INTERBANK and other associations affiliated with INTERBANK (as "issuing members") have issued (or will issue) charge cards ("Charge Cards") to their customers ("cardholders"); and

WHEREAS, Participant wishes to participate in the MASTER CHARGE Card System upon the terms and conditions set forth in this Agreement,

NOW, THEREFORE, IT IS HEREBY AGREED by and between the parties hereto as follows:

#### Section 1. Rights and Obligations of Participant.

1.01. *Advertising.* Participant will adequately exhibit advertising displays supplied by Bank so that the public will know that Charge Cards will be honored at Participant's place of business. Participant shall utilize only such other advertising or promotional materials that identify Bank, the Association or INTERBANK or make use of the MASTER CHARGE trademark as shall be approved by Bank. In no case shall Participant display promotional material containing the name or symbol of Bank in such a way as to be visible from outside Participant's place of business or advertise away from his place of business using such material, if such display or advertisement might cause a cardholder to assume that only cards issued by Bank would be honored by Participant. This provision is not intended as a restriction upon Participant's right to advertise materials relating to other charge cards.

1.02. *Honoring Charge Cards.* Participant will honor Charge Cards issued by any issuing member or by any member of a group affiliated with the Association and its MASTER CHARGE Card System. This provision is not intended as a restriction upon Participant's right to honor other charge cards.

1.03. *Compliance with Law.* Participant shall comply with all applicable Federal and State laws including, without limitation, the Federal Consumer Credit Protection Act and the Song-Beverly Credit Card Act of 1971, as the same may be from time to time amended, and any rules and regulations promulgated thereunder.

1.04. *Use of Sales Slip.* Each Charge Card sale made by Participant will be evidenced by a sales slip drawn by Participant in accordance with paragraphs 1.05, 1.06 and 1.07 hereof on a form furnished to Participant by Bank or approved by the Association. Sales slips shall be completed only with respect to bona fide transactions.

1.05. *Charge Card Sale.* Subject to the provisions of paragraphs 1.06 and 1.07 hereof, in effecting a Charge Card sale Participant will:

(a) effect no sales (i) through the use of a Charge Card that is not yet effective (if an effective date appears thereon) or has expired; (ii) through the use of a Charge Card which Participant is advised at the time of the charge authorization inquiry is not to be honored; (iii) through the use of a Charge Card or counterfeit card listed on the most recent warning notice (issued by the Association) or restricted card list (issued by INTERBANK) furnished to Participant; or (iv) notwithstanding subparagraph (c) (ii) of this paragraph 1.05, through the use of a Charge Card when the goods to be sold are of a type ordinarily installed in or affixed to a vehicle at the time of sale unless said goods are in fact installed in or affixed to the vehicle driven by the cardholder at the time of sale;

(b) effect no Charge Card transaction when only a part of the consideration due is paid through use of a Charge Card except (i) when the remainder is paid by the purchaser at the time of sale, either in cash or by check; or (ii) notwithstanding paragraph 1.05(c), Participant may allow a customer to sign two separate sales slips in a delayed delivery sale, which is a sale in which a deposit is tendered by cash or by completion of a sales slip (to be labeled "deposit") and payment of the balance is tendered by completion of a second sales slip (to be labeled "balance"). The latter sales slip shall be completed concurrently with delivery of the contracted for goods or performance of the contracted for services. Completion of each such sales slip shall constitute a separate transaction with each having a zero floor limit and requiring separate authorization. For purposes of computing the time allowable under paragraph 1.09 hereof for delivery of such sales slips, the date of the respective authorization shall be deemed the transaction date;

(c) include all items of goods or services purchased in a single transaction in the total amount on a single sales slip which shall be completed by filling in the appropriate spaces on the slip (including (i) a brief description of the goods or services sold in sufficient detail to identify the transaction and in compliance with all applicable laws and regulations, (ii) the motor vehicle license number and state (or other jurisdiction) of issue if the transaction occurs at a gasoline filling station, provided that if no motor vehicle is present the words "no car" shall be entered, and (iii) the date the sales slip is completed), by imprinting the sales slip with the embossed legend on the Charge Card and the merchant imprinter plate (or typing or printing such information if an imprinter plate is not in use) and by requiring the cardholder to sign the sales slip;

