

RETAIL INSTALMENT CREDIT AGREEMENT AND CASH ADVANCE AGREEMENT (VARIABLE RATE)

First Niagara Bank, N.A.

- 1. Meaning of some words.** In this agreement, (a) “we,” “us,” “our” and “ours” mean First Niagara Bank, N.A., 6950 South Transit Road, P.O. Box 514, Lockport, NY 14095-0514, (b) “you” and “your” mean any individual in the name of whom a particular variable rate MasterCard® or Platinum MasterCard® account with us is at any time open, (c) “your account” means that account, (d) “your card” means any unexpired card that we have issued or issue for use with your account, (e) “convenience check” means any convenience check that we have supplied or supply for use with your account, (f) “purchase” means any amount of credit obtained under your account in any way described in Section 2 and payable to us, (g) “balance transfer” means any amount of credit obtained under your account in the way described in Section 3 and payable to us, (h) “cash advance” means any amount of credit obtained under your account in any way described in Section 4 and payable to us, (i) “the balance of your account” means all purchases, balance transfers, cash advances, interest charges and other charges posted to and payable under your account, (j) “any guarantor” means any individual who, or any corporation, partnership, limited liability company or other organization that, now or in the future guarantees the payment of any of the balance of your account, and (k) “billing cycle” means any period of approximately a month at the end of which we compute the amount to be billed under your account. An interest charge is a charge for the use of credit.
- 2. Purchases.** Subject to the provisions of this agreement, credit may be obtained under your account by presenting your card, giving the account number of your account by mail, telephone or computer or in any other way, or using your card, together with the personal identification number for your card, at a point-of-sale terminal to obtain credit in any transaction that the MasterCard® network treats as a purchase transaction (for example, a purchase or rental of goods or services). You consent to our acquiring the right to be paid the indebtedness resulting from the credit.
- 3. Balance transfers.** Subject to the provisions of this agreement, credit may be obtained under your account by, if allowed by us, using a balance transfer form that we have supplied or supply, or any other way we allow, to transfer all or part of the balance payable under an account with another financial institution to your account.
- 4. Cash advances.** Subject to the provisions of this agreement, credit may be obtained under your account by, if allowed by us, (a) presenting your card at any financial institution that honors your card, (b) using your card, together with the personal identification number for your card, at any automated teller machine that honors your card for the purpose of obtaining credit, (c) signing and using a convenience check as an ordinary check would be signed and used or (d) obtaining any other credit that the MasterCard® network treats as a cash advance transaction (for example, a transaction with an entity that sells or provides travelers checks, foreign currency, money orders, wire transfers, lottery tickets or funds for gambling) other than a balance transfer.
- 5. Introductory and promotional rates.** From time to time, including but not necessarily when your account is opened, we may offer a plan under which there may be obtained under your account a type of purchase, balance transfer or cash advance will be subject to an introductory or promotional rate specified by us that may be variable or non-variable and that may be in effect until purchases, balance transfers or cash advances of that type are paid or only for a limited period of time specified by us. If we offer the plan when your account is opened, information concerning it will be included in the accompanying rate disclosure. If any minimum payment for your account is not paid by the date it becomes due, we may begin to compute interest charges on any purchase, balance transfer or cash advance that is subject to an introductory or promotional rate as though it were not subject to that introductory or promotional rate.
- 6. Prohibition of certain transactions.** Credit may not be obtained under your account in connection with any prohibited or unenforceable transaction (for example, an illegal gambling transaction), but, if it is, you give up any claim that you do not have to repay the credit on the ground that the transaction was prohibited or unenforceable, and you must pay each liability and expense (for example, attorney’s fees and other legal expenses) that is incurred by, imposed on or asserted against the MasterCard® network or us as a result of the transaction.
- 7. Coverage of certain transactions.** You must not allow anyone else to have your card or the account number of your account unless you authorize him or her to obtain credit under your account. Except to the extent prohibited by applicable law, all credit obtained under your account by anyone you allow to have your card or the account number of your account will be covered by this agreement as though you had obtained it. Consequently, in addition to his or her being responsible for repaying the credit, you will be responsible for doing so.
