

Item A
(1-2)

TOWN of LYSANDER
8220 LOOP ROAD
BALDWINVILLE, NEW YORK 13027
(315) 638-4264

December 23, 2014

Lysander Town Board
8220 Loop Road
Baldwinsville, NY 13027

Re: Timber Banks General Project Plan

Subj: Amendment #4 Application

Dear Town Board Members:

I have completed my review of the Timber Banks General Project Plan (GPP) Amendment #4 Application. Overall the document does a good job consolidating the changes included in the previously approved GPP amendments. The following list summarizes the proposed changes included in Timber Banks GPP Amendment # 4:

- The TDR Discussion previously included in section 3.4 of the GPP has been deleted.
- The suggestion of rear load garages in the proposed high density residential areas has been deleted in section 4.1 of the GPP.
- The front and rear yard setbacks in the high density residential land use design guidelines matrix have been revised to eliminate the need for rear load garages.
- Table 4 – The Timbers Land Uses has been changed to allow apartments in the high density residential areas.
- Tourist Home and Home Occupation have been removed from Table 4 – The Timbers Land Uses and will no longer be permitted.
- Table 5 now allows personal water craft usage, i.e. jet skis, in the marina district.
- The Community Recreation District now allows outdoor sports and recreational fields.
- Additional restrictions have been placed on flag poles, wind turbines and solar panels have been added to section 4.3.6.
- The traffic study requirement in section 4.4.5 has been modified to reflect the additional traffic study requested by the NYSDOT at 468 residential units.
- Architectural design standards have been removed from the GPP and will be controlled by the HOA going forward.
- Requirements for Community Recreational Signs have been included in section 7.13.6 of the GPP Amendment #4.

The requested revisions outlined above are fairly minor in scope however they should certainly be reviewed and discussed by the board prior to approval. I would consider the requested revisions similar in scope to what the Board previously accepted from the RCA to revise the Radisson land use controls at your September 22, 2014 meeting. Feel free to contact me if you have any questions or require any additional information.

Regards



Allen J. Yager, P.E.
Town of Lysander Engineer

Cc: Anthony Rivizzigno, Esq.
James Trasher, P.E. Clough Harbor Associates
Gary Pooler, The Timbers, LLC

MERCHANT APPLICATION

New Ownership Change Tax ID Change Add'l Loc/MID #



Item B1
(1-10)

DBA Name				Legal Name			
Location Address				Mailing Address			
City		State	Zip	Mailing City		State	Zip
Fed Tax ID #	Location Phone #	Primary Contact Name		Fax #	Web Address		Population
Alternate Contact Name		Alternate Contact #	Primary Email Address (required) for Reporting, Statements, and Notifications				

Ownership Type: Sole Proprietor Partnership Corporation Non-Profit (501c doc req) LLC Government
 Failure to submit a W9 tax form with accurate information will result in a \$50 penalty per tax year as well as a 28% withholding per IRS regulations. For more information on T.D. 9496 Merchant Reporting, please visit www.IRS.gov.

(AMOUNTS BELOW MUST EQUAL 100%)

CARD SWIPE (mag stripe) W/SIGNATURE _____ %	Date Business Started _____	Prior Bankruptcy? Yes <input type="checkbox"/> No <input type="checkbox"/>
CARD PRESENT / KEY ENTERED W/SIGNATURE & IMPRINT _____ %	Currently accept credit cards at this location or other business? Yes <input type="checkbox"/> No <input type="checkbox"/>	
MAIL/TELEPHONE SALES (MOTO/IO ADDENDUM REQUIRED) _____ %	*Seasonal? Yes <input type="checkbox"/> No <input type="checkbox"/>	*\$25 seasonal shutdown fee applies
INTERNET/E-COMM SALES (MOTO/IO ADDENDUM REQUIRED) _____ %	Are customers req'd to pay deposits? Yes <input type="checkbox"/> No <input type="checkbox"/> What % of sales? _____	
Describe Products / Service in Detail - use cover sheet if more space is needed	# days product/service shipped/complee? (from time credit card is charged):	
	<input type="checkbox"/> 0-2 days <input type="checkbox"/> 3-15 days <input type="checkbox"/> >30 days <input type="checkbox"/> 16-30 days	
	*Annual Volume: \$ _____	*Average Ticket: \$ _____ *High Ticket: \$ _____
Refund Policy: <input type="checkbox"/> All Sales Final <input type="checkbox"/> # of days _____ <input type="checkbox"/> Exchange Only	Describe High Ticket in Detail _____	

****NOTE: Signer certifies that the average/high ticket, annual volume & business profile indicated is accurate. Signer further agrees that any transactions and/or volume that exceeds the amounts indicated above OR any significant profile or financial changes may result in delayed and/or withheld settlement of funds. Notifying NPS in advance will help avoid such delays.**

----- OWNER OR OFFICER INFORMATION (combined equity must equal 50% or higher) - ALL FIELDS ARE REQUIRED -----

1 (First Name)	(Last Name)	(SS#)	(DOB)	(Home Phone #)	(Equity %)
NA	NA	NA	NA	NA	NA
(Home Address / No P.O. Box)		(City)	(State)	(Zip)	
NA		NA	NA	NA	
2 (First Name)	(Last Name)	(SS#)	(DOB)	(Home Phone #)	(Equity %)
(Home Address / No P.O. Box)		(City)	(State)	(Zip)	

MEMBER BANK INFORMATION: Deutsche Bank AG, New York Branch, 60 Wall Street, 36th Floor, New York, New York 10005 +49 221 99577 777 support.deucs.db.com

IMPORTANT MEMBER BANK RESPONSIBILITIES 1. A Visa Member is the only entity approved to extend acceptance of Visa products directly to a merchant. 2. A Visa Member must be a principal (signer) to the Merchant Agreement. 3. The Visa Member is responsible for educating Merchants on pertinent Visa Operating Regulations with which merchants must comply. 4. The Visa Member is responsible for and must provide settlement funds to the merchant. 5. The Visa Member is responsible for all funds held in reserve that are derived from the settlement.	IMPORTANT MERCHANT RESPONSIBILITIES 1. Merchant must ensure compliance with cardholder data security and storage requirements. 2. Merchant must maintain fraud and chargebacks below thresholds. 3. Merchant must review and understand the terms of the Merchant Agreement. 4. Merchant must comply with Visa Operating Regulations. The responsibilities listed above do not supersede terms of the Merchant Agreement and are provided to ensure the merchant understands these specific responsibilities.
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Cardholder Storage Compliance and Service Provider

**** Payment Card Industry Data Security Standards ("PCI DSS") and card association rules prohibit storage of track data under any circumstances. If you or your Point of Sale ("POS") system pass, transmit, store or receive full cardholder's data, then the POS software must be Payment Application Data Security Standard ("PA DSS") compliant or you (merchant) must validate PCI DSS compliance (see #1(b) below and questions #3 and #4 must be completed). If you use a payment gateway, they must be PCI DSS compliant. ****

#1. Have you ever experienced an Account Data Compromise ("ADC")? Yes No If yes, please provide the date of compromise: _____

a) Have you validated PCI DSS Compliance? Yes No If yes, go to 1.(b); if no, go to #2

b) Date of compliance, Report on Compliance ("ROC") or Self Assessment Questionnaire ("SAQ"): NA

c) What is the name of your Qualified Security Assessor ("QSA")? NA or SAQ (circle or check one): A, B, C, or D

d) Date of last scan: _____ Approved Scanning Vendor's Name: _____

#2. Are you using a "dial-up" terminal or Touch Tone Capture ("TTC")? Yes No a) if yes, where is card data stored? _____

#3. Do you or your Service Provider(s) receive, pass, transmit, or store the Full Cardholder Number ("FCN"), electronically? Yes No a) if yes, where is card data stored? _____

Merchant's Location Only Primary Service Provider Other Service Provider: _____ Merchant's Headquarters/Corp office only Both Merchant and Service Provider(s) All Apply

#4. What Primary Service Provider/Software Developer did you purchase your POS Application from (i.e., software, gateway)? MunicIPAY

a) What is the name of the Service Provider/Software Developer's application? MunicIPAY Software Version #: _____

b) Do your transactions process through any other Service Provider (i.e., web hosting companies, gateways, corporate office)? Yes No c) If yes, name other Service Provider: _____

MERCHANT SITE SURVEY REPORT (to be completed by Sales Professional):

Merchant Location: Retail Storefront Office Building Residence Government

Area Zoned: Commercial Industrial Residential

The Merchant: Owns Leases the location

Landlord Name & contact number: _____

Is inventory/merchandise amount consistent with this type of business? Y N

By signing below, I hereby confirm that the information on this application is true and correct as the merchant applicant has described and that I have verified the identity of the business, its owners and the signer(s) of this application. I further confirm that I have physically inspected the business premises at the location address stated above.

 (Sales Professional Name and ID #) (Strategic Partner/Affiliate ID #) X (Sales Professional Signature) (Date)

BILLING & PRICING INFORMATION - SCHEDULE OF CONVENIENCE FEES

Over-the-Counter, Phone, Mail

Visa/MasterCard/Discover Transactions	2.45%
American Express Transactions	2.45%
Signature Debit Transactions	2.45%

Ecommerce Transactions

Visa/MasterCard/Discover Transactions	2.45%
American Express Transactions	2.45%
<input type="checkbox"/> Echeck Transactions	\$1.50 per check

APPLICABLE FEES

Initial MuniPAY Set Up Fee	\$0
Monthly Software/Gateway Fee (per month per Master MID)	\$0
All Convenience Fee Transactions have a \$3.00 minimum transaction charge	

MuniPAY Agreement

MuniPAY Special Terms and Conditions. The following terms and conditions shall serve as an agreement between Nationwide Payment Solutions LLC ("NPS") and the Government Entity ("GE") listed on page 1 of the NPS Merchant Agreement. These terms and conditions shall be in addition to but not serve as any replacement to any existing terms of the Nationwide Payment Solutions Merchant Agreement.

1. PCI-DSS Security. Both MuniPAY and Nationwide Payment Solutions meet or exceed all PCI DSS guidelines and requirements for the storage and transmission of cardholder data. NPS is a certified Level 1 PCI DSS service provider. GE agrees not to store any sensitive credit card data.

2. Optional Cardholder Convenience Fee Program. GE understands that NPS has authorized GE to accept credit cards. In order to waive processing fees for GE, NPS is required to charge a Convenience Fee to the cardholder at the time of transaction. GE agrees to meet all the requirements established by the Card Associations in order to allow a Convenience Fee to be charged. NPS may deny/decline transactions that do not qualify for a Convenience Fee per the rules and regulations of the Card Associations. NPS agrees to offer cardholders competitive Convenience Fees based upon the annual processing activity generated from each GE. NPS reserves the right to modify the amount of this Convenience Fee depending upon the costs which NPS incurs to process such transactions, industry trends and/or card association rules. In the event of a change, NPS shall provide Municipality with 30 days notice of such change.

3. Disclosure & Opt Out of Convenience Fee. GE understands that a cardholder has a right to opt out of a Convenience Fee transaction at the time of sale. GE agrees to disclose to the cardholder(s) the amount of the calculated Convenience Fee at the time of transaction (MuniPAY will automatically calculate fee) and give the option for the cardholder to cancel the payment and accept another form of payment (cash, checks etc.).

4. Transaction Receipt(s) - Mail/Telephone/Internet Transactions

4a. Face to Face Transactions: GE understands cardholders will be required to sign separately for the NPS Convenience Fee and the transaction amount(s) due to GE. GE agrees to maintain a copy of transaction receipts for a minimum of 18 months per the Card Association regulations. GE further agrees to provide NPS a timely copy of such receipt(s) in the event it is requested.

4b. Phone Transactions: GE understands that each transaction which is processed over the telephone shall require GE to disclose the Third Party Convenience fee being assessed for the completion of the transaction prior to charging the cardholder's credit card. The Cardholder has the right to opt out of the transaction, per the Card Association rules regarding Convenience Fees. GE agrees to print a receipt for phone order transactions and to write in *Phone Order* on the signature line for both the NPS convenience fee and GE transaction(s).

4c. Internet Transactions: MuniPAY's secure e-commerce interface shall disclose to the Cardholder any Third Party Convenience fees being assessed prior to charging the Cardholder's credit card. Such disclosure shall give the cardholder the right to "Opt-out" of the transaction per card association rules. NPS shall automatically initiate an email receipt to the Cardholder for each completed transaction.

5. Internet Sale Items/Default Pricing

GE understands that by using the MuniPAY e-commerce processing solution, it has authorized NPS to post any set default pricing and payment items as indicated by the GE. GE agrees that it is the responsibility of the GE to notify the MuniPAY Support Center of any changes to default pricing and/or payment items displayed.

6. Card Holder Disputes/Convenience Fee Indemnification. GE agrees that any disputes between GE and a Cardholder relating to a transaction funded directly to the GE shall be settled between GE and the Cardholder directly. NPS shall assist GE in settling these disputes. GE understands that such disputes can result in a cardholder issued "chargeback" to GE based on Card Association rules and regulations. Chargeback(s) can be avoided by settling disputes with the Cardholder directly or issuing a refunded transaction. NPS will provide details of such "chargeback(s)" including Cardholder name and transaction details. Such chargeback disputes may require GE to provide a copy of the signed credit card receipt. GE will hold no liability nor be debited any chargeback for a Convenience Fee amount.

7. Equipment Use Provision. At NPS' sole discretion, NPS may provide GE the use of certain hardware related to the use of MuniPAY. GE further agrees that any and all hardware provided by NPS shall remain the property of NPS. GE agrees to return all hardware to NPS no later than 30 days from end of service. Failure to return such hardware shall result in GE being assessed a fee for the value of each piece of hardware provided.

By signing below, I have read and understand the terms and conditions above and understand that these terms shall be in addition to my NPS Merchant Application/Agreement, including but not limited to the terms and conditions of such NPS merchant agreement.

Signature: _____

Print Name: _____

Title: _____

Date: _____

ACKNOWLEDGEMENT & AGREEMENT (required)

ACKNOWLEDGEMENT & AGREEMENT (required) INVESTIGATIVE CONSUMER REPORT: An investigative or consumer report may be made in connection with application. MERCHANT authorizes any party to the Agreement or any of its agents to investigate the references provided or any other statements or data obtained from MERCHANT, from any of the undersigned, or from any other person or entity with any financial obligations under this Agreement. You have a right, upon written request, to a complete and accurate disclosure of the nature and scope of the investigation requested. **CORPORATE RESOLUTION.** The indicated officer (s) identified below have the authorization to execute the Merchant Processing Agreement on behalf of the here within named corporation. Merchant understands that this agreement shall not take effect until merchant has been approved by bank and a merchant number has been issued. **IMPORTANT NOTICE:** All information contained in this application was completed or supplied by all contracting parties. Any change in printed terms shall be of absolutely no force or effect unless specifically agreed to in writing by all contracting parties. By signing below on either the original or a facsimile you are agreeing to the provisions stated within the Terms and Conditions of the Merchant Processing Agreement and the Merchant Application on the reverse side, and you are acknowledging that you have carefully read each of those provisions before signing. **BY SIGNING BELOW,** either on the original or a fax you are agreeing to the provisions stated within the terms & conditions of this merchant application and you are acknowledging that you both received a copy of and have carefully read each of these provisions within the attached 3 page Merchant Processing Terms & Agreement before signing below.