(d) if the total amount of the sale, including applicable taxes, if any, is in excess of the then current and applicable floor limit (as to which Participant shall be advised from time to time in writing by Bank) or if there is a zero floor limit applicable to the transaction, communicate with the Association or its designated agent and obtain authorization for such total amount and write the authorization number on the sales slip;

(e) complete the transaction only (i) if the signature on the sales slip appears to be the same as the signature written on the signature panel on the Charge Card, which signature shall be in the same surname as that embossed on the front of the Charge Card, (ii) if the customer resembles the person depicted in any identification picture that appears on the Charge Card, (iii) if the identity of the customer appears to conform to any other means of identification that is placed on the Charge Card, and (iv) if the Charge Card appears to have been validly issued and to be currently valid, it being understood that, except as provided in paragraph 2.05, Participant shall incur no liability in respect to sales slips because of forged or unauthorized signatures or because the cards were counterfeit cards, provided Participant has exercised reasonable diligence in determining to the best of his ability that the Charge Card was one issued or approved for use in the MASTER CHARGE Card System and is currently valid and that the signature on the sales slip appears to be the same as the signature on the Charge Card and is in the same surname as that embossed on the Charge Card and provided the provisions in paragraph 1.05(a) are not breached;

(f) endorse in favor of Bank all sales slips in which the purchaser by the signing thereof does not become directly obligated to the issuing member;

(g) deliver to the purchaser a true copy of the sales slip at the time of the sale (that is, when Participant has performed all of his principal obligations to the purchaser in connection with the transaction as a result of which the sales slip is generated).

1.06. *Sale Without Charge Card.* If, at Participant's option, the transaction will be effected by a cardholder, without use of the Charge Card, Participant shall legibly write all information embossed on the Charge Card on the sales slip, shall obtain identification by a satisfactory independent method, shall note such method on the sales slip and shall comply with the provisions of paragraph 1.05 hereof, with the exception of the Charge Card imprinting requirement of subparagraph 1.05(c). In effecting a sale under this paragraph or under paragraph 1.07 hereof, Participant shall be deemed to warrant that the purchaser is a person authorized to use the Charge Card, that the name and account number written on the sales slip are identical to those embossed on such Charge Card, and that the purchaser is the person whose signature is written on the signature panel on such Charge Card and has the same surname as that embossed on such Charge Card. In the event of a breach of said warranty, Participant shall issue to Bank a credit memorandum within five (5) calendar days after demand therefor and, where requested, a check for the amount of such sale. Participant shall obtain prior authorization from the Association or its designated agent for the amount of each sale effected under this paragraph.

1.07. *Telephone Order, Mail Order or Preauthorized Order.* If, at Participant's option, a transaction will be effected by a telephone order or mail order or will be based upon a written order, purportedly directed to Participant by a cardholder in advance of a transaction, to execute a sales slip on behalf of the cardholder (a preauthorized order) and such order is made by a person who claims he is authorized to use the Charge Card, the procedures in paragraph 1.06 shall be followed except that in the space provided for the cardholder's signature Participant shall sign his name and note that the order was placed by telephone (TO) or mail (MO) or is a preauthorized order (PO). Participant shall be liable for the amount of any sales slip generated by a TO, MO or PO that is uncollectible for any reason whatsoever. Participant shall obtain prior authorization from the Association or its designated agent for the amount of each sale effected under this paragraph in excess of \$50.00 or such other amounts as to which Participant shall be advised from time to time in writing.

1.08. *Nondiscriminatory Policy.* Participant shall at all times while this Agreement is in effect maintain a policy that shall not discriminate against persons making purchases through use of a Charge Card with respect to the exchange of, return of, or adjustment on merchandise or services obtained through such purchases.

1.09. *Delivery of Sales Slips.* Within seven (7) calendar days from the transaction date thereof Participant shall deliver the sales slip to Bank; provided, however, that Participant will not present a sales slip to Bank until such time as Participant has substantially performed all of his principal obligations to the purchaser in connection with the transaction in which the sales slip was generated.