- 8. Credit limit.** Each statement for your account will show the credit limit for your account on the date of the statement. We may change the credit limit for your account. Any change in the credit limit will take effect immediately. If we lower the credit limit, we will send you a notice that we have done so. We will not have to notify you if we raise the credit limit. You must not allow the balance of your account, rounded to the next higher dollar, to exceed the credit limit. If it does so, you must immediately pay us the excess.
- 9. Limitation on credit.** We will not be obligated to extend or liable for failing to extend credit under your account. For example, we will not be obligated to extend or liable for failing to extend credit under your account whether or not (a) at the time we decide whether to extend the credit the balance of your account, rounded to the next higher dollar, exceeds, or extending the credit would cause the balance of your account, rounded to the next higher dollar, to exceed, the credit limit for your account or (b) before we refuse to extend the credit anything that would allow us to declare the balance of your account immediately due happens. Similarly, we will not be obligated to extend or liable for failing to extend credit under your account if (a) at the time we decide whether to extend the credit your account has been suspended and remains suspended, we in good faith believe that there is any dispute concerning your account between you and anyone else in whose name your account is open (for example, because you have ordered us not to pay a convenience check signed by someone else in whose name your account is open and that person cancels the order), that the credit is being sought for a prohibited purpose, that any card issued by us for use with your account or any convenience check has been lost or stolen or that there has been or may be any unauthorized or fraudulent use of your account or we are prevented from extending the credit by an occurrence beyond our control (for example, a fire, flood, failure or malfunction of telecommunications equipment or service, act of war or terrorism or governmental action or inaction), (b) before we refuse to extend the credit your account is canceled or we discover anything that we in good faith believe may adversely affect your creditworthiness or the creditworthiness of any guarantor, (c) the credit is sought in a transaction that requires an authorization under an authorization system and the authorization system is not working properly or (d) the credit is sought by using a convenience check and the convenience check is dated more than six months before the date it is presented to us for payment or is dated after the date it is presented to us for payment or at the time we decide whether to extend the credit we in good faith believe that the convenience check is not properly completed, signed or endorsed. But, if we extend the credit, it will be covered by this agreement, and we will not be liable if, as a result of extending it, we do not extend other credit under your account.
- 10. Availability of credit.** The amount of credit available under your account may sometimes be less than you might expect. For example, (a) a purchase transaction at a merchant (for example, a hotel, car rental company, restaurant or gas station) may result in an authorization for the purchase transaction in an amount greater than the actual amount of the purchase transaction, which may have the effect of reducing the amount of credit available under your account by the amount of the authorization until the actual amount of the purchase transaction is posted to your account, and (b) if a check is used to pay any of the balance of your account, we may delay increasing the amount of credit available under your account by the amount of the check until we are sure that we will collect the funds represented by the check.
- 11. Payment of balance of account.** You must pay us the balance of your account. You may pay it in full at any time without any penalty, or you may pay it in monthly installments.
- 12. Minimum payment.** By the payment due date shown on any statement for your account, you must pay at least the minimum payment for your account shown on the statement. The minimum payment will be, rounded to the next higher dollar, the total of (a) the greater of (i) \$20 or (ii) 2% of the portion of the balance of your account at the end of the billing cycle covered by the statement and (b) all previous minimum payments for your account to the extent that they are overdue at the end of the billing cycle. But the minimum payment will not exceed the balance of your account at the end of the billing cycle. Inclusion in the minimum payment of any amount included in any previous minimum payment for your account will not give you any additional time to pay it, and it will remain immediately due. Paying more than the minimum payment will not relieve you of the obligation to pay any minimum payment for your account shown on any future statement for your account.
- 13. Currency requirements for payments.** You must pay in United States currency amounts payable under this agreement, although we reserve the right to accept a payment in foreign currency of any amount payable under this