(Signature # 1)

(Title)

(Date)

(Signature # 2)

(Date)

Merchant Processing Terms and Agreement: This document, "Merchant Processing Agreement" (the "Agreement"), accompanies the document "Merchant Application" ("Merchant Application") and includes the Terms and Conditions set forth below (the "Terms and Conditions") together with the terms and conditions of the Merchant Application. The bank ("Bank") identified in this Agreement is a member of Visa USA, Inc. ("Visa") and MasterCard International, Inc. ("MasterCard"), and is Deutsche Bank AG, New York branch. EVO Merchant Services, LLC db/a EVO ("Processor") is a registered independent sales organization of Visa and a member service provider of MasterCard. This Agreement is between Processor and Bank, and the merchant ("you") identified in the Merchant Application ("Merchant"). Merchant and Processor agree that the rights and obligations contained in this Agreement do not apply to Bank with respect to Discover transactions. To the extent Merchant accepts Discover cards, the provisions in this Agreement with respect to Discover apply if Merchant does not have a separate agreement with Discover. In such case, Merchant will also be enabled to accept JCB and Diner's Club cards under the Discover network and such transactions will be processed at the same fee rate as Merchant's Discover transactions are processed. Any references to the Debit Sponsor shall refer to the debit sponsors identified below.

RECIPIENTS

Merchant desires to accept credit cards ("Cards") validly issued by members of Visa, MasterCard, and Discover. Bank and Processor desire to provide credit card processing services to Merchant. Therefore, Merchant, Processor and Bank agree as follows:

TERMS AND CONDITIONS

1. Honoring Cards.

A. Without Discrimination. You will honor, without discrimination, any Card properly tendered by a Cardholder. "Cardholder" means a person possessing a Card and purporting to be the person in whose name the Card is issued. You will not establish a minimum or maximum transaction amount as a condition for honoring a Card.

B. Cardholder Identification. You will identify the Cardholder and check the expiration date and signature on each Card. You will not honor any Card if: (i) the Card has expired, (ii) the signature on the sales draft does not correspond with the signature on the Card, or (iii) the account number embossed on the Card does not match the account number on the Card's magnetic strip (as printed in electronic form) or the account number listed on a current Electronic Warning Bulletin file. You may not require a Cardholder to provide personal information, such as a home or business telephone number, a home or business address, or a driver's license number as a condition for honoring a Card unless permitted under the Laws and Rules (defined in Section 14, below).

C. Card Recovery. You will use your best efforts to retain any Card: (i) on Visa Cards if the printed four digits below the embossed account number do not match the first four digits of the embossed account number; (ii) if you are advised by Processor or Bank (or a designee) the issuer of the Card or the designated voice authorization center to retain it; (iii) if you have reasonable grounds to believe the Card is counterfeit, fraudulent or stolen, or not authorized by the Cardholder; or (iv) if, for MasterCard Cards, the embossed account number, indent printed account number and encoded account number do not match or the Card does not have a MasterCard hologram on the lower right corner of the Card face.

D. Surcharges. You will not add any amount to the posted price of goods or services you offer as a condition of paying with a Card, except as permitted by the Rules. This paragraph does not prohibit you from offering a discount from the standard price to induce a person to pay by cash, check or similar means rather than by using a Card.

E. Return Policy. You will properly disclose to the Cardholder, at the time of the Card transaction and in accordance with the Rules, any limitation you have on accepting returned merchandise.

F. No Claim Against Cardholder. You will not have any claim against or right to receive payment from a Cardholder unless Processor and Bank refuses to accept the Sales Draft (as defined in Section 3) or revokes a prior acceptance of the Sales Draft after receipt or a chargeback or otherwise. You will not accept any payments from a Cardholder relating to previous charges for merchandise or services included in a Sales Draft, and if you receive any such payments you promptly will remit them to Processor and Bank.

G. Disputes With Cardholders. All disputes between you and any Cardholder relating to any Card transaction will be settled between you and the Cardholder. Neither Processor nor Bank bear any responsibility for such transactions.

2. Authorization.

A. Required on all Transactions. You will obtain a prior authorization for the total amount of a transaction via electronic terminal or device before completing any transaction, and you will not process any transaction that has not been authorized. You will follow any instructions received during the authorization process. Upon receipt of authorization you may consummate only the transaction authorized and must note on the Sales Draft the authorization number. Where authorization is obtained, you will be deemed to warrant the true identity of the customer as the Cardholder.

B. Effect. Authorizations are not a guarantee of acceptance or payment of the Sales Draft. Authorizations do not waive any provisions of this Agreement or otherwise validate a fraudulent transaction or a transaction involving the use of an expired Card.

C. Unreadable Magnetic Stripes. When you present Card transactions for authorization electronically, and if your terminal is unable to read the magnetic stripe on the card, you will obtain an imprint of the card and the Cardholder's signature on the imprinted draft before presenting the Sales Draft to Processor and Bank for processing. Failure to do so may result in the assessment of a transaction surcharge on non-qualifying transactions.

3. Presentation of Sales Drafts.

A. Forms. You will use a Sales Draft ("Sales Draft") or other form approved by Processor and Bank to document each Card transaction. Each Sales Draft will be legibly imprinted with: (i) Merchant's name, location and account number; (ii) the information embossed on the Card presented by the Cardholder (either electronically or manually); (iii) the date of the transaction; (iv) a brief description of the goods or services involved; (v) the transaction authorization number; (vi) the total amount of the sale including any applicable taxes, or credit transaction; and (vii) adjacent to the signature line, a notation that all sales are final, if applicable.

B. Signatures. Each Sales Draft must be signed by the Cardholder unless the Card transaction is a valid multi/telephone order Card transaction which fully complies with the requirements set forth in this Agreement. You may not require the Cardholder to sign the Sales Draft before you enter the final transaction amount in the Sales Draft.

C. Reproduction of Information. If the following information is not legibly imprinted on the Sales Draft, you will legibly inscribe on the Sales Draft before submitting it to Processor and Bank: (i) the Cardholder's name; (ii) account number; (iii) expiration date of the Card and (iv) the Merchant's name and place of business. Additionally, for MasterCard transactions you will legibly inscribe the name of the bank issuing the Card as it appears on the face of the Card.

D. Delivery and Retention of Sales Drafts. You will deliver a complete copy of the Sales Draft or credit voucher to the Cardholder at the time of the transaction. You will retain the "merchant copy" of the Sales Draft or credit memorandum for at least 3 years following the date of completion of the Card transaction (or such longer period as the Rules require).

E. Electronic Transmission. In using electronic authorization and/or data capture services, you will enter the data related to a sales or credit transaction into a computer terminal or magnetic stripe reading terminal no later than the close of business on the date the transaction is completed (unless otherwise permitted by the Rules). Failure to do so may result in the assessment of a transaction surcharge on non-qualifying transactions and, at Processor's sole discretion, to deposit of the funds received for such sales or credit transaction into the Reserve Account. If you provide your own electronic terminal or similar device, such terminal must meet Processor and Bank's requirements for processing transactions. Information regarding a sales or credit transaction transmitted with a computer or magnetic stripe reading terminal will be transmitted by you to Processor and Bank or their agent in the form Processor and Bank from time to time specify or as required under the Rules. If Processor or Bank requests a copy of a Sales Draft, credit voucher or other transaction evidence, you will provide it within 24 hours following request.

4. Deposit of Sales Drafts and Funds Due Merchant.

A. Deposit of Funds. i. Deposits. You agree that this Agreement is a contract of financial accommodation within the meaning of the Bankruptcy Code, 11 U.S.C. § 365 as amended from time to time. Subject to this Section, Bank will deposit to the Designated Account (defined in section 6 below) funds evidenced by Sales Drafts (whether evidenced in writing or by electronic means) complying with the terms of this Agreement and the Rules and will provide you provisional credit for such funds (less recoupment of any credit(s), adjustments, fines, chargeback or fees). You shall not be entitled to credit for any indebtedness that arises out of a transaction not processed in accordance with the terms of this Agreement or the rules and regulations of a card association or network organization. You acknowledge that your obligation to Processor and Bank for all amounts owed under this Agreement arises out of the same transaction as Processor and Bank's obligation to deposit funds to the Designated Account. ii. Provision of credit. Notwithstanding the previous sentences, under no circumstance will

Processor or Bank be responsible for processing credits or adjustments related to Sales Drafts not originally processed by Processor and Bank. All Sales Drafts and deposits are subject to audit and final checking by Processor and Bank and may be adjusted for inaccuracies. You acknowledge that all credits provided to you are provisional and subject to chargebacks, recoupment, adjustments, fines and fees: (i) in accordance with the Rules; (ii) for any of your obligations to Processor and Bank; and (iii) in any other situation constituting suspected fraud or a breach of this Agreement, whether or not a transaction is charged back by the Card issuer. Processor and Bank may elect, but are not required, to grant conditional credit for individual or groups of any funds evidenced by Sales Drafts. Final credit for those conditional funds will be granted within Processor and Bank's sole discretion. iii. Processing Limits. Processor and Bank may impose a cap on the volume and ticket amount of Sales Drafts that they will process for you, as indicated to you by Processor or Bank. This limit may be changed by Processor or Bank upon written notice to you.

B. Chargebacks. You are fully liable for all transactions returned for whatever reason, otherwise known as "chargebacks". You will pay on demand the amount of all chargebacks. Authorization is granted to offset from incoming transactions and to debit the Designated Account, the Reserve Account (defined in Section 7, below) or any other account held at Bank or at any other financial institution the amount of all chargebacks. You will fully cooperate in complying with the Rules regarding chargebacks.

C. Excessive Activity. Your presentation to Processor and Bank of Excessive Activity will be a breach of this Agreement and cause for immediate termination of this agreement. "Excessive Activity" means, during any monthly period: (i) the dollar amount of chargebacks and/or retrieval requests in excess of 1% of the average monthly dollar amount of your Card transactions; (ii) sales activity that exceeds by 10% of the dollar volume indicated on the Application; or (iii) the dollar amount of returns equals 20% of the average monthly dollar amount of your Card transactions. You authorize, upon the occurrence of Excessive Activity, Processor and Bank to take any action they deem necessary including but not limited to, suspension of processing privileges and establishment or increase in the amount allocated to the Reserve Account and a reduction in the amount of provisional credit remitted to you in accordance with this Agreement.

D. Credit. i. Credit Memoranda. You will issue a credit memorandum in any approved form, instead of making a cash advance, a disbursement or a refund on any Card transaction. Processor and Bank will debit the Designated Account for the total face amount of each credit memorandum submitted to Processor and Bank. You will not submit a credit memorandum relating to any Sales Draft not originally submitted to Processor and Bank, nor will you submit a credit memorandum that exceeds the amount of the original Sales Draft. You will within the time period specified by the Rules, provide a credit memorandum or credit statement for every return of goods or forgiveness of debt for services which were the subject of a Card transaction. ii. Revocation of Credit. Processor or Bank may refuse to accept any Sales Draft, and Processor and Bank may revoke prior acceptance of a Sales Draft in the following circumstances: (a) the transaction giving rise to the Sales Draft was not made in compliance with this Agreement, the Laws or the Rules; (b) the Cardholder disputes his liability to Processor and Bank for any reason, including but not limited to a contention that the Cardholder did not receive the goods or services, that the goods or services provided were not as ordered, or those chargeback rights enumerated in the Rules; or (c) the transaction giving rise to the Sales Draft was not directly between you and the Cardholder. You will pay Processor and Bank any amount previously credited to you for a Sales Draft not accepted by Processor and Bank or where accepted, is revoked by Processor and Bank.

E. Reprocessing. Notwithstanding any authorization or request from a Cardholder, you will not re-enter or reprocess any transaction which has been charged back.

F. Miscellaneous. You will not present for processing or credit, directly or indirectly, any transaction not originated as a result of a Card transaction directly between you and a Cardholder or any transaction you know or should know to be fraudulent or not authorized by the Cardholder. You will not sell or disclose to third parties Card account information other than in the course of performing your obligations under this Agreement.

5. Other Types of Transactions.

A. Debit Card Processing Services. You may elect to accept debit cards, and said election should be made by you on the accompanying Merchant Application. If you elect to accept debit cards, the following terms and conditions apply to you. Debit Sponsor shall act as your sponsor with respect to the participation of point-of-sale terminals owned, controlled, and/or operated by you (the "Covered Terminals") in each of the following debit card networks ("Networks"): Accel, AFFN, Alaska Option, Interlink, Maestro, NYCE, Pulse, Shazam, Star, CU24, and Tyme, which Networks may be changed from time-to-time by Debit Sponsor or Processor without notice. You may also have access to other debit networks that do not require a sponsor. Processor will provide you with the ability to access the Networks at the Covered Terminals for the purpose of authorizing debit card transactions from cards issued by the members of the respective Networks, and Processor will provide connection to such Networks, terminal applications, settlement, and reporting activities (collectively, the "Services"). You will comply with all federal, state, and local laws, rules, regulations and ordinances ("Applicable Laws") and with all by-laws, regulations, rules, and operating guidelines of the Networks ("Network Rules"). You will execute and deliver any application, participation, or membership agreement or other document necessary to enable Debit Sponsor to act as sponsor for you in each Network, and you shall obtain all consents, approvals, authorizations, or orders of any governmental agency or body required for the execution, delivery, and performance of this Agreement. You agree to utilize the debit card services in accordance with this Agreement, its exhibits or attachments, and Processor's instructions and specifications, and to provide Processor with the necessary data in the proper format to enable Processor to properly furnish the Services. Copies of the relevant agreements or operating regulations shall be made available to you upon request. You will provide prompt written notice to Processor in the event that you are subject to any of the following: i. Conviction for a felony offense or any other crime involving moral turpitude; ii. Restraining order, decree, injunction, or judgment in any proceeding or lawsuit alleging fraud or deceptive practice on your part; iii. Bankruptcy filing or petition; iv. Federal or state tax lien; v. Any material adverse change in your assets, operations, or condition, financial or otherwise; vi. The threat or filing of any litigation against you, the outcome of which reasonably could have a material adverse effect on your continuing operations; vii. Administrative or enforcement proceeding commenced by any state or federal regulatory agency, including any banking or securities agency or entity operating an EBT network, that reasonably could have a material adverse effect on your continuing operations; or viii. Any disciplinary action taken by any Network against you or any of your principals. Processor may terminate or suspend in its discretion Debit Sponsor's sponsorship of you in any Network or modify the provision of Services to you: i. Immediately upon notice to you of the occurrence of any of the conditions set forth in items (i), (ii), (iii), (v), or (viii) in the immediately preceding paragraph or if Debit Sponsor's authority to participate in such Network or act as your sponsor in such Network is terminated by such Network; ii. Thirty (30) days after written notice by Processor to you of the occurrence of any of the conditions set forth in items (iv), (vi), or (vii) in the immediately preceding paragraph or if Debit Sponsor terminated its membership or participation in such Network; iii. Immediately upon notice to you in the event any financial statement, representation, warranty, statement or certificate furnished is materially false or misleading; or iv. Immediately upon notice to you of the occurrence of any other circumstance with respect to this Section that may reasonably be expected to have an adverse effect on Processor. The parties hereto acknowledge and agree that Processor shall pay Debit Sponsor any and all fees related to Debit Sponsor's sponsorship of you in the Networks; provided, however, that in the event Processor fails to pay such amounts, Debit Sponsor shall be entitled to recover all such amounts directly from you and you agree to pay all such amounts. You shall not in any way indicate that Debit Sponsor endorses your activities, products, or services. Debit Sponsor and you are and shall remain independent contractors of one another, and neither they, nor their respective individual employees, shall have or hold themselves out as having any power to bind

the other to any third party. Nothing contained in this section shall be construed to create or constitute a partnership, joint venture, employer-employee, or agency relationship between Debit Sponsor and you. You shall indemnify and hold harmless Processor and its affiliates (including parents and subsidiaries), and their respective officers, directors, employees, successors and assigns, from and against any and all direct or contingent losses, costs, claims, demands, and causes of action (including, without limitation, the cost of investigating the claim, the cost of litigation, and reasonable attorney's fees including those of in-house counsel, whether or not legal proceedings are instituted) paid or incurred by or on behalf of Processor as a result of your violation of any of the terms of this Section, Network Rules, or Applicable Laws, or otherwise arising from or related to Debit Sponsor's sponsorship of you in any Network. In the event that Debit Sponsor's sponsorship of you in any Network is terminated prior to the termination of this Agreement, Processor may assign Debit Sponsor's rights and obligations hereunder to a third party. All provisions in this section necessary to enforce the rights and obligations of the parties contained in this section shall survive the termination of Debit Sponsor's debit sponsorship of you under this Agreement.