1.10. *Retrieval of Charge Cards.* Participant will use his best efforts to retrieve each Charge Card and each counterfeit card listed on the warning notices or restricted card lists (or other means of warning that may be devised) furnished to Participant, each card which Participant is advised at the time of a sales authorization inquiry is to be retrieved and each card which Participant has reason to believe is counterfeit. Participant shall promptly surrender to Bank, the Association or INTERBANK any such Charge Card or counterfeit card.

1.11. *Use and Delivery of Credit Memorandum.* In the event that merchandise is accepted for return or any price adjustment with respect to a sale of goods or services is allowed by Participant, Participant shall make no cash refund to the cardholder but will prepare, execute and deliver to Bank promptly and in no event later than seven (7) calendar days from the date of such adjustment or return, a credit memorandum on a form to be furnished to Participant by Bank. Participant shall complete the credit memorandum in the manner described in paragraph 1.05 or, at Participant's option, in the manner described in paragraph 1.06 and shall deliver a copy of the credit memorandum to the cardholder. In either event Participant shall fill in the date that a copy of the credit memorandum is furnished to the cardholder and shall sign the credit memorandum.

## Section 2. *Rights and Obligations of Bank.*

2.01. *Imprinters.* Bank will furnish to Participant suitable imprinters at an annual service fee for each imprinter as from time to time may be agreed upon between Bank and Participant. Such fees shall be non-refundable and shall be payable in advance by debit to a designated demand deposit account maintained by Participant with Bank ("Participant's Account") of the full amount thereof. All such imprinters shall remain the property of Bank and shall be returned to Bank upon termination of this Agreement in the same condition as when received, reasonable wear and tear excepted.

2.02. *Forms.* At a reasonable fee to be established by Bank, or at Bank's option without charge, Bank shall supply Participant with forms for sales slips, credit memoranda and deposit tickets to be used by Participant pursuant to this Agreement.

2.03. *Credit for Sales Slips.* Upon delivery of a sales slip to Bank in accordance with paragraph 1.09 hereof, Bank will give Participant credit for the face amount of such slip less a discount of \_\_\_\_\_ % of such face amount. Such credit may, at Participant's option, be given by credit to Participant's Account. The amount of such discount may from time to time be changed by Bank upon thirty (30) days written notice given to Participant by Bank. Bank may refuse to give Participant immediate credit for any sales slip which does not conform in every respect to the requirements of paragraphs 1.04, 1.05, 1.06, 1.07 and 1.09 hereof.

2.04. *Collection or Charge for Credit Memorandum.* Upon delivery of a credit memorandum to Bank unaccompanied by a cash remittance therefor, Bank shall have the right to collect from Participant or charge back to Participant's Account the amount evidenced by such credit memorandum, less the applicable portion of the discount charged in connection with the sales slip covering the original transaction.

2.05. *Rejected Slips.* Bank shall have the right to collect from Participant or charge back to Participant's Account the full amount of any sales slip (a) which is illegible or which Bank is unable to present to, or which is rejected by, or which is charged back to Bank pursuant to applicable Association Operating Rules ("Rules") by, the Association because of illegibility, or (b) which fails to conform, or is charged back to Bank pursuant to the Rules for failure to conform, to any of the provisions of Section 1 hereof, or (c) with respect to which there has been a breach of the warranty set forth in paragraph 1.06 hereof or which is charged back to Bank pursuant to the Rules because of such breach, or (d) which evidences, or is charged back to Bank pursuant to the Rules because it evidences, a transaction or transactions disputed by the cardholder; provided, however, that Bank may collect from Participant or charge back to Participant's Account, without regard to the provisions of the Rules, any sales slip that does not represent a bona fide transaction, represents a transaction completed in violation of paragraph 1.06 (a) (iv) hereof, or represents a transaction in which Participant or any employee or agent of Participant fraudulently acted in collusion with one presenting a Charge Card. As used herein the term "disputed" includes situations in which the issuing member is advised in writing by the registered Charge Card holder (a) that he engaged in the transaction but for some specified reason requested a price adjustment and credit memorandum from Participant and was refused or (b) that the transaction evidenced thereby violated the law or is void or voidable by operation of law. Bank shall return each such slip to Participant upon payment therefor in accordance with this paragraph. Bank shall also have the right to collect from Participant or charge to Participant's Account the amount by which the total on any credit memorandum submitted to Bank is less than the total shown on the copy of the memorandum delivered to the purchaser at the time of the adjustment. Each reference in this paragraph to "issuing member" shall, with respect to each such sales slip involving a Charge Card issued by Bank, include Bank.