agreement and to choose the currency conversion rate used to convert the payment into United States currency. Any check or other nonelectronic item or electronic transfer used to pay any amount payable under this agreement must be drawn on or payable by a United States bank or a United States branch of a foreign bank.

14. Crediting of payments. Except to the extent required by applicable law, any payment we receive for application to the balance of your account need not be posted to your account or considered to have been made until the fifth day after the date we receive it unless it is made in United States currency, is accompanied by a payment stub for your account, meets the requirements specified on or accompanying the payment stub and is received at the address shown on the payment stub as that to which the payment is to be sent.

15. Application of payments. Even if you specify otherwise, we may apply any payment we post to your account to items included in the balance of your account in any order we choose except to the extent that we are required by applicable law to apply the payment to those items in any particular order.

16. Annual fees. If your account is a secured variable rate MasterCard® account, you must pay us an annual fee of \$50 for your account. Each of the annual fees will be a fee you pay for the convenience of having your account and not a fee you pay in exchange for having a specified amount of credit available under your account for a specified period of time. Except to the extent required by applicable law, none of the annual fees will be refundable. The first of the annual fees may be posted to your account at any time unless before it would be posted to your account your account is canceled. Every twelfth billing cycle after the billing cycle in which the first of the annual fees is posted to your account, another of the annual fees will be posted to it as long as it remains open.

17. Late fees. If any minimum payment for your account remains unpaid for more than 10 days after the date it becomes due, you must pay us a late fee of \$25.

18. Returned payment charges. If you use a check or other nonelectronic item to pay any amount payable under this agreement and the check or other nonelectronic item is not paid, you must pay us a returned payment charge of \$20.

19. Avoiding interest charge for purchases. For any billing cycle, you may avoid any interest charge for purchases (including purchases posted to your account during the billing cycle) if (a) the balance of your account at the beginning of the billing cycle is zero or (b) all payments and other credits posted to your account during the billing cycle equal or exceed the balance of your account at the beginning of the billing cycle.

20. Interest charge for purchases. Except as provided in Section 19, interest charge will begin to be earned on any purchase on the day it is posted to your account unless the purchase is of a type for which the daily periodic rate is 0%, in which case interest charge will begin to be earned on the purchase only if the daily periodic rate for purchases of that type ceases to be 0%. We will compute the interest charge for purchases of any type (for example, purchases subject to an introductory or promotional rate or purchases not subject to an introductory or promotional rate) for any billing cycle as follows: (a) each day in the billing cycle, we will compute purchases of that type payable under your account for that day by (i) adding to the balance of your account at the beginning of that day all purchases, balance transfers and cash advances posted to your account that day and (ii) subtracting from the sum resulting from the addition (A) all payments and other credits posted to your account that day and (B) all purchases not of that type, balance transfers, cash advances, interest charges and other charges included in the balance of your account after the application of the payments and other credits to items included in the balance of your account; (b) each day in the billing cycle, we will multiply purchases of that type payable under your account for that day by the daily periodic rate for purchases of that type for the billing cycle; and (c) we will add up the results of the multiplications for all the days in the billing cycle. A periodic rate is a percentage applied to compute a charge on an amount for a period of time. But, if the total of the interest charges for purchases of all types for the billing cycle is less than \$.50, there will be a minimum interest charge for purchases of \$.50 for the billing cycle.

21. Interest charge and balance transfer fees for balance transfers. Interest charge will begin to be earned on any balance transfer on the day it is posted to your account unless the balance transfer is of a type for which the daily periodic rate is 0%, in which case interest charge will begin to be earned on the balance transfer only if the daily periodic rate for balance transfers of that type ceases to be 0%. We will compute the interest charge for balance transfers of any type (for example, balance transfers subject to an introductory or promotional rate or balance transfers not subject to an

introductory or promotional rate) for any billing cycle as follows: (a) each day in the billing cycle, we will compute balance transfers of that type payable under your account for that day by (i) adding to the balance of your account at the beginning of that day all purchases, balance transfers and cash advances posted to your account that day and (ii) subtracting from the sum resulting from the addition (A) all payments and other credits posted to your account that day and (B) all balance transfers not of that type, purchases, cash advances, interest charges and other charges included in the balance of your account after the application of the payments and other credits to items included in the balance of your account; (b) each day in the billing cycle, we will multiply balance transfers of that type payable under your account for that day by the daily periodic rate for balance transfers of that type for the billing cycle; and (c) we will add up the results of the multiplications for all the days in the billing cycle. For each balance transfer posted to your account during the billing cycle, you must pay us a balance transfer fee that is 3% of the amount of that balance transfer but not less than \$10 or more than \$100.