B. Mail/Telephone Order. Processor and Bank caution against mail orders or telephone orders or any transaction in which the Cardholder and Card are not present ("mail/telephone orders") due to the high incidence of customer disputes. You will obtain the expiration date of the Card for a mail/telephone order and submit the expiration date when obtaining authorization of the Card transaction. For mail/telephone order transactions, you will type or print legibly on the signature line the following as applicable: telephone order or "TO" or "mail order" or "MO". You must promptly notify Processor and Bank if your retail mail order/telephone order mix changes from the percentages represented to Processor and Bank in the Merchant Application. Processor and Bank may cease accepting mail/telephone order transactions, or limit their acceptance of such transactions, or increase their fees if this mix changes. Bank will release funds to Merchant five (5) business days after the transaction date for mail/telephone orders. Merchant agrees to use and retain proof of a traceable delivery system as means of shipment of product to the customer. Merchant agrees that transactions will not be processed until products are shipped to the Cardholder. Merchant agrees to pay a charge of \$0.05 per AVS transaction, if applicable. This agreement may be immediately terminated by Bank if Merchant fails to comply with any of the terms of the agreement.

C. Recurring Transactions. For recurring transactions, you must obtain a written request from the Cardholder for the goods and services to be charged to the Cardholders account, the frequency of the recurring charge, and the duration of time during which such charges may be made. You will not complete any recurring transaction after receiving: (i) a cancellation notice from the Cardholder, (ii) notice from Processor or Bank, or (iii) a response that the Card is not to be honored. You must print legibly on the Sales Draft the words "Recurring Transaction".

D. Multiple Sales Drafts. You will include a description and total amount of goods and services purchased in a single transaction on a single Sales Draft or transaction record, unless (i) partial payment is entered on the Sales Draft or transaction record and the balance of the transaction amount is paid in cash or by check at the time of transaction, or (ii) a Sales Draft represents an advance deposit in a Card transaction completed in accordance with this Agreement and the Rules.

E. Partial Completion. i. Prior Consent. You will not accept for payment by Card any amount representing a deposit or partial payment for goods or services to be delivered in the future without the prior written consent of Processor or Bank. Such consent will be subject to Bank's final approval. The acceptance of a Card for payment or partial payment of goods or services to be delivered in the future without prior consent will be deemed a breach of this Agreement and cause for immediate termination, in addition to any other remedies available under the Laws or Rules. ii. Acceptance. If you have obtained prior written consent, then you will complete such Card transactions in accordance with the terms set forth in this Agreement, the Rules, and the Laws. Cardholders must execute one Sales Draft when making a deposit with a Card and a second Sales Draft when paying the balance. You will note upon the Sales Draft the words "deposit" or "balance" as appropriate. You will not duplicate the Sales Draft labeled "balance" until the goods have been delivered to Cardholder or you have fully performed the services.

F. Future Delivery. You will not present any Sales Draft or other memorandum to Bank for processing "whether by electronic means" which relates to the sale of goods or services for future delivery without Processor or Bank's, prior written authorization. Such consent will be subject to Bank's final approval. If Processor or Bank have given such consent, you represent and warrant to Processor and Bank that you will not rely on any proceeds or credit resulting from such transactions to purchase or furnish goods or services. You will maintain sufficient working capital to provide for the delivery of goods or services at the agreed upon future date, independent of any credit or proceeds resulting from sales drafts or other memoranda taken in connection with future delivery transactions.

G. Electronic Commerce Transactions. You may process electronic commerce ("EC") transactions only if you have so indicated on the Application, and only if you have obtained Processor's consent. If you submit EC transactions without our consent, we may immediately terminate this Agreement. If you have indicated on the Application that you will be submitting EC transactions, you acknowledge that you have reviewed the Payment Card Industry Data Security Standards (PCI DSS), Visa's Cardholder Information Security Program (CISP) and MasterCard's Site Data Protection Program (SDP), and to the extent that they apply to you, you agree to comply with, and ensure such transactions comply with, the terms of each. You understand that transactions processed via EC are high risk and subject to a higher incidence of chargebacks. You are liable for all chargebacks and losses related to EC transactions, whether or not: i) EC transactions have been encrypted; and ii) you have obtained consent to engage in such transactions. Encryption is not a guarantee of payment and will not waive any provision of this Agreement or otherwise validate a fraudulent transaction. All communication costs related to EC transactions are your responsibility. You understand that Processor will not manage the EC telecommunications link and that it is your responsibility to manage that link. All EC transactions will be settled by Bank into a depository institution of the United States in U.S. currency. i. Requirements. For goods to be shipped on EC transactions, you may obtain authorization up to 7 calendar days prior to the shipment date. You need not obtain a second authorization if the Sales Draft amount is within 15% of the authorized amount, provided that the additional amount represents shipping costs. Further, your web site must contain all of the following information: i) complete description of the goods or services offered; ii) returned merchandise and refund policy; iii) customer service contact, including electronic mail address and/or telephone number, iv) transaction currency (such as U.S. or Canadian dollars), v) export or legal restrictions, if known, and vi) delivery policy. If you store cardholder account numbers, expiration dates, and other personal cardholder data in the database, you must follow PCI DSS, CISP and SDP guidelines on securing such data. ii. If you accept EC transactions, you must: install and maintain a working network firewall to protect data accessible via the Internet; keep security patches up-to-date; encrypt stored data and data sent over open networks; use and update anti-virus software; restrict access to data by business "need-to-know"; assign a unique ID to each person with computer access to data; not use vendor-supplied defaults for system passwords and other security parameters; track access to data by unique ID; regularly test security systems and processes; maintain a policy that addresses information security for employees and contractors; and restrict physical access to Cardholder information. When outsourcing administration of information assets, networks, or data you must retain legal control of proprietary information and use limited "need-to-know" access to such assets, networks or data. Further, you must reference the protection of cardholder

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information and compliance with the PCI DSS, CISP and SDP Rules in contracts with other service providers. You understand that failure to comply with this Section may result in fines and you agree to indemnify and reimburse Processor and Bank immediately for any fine imposed due to your breach of this Section.

H. American Express, JCB and Diners Club Transactions. Upon your request, Processor will provide authorization and/or data capture service, for JCB, Diners Club and American Express transactions. By signing this Merchant Agreement, Merchant agrees to abide by the terms and conditions of Diners Club, American Express, and JCB. Merchant understands that the Diners Club Agreement will be sent to the business entity indicated on this application. By accepting the Diners Club Card for goods and/or services, Merchant agrees to be bound by the terms and conditions of the Agreement. Processor and Bank are not responsible for funding such transactions. Initial setup fees may apply.

I. Cash Advances. You will not deposit any transaction for purposes of obtaining or providing a cash advance. You agree that any such deposit shall be grounds for immediate termination.

J. Prohibited Transactions. You will not accept or deposit any fraudulent or illegal transaction and you may not, under any circumstances, present for deposit directly or indirectly, a transaction which originated with any other merchant or any other source. You will not, under any circumstance, deposit telemarketing transactions unless you obtain Bank, Processor prior written consent. Such consent will be subject to Bank's final approval. If you process any such transactions, you may be immediately terminated and Processor and Bank may hold funds and/or increase the amount allocated to the Reserve Account and/or deduct from the amount of provisional credit that would otherwise be allocated to you. Further, you may be subject to Visa, MasterCard or Discover reporting requirements.

6. Designated Account.

A. Establishment and Authority. Merchant will establish and maintain an account at an ACH receiving depository institution approved by Bank and Processor ("Designated Account"). Merchant will maintain sufficient funds in the Designated Account to satisfy all obligations, including fees, contemplated by this Agreement. Merchant irrevocably authorizes Bank and Processor to debit the Designated Account for chargebacks, recoupments, adjustments, fines, fees and any other penalties or amounts owed under this Agreement, and irrevocably authorizes Bank and Processor to debit the Designated Account for any amount owed to Bank and Processor under this Agreement other than the amounts directly attributable to the settlement of transactions. You also authorize Processor and Bank to debit the Merchant Account for any fees due such vendor or agent under this Agreement. This authority will remain in effect for at least 2 years after termination of this Agreement whether or not you have notified Processor and Bank of a change to the Designated Account. Merchant must obtain prior written consent from Bank or Processor to change the Designated Account. If Merchant does not get that consent, Processor or Bank may immediately terminate the Agreement and may take other action necessary, as determined by them within their sole discretion.

B. Deposit. Bank will deposit all Sales Drafts to the Designated Account subject to the other provisions of this Agreement. The funds represented by Sales Drafts will be deposited 3 business days following Processor's receipt of the Sales Draft, except for mail order/telephone order and electronic commerce transactions, which will be deposited 5 business days following receipt of the Sales Draft. "Business Day" means Monday through Friday, excluding holidays observed by the Federal Reserve Bank of New York. Merchant authorizes Bank and Processor to initiate reversal or adjustment entries and initiate or suspend such entries as may be necessary to grant Merchant provisional credit for any entry. You authorize and appoint Bank and Processor to act as your agent to collect Card transaction amounts from the Card Issuing bank. As the collecting agent, Bank and Processor in their sole discretion, may grant you provisional credit for transaction amounts in the process of collection, subject to receipt of final payment by Bank and subject to all chargebacks.

C. Assorted Errors. You must promptly examine all statements relating to the Designated Account, and immediately notify Processor and Bank in writing of any errors. Your written notice must include: (i) Merchant name and account number, (ii) the dollar amount of the asserted error, (iii) a description of the asserted error, and (iv) an explanation of why you believe an error exists and the cause of it, if known. That written notice must be received by Processor and Bank within 30 calendar days after you received the periodic statement containing the asserted error. Your failure to notify Processor and Bank of any error within 30 days constitutes a waiver of any claim relating to that error. You may not make any claim against Processor or Bank for any loss or expense relating to any asserted error for 60 calendar days immediately following our receipt of your written notice. During that 60 day period, Processor and Bank will be entitled to investigate the asserted error.

D. Indemnity. You will indemnify and hold Processor and Bank harmless for any action they take against the Designated Account, the Reserve Account, or any other account pursuant to this Agreement.

E. ACH Authorization. You authorize Processor and Bank to initiate debit/credit entries to the Designated Account or the Reserve Account, all in accordance with this Agreement and the ACH Authorization on the attached Exhibit B, Merchant Authorizations. The ACH Authorization will remain in effect beyond termination of this Agreement. In the event you change the Designated Account, you will execute a new ACH Authorization.

7. Security Interests, Reserve Account, Recoupment and Set-Off.

A. Security Interests. i. Security Agreement. This Agreement is a security agreement under the Uniform Commercial Code. You grant to Processor and Bank a security interest in and lien upon: (i) all funds at any time in the Designated Account, (ii) all funds at any time in the Reserve Account, (iii) present and future Sales Drafts; and (iv) any and all amounts which may be due to you under this Agreement including, without limitation, all rights to receive any payments or credits under this Agreement (collectively, the "Secured Assets"). You agree to provide other collateral or security to Processor and Bank to secure your obligations under this Agreement upon Processor or Bank's request. These security interests and liens will secure all of your obligations under this Agreement and any other agreements now existing or later entered into between you and Processor or Bank. This security interest may be exercised by Processor or Bank without notice or demand of any kind by making an immediate withdrawal or freezing the secured assets. ii. Perfection. Upon request of Processor or Bank, you will execute one or more financing statements or other documents to evidence this security interest. You represent and warrant that no other person or entity has a security interest in the Secured Assets. Further, with respect to such security interests and liens, Processor and Bank will have all rights afforded under the Uniform Commercial Code, any other applicable law and in equity. You will obtain from Processor and Bank written consent prior to granting a security interest of any kind in the Secured Assets to a third party. You agree that this is a contract of recoupment and Processor and Bank are not required to file a motion for relief from the automatic stay in any bankruptcy proceeding in order for Processor or Bank to realize on any of its collateral (including any Reserve Account). Nevertheless you agree not to contest or object to any motion for relief from the automatic stay filed by Processor or Bank. You authorize Processor or Bank and appoint Processor or Bank your attorney in fact to sign your name to any financing statement used for the perfection of any security interest or lien granted hereunder.

B. Reserve Account. i. Establishment. A non-interest bearing deposit account ("Reserve Account") has been established and is maintained at Bank or one of its affiliates with sums sufficient to satisfy your current and future merchant obligations as determined by Processor and Bank. You authorize Processor and Bank to debit the Designated Account or any other account you have at Bank or any other financial institution to establish or maintain funds in the Reserve Account. Bank or Processor may deposit into the Reserve Account funds it would otherwise be obligated to pay for, for the purpose of establishing, maintaining or increasing the Reserve Account in accordance with this Section, if it determines such action is reasonably necessary to protect its interests. ii. Authorizations. Processor and Bank may, without notice to you, apply deposits in the Reserve Account against any outstanding amounts you owe under this Agreement or any other agreement between you and Processor or Bank. Also, Processor and Bank may exercise their rights under this Agreement against the Reserve Account to collect any amounts due to Processor or Bank including, without limitation, rights of set-off and recoupment. In the event you submit a merchant application to Processor through the use of Insta-App, and Processor does not receive a completed written merchant application within 2 business days, you authorize Processor or Bank to hold all of your funds in the Reserve

Account until the completed written merchant application and other required documentation is received by Processor. ii. Funds. Funds in the Reserve Account will remain in the Reserve Account for 270 calendar days following the later of termination of this Agreement or the last activity in your account provided, however, that you will remain liable to Processor and Bank for all liabilities occurring beyond such 270 day period. After the expiration of the 270 day period Processor will provide you with written notification via nationally recognized delivery service advising you that the 270 day period has expired, requesting that you provide Processor with an address where the funds you have remaining in the Reserve Account should be delivered, and stating that in the event you fail to respond to this notification within 30 days, Processor will begin deducting a flat fee of \$95 each month from the funds you have remaining in the Reserve Account. In the event you fail to respond to the notification, the \$95 fee will then be deducted each month from the funds you have remaining in the Reserve Account. This fee will offset the administrative, clerical, legal, and risk management costs incurred by Processor to monitor the funds you have remaining in the Reserve Account beyond the 270 day period, and includes all monthly minimums and any other contractual fees that would ordinarily be assessed against your account pursuant to the terms of this Agreement. You agree that prior to the expiration of the 270 days, you will not use any funds you have in the Reserve Account for any purpose, including but not limited to paying chargebacks, fees, fines, or other amounts you owe to Processor and/or Bank under this Agreement. Processor and Bank (and not Merchant) shall have control of the Reserve Account. iv. Assurance. In the event of a bankruptcy proceeding and the determination by the court that this Agreement is assumable under Bankruptcy Code § 365, as amended from time to time, you must maintain funds in the Reserve Account in an amount satisfactory to Processor and Bank.

C. Recoupment and Set Off. Processor and Bank have the right of recoupment and set-off. This means that they may offset or recoup any outstanding/uncollected amounts owed by you from: (i) any amounts they would otherwise be obligated to deposit into the Designated Account; (ii) any other amounts Bank or Processor may owe you under this Agreement or any other agreement; and (iii) any funds in the Designated Account or the Reserve Account. You acknowledge that in the event of a bankruptcy proceeding, in order for you to provide adequate protection under Bankruptcy Code § 362 to Processor and Bank, you must create or maintain the Reserve Account as required by Processor and Bank, and Processor and Bank must have the right to offset against the Reserve Account for any and all obligations which you may owe to Processor and Bank, without regard to whether the obligations relate to Sales Drafts initiated or created before or after the filing of the bankruptcy petition.

D. Remedies Cumulative. The rights and remedies conferred upon Processor and Bank in this Agreement, at law or in equity, are not intended to be exclusive of each other. Rather, each and every right of Processor and Bank under this Agreement, at law or in equity, will be cumulative and concurrent and in addition to every other right.