2.06. *Song-Beverly Act Claims.* In addition to those rights specified in Section 2.05 above, Bank shall have the right to collect from Participant or charge back to Participant's Account the full amount of any of Participant's sales slips or portions thereof which are rendered uncollectible from the Charge Card holder, either directly or indirectly pursuant to the provisions of (a) the Song-Beverly Credit Card Act of 1971, as the same may be from time to time amended, or (b) any other Federal or State statute or regulation, now or hereafter enacted or promulgated, which gives or purports to give a Charge Card holder the right to assert against Bank or any other issuing member a claim or defense (i) of a purchaser arising out of the sale of goods or services pursuant to the Charge Card or (ii) arising out of any act of commission or omission of Participant in connection therewith.

3.01. *Solicitation or Acceptance of Payment.* Participant shall not solicit or accept any payment on account of any sales slip which has been delivered to Bank and which has not been returned to Participant.

3.02. *Sales Authorization Calls.* Sales authorization calls may be made during such hours as are established by the Association.

3.03. *Selection of Member Bank.* In the event Participant has entered into an agreement with one or more other members upon the same general subject matter as this Agreement, Participant shall have the right to select the member through which Participant will process each MASTER CHARGE Card transaction; provided, however, that no forms supplied by Bank hereunder shall be used by Participant in processing a MASTER CHARGE Card transaction with any other member.

3.04. *Notices.* Any notice required or permitted to be given in writing by depositing such notice in the United States mail, postage prepaid and if to Bank, addressed to the branch office where Participant's Account is located, and if to Participant, addressed as indicated below Participant's signature to this Agreement, or to such other place or places as either party hereto shall designate by written notice to the other.

3.05. *Amendments.* This Agreement may be amended only by an instrument in writing executed by Participant and Bank; provided, however, should Bank and the Association, or either of them, at any time and in their sole judgment, determine that amendments to the Rules necessitate the making of an amendment or amendments to this Agreement, Bank and the Association, or either of them, may so amend this Agreement by giving written notice by Mail to Participant setting forth the terms of said amendment or amendments. Any such amendment shall become effective ten (10) calendar days following the date of said notice or such later time as may be designated by Bank or the Association in said notice.

3.06. *Termination: Effect.* This Agreement may be terminated by either party hereto at any time upon written notice given to the other; provided, however, in the event that (a) Participant shall at any time discontinue operating the type of business engaged in at the time of execution of this Agreement or (b) all or substantially all of the assets of the Participant's business shall be sold, transferred or hypothecated or (c) there shall be a substantial and material change in the form, management, operations or ownership of Participant's business, then this Agreement shall immediately terminate without further notice as of the date of such event of discontinuance, sale or change; provided further, however, that notwithstanding any such termination, this Agreement shall remain in full force and effect with respect to any sales slip which is actually delivered to Bank by Participant and not returned to Participant prior to Bank extending credit therefor. The right of Participant to make sales as specified in this Agreement and to use advertising displays, sales slips, credit memoranda and other items and materials developed for use in the MASTER CHARGE Card System under this Agreement shall cease upon termination of this Agreement.

3.07. *Successors and Assigns.* Except as provided in Section 3.06 above, this Agreement shall be binding upon the parties hereto, their successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

WELLS FARGO BANK, NATIONAL ASSOCIATION

By \_\_\_\_\_  
Title \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By \_\_\_\_\_  
Title \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_  
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Call-in-Code No. \_\_\_\_\_

DDA No. \_\_\_\_\_

Floor Limit \_\_\_\_\_