22. Interest charge and cash advance fees for cash advances. Interest charge will begin to be earned on any cash advance on the day it is posted to your account unless the cash advance is of a type for which the daily periodic rate is 0%, in which case interest charge will begin to be earned on the cash advance only if the daily periodic rate for cash advances of that type ceases to be 0%. We will compute the interest charge for cash advances of any type (for example, cash advances subject to an introductory or promotional rate or cash advances not subject to an introductory or promotional rate) for any billing cycle as follows: (a) each day in the billing cycle, we will compute cash advances of that type payable under your account for that day by (i) adding to the balance of your account at the beginning of that day all purchases, balance transfers and cash advances posted to your account that day and (ii) subtracting from the sum resulting from the addition (A) all payments and other credits posted to your account that day and (B) all cash advances not of that type, purchases, balance transfers, interest charges and other charges included in the balance of your account after the application of the payments and other credits to items included in the balance of your account; (b) each day in the billing cycle, we will multiply cash advances of that type payable under your account for that day by the daily periodic rate for cash advances of that type for the billing cycle; and (c) we will add up the results of the multiplications for all the days in the billing cycle. For each cash advance posted to your account during the billing cycle, you must pay us a cash advance fee that is 3% of the amount of that cash advance but not less than \$10 or more than \$100.

23. Disclosure as to balance computation method. The way we determine the balance we use in computing interest charges on any type of purchase, balance transfer or cash advance is called the "daily balance" method, which is described in clause (a) of the second sentence of Section 20 for purchases, clause (a) of the second sentence of Section 21 for balance transfers and the second sentence of Section 22 for cash advances.

24. Annual percentage rate. Except for any type of purchase, balance transfer or cash advance for which the daily periodic rate is not variable, the annual percentage rate for any type of purchase, balance transfer or cash advance for any billing cycle will be the total of (a) the margin for that type of purchase, balance transfer or cash advance for the billing cycle and (b) the highest rate identified as the prime rate by *The Wall Street Journal* in its table entitled "Money Rates" on the first day of the calendar month preceding the calendar quarter in which the billing cycle begins or, if it is not published that day, the last day it is published before that day. But the annual percentage rate will not exceed the maximum rate allowed by applicable law. An annual percentage rate is a cost of credit expressed as an annual rate. The prime rate may be described generally as the base rate on corporate loans at large United States money center commercial banks. **Additional information concerning the annual percentage rate for each type of purchase, balance transfer or cash advance (including, if applicable, the margin for that type of purchase, balance transfer or cash advance) will be provided to you when that type of purchase, balance transfer or cash advance is first available under your account (including on the accompanying rate disclosure if that type of purchase, balance transfer or cash advance is available under your account when it is opened).**

25. Daily periodic rate. The daily periodic rate for any type of purchase, balance transfer or cash advance for any billing cycle will be 1/365 of the annual percentage rate for that type of purchase, balance transfer or cash advance for the billing cycle, carried to four decimal places with the last decimal rounded to the next higher decimal.

26. Additional disclosures as to annual percentage rate and daily periodic rate. The initial annual percentage rate and the initial daily periodic rate

for each type of purchase, balance transfer or cash advance available under your account when it is opened are shown on the accompanying rate disclosure. Except for any type of purchase, balance transfer or cash advance for which the daily periodic rate is not variable, the annual percentage rate and the daily periodic rate for any type of purchase, balance transfer or cash advance might increase if there is an increase in the highest rate identified as the prime rate by *The Wall Street Journal* in its table entitled "Money Rates." The annual percentage rate and the daily periodic rate might increase as often as every three billing cycles. Any increase in the annual percentage rate and the daily periodic rate will take effect on the first day of a billing cycle and will increase the amounts of future minimum payments for your account. If a type of purchase, balance transfer or cash advance subject to an introductory or promotional rate is available under your account when it is opened, additional information concerning the annual percentage rate and the daily periodic rate for that type of purchase, balance transfer or cash advance is included on the accompanying rate disclosure.

27. Security. Property that now secures or in the future begins to secure the payment of other indebtedness to us existing now or coming into existence in the future might secure the payment of amounts payable under this agreement. In addition, if your account is a secured variable rate MasterCard® account, a deposit account with us will secure the payment of amounts payable under this agreement.

28. Limitation on principal dwelling as security. No interest in your or anyone else's principal dwelling given in any other agreement existing now or coming into existence in the future will secure the payment of any amount payable under this agreement regardless of the other agreement.

29. Financial and other information. If the address of your residence, your mailing or electronic mail address or your employer changes or if there is any unfavorable change in your financial condition, you must promptly notify us in writing of the change. Whenever we ask you to do so, you must submit to us a financial statement in a form satisfactory to us.