8. Fees and Other Amounts Owed Processor and Bank.

A. Fees and Taxes. You will pay Processor fees for services, forms and equipment in accordance with the rates set forth on the Application including a \$35 NSF/Chargeback fee if applicable. In addition, you will pay Processor a fee for research it performs at your request in an amount equal to \$0 per hour, or \$0 per statement. Such fees will be calculated and debited from the Designated Account once each business day or month for the previous business day's or month's activity or will be netted out from the funds due you attributable to Sales Drafts presented to Processor and Bank. Processor and Bank reserve the right to adjust the fees set forth on the Application and in this Section, in accordance with Section 16.H. below. If you do not have an active account at the time of the request, payment by certified check or money order must be received prior to the release of the requested document copies or research results. You are also obligated to pay all taxes, and other charges imposed by any governmental authority on the services provided under this Agreement. With respect to Visa, MasterCard and Discover products, you may elect to accept credit cards or debit/prepaid cards or both. You shall so elect on the Merchant Application being completed contemporaneously herewith. You agree to pay and your account(s) will be charged pursuant to Section 6.A of this Agreement for any additional fees incurred as a result of your subsequent acceptance of transactions with any Visa, MasterCard or Discover product that you have elected not to accept.

B. Other Amounts Owed Processor and Bank. You will immediately pay Processor and Bank any amount incurred by Processor and Bank attributable to this Agreement including but not limited to chargebacks, refunds, NSF charges, fines and penalties imposed by Visa, MasterCard or Discover (including but not limited to fines and penalties related to PCI DSS), non-sufficient fund fees, and ACH debits that overdraw the Designated Account or Reserve Account, or are otherwise dishonored. You authorize Processor and Bank to debit via ACH the Designated Account or any other account you have at Bank or at any other financial institution for any amount you owe Processor or Bank under this Agreement or under any other contract, note, guarantee, instrument or dealing of any kind now existing or later entered into between you and Processor or Bank, whether your obligation is direct, indirect, primary, secondary, fixed, contingent, joint or several. In the event Processor or Bank demand sums due or such ACH does not fully reimburse Processor and Bank for the amount owed, you will immediately pay Processor and Bank such amount.

C. Merchant Supply/Replacement Program. Merchant is responsible for purchasing all supplies required to properly process credit card transactions (sales slips, printer rolls, etc.). If Merchant elects to participate in Processor's Supply/Replacement Program, Merchant understands that it is entitled to a maximum of 6 rolls of paper and 2 printer ribbons per month. It is Merchant's responsibility to contact Processor each month to order supplies. Processor will only provide Merchant with supplies for the current month, and Merchant's failure to place an order with Processor will constitute a waiver of its right to receive supplies for that month under the Supply/Replacement Program. Quantity of supplies provided is at the discretion of Processor. Enrollment in Processor's Supply/Replacement Program also entitles Merchant to free refurbished replacement equipment after Processor has collected 3 monthly payments from Merchant (merchant is responsible for all shipping costs). A separate program is required for each terminal Merchant may have. If Merchant's terminal type is unavailable, at Processor's discretion, a substitute may be provided. Processor's Supply/Replacement Program does not include labor, parts, or expenses necessary to replace or repair equipment damaged by fire, flood, accident, improper voltages, misuse of equipment, service performed by persons other than Processor representatives, and/or failure to continually maintain a suitable operating environment for the equipment. Processor may choose to cancel Merchant's Supply/Replacement Program at any time without notice. This program is nontransferable without written consent. Maintenance is not available for any wireless terminals.

9. Application, Indemnification, Limitation of Liability.

A. Application. You represent and warrant to Processor and Bank that all information in the Application is correct and complete. You must notify Processor in writing of any changes to the information in the Application, including but not limited to: any additional location or new business, the identity of principals and/or owners, the form of business organization (e.g., sole proprietorship, partnership, etc.), type of goods and services provided and how sales are completed (i.e., by telephone, mail, or in person at your place of business). The notice must be received by Processor within 10 business days of the change. You will provide updated information to Processor within a reasonable time upon request. You are liable to Processor and Bank (as applicable) for all losses and expenses incurred by Processor and/or Bank arising out of your failure to report changes to it. Bank and Processor may immediately terminate this Agreement upon notification by you of a change to the information in the Application.

B. Indemnification. You will hold harmless and indemnify Processor and Bank, their employees and agents (i) against all claims by third parties arising out of this Agreement, and (ii) for all attorneys' fees and other costs and expenses paid or incurred by Processor or Bank in the enforcement of the Agreement, including but not limited to those resulting from any breach by you of this Agreement and those related to any bankruptcy proceeding.

C. Limitation of Liability. Any liability of Processor or Bank under this Agreement, whether to you or any other party, whatever the basis of the liability, shall not exceed in the aggregate the difference between (i) the amount of fees paid by you to Processor and Bank during the month in which the transaction out of which the liability arose occurred, and (ii) assessments, chargebacks, and offsets against such fees which arose during such month. In the event more than one month is involved, the aggregate amount of Processor and Bank's liability

shall not exceed the lowest amount determined in accord with the foregoing calculation for anyone month involved. Neither Processor, Bank nor their agents, officers, directors, or employees shall be jointly liable to you under this Agreement or liable for indirect, special, or consequential damages. Neither Processor nor Bank will be responsible or liable for any damages you incur that arise from a terminal that has been downloaded by a third party.

D. Performance. Processor and Bank will perform all services in accordance with this Agreement. Processor and Bank make no warranty, express or implied, regarding the services, and nothing contained in the Agreement will constitute such a warranty. Processor and Bank disclaim all implied warranties, including those of merchantability and fitness for a particular purpose. No party will be liable to the others for any failure or delay in its performance of this Agreement if such failure or delay arises out of causes beyond the control and without the fault or negligence of such party. Neither Processor nor Bank shall be liable for the acts or omissions of any third party.

E. Representations By Salespersons. All salespersons are independent contractors, and are not agents, employees, joint venturers, or partners of Processor or Bank. Any and all representations and/or statements made by a salesperson are made by them in their capacity as an independent contractor, and cannot be imputed to Processor or Bank. Processor and Bank have absolutely no liability or responsibility for any representations and/or statements made to you by any sales representative.

10. Representations and Warranties. You represent and warrant to Processor and Bank at the time of execution and during the term of this Agreement the following:

A. Information. You are a Government Entity validly existing and organized in the United States. All information contained on the Application or any other document submitted to Processor or Bank is true and complete and properly reflects the business, financial condition, and principal partners, owners, or officers of Merchant. You are not engaged or affiliated with any businesses, products or methods of selling other than those set forth on the Application, unless you obtain the prior written consent of Processor and Bank.

B. Entity Power. Merchant and the person signing this Agreement have the power to execute and perform this Agreement. This Agreement and your performance hereunder will not violate any law, or conflict with any other agreement to which you are subject.

C. No Litigation or Termination. There is no action, suit or proceeding pending or to your knowledge threatened which if decided adversely would impair your ability to carry on your business substantially as now conducted or which would adversely affect your financial condition or operations. You have never entered into an agreement with a third party to perform credit or debit card processing which has been terminated by that third party.

D. Transactions. All transactions are bona fide. No transaction involves the use of a Card for any purpose other than the purchase of goods or services from you nor does it involve a Cardholder obtaining cash from you unless allowed by the Rules and agreed in writing with Processor and Bank. Processor may choose to cancel Merchant's Supply/Replacement Program at any time without notice. This program is non-transferable without written consent. Maintenance is not available for any wireless terminals.

E. Rule Compliance. You will comply with the Rules and Rules. Without limiting the generality of the foregoing, each sales transaction submitted hereunder and the handling, retention, and storage of information related thereto, will comply with the rules and regulations of Visa, MasterCard, Discover, and any other card association or network organization related to cardholder and transaction information security, including, without limitation Payment Card Industry Data Security Standards (PCI DSS), Visa's Cardholder Information Security Program (CISP) and MasterCard's Site Data Protection Program (SDP), and Payment Application Best Practices.

11. Audit and Financial Information.

A. Audit. You authorize Processor or Bank to audit your records to confirm compliance with this Agreement, as amended from time to time. You will obtain, and will submit a copy of, an audit of your business when requested by Processor or Bank.

B. Financial Information. i. Authorizations. You authorize Processor or Bank to make any business or personal credit inquiries they consider necessary to review the acceptance and continuation of this Agreement. You also authorize any person or credit reporting agency to compile information to answer, those credit inquiries and to furnish that information to Processor and Bank. ii. Documents. You will provide Processor or Bank personal and business financial statements and other financial information as requested from time to time. If requested, you will furnish within 120 calendar days after the end of each fiscal year to Processor and Bank a financial statement of profit and loss for the fiscal year and a balance sheet as of the end of the fiscal year.

12. Third Parties.

A. Services. You may be using special services or software provided by a third party to assist you in processing transactions, including authorizations and settlements, or accounting functions. You are responsible for ensuring compliance with the requirements of any third party in using their products. This includes making sure you have and comply with any software updates. Processor and Bank have no responsibility for any transaction until that point in time Processor or Bank receive data about the transaction.

B. Use of Terminals Provided by Others. You will notify Processor and Bank immediately if you decide to use electronic authorization or data capture terminals or software provided by any entity other than Processor and Bank or its authorized designee ("Third Party Terminals") to process transactions. If you elect to use Third Party Terminals or payment software provided by others you agree (i) the third party providing the terminals will be your agent in the delivery of Card transactions to Processor and Bank; and (ii) to assume full responsibility and liability for any failure of that third party to comply with the Rules and this Agreement. Neither Processor nor Bank will be responsible for any losses or additional fees incurred by you as result of any error by a third party agent, or a malfunction of your credit card terminal, including but not limited to Third Party Terminals.

13. Term and Termination.

A. Term. This Agreement shall become effective ("Effective Date") only upon acceptance by Processor and Bank, or upon the submission of a transaction by you to Processor, whichever event shall occur first. The Agreement will remain in effect for a period of 3 years ("Initial Term") and will renew for successive 1 year terms ("Renewal Term") unless terminated as set forth below.

B. Termination. The Agreement may be terminated by Merchant at the end of the Initial Term or any Renewal Term by giving written notice of an intention not to renew at least 90 calendar days before the end of the Initial Term or any Renewal Term. Further, this Agreement may be terminated by Processor or Bank at any time with or without notice and with or without cause.

C. Action upon Termination. i. Terminated Merchant File. You acknowledge that Bank is required to report your business name and the name of Merchant's principals to Visa, MasterCard and Discover when Merchant is terminated due to the reasons listed in the Rules. ii. Designated Account. All your obligations regarding accepted Sales Drafts will survive termination. You must maintain in the Designated Account and the Reserve Account enough funds to cover all chargebacks, deposit charges, refunds and fees incurred by you for a reasonable time, but in any event not less than the time specified in this agreement. You authorize Processor and Bank to charge those accounts, or any other account maintained under this Agreement, for all such amounts. If the amount in the Designated Account or Reserve Account is not adequate, you will pay Processor and Bank the amount you owe it upon demand, together with all costs and expenses incurred to collect that amount, including reasonable attorneys' fees. iii. Equipment. Within 14 business days of the date of termination, you must return all equipment owned by Processor and immediately pay Processor, any amounts you owe them for equipment costs. iv. Early Termination. If you terminate this agreement you agree to give Processor a written notice of cancellation 60 days prior to: no longer processing transactions with Processor, switching to a competing service provider, or no longer using Processor's processing services. Failure to provide such notice will result in an Early Closure fee equal to: \$0 If cancelled within the first 12 months of your first

Merchant Processing Terms & Agreement

batch data, or \$0 if cancelled anytime thereafter. You agree this fee is not a penalty but rather is reasonable in the light of the financial harm caused by the early or improper termination of this Agreement. **Such Early Closure Fee shall be waived if proper 80 day notice is given as indicated above.**

14. Compliance With Laws And Rules.

You agree to comply with all rules and operating regulations issued from time to time by MasterCard, Visa and Discover ("Rules"), and any policies and procedures provided by Processor or Bank. You further agree to comply with all applicable state, federal and local laws, rules and regulations ("Laws"), as amended from time to time. You will assist Processor and Bank in complying with all Laws and Rules now or hereafter applicable to any Card transaction or this Agreement. You will execute and deliver to Processor and Bank all instruments it may from time to time reasonably deem necessary. Without limiting the generality of the foregoing, you agree to comply with and be bound by the rules and regulations of Visa, MasterCard, Discover, and any other card association or network organization related to cardholder and transaction information security, including without limitation, Payment Card Industry Data Security Standards (PCI DSS), Visa's Cardholder Information Security Program and MasterCard's Site Data Protection Program. You agree to cooperate at your sole expense with any request for an audit or investigation by Processor, Bank, a card association or network organization in connection with cardholder and transaction information security. You may also be assessed a monthly or annual PCI fee, which will appear as a separate item on your monthly statement. This fee is assessed by Processor in connection with Processor's efforts to comply with the PCI DSS and does not ensure your compliance with the PCI DSS or any law, rule or regulation related to cardholder data security. The payment of such fee shall not relieve you of your responsibility to comply with all rules and regulations related to cardholder data security, including without limitation the PCI DSS. Without limiting the generality of the foregoing, you agree to use information obtained from a cardholder in connection with a card transaction solely for the purpose of processing a transaction with that cardholder or attempting to re-present a chargeback with respect to such transaction. You will indemnify and hold Processor and Bank harmless from any fines and penalties issued by Visa, MasterCard, Discover or any card association or network organization and any other fees and costs arising out of or relating to the processing of transactions by Processor and Bank at your location(s) and will reimburse Processor and Bank for any losses incurred by Processor with respect to any such fines, penalties, fees and costs. You also agree that you will comply with all applicable laws, rules and regulations related to the truncation or masking of cardholder numbers and expiration dates on transaction receipts from transactions processed at your location(s), including without limitation the Fair and Accurate Credit Transactions Act and applicable state laws ("Truncation Laws"). As between you, on the one hand, and Processor and Bank, on the other hand, you shall be solely responsible for complying with all Truncation Laws and will indemnify and hold Processor and Bank harmless from any claim, loss or damage resulting from a violation of Truncation Laws as a result of transactions processed at your location(s).

15. Use of Trademarks and Confidentiality.

A. Use of Trademarks. Your use of Visa, MasterCard and Discover trademarks must fully comply with the Rules. Your use of Visa, MasterCard, Discover, or other cards' promotional materials will not indicate directly or indirectly that Visa, MasterCard, Discover, or others endorse any goods or services other than their own and you may not refer to Visa, MasterCard, Discover or others in stating eligibility for your products or services.

B. Merchant is hereby granted a limited non-exclusive, non-transferable license to use Discover brands, emblems, trademarks, and/or logos that identify Discover cards ("Discover Program Marks"). You are prohibited from using the Discover Program Marks other than as expressly authorized in writing. You shall not use the Discover Program Marks other than to display decals, signage, advertising and other forms depicting the Discover Program Marks that are provided to you pursuant to this Agreement or otherwise approved in advance in writing. You may use the Discover Program marks only to promote the services covered by the Discover Program Marks by using them on decals, indoor and outdoor signs, advertising materials and marketing materials; provided that all such uses by you must be approved in advance in writing. You shall not use the Discover Program Marks in such a way that customers could believe that the products or services offered by you are sponsored or guaranteed by the owners of the Discover Program Marks. You recognize that you have no ownership rights in the Discover Program Marks and shall not assign to any third party any of the rights to use the Discover

Program Marks.

C. Confidentiality. i. Cardholder Information. You will not disclose to any third party Cardholders' account information or other personal information except to an agent of yours assisting in completing a Card transaction, or as required by law. You must destroy all material containing Cardholders' account numbers, Card imprints, Sales Drafts, credit vouchers and (except for Sales Drafts maintained in accordance with this Agreement, Laws, and the Rules). Further, you must take all steps reasonably necessary to ensure Cardholder information is not disclosed or otherwise misused. ii. Prohibitions. You will not use for your own purposes, will not disclose to any third party, and will retain in strictest confidence all information and data belonging to or relating to the business of Processor and Bank (including without limitation the terms of this Agreement), and will safeguard such information and data by using the same degree of care that you use to protect your own confidential information. iii. Disclosure. You authorize Processor and Bank to disclose your name and address to any third party who requests such information or otherwise has a reason to know such information.

D. Return to Processor. All promotional materials, advertising displays, emblems, Sales Drafts, credit memoranda and other forms supplied to you and not purchased by you or consumed in use will remain the property of Processor and Bank and will be immediately returned to Processor upon termination of this Agreement. You will be fully liable for all loss, cost, and expense suffered or incurred by Processor and Bank arising out of the failure to return or destroy such materials following termination.

16. General Provisions.

A. Entire Agreement. This Agreement, as amended from time to time, including the Rules and the completed Merchant Application, all of which are incorporated into this Agreement, constitute the entire agreement among the four parties hereto (other than any prior agreements to which Merchant is not a party), and all prior or other agreements to which Merchant is a party or representations, written or oral, made to Merchant are superseded. This Agreement may be signed in one or more counterparts, all of which, taken together, will constitute one agreement.

B. Exclusivity. During the initial and any renewal term of this Agreement, you will not enter into an agreement with any other entity that provides credit card or debit card processing services similar to those provided by Processor and Bank as contemplated by this Agreement without Processor and Bank's written consent.

C. Construction. The headings used in this Agreement are inserted for convenience only and will not affect the interpretation of any provision. The language used will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party. Any alteration or strikeover in the text of this pre-printed Agreement will have no binding effect, and will not be deemed to amend this Agreement. This Agreement may be executed by facsimile, and facsimile copies of signatures to this Agreement shall be deemed to be originals and may be relied on to the same extent as the originals.

D. Assignability. This Agreement may be assigned by Processor or Bank but may not be assigned by Merchant directly or by operation of law, without the prior written consent of Processor and Bank. Any such assignment in breach of this provision shall be null and void, ab initio. If Merchant nevertheless assigns this Agreement without the consent of Processor and Bank, the Agreement shall be binding upon the assignee. Bank will be immediately informed in writing of any such assignment.

E. Notices. Any written notice under this Agreement will be deemed received upon the earlier of: (i) actual receipt or (ii) five calendar days after being deposited in the United States mail, and addressed to the last address shown on the records of the sender.

MEMBER BANK INFORMATION

Deutsche Bank AG, NY Branch
60 Wall Street, 36th floor
New York, New York 10005
+49 221 99577 777 Support.deucs@db.com
Debit sponsorship provided by either Wells Fargo Bank N.A. or JP Morgan Chase N.A., as applicable.

F. Bankruptcy. You will immediately notify Processor and Bank (i) of any bankruptcy, receivership, insolvency or similar action or proceeding initiated by or against Merchant or any of its principals and (ii) if it could reasonably be expected that any such action or proceeding will be initiated by or against Merchant or any of its principals. You will include Processor and Bank on the list and matrix of creditors as filed with the Bankruptcy Court whether or not a claim may exist at the time of filing. Failure to comply with either of these requirements will be cause for immediate termination or any other action available to Processor and Bank under applicable Rules or Law.

G. Choice of Law/Attorney's Fees/Venue/Jury Trial Waiver. Should it be necessary for either party to defend or enforce any of its rights under this Agreement in any collection or legal action, each party agrees that the prevailing party, as permitted by State Law, shall be entitled to recover, as applicable, reasonable costs and expenses including reasonable attorney's fees, as a result of such collection or legal action. Each party agrees to waive trial by jury with respect to any litigation arising out of, relating to, or in connection with this Agreement. Each Party agree that any and all disputes or controversies of any nature whatsoever (whether in contract, tort or otherwise) arising out of, relating to, or in connection with (i) this Agreement, (ii) the relationships which result from this Agreement, or (iii) the validity, scope, interpretation or enforceability of the choice of law and venue provisions of this Agreement, shall be governed by the laws of the State of New York, notwithstanding any conflicts of laws rules (other than NY General Obligations Law Section 5-1401), and shall be resolved, on an individual basis without resort to any form of class action and not consolidated with the claims of any other parties. Processor, Bank, you, and Guarantor agree that all actions arising out of, relating to, or in connection with (a) this Agreement, (b) the relationships which result from this Agreement, or (c) the validity, scope, interpretation or enforceability of the choice of law and venue provisions of this Agreement shall only be brought in either the courts of the State of New York sitting in Suffolk County or in the United States District Court for the Eastern District of New York, and hereby irrevocably and unconditionally submit to the personal jurisdiction of those courts in any such action.

H. Amendments. Processor will notify you on your monthly statement of any new or increased fees. Except for any fee increases imposed by Visa, MasterCard, Discover, or the debit network, you may cancel the Agreement without charge if you object to the fee changes in writing within 30 days. If you do not object, and continue to process for 30 days after receiving notice of the fee change, you will be deemed to assent to the new fees.

I. Severability and Waiver. If any provision of this Agreement is illegal, the invalidity of that provision will not affect any of the remaining provisions and this Agreement will be construed as if the illegal provision is not contained in the Agreement. Neither the failure nor delay by Processor or Bank to exercise, or partial exercise of, any right under this Agreement will operate as a waiver or estoppel of such right, nor shall it amend this Agreement. All waivers must be signed by the waiving party.

J. Independent Contractors. Processor, Bank and Merchant will be deemed independent contractors and will not be considered agent, joint ventures or partner of the other, except as provided in 6.C and 7.A(ii).

K. Employee Actions. You are responsible for your employees' actions while in your employment.

L. Survival. Sections 4.A, 4.B, 6, 7, 8, 9, 13.C, 15, and 16.G will survive termination of this Agreement.

17. Electronic Signatures.

Under the Electronic Signatures in Global and National Commerce Act ("E-Sign"), this Agreement and all electronically executed documents related hereto are legally binding in the same manner as are hard copy documents executed by hand signature when: (a) your electronic signature is associated with the Agreement and related documents, (b) you consent and intend to be bound by the Agreement and related documents, and (c) the Agreement is delivered in an electronic record capable of retention by the recipient at the time of receipt (i.e., print or otherwise store the electronic record). This Agreement and all related electronic documents shall be governed by the provisions of E-Sign. By pressing Submit, you agree: (i) that the Agreement and related documents shall be effective by electronic means, (ii) to be bound by the terms and conditions of this Agreement and related documents, (iii) that you have the ability to print or otherwise store the Agreement and related documents, and (iv) to authorize Processor or Bank to conduct an investigation of your credit history with various credit reporting and credit bureau agencies for the sole purpose of determining the approval of the applicant for merchant status or equipment leasing. This information is kept strictly confidential and will not be released to you.

X

(accepted by Processor)

X

(accepted by Deutsche Bank AG, New York)



MunicipiPAY Configuration Form

Support Phone Number: 877-564-5656 opt. 1, then opt. 6

Support E-mail: municipay@getnationwide.com

www.MunicipiPAY.com

Below we will ask you some questions about your location, which services you'd like to take advantage of and w

1. General Information:			
Municipality Name:		Full name of your entity	
Physical Address:		Address of your locatic	
City:		City of your location.	
State:		State of your location.	
Zip:		Zip of your location.	
General Phone Number:		Phone number for you	
Business Logo:	Please e-mail to municipay@getnationwide.com	E-mail a logo to Municipi	
2. Point of Contact Info:			
Full Name:		POC full name.	
E-mail Address:		POC e-mail address.	
Phone Number:		POC phone number.	
3. IT Technical Info (optional):			
Full Name:		IT full name.	
E-mail Address:		IT e-mail address.	
Phone Number:		IT contact phone numt	
4. Hardware:			
USB Card Readers:	0	How many card reader	
3" Receipt Printer (\$213/ea):	0	If you do not want to pr	
5. Services:			
Over the Counter (OTC):	Yes	This service is where c	
E-Commerce (Online):	No	This service is used to	
Your website:		If setting up E-Comme	
6. Payment Types:			
	OTC	E-Commerce	Over-the-Counter (cler
VISA	Yes	No	Accepting VISA for Ov
MasterCard	Yes	No	Accepting MasterCard
Discover	Yes	No	Accepting Discover for
American Express	Yes	No	Accepting American E;
E-Check/Check-by-Web	N/A	No	Accepting Electronic C
7. Do you want to track:			
Cash:	No	N/A	Do you want to track c;
Checks:	No	N/A	Do you want to track p;

<<< NEXT >>>

In order to continue with the configuration process, please either click "NEXT" c

General Information

What type of payments you'd like to take.

y.
in.

for customers.

MUNICIPAY or we will provide a generic logo.

per.

What do you need.

For receipt printers on full pages, we have receipt printers (\$213 per printer).

Employees log in and take face-to-face payments.

We will provide your clients with the ability to pay online via your website. We will provide dept. links. If you have a website, please provide your business website. Example: <http://www.YourBusinessSite.com>

Options for Over-the-Counter and/or E-Commerce (options for online via website)

Over-the-Counter and/or E-Commerce.

Options for Over-the-Counter and/or E-Commerce .

Over-the-Counter and/or E-Commerce.

Options for Express for Over-the-Counter and/or E-Commerce.

Options for Checks for E-Commerce Only.

Can you process cash transactions with the MunicipiPAY System?

Can you process paper check transactions with the MunicipiPAY System?

For more information, please contact the Department of Information Technology or click on the "Departments" sheet at the bottom of this document.

Consumer Convenience Fee Option | Setup Information

ISO ID# 9628

Merchant Information

Merchant Legal Name: _____

Merchant DBA Name: _____

DBA Address: _____

City: _____

State: _____ Zip Code: _____

Program Details

Consumer Convenience Fee Amount: \$ 1.50

Check one of the boxes below:

Check amount submitted to processor includes Consumer Convenience Fee
Merchant acknowledges that the total amount submitted into the payment entry system already includes the convenience fee added to the total sale. *

Check amount submitted to processor does not include Consumer Convenience Fee
Merchant acknowledges processor will add consumer convenience fee to the total amount entered into the payment entry system after the transaction has been received. *

*Inquire with your software provider as to whether the Consumer Convenience Fee is included in submission or must be added by processor.

NOTE: There is a max check limit of \$2,500. Any transaction over \$2,500 will be subject to the premium discount % rate listed on the application.

Consumer Convenience Fee Option Acceptance

Merchant wishes to participate in the Consumer Convenience Fee Option in which Processor shall collect a Convenience Fee from the consumer. By participation in the Consumer Convenience Fee Option, Processor agrees to waive certain fees listed in the Master Service Agreement Terms & Conditions including the Annual Fee and Network & Compliance Fee. ~~SPS-EFT reserves the right, upon written notice to Merchant, to implement a fee to be charged to the Merchant per return if Merchant's transaction return rate reaches 5% or higher. Merchant shall pay a monthly Inactivity Fee of Ten Dollars (\$10.00) after 90 days of no transaction activity.~~

Merchant statements do not generate when there are no processing fees assessed to the Merchant. All transaction activity is available via online reporting. Under the Consumer Convenience Fee Option, all other Sections on the Processing Agreement Front and attached Terms and Conditions shall still apply.

Merchant shall be solely responsible for informing end consumers of such convenience fee charges and to obtain consumer's authorization, by signature or similarly authenticated, to debit the convenience fee from consumer's bank account via ACH debit. Merchant's consumer authorization process should take into account whether the convenience fee is or is not included in the face amount of the check and for obtaining proper authorization so that the total amount to be deducted (both the sale amount and the fee) are properly authorized by the consumer.

SAMPLE AUTHORIZATION TEXT FOR USE BY MERCHANT: "I authorize Merchant to process my payment as an electronic funds transfer or paper draft and to debit my account for the amount of the transaction through the ACH network. I agree that a \$_____ convenience fee will be also be debited from my account."

Merchant shall be responsible for training all employees on proper transaction input based on the option selected in the Program Details section of this Addendum. Processor shall not be responsible for transactions resulting in chargeback due to submission errors by Merchant or Merchant's Employees.

Merchant Signature: _____

Date: _____

Convenience Fee Program Rights and Responsibilities

A. PROVIDER wishes to initiate consumer debits (Entries) pursuant to the terms of this Agreement and the rules of the National Automated Clearing House Association (the "Rules"), and Sage Payment Solutions - EFT. (SPS-EFT) is willing to act as the THIRD PARTY PROCESSOR for PROVIDER, subject to the terms and conditions set forth in this Agreement with respect to such Entries.
B. Unless otherwise defined herein, capitalized terms shall have the meanings provided in the Rules. The term "Entries" shall have the meaning provided in the Rules and shall also mean the data, which is transmitted by the PROVIDER to SPS-EFT (Processor) to prepare such Entries for processing.
C. This agreement is applicable to processing consumer debit transactions to collect a convenience fee utilizing the end-consumer's banking account data. SPS-EFT's product and associated software specifically designed for such transactions will be utilized by PROVIDER, and such software will either be hosted and maintained by SPS-EFT on SPS-EFT equipment, or alternatively, provided directly to PROVIDER for installation on PROVIDER equipment. In certain cases, SPS-EFT may at its sole discretion, may authorize PROVIDER'S use of third party software which must be approved and certified by SPS-EFT in advance. PROVIDER agrees not to change, modify, or alter such SPS-EFT software or product in any way or alter SPS-EFT certified third party software without advance approval by SPS-EFT. SPS-EFT will not be liable in any way for any returned Convenience Fee Debits of PROVIDER or its customers, for any reason.

AGREEMENT

1.1 **PROVIDER'S AUTHORITY.** PROVIDER specifically warrants to SPS-EFT that PROVIDER has taken all necessary legal action and has authority to enter into this Agreement with SPS-EFT. It further warrants that the person(s) signing for and on behalf of PROVIDER is specifically authorized and directed to do so by PROVIDER. PROVIDER acknowledges that this Agreement constitutes the legal, valid and binding obligation of PROVIDER, enforceable in accordance with its terms.

1.2 **CONVENIENCE FEE SERVICE.** PROVIDER has engaged SPS-EFT to provide electronic funds transfer consisting of a consumer debit and a PROVIDER credit for each Convenience Fee Debit. SPS-EFT will attempt each consumer debit only once. No guarantee services are offered under this program and PROVIDER shall be liable for any returned Entries.

2.1 **PROVIDER'S PUBLIC DISCLOSURE RESPONSIBILITIES.** PROVIDER agrees to inform their Merchants of PROVIDER'S collection of consumer Convenience Fee Debits via processing services provided by SPS-EFT. PROVIDER further agrees to immediately remove and properly dispose of SPS-EFT's previous version releases of software and to utilize the most current software version releases upon receipt of such from SPS-EFT. In the event of termination, PROVIDER immediately shall properly discard all software related to SPS-EFT services at PROVIDER'S expense.

2.2 **RESTRICTIONS ON USE OF PROMOTIONAL MATERIALS AND REPRESENTATIONS CONCERNING SPS-EFT'S SERVICES.** PROVIDER shall make no use of SPS-EFT's software, other than as set forth in paragraph 2.1 above, without SPS-EFT's prior written consent. In no way shall the PROVIDER indicate that SPS-EFT's services are an endorsement of the PROVIDER, its business or its business practices.

2.3 **CONFIDENTIALITY.** Each party acknowledges that all other materials and information disclosed to the other party ("Recipient") in connection with the performance of this Agreement, including any trade secret, process, technique, algorithm, computer program (source and object code), design, drawing, formula, business plan or test data relating to any research project, work in process, future development, engineering, marketing, servicing, financing, strategic partnership or personnel matter consist of confidential and proprietary data. Each Recipient will hold those materials and that information in strict confidence, and will restrict its use of those materials and that information to the purposes anticipated in this Agreement. If the law or legal process requires Recipient to disclose confidential and proprietary data, Recipient will notify the disclosing party of the request. Thereafter the disclosing party may seek a protective order or waive the confidentiality requirements of this Agreement, provided that Recipient may only disclose the minimum amount of information necessary to comply with the requirement. Recipient will not be obligated to hold confidential any information from the disclosing party which (a) is or becomes publicly known through no act or omission of the Recipient, (b) is received from any person or entity who, to the best of Recipient's knowledge, or Recipient's reason to know, has no duty of confidentiality to the disclosing party, (c) was already known to Recipient prior to the disclosure, and that knowledge was evidenced in writing prior to the date of the other party's disclosure, or (d) is developed by the Recipient without using any of the disclosing party's information.