30. Balance immediately due. We may declare the balance of your account immediately due if any of the following things happens: (a) any amount payable under this agreement or any other indebtedness from you or any guarantor to us existing now or coming into existence in the future is not paid by the date it becomes due (even though a late charge would not be imposed until later); (b) any indebtedness from you or any guarantor to any financial institution other than us existing now or coming into existence in the future is not paid by the date it becomes due (even though a late charge would not be imposed until later); (c) you violate any provision of this agreement or any provision of any other agreement between you and us existing now or coming into existence in the future; (d) any guarantor violates any provision of any agreement between him, her or it and us existing now or coming into existence in the future; (e) any default occurs for purposes of any other agreement between you and us existing now or coming into existence in the future or any agreement between any guarantor and us existing now or coming into existence in the future; (f) you die or become incompetent or insolvent; (g) any guarantor dies or becomes incompetent or insolvent; (h) any proceeding under any bankruptcy statute is started by or against you or any guarantor; (i) anyone starts any legal proceeding to take any property belonging to you or any guarantor now or acquired by you or any guarantor in the future to pay any indebtedness existing now or coming into existence in the future; (j) any tax or other involuntary lien is filed or recorded against any property belonging to you or any guarantor now or acquired by you or any guarantor in the future; (k) we discover that in any agreement between you and us existing now or coming into existence in the future, any application you have made or make to us for credit or any financial statement you have submitted or submit to us you made any false or misleading statement about an important matter; or (l) we discover that in any agreement between any guarantor and us existing now or coming into existence in the future, any application any guarantor has made or makes to us for credit or any financial statement any guarantor has submitted or submits to us he, she or it made any false or misleading statement about an important matter.

31. Attorney's fee. Except to the extent prohibited by applicable law, if we incur any liability for an attorney's fee to an attorney who is not a salaried employee of ours and whom we hire to bring a lawsuit to collect any amount payable under this agreement, whether the fee is for services at trial or on appeal or any other legal service, you must pay us the fee to the extent that it is reasonable. The fee will be reasonable to the extent that it does not exceed the smallest of (a) 20% of that amount, (b) the maximum amount allowed by applicable law or provided by any applicable statute or regulation to be reasonable without a determination by a court or (c) the maximum amount determined by a court to be reasonable. To the extent required by applicable law, we will pay you a reasonable attorney's fee if you prevail in any lawsuit brought by us against you, or by you against us, in connection with your account.

32. Court costs. Except to the extent prohibited by applicable law, you must pay all court costs we pay for any lawsuit brought to collect any amount payable under this agreement that is or results from a balance transfer or cash advance by an attorney who is not a salaried employee of ours and whom we hire to bring the lawsuit.

33. Cancellation or suspension. You may cancel your account at any time by notifying us in writing that you are doing so. The cancellation will not take effect until we receive the notice and have a reasonable time to act on it. The notice must be sent to BankCard Processing Center, P.O. Box 1111, Madison, WI 53701-1111. If we receive from you a notice indicating that you do not intend to be obligated for any additional credit extended by us under your account, we may treat the notice as a notice that you are canceling your account. We may cancel or suspend your account. The cancellation or suspension will take effect immediately unless we decide to have it take effect later. If you cancel your account or learn that we have canceled it, you must stop using it, prohibit further use of it and cut in half and, if we ask you to do so, return to us each card issued by us for use with it and each unused convenience check. If you learn that we have suspended your account, you must stop using it and prohibit further use of it while the suspension remains in effect. Cancellation of your account by you or cancellation or suspension of your account by us will not affect any of your obligations under this agreement. For example, except to the extent prohibited by applicable law, you must still pay all amounts that are then or later become payable under this agreement as a result of any use of your account, whether the use occurs before or after the cancellation or suspension.

34. Cards and convenience checks are our property. Each card issued by us for use with your account and each convenience check is and will remain our property. If we ask you to do so, you must cut in half and return to us each card issued by us for use with your account and each unused convenience check. We or anyone acting for us may keep any card issued by us for use with your account if it is used after your account has been canceled or suspended or after we have requested you to return it to us. For example, if any card issued by us for use with your account is used at any electronic banking facility after your account has been canceled or suspended, the card might not be given back.

35. Nonliability. We will not be liable if anyone or any electronic banking facility fails to honor any card issued by us for use with your account or if anyone fails to honor the account number of your account or to take any convenience check. Except to the extent required by applicable law, we will not be liable for any claim by you against anyone who honors any card issued by us for use with your account or the account number of your account or takes any convenience check, and you must resolve the claim directly with that person.

36. Notice of unauthorized or fraudulent use. You must immediately notify us of any loss or theft of any card issued by us for use with your account or any convenience check or any possible unauthorized or fraudulent use of your account.