3.1 **REQUIREMENTS FOR PROCESSING CONVENIENCE FEE DEBITS.** PROVIDER shall sign the master Convenience Fee Agreement which includes the program terms and conditions. PROVIDER shall submit the Convenience Fee Addendum for each new location PROVIDER adds to the program. PROVIDER shall complete the Addendum specifying the designated bank account for transaction and return fees to be debited from and for Convenience Fees to be credited to. PROVIDER shall comply with the following conditions when processing Convenience Fee Debits and agrees to complete all transactions in accordance with the provisions of this Agreement and such rules of operation as may be established by SPS-EFT from time to time. SPS-EFT shall work with PROVIDER to receive Convenience Fee data from PROVIDER or PROVIDER'S Merchant, including the data format acceptable to SPS-EFT. PROVIDER or PROVIDER'S Merchant must obtain proper authorization from the consumer in order to collect and ACH debit the consumer's bank account for the Convenience Fee. PROVIDER shall accept only the following source documents to initiate Entries through SPS-EFT; (a) All Entries must be based on a consumer bank account drawn on or payable through a federally insured depository financial institution; be based on accounts issued with a valid bank routing number, account number, and be for an amount less the check limit assigned by SPS-EFT. (b) Consumer shall authorize such ACH debit by signed written authorization containing Convenience Fee Debit amount and day of month to be debited from consumer's account. This agreement may be based on a signed authorization for a transaction total which includes the Convenience Fee in the total sale amount or by signed authorization of the Convenience Fee as a separate transaction from the total sale amount. (d) Upon SPS-EFT's request, PROVIDER shall provide to SPS-EFT proof of consumer's payment authorization, specifically including consumer's authorization to charge such Convenience Fee. (e) Once SPS-EFT authorizes the transaction, PROVIDER shall ensure that the transaction data submitted to SPS-EFT for processing contains the following correct information: (a) the consumer's bank routing and account number; (b) Merchant's correct name and business address (c) the date of the transaction; (d) the total cash price of the consumer debit (including all applicable state, federal or local surcharges and taxes). (e) After consumer authorizes the payment, PROVIDER or PROVIDER'S Merchant shall deliver to the person presenting the Convenience Fee Debit a true and completed copy of the authorization; (f) No Entry may be altered after SPS-EFT authorizes acceptance of the Convenience Fee Debit. PROVIDER may not resubmit a subsequent Convenience Fee Debit electronically once SPS-EFT authorizes the original transaction. Failure to comply with the above requirements will, in addition to other penalties, subject PROVIDER to chargebacks and may be grounds for immediate suspension/termination of services and indemnification of SPS-EFT by PROVIDER pursuant to this Agreement. **YOU UNDERSTAND THAT IT IS A FEDERAL VIOLATION TO PROCESS DEBIT REQUESTS AGAINST A CONSUMER BANK ACCOUNT WITHOUT THE CONSUMERS EXPRESSED AUTHORITY. YOU HEREBY ACKNOWLEDGE RECEIPT OF PROPER NOTICE THAT THE USE OF ANY COUNTERFEIT, FICTITIOUS, LOST, STOLEN, OR FRAUDULENTLY OBTAINED DEBIT INSTRUMENT OR DEVICE TO UNLAWFULLY INITIATE A DEBIT TRANSACTION IS PUNISHABLE BY A MAXIMUM OF \$10,000.00 FINE, IMPRISONMENT FOR A TERM OF TEN YEARS, OR BOTH.**

3.2 **CONSUMER'S AUTHORIZATION INITIATES DEBIT ENTRY.** PROVIDER acknowledges that the consumer's authorization allows PROVIDER to instruct SPS-EFT to initiate a Convenience Fee Debit Entry ("ENTRY") for PROVIDER against consumer. PROVIDER agrees to inform end consumer of such Convenience Fee charges and to obtain consumer's authorization to debit the Convenience Fee from consumer's bank account via ACH in accordance with the Rules. If a Convenience Fee Debit is returned unpaid, SPS-EFT shall be entitled to debit the PROVIDER'S account for the amount of the Convenience Fee Debit.

3.3 **RESTRICTIONS ON ACCEPTANCE OF CONVENIENCE FEE DEBITS FOR ELECTRONIC PROCESSING.** From time to time, SPS-EFT shall establish necessary security and identification procedures for presentation of checks or debits for electronic processing pursuant to the Rules and applicable law. PROVIDER agrees to comply with such procedures and to accept such "properly presented" checks or debits for electronic processing. SPS-EFT shall establish maximum amount limitations on Convenience Fee Debits presented for electronic processing by PROVIDER. PROVIDER shall not accept or attempt to process Convenience Fee Debits in excess of the maximum limitations established by SPS-EFT. PROVIDER further agrees to inform SPS-EFT immediately of any changes in business activities, rules or regulations, which may affect these limitations. PROVIDER further agrees to abide by these limitations as a condition to SPS-EFT electronically processing any Convenience Fee Debit. For a Convenience Fee Debit transaction to be valid, consumer must initiate the transaction and must have authorized the Convenience Fee Debit according to the Rules.

3.4 **UNACCEPTABLE TRANSACTIONS.** In addition to the restrictions set out above and in any event, the following transactions are unacceptable for electronic processing. PROVIDER agrees not to submit any of the following transactions to SPS-EFT for electronic processing; (a) PROVIDER shall not electronically process any Convenience Fee Debit drawn on any depository institution that is not federally insured or part of the ACH network, (b) PROVIDER shall not electronically process any Convenience Fee Debit that has not been properly authorized by the consumer who's bank account is being debited, (c) PROVIDER shall not accept any third party items, (g) PROVIDER shall not submit a Convenience Fee Debit which is altered by the PROVIDER in any way. PROVIDER'S submission of any of the above transactions for electronic processing may subject the PROVIDER to immediate suspension or termination and all funds of PROVIDER, including those in PROVIDER'S account, may be placed on hold.

3.5 **SURCHARGES AND TAXES.** PROVIDER shall not impose any illegal surcharge on any processed Convenience Fee Debit transaction.

4.1 **SOFTWARE.** PROVIDER shall utilize Convenience Fee Debit software or ACH file formats provided by SPS-EFT for processing all Convenience Fee Debit transactions. (a) PROVIDER or PROVIDER'S Merchant is responsible for all telecommunication fees and charges, including but not limited to telephone fees, associated with and related to the use of the software or ACH file submission. (b) PROVIDER shall maintain all equipment necessarily related to Convenience Fee Debit processing, including necessary file servers, computer and telecommunications equipment in good working order at PROVIDER'S sole expense. (c) PROVIDER shall advise SPS-EFT immediately in the event of breakdown of related equipment, software problems or of any other system failure. (d) PROVIDER acknowledges that SPS-EFT is not responsible for any related computer and telecommunications equipment used by the PROVIDER or PROVIDER'S Merchant. In this regard, SPS-EFT shall not be responsible for any unauthorized tampering or altering to equipment and software specifically installed by SPS-EFT on the part of the PROVIDER or PROVIDER'S agent. Additionally, SPS-EFT'S approval of such equipment does not constitute an express or implied warranty, representation or endorsement of such equipment.

5.1 **DAILY SETTLEMENT OF TRANSACTIONS.** PROVIDER agrees that a batchfile shall consist of all transactions submitted by 12:00 P.M. (CST) each calendar day. PROVIDER acknowledges that a request to not process a batchfile could result in a \$50.00 fee per day that those transactions are not processed for ACH submittal by SPS-EFT. SPS-EFT, in its sole discretion, shall not be responsible for the payment of any Convenience Fee Debits of PROVIDER that SPS-EFT has not received for processing from PROVIDER within twenty-four hours of the initial transaction date of said Convenience Fee Debit(s). SPS-EFT reserves the right to hold monies as necessary to reduce any risk associated with daily processing of Convenience Fee Debits. SPS-EFT also reserves the right to move monies into an account of its choosing to hold it against returns to those monies and providing to the PROVIDER a net deposit after a period of time acceptable to SPS-EFT. PROVIDER acknowledges that failure to submit batchfiles for processing will delay funds being deposited. If so requested by SPS-EFT, the signed or similarly authenticated consumer Authorization must be sent out and received at SPS-EFT'S designated location within 48 hours from the request date.

5.2 **NETTING OF TRANSACTIONS.** PROVIDER acknowledges that all transactions between SPS-EFT and PROVIDER under this Agreement, except assessment of fees, shall be treated as a single transaction for purposes of daily settlement between PROVIDER or PROVIDER'S Merchant and SPS-EFT.

5.3 **PAYMENT.** PROVIDER acknowledges that this Agreement provides for the provisional settlement of PROVIDER'S transactions, subject to certain terms and conditions, fees, credit transactions, contingent claims for chargebacks, adjustments and final settlement including but not limited to those enumerated herein. All payments to PROVIDER for legitimate and authorized transactions shall be made by SPS-EFT through the ACH Network and shall normally be electronically transmitted directly to PROVIDER'S designated account. However, SPS-EFT cannot guarantee the timeliness with which any payment may be credited by PROVIDER'S bank. PROVIDER understands that due to the nature of the ACH and the electronic networks involved and the fact that not all banks belong to the ACH, payment to PROVIDER can be delayed. In such cases, PROVIDER agrees to work with SPS-EFT to help resolve any problems in crediting PROVIDER'S designated account. In the event that a payment is rejected by PROVIDER'S bank or fails to arrive within five to seven days from the date of settlement due to problems beyond SPS-EFT'S control, SPS-EFT may periodically wire transfer all funds due PROVIDER until the problem is corrected, at PROVIDER'S EXPENSE. All payments to PROVIDER shall be made after first deducting therefrom any transaction fee, credit, chargeback, reserve or other fee or charge for which PROVIDER is responsible pursuant to this Agreement. Said charges and fees shall be deducted from incoming transactions or may be debited against PROVIDER'S designated Account at SPS-EFT'S sole discretion, without any further notice or demand.

5.4 **AUTHORIZATION TO ACCESS PROVIDER'S ACCOUNT.** PROVIDER hereby authorizes SPS-EFT to initiate debit and credit entries to PROVIDER'S designated account. PROVIDER'S authorization shall continue in effect for at least 120 days after termination of this Agreement, or for a longer period as determined necessary by SPS-EFT in the exercise of its sole discretion in order to properly terminate business. SPS-EFT will generally transmit settlement to PROVIDER'S bank within 5 to 7 banking days. In cases where PROVIDER has been approved by SPS-EFT in advance to initiate credit entries, the debit to PROVIDER'S account will be initiated first and the credit to the consumer may be held until PROVIDER'S debit clears, generally within 6 banking days or for a longer period as determined necessary by SPS-EFT to insure the funds have cleared PROVIDER'S account. SPS-EFT may holdback certain amounts where SPS-EFT is investigating a transaction for breach of warranty by PROVIDER or PROVIDER'S Merchant or for other reasons. SPS-EFT shall monitor PROVIDER'S transactional activity and PROVIDER agrees that SPS-EFT may delay funds for a reasonable period to investigate account activity. SPS-EFT will attempt to notify PROVIDER of any investigation but SPS-EFT shall have no liability to PROVIDER or any other party, for any such actions taken by SPS-EFT. PROVIDER agrees that SPS-EFT may hold, setoff or retain funds to protect against amounts owed SPS-EFT or based on PROVIDER'S financial condition. SPS-EFT will not be liable for any dishonor of any item as a result of actions taken hereunder. Any account is subject to review, verification, audit and acceptance by SPS-EFT. SPS-EFT may return any item to PROVIDER for correction or proper processing.

5.5 **RETURNS AND CREDITS.** PROVIDER shall maintain a fair policy permitting refunds, exchanges, returns and adjustments. During the term of this Agreement, PROVIDER shall be responsible for making all Convenience Fee Debit refunds to consumer after a transaction has been released for settlement. If it becomes necessary for a reversal of a transaction to be initiated, PROVIDER shall request in writing SPS-EFT to initiate such reversal. PROVIDER shall give SPS-EFT enough information to create such reversal. A fee of no more than twenty-five dollars for each transaction reversal may be charged by SPS-EFT.

6.1 **WARRANTIES BY PROVIDER.** PROVIDER warrants and agrees to fully comply with all federal, state, and local laws, rules and regulations, as amended from time to time, including those with respect to consumer protection. PROVIDER also warrants not to change the nature of its business as indicated on the Application attached hereto and submitted herewith or to modify the ownership of the business without the prior written consent of SPS-EFT. With each transaction presented to SPS-EFT by PROVIDER for authorization, PROVIDER specifically warrants and represents that: (a) each consumer has authorized the debiting or crediting of its checking account, that each debit or credit is for an amount agreed to by the consumer; (b) each debit or credit entry was authorized by the person named on the checking account or the authorized representative or agent of such person; (f) each Convenience Fee debit collected by PROVIDER is related to a bona fide direct sales transaction between the PROVIDER and the person presenting the Convenience Fee Debit in the PROVIDER'S ordinary course of business; (g) the person presenting the Convenience Fee Debit has no claim, defense, right of offset, or dispute against PROVIDER or PROVIDER'S Merchant in connection with the purchase of the goods or services and PROVIDER or PROVIDER'S Merchant will provide adequate services to the person presenting the Convenience Fee Debit and will honor all warranties applicable thereto; (h) all of PROVIDER'S Merchants' business locations engage in the business activity listed on the face of this Agreement; (i) PROVIDER uses only the name and address shown on the front of the Agreement on all its sales drafts; (k) PROVIDER has not submitted duplicates of any transaction; (l) PROVIDER warrants that Convenience Fee Debit banking information submitted to SPS-EFT for processing is correct; and (m) no transaction submitted for authorization to SPS-EFT is with or through an entity other than PROVIDER or PROVIDER'S Merchants. PROVIDER shall execute and deliver endorsements, instruments, and papers and shall do whatever is necessary under the laws of any applicable jurisdictions to secure and defend SPS-EFT'S rights and shall do nothing to prejudice those rights. PROVIDER shall cooperate with SPS-EFT in pursuing SPS-EFT'S rights, including suing or prosecution of the consumer under all applicable laws.

- 7.1 **LIMITATION OF LIABILITY AND PROVIDER'S WAIVER OF DAMAGES.** SPS- EFT shall be responsible for performance of the Convenience Fee services as a third-party provider in accordance with the terms of this Agreement. SPS- EFT shall not be responsible for any other person's or entity's errors, acts, omissions, failures to act, negligence or intentional conduct, including without limitation entities such as SPS- EFT's communication carrier or clearing houses, and no such entity shall be deemed to be a representative or an agent of SPS- EFT. **IN NO EVENT SHALL SPS- EFT BE LIABLE TO PROVIDER FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR SPECIAL DAMAGES WHICH PROVIDER OR ITS CONSUMERS, AFFILIATES, PARENT COMPANIES, ASSOCIATES, AGENTS, OFFICERS, DIRECTORS OR EMPLOYEES MAY INCUR OR SUFFER IN CONNECTION WITH THIS AGREEMENT, INCLUDING LOSS OR DAMAGE FROM SUBSEQUENT WRONGFUL DISHONOR OF ACH DEBITS RESULTING FROM SPS- EFT'S ACTS OR OMISSIONS PURSUANT TO THIS AGREEMENT.**
- 7.2 **FORCE MAJEURE.** SPS- EFT shall not be responsible for delays, nonperformance, damages, lost profits or other losses caused directly or indirectly by any Act of God, including without limitation fires, earthquakes, tornadoes, hurricanes, wars, labor disputes, communication failures, legal constraints, power outages, data transmission loss or failure, incorrect data transmission or any other event outside the direct control of SPS- EFT.
- 8.1 **CHARGEBACKS AND RETURNS.** PROVIDER shall bear all risk of loss, without warranty or recourse to SPS- EFT for the amount of any transaction, applicable fees, or other amounts due SPS- EFT (including SPS- EFT's actual costs and expenses) due to or caused by chargebacks and returns of any kind, whether for consumer chargebacks, insufficient funds, administrative or corporate returns, or any other type of returns. SPS- EFT shall have the right to debit PROVIDER'S incoming transactions, designated account or any other funds of PROVIDER in SPS- EFT's direct or indirect control by reason of SPS- EFT's security interest granted to SPS- EFT by PROVIDER hereunder, and to chargeback such transactions to PROVIDER including, but not limited to any of the following situations: (a) where goods have been returned or service canceled by the person submitting the Convenience Fee Debit for electronic processing and that person has requested a credit draft and such credit draft was not processed by PROVIDER; (b) where the transaction differs from the amount authorized by the consumer; (c) where a consumer contends or disputes in writing to SPS- EFT, or the consumer's financial institution named on the Convenience Fee Debit that: (1) Goods or services were not received; or (4) The dispute reflects a claim or defense authorized by a relevant statute or regulation, (d) where the proof of consumer's Authorization was not received by SPS- EFT as required hereunder or is subject to indemnification charged back by the consumer's financial institution; (f) if PROVIDER or PROVIDER'S Merchant failed to obtain specific authorization in advance from the consumer to complete the transaction (h) where the consumer's financial institution or SPS- EFT has information that PROVIDER fraud occurred at the time of the transaction (i) in any other situation where the proof of purchase was executed or a credit was given to PROVIDER in circumstances constituting a breach of any representation or warranty of PROVIDER or in violation of applicable law. If the amount of or number of any counterfeit or fraud incidents becomes excessive, in the sole determination of SPS- EFT, PROVIDER may be charged back for all transactions, this Agreement may be terminated immediately without notice, and PROVIDER'S funds, including but not limited to those in incoming transactions and in PROVIDER'S designated account, shall be held pursuant to the provisions herein. SPS- EFT shall retain any fee related to a chargeback transaction. PROVIDER agrees that SPS- EFT will assess up to twenty-five dollars for each chargeback, or such increased or additional charges as may be established by SPS- EFT from time to time. Additionally, SPS- EFT shall have the same rights to debit PROVIDER'S account for transactions returned or not honored for any reason, including but not limited to insufficient funds, administrative or corporate returns, or any other kind of returned transaction.
- 8.2 **CHARGEBACK AND RETURNS RESERVE ACCOUNT.** Notwithstanding any other language to the contrary contained in this Agreement, SPS- EFT reserves the right to establish, without notice to PROVIDER, and PROVIDER agrees to fund a non-interest bearing Chargeback Reserve Account, or demand other security and/or to raise any discount fee or transaction fee hereunder, upon SPS- EFT's reasonable determination of the occurrence of any of the following: (a) PROVIDER engages in any processing of charges which create an overcharge to the consumer by duplication of charges; (e) Processing by PROVIDER of unauthorized charges or is likely to cause loss; (f) Any misrepresentation made by PROVIDER in completion of the PROVIDER Application or breach of any other covenant, warranty, or representation contained in this Agreement or applicable law including a change of type of business without prior written approval by SPS- EFT; (g) PROVIDER has chargebacks which exceed 1% of the total number of transactions completed by PROVIDER in any thirty (30) calendar day period; (h) Excessive number of requests from consumers or issuing banks for retrieval of documentation; (i) PROVIDER'S financial stability is in question or PROVIDER ceases doing business; or (j) Upon notice of or termination of this Agreement. After payment or adequate provision for payment is made by SPS- EFT, for all obligations on the part of PROVIDER to SPS- EFT under this Agreement, PROVIDER may request SPS- EFT to disburse to PROVIDER any funds remaining in the Chargeback Reserve Account unless otherwise agreed to by SPS- EFT. Such funds will not be disbursed to PROVIDER until the end of one hundred twenty (120) days after termination of this Agreement or ninety (90) days from the date of the last chargeback activity, whichever is later, unless SPS- EFT in its sole discretion has reason to believe that consumer chargeback rights may be longer than such period of time or that loss is otherwise likely, in which event SPS- EFT will notify PROVIDER of such fact and SPS- EFT will set the date when funds shall be released. No monies held in the Chargeback Reserve Account shall bear interest. Provisions applicable to the designated account are also applicable to this account.
- 9.1 **PROVIDER SHALL PAY.** As per schedule: a per transaction fee for network access, a per transaction fee for each electronic inquiry to the database that does not result in an electronic transfer of fund, and a return fee as per schedule. Additionally, a fee up to twenty-five dollars may be assessed for each reversal requested by PROVIDER at SPS- EFT's sole discretion. If PROVIDER chooses to pay the fees rather than have merchant billed for the fees, PROVIDER fees will be held from monthly residual payout or will be processed as a separate debit to PROVIDER'S residual payout account, at SPS- EFT's discretion. PROVIDER must promptly notify SPS- EFT in writing of any dispute regarding fees under this Agreement. PROVIDER'S written notice must include: (i) PROVIDER name and account number; and (ii) the dollar amount and description of the disputed fees. Such written notice must be received by SPS- EFT no later than ninety (90) days after the disputed fees have been paid by PROVIDER or charged to PROVIDER'S account by SPS- EFT. PROVIDER'S failure to so notify SPS- EFT will waive and bar the dispute.
- 10.1 **COMPLIANCE AND DISCLOSURE OF INFORMATION.** PROVIDER shall provide such information and certifications as SPS- EFT may reasonably require from time to time to determine PROVIDER'S compliance with the terms and conditions of this Agreement and applicable law. PROVIDER further agrees to provide to SPS- EFT from time to time such information including, but not limited to, credit reports, personal and/or business financial statements, income tax returns, or other such information as SPS- EFT may request. PROVIDER grants to SPS- EFT continuing authority to conduct credit and background investigations and inquiries concerning PROVIDER and PROVIDER'S owner(s) including, but not limited to, character and business references and the financial condition of PROVIDER and PROVIDER'S owner(s). PROVIDER expressly authorizes SPS- EFT or its agents, attorneys, accountants, and representatives to provide and receive such information from any and all third parties directly, without further consent or authorization on the part of PROVIDER. SPS- EFT may share with others its credit, sales and other information. PROVIDER will not transfer, sell, or merge or liquidate its business or assets or otherwise transfer control of its business, change its ownership in any amount or respect, engage in any joint venture partnership or similar business arrangement, change its basic nature or method of business, types of products sold or engage in sales by phone or mail order without providing notice to SPS- EFT and provide SPS- EFT with the opportunity to terminate this Agreement.
- 10.2 **COMPLIANCE WITH THE RULES AND APPLICABLE LAW.** The PROVIDER'S rights and obligations with respect to any Entry are governed by the NACHA Rules ("the Rules"), this Agreement and applicable law. The PROVIDER agrees to comply with and be bound by "the Rules". The PROVIDER agrees to comply with applicable state and federal law or regulation and PROVIDER warrants that it will not transmit any Entry that violates the laws of the United States, including, without limitation, regulations of the Office of Foreign Asset Control (OFAC).
- 11.1 **DATA RETENTION.** PROVIDER or PROVIDER'S Merchant shall retain all records related to authorization, including all sales and credit receipts for a period of no less than two years following the date of the transaction. According to SPS- EFT'S current policies, PROVIDER shall retain for a period of 2 years all Convenience Fee Debits received from consumers.
- 12.1 **ADDITIONAL PROVIDER REPRESENTATIONS.** PROVIDER agrees to permit SPS- EFT to audit PROVIDER'S transaction data upon reasonable notice. PROVIDER agrees that any outstanding amount(s) owed to SPS- EFT shall be subject to a 1.5% finance charge monthly. Any outstanding sums will be sent to an outside collection agency and charged the maximum amount of civil, legal and collections fees / charges as is allowed by law. PROVIDER will not disclose and will keep confidential the terms and conditions of this Agreement.
- 13.1 **ADDITIONAL SPS- EFT RESPONSIBILITIES.** SPS- EFT will accept entries via Convenience Fee Debit software or ACH File on a 24-hour per day basis. SPS- EFT is only responsible for processing entries that have arrived at its premises in a proper format and on a timely basis. SPS- EFT will use information provided by PROVIDER to originate its entries in the ACH. PROVIDER understands and agrees that SPS- EFT may reject PROVIDER'S entries for any reason permitted in this Agreement and/or if acceptance of such entry would cause SPS- EFT to potentially violate any federal, state or local law, rule, statute, or regulation, including without limitation any Federal Reserve or other regulatory risk control program. At PROVIDER'S written request, SPS- EFT will make reasonable efforts to reverse or delete an entry, but will under no circumstance be liable for the failure to comply with such request.
- 14.1 **INDEMNIFICATION.** PROVIDER agrees to indemnify SPS- EFT for any cost, expense, damage, lost profit and/or attorney's fees caused by any breach of its obligations or representations in this Agreement.
- 15.1 **NON-WAIVER.** Neither the failure nor any delay on the part of SPS- EFT to exercise any right, remedy, power or privilege hereunder shall operate as a waiver thereof or give rise to an estoppel nor be construed as an agreement to modify the terms of this Agreement, nor shall any single or partial exercise of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver by a party hereunder shall be effective unless it is in writing and signed by the party making such waiver, and then such waiver shall apply only to the extent specifically stated in such writing.
- 16.1 **ASSIGNMENT.** PROVIDER may not assign or transfer any rights under this Agreement unless and until it receives the prior written approval of SPS- EFT.
- 16.2 **TERMINATION.** This Agreement shall continue indefinitely unless and until terminated by any party. PROVIDER may terminate this Agreement upon sixty (60) days written notice to SPS- EFT. SPS- EFT shall have the right to suspend or terminate this Agreement immediately and without notice to PROVIDER.
- 17.1 **COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, such counterparts to constitute but one and the same instrument.
- 18.1 **SCHEDULE OF FEES.** Attached to this Agreement and incorporated herein by reference is a Schedule of Fees, which contains the Transaction Fees and Returned Items Fees, and other terms and conditions in effect on the commencement date of this Agreement. SPS- EFT reserves the right at all times to unilaterally change all or part thereof, or any other terms of this Agreement upon written notice to PROVIDER.
- 19.1 **ENTIRE AGREEMENT.** This Agreement, including the attached Schedules, together with the Account Agreement, is the complete and exclusive statement of the agreement between SPS- EFT and the PROVIDER with respect to the subject matter hereof and supersedes any prior agreement(s) between SPS- EFT and the PROVIDER with respect to the subject matter. In the event of any inconsistency between the terms of this Agreement and the Account Agreement, the terms of this Agreement shall govern. In the event the performance of the services provided herein in accordance with the terms of this Agreement would result in a violation of any present or future statute, regulation or government policy to which SPS- EFT, the Originating Depository Financial Institution (ODFI) or PROVIDER is subject, and which governs or affects transactions contemplated by this Agreement, then this Agreement shall be deemed amended to the extent necessary to comply with such statute, regulation or policy and SPS- EFT, the ODFI and PROVIDER shall incur no liability as a result of such changes except as provided in the following paragraph.
- 19.2 **AMENDMENTS.** As stated in paragraph 21.1, SPS- EFT, the ODFI or PROVIDER may amend operations or processing procedures in order to conform to and comply with any changes in the Rules or applicable Federal or State Regulations. Such amendments to operations or procedures shall become effective upon receipt of written notice to the other party, as provided for herein, or upon such date as may be provided in the NACHA Rules or applicable law or regulation referenced in the written notice, whichever is earlier in time. Use of the Convenience Fee services after any such changes shall constitute acceptance of the changes by the parties. No other amendments or modifications to this Agreement will be effective unless such changes are reduced to writing and such Amendments are incorporated into and made a part of this document.
- 20.1 **BINDING AGREEMENT BENEFIT.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns. This Agreement is not for the benefit of any other person or entity and no other person or entity shall have any right against SPS- EFT.
- 21.1 **ATTORNEYS' FEES.** In the event that it becomes necessary for SPS- EFT to employ an attorney to enforce, interpret, mediate or arbitrate this Agreement, SPS- EFT shall be entitled to recover its reasonable attorneys' fees, costs, and disbursements related to such dispute from PROVIDER.
- 22.1 **GOVERNING LAW, VENUE, & JURISDICTION.** Notwithstanding any language to the contrary, all issues related to the electronic processing of Convenience Fee Debits under the terms of this Agreement shall be determined in accordance with the NACHA Rules, laws of the United States of America and the State of Florida as it applies to contracts. In the event of a conflict between the Rules and applicable local, state or federal law, the Rules shall prevail unless otherwise prohibited by law. PROVIDER acknowledges that this Agreement was formed in Northwest Florida upon its acceptance by SPS- EFT. All parties hereby submit to the exclusive jurisdiction and venue of the State of Florida or Federal District Court for the Northern District of Florida for the purposes of any legal action arising in connection with such obligations.
- 23.1 **SEVERABILITY.** If any provision of the Agreement is held to be illegal, invalid, or unenforceable, in whole or in part, by court decision, statute, or rule (or otherwise would go in if you wanted to include arbitration) such holding shall not affect any other provisions of this Agreement. All other provisions or parts thereof shall remain in full force and effect and this Agreement shall, in such circumstances, be deemed modified to the extent necessary to render enforceable the provision hereof.
- 24.1 **HEADINGS.** The headings in this Agreement are used for referenced purposes only. They shall not be deemed as part of this Agreement and shall not affect its interpretation.
- 25.1 **EFFECTIVE DATE.** This Agreement shall be effective only upon acceptance by SPS- EFT.
- 26.1 **IN WITNESS WHEREOF** the parties hereto have caused this Agreement to be executed by their duly authorized officers.

Item C,
(1-8)

DEPARTMENT Children and Family Services (Youth Bureau)

CONTRACT NO.

Program IMA for Youth Services 2014

A G R E E M E N T

THIS AGREEMENT, by and between the COUNTY OF ONONDAGA, a municipal corporation of the State of New York, by authority granted by Joanne M. Mahoney, Onondaga County Executive to the Commissioner of the DEPARTMENT OF CHILDREN AND FAMILY SERVICES, by its Commissioner DAVID SUTKOWY ("Commissioner", having its principal office at 421 Montgomery Street, Syracuse, New York 13202, and Town of Lysander, hereinafter called the "PROVIDER", which is a town, having its principal office located at 8220 Loop Rd, Baldwinsville, NY 13027, and wishes to contract with COUNTY for the provision of services to youth in the Central New York region;

W I T N E S S E T H:

WHEREAS, "COUNTY" shall mean the County of Onondaga; and

WHEREAS, "Municipal Entity" shall mean:

- (1) a board of education as defined in Section Two of the New York State Education Law; or
- (2) trustees of a common school district as defined in Section 1601 of the New York State Education Law; or
- (3) A City, Village, Town or County as defined in General Municipal Law, and any subdivision thereof, including subdivisions thereof representing Departments of Police, Sheriffs, Parks and Recreation; and

WHEREAS, "OCFS" shall refer to the New York State Office of Children and Family Services; and

WHEREAS, "PROVIDER" shall mean a Municipal Entity approved by the County to provide services to youth in accordance with requirements set by OCFS in distributing its allocation to the County of funds for programs and services to youth; and

WHEREAS, the PROVIDER warrants that it can meet the goals and needs of youth by Parks & Recreation program, as more specifically outlined in the application for allocation of OCFS youth services funds dated August 1, 2014, which was approved by the County under applicable provisions of the New York Executive Law, Social Services Law and in compliance with the New York Code of Rules and Regulations, and shall comply with all other applicable federal, state and local laws; and

WHEREAS, the PROVIDER has been approved by the COMMISSIONER to provide youth services in accordance the approved application, and in compliance with New York State Executive and Social Services Laws; and

NOW, THEREFORE, in order to make available those services to youths in the Central New York community as determined by the Department, the parties hereto mutually agree as follows:

SERVICES

The PROVIDER shall provide appropriate services for youths to attend the PROVIDER'S program during the term of this Agreement.