37. Special rules concerning convenience checks and credit. We will not have to certify any convenience check or return any canceled convenience check. You may not order us not to pay any convenience check, and we will not be obligated to follow or liable for failing to follow any order to us not to pay any convenience check. You must not obtain credit under your account or permit credit to be obtained under your account to (a) make a payment of any amount payable under this agreement or (b) buy, carry or trade in, or repay any indebtedness originally incurred to buy, carry or trade in, any security that is "margin stock" or a "margin security" for purposes of Regulation U or T of the Board of Governors of the Federal Reserve System.

38. Reasonable time to act. A reasonable time for us to act on any information, notice, order or other communication or document received by us will not end until at least the close of business on our first business day after our business day we receive the information, notice, order or other communication or document.

39. Statements and notices. Any statement for your account that we send you or any notice or other communication or document concerning this agreement, your account or any credit extended by us under your account that we send you may be sent in any way not prohibited by applicable law (including electronic mail). If sent by mail, the statement or notice or other communication or document may be sent to your current mailing address shown in our records concerning your account and may be sent by regular mail. Except as otherwise provided in this agreement or by applicable law, (a) any notice or other communication or document concerning this agreement, your account or any credit extended by us under your account that we send you will take effect when we send it, and (b) any notice or other communication or document concerning this agreement, your account or any credit extended by us under your account

that you send us must be in writing and sent by mail or courier and will not take effect until we receive it and have a reasonable time to act on it.

40. Credit information. We may investigate your credit record and obtain any credit report we believe appropriate in connection with any aspect of our dealings with your account (for example, considering whether to extend any credit under your account, to increase the credit limit for your account or to cancel or suspend your account, investigating any dispute concerning your account or taking any collection action with respect to your account). We may furnish information concerning your account or any aspect of our dealings with your account to other creditors, other financial institutions and credit reporting agencies.

41. Monitoring communications. In the regular course of our business, we may, for the purpose of quality control, monitor and record telephone, electronic mail and other communications between any of our employees and other agents and you or anyone acting on your behalf.

42. Transfer of claims. If we reimburse you for any amount payable under this agreement that you claim you should not have to pay because of a dispute concerning a transaction (for example, a dispute with a merchant concerning a purchase transaction) or because of any possible unauthorized or fraudulent use of your account, you (a) transfer to us each claim (other than a tort claim) you have against anyone involved in the transaction or possible unauthorized or fraudulent use, (b) must not pursue the claim without first obtaining our permission in writing and (c) must assist in any way we ask in our pursuing the claim.

43. Changes. No change in this agreement can be made except as provided in this section. We may change this agreement or any aspect of your account and apply the change to all or part of the balance of your account when the change takes effect. For example, if the index referred to in the first sentence of Section 24 becomes unavailable, we may change that sentence to refer to another index chosen by us. We will send you a notice of the change and its effective date.

44. Giving up of rights by you. You give up any right to require that we (a) demand that you pay any amount payable under this agreement, (b) notify you if any amount payable under this agreement is not paid by the date it becomes due or (c) obtain a certificate stating that any amount payable under this agreement was not paid by the date it became due.

45. No notice or loss of rights. We may do any of the following things without notifying you or losing any of our rights with respect to your account or any credit extended by us under your account or against you or any property belonging to you now or acquired by you in the future: (a) allow the balance of your account, rounded to the next higher dollar, to exceed the credit limit for your account; (b) accept any check or other order marked "paid in full" or with similar language as a payment of any amount payable under this agreement; (c) give additional time for the payment of any amount payable under this agreement, regardless of the number of times we previously did so and regardless of the length of any additional time we previously gave; (d) exercise, give up, fail to exercise or delay exercising any of our rights against any other person or property; or (e) fail to protect any interest in any property belonging to you now or acquired by you in the future or any other property, whether by failing to maintain any insurance, by failing to file or record any mortgage, financing statement, notice of lien or other document that must be filed or recorded in a public office or in any other way. For example, we may sue you to collect the balance of your account whether or not we sue anyone else. By on any occasion exercising, giving up, failing to exercise or delaying the exercise of any of our rights with respect to your account or any credit extended by us under your account or against you or any property belonging to you now or acquired by you in the future, we will not lose that right on any other occasion or lose any other of those rights.