DOCUMENTATION

The PROVIDER shall have on file and/or furnish, upon request to the COUNTY with monthly claims, the required documentation for all children enrolled in its programs. Requirements shall include, but not be limited to:

1. The record shall contain sufficient information which:
 - a. supports the services rendered, including dates of service delivery;
 - b. documents the results of services;
 - c. is consistent with claim for reimbursement.
2. Pertaining to records, unprofessional conduct is defined as the act of revealing personal identifiable facts, data or information obtained in a professional capacity without the prior consent of the parent or legal guardian, except as provided by law.
3. The PROVIDER will comply with all federal and state records retention requirements. Evidence must be submitted to the municipality documenting the policy and procedures of the provider regarding record retention including filing, archiving and storage arrangements. In the event that the PROVIDER program closes for any reason, location and destroy dates of such records must be submitted in writing to the COUNTY.

FISCAL

All financial arrangements for services under this contract shall be between the COUNTY and PROVIDER. No parent or any other person shall be required or requested to make any payment for tuition, program fees, maintenance or transportation, in addition to the payments made by the COUNTY pursuant to this contract.

1. All claims for payment made to the COUNTY by the PROVIDER shall identify and allocate costs for services rendered in such a manner as shall be acceptable to the COUNTY. PROVIDERS agree to document delivery of services provided to all children in the manner prescribed by the COUNTY.
2. The PROVIDER shall submit an accurately completed claim with proper documentation to the COUNTY for services rendered not later than January 15, 2015, or thirty (30) days from the execution of this Agreement, whichever date is later.
3. The PROVIDER shall include, with the claim, with detailed documentation of expenses incurred in performance of this Agreement.
4. The PROVIDER shall submit any and all data as required by the COUNTY for budgeting, reimbursement and forecasting. The PROVIDER shall prepare and make available such statistical, financial and other reports as required. All documents and records shall be consistent with New York State and Federal financial requirements for audit and rate establishment procedures. The financial records and other financial documents relevant to this contract shall be retained by the PROVIDER for such time as mandated by Federal and State requirements.

- 5. These records shall be subject at all reasonable times to audit.
- 6. The PROVIDER certifies that all information submitted for payment will be true, accurate and complete. The PROVIDER acknowledges that this information may be used for billing and payment and satisfaction of the claim from federal and/or state funds. The PROVIDER understands that any false claims, statements or documents, or concealment of material facts, may be prosecuted under applicable federal and state laws. The PROVIDER certifies that all services reported have been provided by or under the direction of a qualified provider in accordance with all applicable requirements of the State and Federal Laws and Regulations. Any errors discovered after submission will be immediately reported by the PROVIDER to the COUNTY for adjustment.

REIMBURSEMENT

The COUNTY, in accordance with the provisions of this contract, shall reimburse the PROVIDER for expenditures made for contracted services and related expenses incurred following completion and submission of COUNTY-required forms and sufficient documentation to support claims for related expenses incurred in performance of this Agreement.

COMPENSATION

The Department will pay the Contractor according to the following terms and conditions:

a. Allocation

The maximum compensation that may be paid under this agreement is \$2,575.

b. Actual Compensation

Actual compensation shall be determined by actual expenses incurred. Any unexpended funds which have been paid to the Contractor pursuant to the Agreement shall be accounted for and refunded to the County within thirty (30) days.

AGREEMENTS

In the event that the COMMISSIONER withdraws approval for the operation of any program or service at any site as approved hereunder, such action shall constitute an immediate amendment to this contract removing inclusion of such program or service from the scope of services covered under this Agreement. In the event that the PROVIDER intends to cease operation of any or all programs or services at any site covered by the scope of this Agreement, the PROVIDER shall give written notice of such intention to the COUNTY not less than ninety (90) days prior to the intended effective date of such action. Such cessation shall constitute an immediate amendment to this contract thus removing such program or service from the scope of services covered under this Agreement.

TERMS

This contract shall take effect as of January 1, 2014 and terminate on December 31, 2014; unless this agreement shall be deemed to have terminated at any time that the COMMISSIONER withdraws approval for the PROVIDER to provide services or programs for youths. This contract may be renewed upon notification by the COUNTY, and acceptance by the PROVIDER at least thirty (30) days prior to the expiration of the existing term.

- 1. The PROVIDER shall not reassign this contract.

2. The COUNTY and the PROVIDER shall observe and require the observance of all applicable federal and NYS requirements relating to confidentiality of records and information by all subcontractors and their employees.

TERMINATION OF CONTRACT

The COUNTY shall have the right to terminate this Agreement, on the following basis:

- 1. If the PROVIDER fails to fulfill in a timely and proper manner its obligations under this agreement.
- 2. If the PROVIDER becomes bankrupt or insolvent or falsifies its records or reports, or misuses funds from whatever source.
- 3. If an agency PROVIDER knowingly fails to act upon the conviction of an employee or employees of a criminal offense that may reflect on the ability to provide these services in a manner or environment that provides for the highest degree of emotional and physical welfare and safety for the youths participating in the program.
- 4. Upon failure of the PROVIDER to cooperate with an audit by the County.

DEFENSE, INDEMNIFICATION AND HOLD HARMLESS

A. The PROVIDER covenants and agrees to indemnify, defend and hold harmless, to the fullest extent permitted by law, the County of Onondaga, its officers, agents and employees and representatives in connection with this Agreement, from and against any and all loss or expense that may arise by reason of liability for damage, injury or death, or for invasion of personal or property rights, of every name and nature including but not limited to: (i) claims of property damage; (ii) claims of personal injury to PROVIDER if self-employed, PROVIDER's employees, agents, or subcontractors; (iii) claims of personal injury to third parties; and (iv) reasonable attorneys' fees, whether incurred as the result of a third party claim or to enforce this contract: arising out of or resulting directly or indirectly from the performance of the work or the enforcement of this Contract, irrespective of whether there is a breach of a statutory obligation or rule of apportioned liability; and whether casual or continuing trespass or nuisance, and any other claim for damages arising at law and equity alleged to have been caused or sustained in whole or in part by or because of misfeasance, omission of duty, negligence or wrongful act on the part of the PROVIDER.

B. Without otherwise limiting the scope of the indemnity provisions set forth in paragraph (A) herein, if PROVIDER serves upon the County, within ten (10) calendar days of being notified by County of a claim a duly executed copy of a letter from PROVIDER to PROVIDER's various insurers, providing notice of the Claim requesting that the Insurer provide defense therefore, and if within sixty (60) days thereafter, PROVIDER provides to the County a duly certified letter from PROVIDER's insurer(s): (i) Giving notice to PROVIDER that the claim is not within the scope of coverage of insurance contracts that PROVIDER is obligated to obtain and maintain in force pursuant to the terms of this AGREEMENT or; (ii) A Reservation of rights Letter; Together with (PROVIDER's duly signed consent to joinder in any pending action and to participation in settlement of the claim, the County shall assume the cost of defending the claim. Provided, however, that the County reserves All rights pursuant to applicable law and Paragraph A of this Section to seek recovery of all costs incurred by the county in

defending the claim to the fullest extent allowed by applicable law. The County's reservation of rights as set forth herein is without prejudice to PROVIDER's right to seek to limit the obligation to indemnify the County for defense costs incurred by the County to the percentage of the claim or damages caused by the negligence or other fault of the PROVIDER.

The PROVIDER further covenants and agrees to obtain the necessary insurance as required by the General Obligations Law of the State of New York and this contract to effectuate this Hold Harmless clause, and shall name the County of Onondaga as an additional insured on all applicable insurance and indemnification. (See also insurance provision).

INSURANCE

PROVIDER shall purchase and maintain insurance of the types and coverages set forth below, written on an occurrence basis, reasonably acceptable to the County of Onondaga and which will provide primary liability coverage to PROVIDER AND WITH THE COUNTY NAMED AS AN ADDITIONAL INSURED ON A PRIMARY AND NON-CONTRIBUTING BASIS for claims which may arise out of or result from PROVIDER's operations under the Contract, including without limitation (i) claims because of bodily injury, occupational sickness or disease, or death, whether to PROVIDER if self-employed, PROVIDER's employees or others and whether or not under a workers' compensation or other similar act or law for the benefit of employees; and (ii) claims because of injury to or destruction of tangible property, including loss of use resulting therefrom. As the sole exception to the foregoing, the PROVIDER shall not be required to name the County as an additional insured on policies issued to it for the professional liability of the PROVIDER.

All policies shall be written so that the County of Onondaga will be notified of cancellation or restrictive amendment at least thirty (30) days prior to the effective date of such cancellation or amendment. Certificates or insurance from the carrier, or their authorized agent, with the appropriate additional insured endorsement attached showing the County of Onondaga as an additional insured and stating the limits of liability, expiration date which are acceptable to the County of Onondaga shall be filed with and accepted by the County of Onondaga before operations are begun. The intent is that this insurance, with the County of Onondaga being named as an additional insured, is to be primary over and above the County of Onondaga's own general liability coverage.

The PROVIDER agrees to obtain and maintain General Liability Insurance including Comprehensive Form, Premises-Operations, Products/Completed Operations, Blanket Broad Form Contractual, Independent Contractors, and Broad Form Property Damage Coverage with minimum limits of not less than \$1 Million (\$1,000,000) Combined Single Limit for Bodily Injury and Property Damage.

DUTY TO MAINTAIN CONFIDENTIALITY

The PROVIDER agrees not to disclose any data, facts or information concerning services performed for the County or obtained while performing such services, except as authorized by the County in writing or as may be required by law.

NON-ASSIGNABILITY

The PROVIDER shall not assign this contract without prior written approval of the BOARD and COUNTY which approvals shall be attached to this contract as an amendment.

NON-DISCRIMINATION

No discrimination because of race, color, national origin, ancestry, disability, gender, sexual orientation or religion shall be made in the employment of persons to perform services under this contract. PROVIDER agrees to meet all requirements of the State and federal laws pertaining to non-discrimination in employment.

SEPARABILITY: WAIVER

In the event any provision of this contract shall be held invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term, condition or covenant shall not be construed by the other party as a waiver of subsequent breach of same by the other party.

APPLICABLE LAW

This contract shall be governed by the laws of the State of New York.

ENTIRE CONTRACT

The terms of this contract, including its attachments and exhibits, represent the final intent of the parties. Any modifications, rescission or waiver of the terms of this contract will be effective only if evidenced by a subsequent writing which is executed and acknowledged by the parties with the same formalities accorded this basic contract, and is approved by the Commissioner.

STATUTORY COMPLIANCE

In acceptance of this Agreement, the PROVIDER covenants and agrees to comply in all respects with all Federal, State and County laws which pertain hereto regarding services for municipal corporations including but not limited to Workers' Compensation and Employers' Liability Insurance, hours of employment, wages and human rights. PROVIDER covenants and agrees to comply with statutory and regulatory obligations regarding individuals or entities whose participation in Federal programs including Medicaid, has been restricted, terminated or excluded under the provisions of 42 CFR 1001.

LICENSES AND CERTIFICATES

The PROVIDER hereby agrees that it will obtain at its own expense all licenses or certificates for the work performed under this contract, as required by law, prior to the commencement of work and at points of renewal.

CLAUSES REQUIRED BY LAW

The parties hereto understand and agree that each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to have been

inserted herein, and if through mistake or inadvertence such provision is not inserted, said clause shall be deemed to have been inserted and shall have the full force and effect of law.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date and year hereinafter written.

COUNTY OF ONONDAGA DEPARTMENT OF CHILDREN AND FAMILY SERVICES

Dated: _____ 201__

By: _____
DAVID SUTKOWY, COMMISSIONER

Town of Lysander

Dated: _____ 201__

By: _____
Name:
Title:

Form 1

State of NEW YORK)
County of ONONDAGA) ss.:

On the ____ day of _____ in the year _____ before me the undersigned, personally appeared DAVID SUTKOWY, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he executed the same in ____ his capacity as COMMISSIONER of the Onondaga County Department of Social Services and that by his signature on the instrument, the entity upon behalf of which the individual acted, executed the instrument.

Notary Public

State of NEW YORK)
County of _____) ss.:

On the ____ day of _____ in the year _____ before me personally came _____, who, being by me duly sworn, did depose and say that that ____ (he or she or they) is (are) the (title) _____ of Town of Lysander, the municipal entity described in and which executed the above instrument; and that ____ (he or she or they) signed ____ (his or her or their) name(s) thereto by authority of the governing body of said municipal entity.

Notary Public

Item E, F,
(1-4)

TOWN of LYSANDER
8220 LOOP ROAD
BALDWINSVILLE, NEW YORK 13027
(315) 638-4264

December 17, 2014

Lysander Town Board
8220 Loop Road
Baldwinsville, NY 13027

Re: Timber Banks Section 3 Phase I

Subj: Road & Utility Acceptance

Dear Town Board Members:

I have conducted a final punch list inspection of the following street and utilities which compromise the acceptance of the roads and utilities included in Timber Banks Section 3 Phase I project. The Timber Banks Section 3 Phase I project contains the roadway and associated utilities for the street listed below.

<u>Street</u>	<u>Length</u>
Tall Tree Lane	0.196 miles

The streets were designed and constructed to conform to the Highway Construction Specification Ordinance of the Town of Lysander and are in satisfactory condition.

Attached is a punch list of work items which remain to be completed. The value of the punch list is \$48,000 which I recommend as the amount of the performance bond or other security to be established by the Town Board and deposited by the developer.

Please note that in addition to the street, this project will involve the deeding of drainage facilities and sanitary sewer facilities. It is my understanding that the necessary special districts is in place, however I am not aware that the required deeds, utility easements, or other legal documents have been tendered to the Town Attorney. It should be noted that it appears that an additional temporary 20' drainage easement parallel to the eastern property line of the YMCA parcel will be required until the construction of the stormwater management facility in the Timber banks Section 3 Phase 2 project is completed. I recommend that the Town Board require the developer to submit the documents referenced above to the Town Attorney prior to final acceptance and dedication of the roadway and

utilities by the Town Board. In addition the developer will need to provide as-built drawings of all infrastructure to be dedicated to the Town prior to acceptance of the roadway and utilities.

In addition to the punch list security the developer will also be required to post a maintenance guarantee. The Town Code allows the Town Board to set the amount of the required guarantee between 25% and 100% of the project value. I estimate the value of the roadway, sanitary sewer and drainage utilities to be approximately \$553,830 (estimate attached), such that the guarantee could range from \$138,458 (25%) to \$553,830 (100%), at your discretion.

Regards



Allen J. Yager, P.E.

Town of Lysander Engineer

Attachments

Cc: Gary Pooler; Timbers LLC
Hal Welsh; YMCA
James Trasher; CHA Associates

Final Punch List

Timber Banks Section 3 Phase 1
September December 17, 2014

1. Furnish and install 1 1/2" Type 6F asphalt top course and tack coat	\$ 30,500
2. Construct permanent stormwater management area for Tall Tree Lane Drainage	\$ 10,000
3. Place topsoil, seed and establish turf in road right-of-way	\$ 3,000
4. Clean closed drainage system once all land in the development has been stabilized and the asphalt top course has been placed.	\$ 2,500
5. Install monuments	\$ 2,000
Total	\$ 48,000

Value of Improvements

Timber Banks Section 3 Phase 1

Roadway – 1035LF @ \$160/LF	\$ 165,600
Storm Drainage – 12" Diameter 596 LF @ \$40/LF	\$ 23,840
Storm Drainage – 18" Diameter 209 LF @ \$50/LF	\$ 10,450
Storm Drainage – 24" Diameter 114 LF @ \$60/LF	\$ 6,840
Catch Basins & Junction Boxes – 9 @ \$2,000/Each	\$ 18,000
Sanitary Sewers – 3016 LF @ \$100/LF	\$ 301,600
Sanitary Manholes – 11 @ \$2,500/Each	<u>\$ 27,500</u>
Total	\$ 553,830