46. Giving up of rights by us. None of our rights with respect to your account or any credit extended by us under your account or against you or any property belonging to you now or acquired by you in the future can be given up by us except in a writing signed by us.

47. No transfer by you. You may not transfer your account or any of your rights and obligations under this agreement or with respect to your account or any credit extended by us under your account to anyone else. Any transfer by you of your account or any of those rights and obligations will be void.

48. Transfer by us. We may transfer your account, any amount payable under this agreement and any of our rights and obligations under this agreement or with respect to your account or any credit extended by us under your account to anyone else.

49. Permitted actions. We will not be obligated to take or liable for not taking any action that this agreement or applicable law permits but does not require us to take. Except to the extent limited by this agreement or applicable law, we may at any time, for any reason and without notifying you or obtaining your consent take

any action that this agreement or applicable law permits us to take. For example, except to the extent limited by this agreement or applicable law, we may at any time, for any reason and without notifying you or obtaining your consent cancel or suspend your account or change this agreement.

50. Limitation on interest. Interest on any purchase, balance transfer or cash advance will not be payable at a rate in excess of the maximum rate allowed by applicable law. To the extent necessary to result in interest on any purchase, balance transfer or cash advance not being payable at a rate in excess of that maximum rate, any amount that would be treated as part of that interest under a final interpretation of that law by a court will be considered to be a mistake, will be considered to be automatically canceled and, if received by us, will be refunded to you, it being your and our intention that that interest not be payable at a rate in excess of that maximum rate.

51. If account is open in names of two or more persons. If your account is open in the names of two or more persons, all of them will be, individually and together, liable under this agreement and in connection with your account. Except to the extent that applicable law requires otherwise, we may send any statement for your account or any notice or other communication or document concerning this agreement, your account or any credit extended by us under your account to any of them alone, and it will be effective for all of them. Any of them acting alone may obtain credit under your account or cancel your account.

52. Conflicts. If any part of this agreement conflicts with applicable law, that law will control, and this agreement will be considered changed to the extent necessary to comply with that law.

53. Continued effectiveness. If any part of this agreement is determined by a court to be invalid, the rest of this agreement will remain in effect.

54. Refunds and allowances. Any refund or allowance given in connection with any purchase will be given as a credit to your account rather than in cash.

55. Foreign transactions. Any transaction under your account in a foreign currency will be converted to United States currency using a conversion procedure and a currency conversion rate used by the MasterCard® network on the date the conversion takes place. Consequently, for example, if a credit in a foreign currency issued in connection with a purchase in the foreign currency is converted to United States currency on a date later than the date the purchase is converted to United States currency, the amount of the credit when converted to United States currency might differ from the amount of the purchase when converted to United States currency.

56. Foreign transaction fee. In connection with any transaction under your account in a foreign currency involving your card or the account number of your account, the MasterCard® network may impose a fee based on the amount of the transaction.

57. When agreement takes effect. This agreement will not take effect for purchases until credit that is a purchase is obtained by you or anyone you authorize to use your account. Until this agreement takes effect for purchases, you will not be responsible for paying for any goods bought or leased or services bought by the use of any card issued by us for use with your account after its loss or theft. After this agreement takes effect for purchases, you will be bound by it with respect to purchases.

This agreement will take effect for balance transfers and cash advances when credit that is a balance transfer or cash advance is obtained by you or anyone you authorize to use your account. After this agreement takes effect for balance transfers and cash advances, you will be bound by it with respect to balance transfers and cash advances.

58. Two agreements. This agreement consists of a retail instalment credit agreement and a cash advance agreement combined in a single document. Any part of this agreement that indicates that it relates to balance transfers or cash advances but does not indicate that it relates to purchases is not part of the retail instalment credit agreement.

59. What law applies. This agreement is entered into by us, and made, in New York State, any credit extended by us under your account will be extended by us in New York State, and any payment under this agreement will be accepted by us in New York State. To the extent allowed by federal law, any credit extended by us under your account will be extended by us under the authority of federal law (including the National Bank Act). Regardless of where you live or where your account is used, any legal question concerning this agreement, your account or any credit extended by us under your account will be decided in accordance with (a) to the extent applicable, federal law (including the National Bank Act) and (b) to the extent that federal law is inapplicable, New York State law without regard to the law of any other state or other jurisdiction.

60. Entire agreement. Your name and the address of your residence are treated as part of this agreement. This agreement is the final and complete agreement between you and us concerning your account and credit extended by us under your account. Any statement concerning your account or any credit extended by us under your account made by any of our employees or anyone else is not part of this agreement. This agreement replaces any other agreement now existing between you and us concerning your account.

filled in copy of this credit agreement. 3. You may at any time pay your total indebtedness under this credit agreement.

Dated as of July 1, 2010

FIRST NIAGARA BANK, N.A.

NOTICE TO THE BUYER: 1. Do not sign this credit agreement before you read it or if it contains any blank space. 2. You are entitled to a completely

Your Billing Rights: Keep This Document For Future Use

This notice tells you about your rights and our responsibilities under the Fair Credit Billing Act.

What To Do If You Find A Mistake On Your Statement

If you think there is an error on your statement, write to us at:

BankCard Processing Center
Attention: Dispute Resolution
P.O. Box 1111
Madison, WI 53701-1111

In your letter, give us the following information:

- *Account information:* Your name and account number.
- *Dollar amount:* The dollar amount of the suspected error.
- *Description of problem:* If you think there is an error on your bill, describe what you believe is wrong and why you believe it is a mistake.

You must contact us:

- Within 60 days after the error appeared on your statement.
- At least 3 business days before an automated payment is scheduled, if you want to stop payment on the amount you think is wrong.

You must notify us of any potential errors *in writing*. You may call us, but if you do we are not required to investigate any potential errors and you may have to pay the amount in question.

What Will Happen After We Receive Your Letter

When we receive your letter, we must do two things:

1. Within 30 days of receiving your letter, we must tell you that we received your letter. We will also tell you if we have already corrected the error.
2. Within 90 days of receiving your letter, we must either correct the error or explain to you why we believe the bill is correct.

While we investigate whether or not there has been an error:

- We cannot try to collect the amount in question, or report you as delinquent on that amount.
- The charge in question may remain on your statement, and we may continue to charge you interest on that amount.
- While you do not have to pay the amount in question, you are responsible for the remainder of your balance.
- We can apply any unpaid amount against your credit limit.

After we finish our investigation, one of two things will happen:

- *If we made a mistake:* You will not have to pay the amount in question or any interest or other fees related to that amount.
- *If we do not believe there was a mistake:* You will have to pay the amount in question, along with applicable interest and fees. We will send you a statement of the amount you owe and the date payment is due. We may then report you as delinquent if you do not pay the amount we think you owe.

If you receive our explanation but still believe your bill is wrong, you must write to us within *10 days* telling us that you still refuse to pay. If you do so, we cannot report you as delinquent without also reporting that you are questioning your bill. We must tell you the name of anyone to whom we reported you as delinquent, and we must let those organizations know when the matter has been settled between us.

If we do not follow all of the rules above, you do not have to pay the first \$50 of the amount you question even if your bill is correct.

Your Rights If You Are Dissatisfied With Your Credit Card Purchases

If you are dissatisfied with the goods or services that you have purchased with your credit card, and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the remaining amount due on the purchase.

To use this right, all of the following must be true:

1. The purchase must have been made in your home state or within 100 miles of your current mailing address, and the purchase price must have been more than \$50. (Note: Neither of these are necessary if your purchase was based on an advertisement we mailed to you, or if we own the company that sold you the goods or services.)

2. You must have used your credit card for the purchase. Purchases made with cash advances from an ATM or with a check that accesses your credit card account do not qualify.

3. You must not yet have fully paid for the purchase.

If all of the criteria above are met and you are still dissatisfied with the purchase, contact us *in writing* at:

BankCard Processing Center
Attention: Dispute Resolution
P.O. Box 1111
Madison, WI 53701-1111

While we investigate, the same rules apply to the disputed amount as discussed above. After we finish our investigation, we will tell you our decision. At that point, if we think you owe an amount and you do not pay, we may report you as delinquent.

NOTICE REGARDING UNAUTHORIZED USE

If you notice the loss or theft of your credit card or a possible unauthorized use of your card, you should notify us immediately by writing to BankCard Processing Center, P.O. Box 1111, Madison, WI 53701-1111, or calling 800-221-5920.

You will not be liable for any unauthorized use that occurs after you notify us. You may, however, be liable for unauthorized use that occurs before your notice to us. In any case, your liability will not exceed \$50.

NOTICE REGARDING ANNUAL FEE

An annual fee of \$50 for any secured variable rate MasterCard® account we open for you may be posted to the account at any time unless before it would be posted to the account the account is canceled.