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**CONFIDENTIAL DRAFT**  
**AFFINITY GROUP BANKCARD AGREEMENT**

THIS AGREEMENT, made this 1 day of July, 1997, by and between SIGMA NU FRATERNITY INC., a Virginia not-for-profit association having its principal office at 9 Lewis St., Lexington, VA 24450 (the "Group") and FIRST USA BANK, a Delaware banking corporation, having its principal offices at Three Christina Centre, 201 North Walnut Street, Wilmington, Delaware, 19801 ("FUSA").

**RECITALS:**

WHEREAS, FUSA desires to make its MasterCard and/or Visa consumer credit products and related services (hereinafter referred to as "Credit Card(s)") available to the officers, directors, employees, members of Group and other affiliated persons (the "Group Members"); and

WHEREAS, the Group is willing to make its proprietary intellectual property and mailing lists available to FUSA in connection with FUSA's offering of FUSA's Credit Card(s) to and among the Group Members subject to the terms and conditions hereinafter contained;

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged the parties hereby agree as follows:

1. License to Use Marks.

(a) During the term of this Agreement, FUSA shall have the right and license to use the respective name, trademarks, servicemarks, copyrights and logo of the Group as they now exist or as they may be modified during the term hereof (collectively, the "Marks") solely in connection with FUSA's marketing of Credit Card(s) to Group Members under this Agreement (the "Affinity Program"). Examples of the current Marks are set forth in Exhibit B attached hereto. Such right and license is restricted to the products and services described herein and shall not apply or extend to any other product or service offered by FUSA. Group hereby agrees that the Marks may be used on either MasterCard or Visa Credit Cards, and Group and FUSA agree that FUSA will only issue credit cards bearing the Marks pursuant to this Agreement, unless otherwise mutually agreed in writing by FUSA and Group. Following termination of this Agreement, Credit Card(s) issued during the term hereof may continue to bear the Marks until the normal expiration date thereof. Subject to and consistent with the rules and regulations of Visa and MasterCard, FUSA shall comply with the standards established by the Group with respect to the form of the Marks and their usage.

(b) Subject to the foregoing, each of the parties hereto is and shall remain the owner of all rights in and to its name and logo, as the same now exist or as they may hereafter be modified, including all rights in and to any copyright, trademark, servicemark and/or like rights pertaining thereto. Any and all rights to Group's Marks not herein specifically granted and licensed to FUSA are reserved to Group. Except as otherwise specifically provided for in Paragraph 1(a) hereof, upon the termination of this Agreement, all rights conveyed by Group to FUSA with respect to the use of Group's Marks shall cease, and all such rights shall revert to Group. Upon termination of this Agreement, FUSA shall have no further right to market its cardmember products using the Group Marks or to further utilize any promotional materials containing the Group Marks.

However, nothing contained herein shall require FUSA to cancel any account or to terminate any card issued in connection with this Agreement.

2. Mailing Lists.

(a) Group shall provide FUSA with lists of the Group Members eighteen (18) years of age and older, including names and residential addresses and, where available, residential telephone numbers, via magnetic tape, cartridge, or any other media which is mutually agreed upon (the "Lists"). Group shall use its best efforts to provide as complete a List as possible of all Group Members, which first List delivery shall consist of a minimum of 90,000 mailable Group Member names. Thereafter, Group shall provide FUSA with updated Lists at least two (2) times per year. Further, this Program may include marketing Credit Cards to current student members of Group. If student marketing includes the use of direct mail, then Group shall provide an additional list of approximately 10,000 mailable student names. All Lists shall be provided to FUSA by Group at no additional cost to FUSA.

(b) FUSA shall use the Lists provided by Group on a basis consistent with the intent and terms of this Agreement, i.e. to market and service credit cards, and shall not rent, use or permit any third party handling such Lists to use them for any other purpose. FUSA shall not rent or otherwise make available such Lists to any third party (except for the purposes of fulfilling obligations under this Agreement) without the express written consent of Group. The Lists provided by Group are and shall remain the sole property of Group provided they have been provided to FUSA by Group at no expense to FUSA, except to the extent that such Group names are available to FUSA from another source. FUSA will, subject to applicable law requiring their retention, return such lists to Group or destroy them upon the termination of this Agreement. However, FUSA may maintain separately all information which it obtains as a result of an account relationship or an application for an account relationship with any Group Member. This information becomes a part of FUSA's own files which shall not be subject to this Agreement and will not imply or suggest any endorsement by Group.

3. Offering of Credit Cards by FUSA. FUSA shall offer Credit Card(s) to Group Members in accordance with the following provisions:

(a) Subject to subparagraph (c) of this Paragraph 3, FUSA shall, at its own expense, design and develop such marketing, promotion and solicitation materials as it deems appropriate to promote the Affinity Program among Group Members, and the Group shall endorse and reasonably assist FUSA with the administration of such promotional and solicitation activities. FUSA and the Group will jointly schedule and direct the solicitation of Group Members, provided, that FUSA reserves the right to limit its solicitation materials to those persons deemed by it to be creditworthy in accordance with FUSA's normal credit criteria and credit practices.

(b) Subject to federal, state and local law and any other applicable rules and regulations (e.g. MasterCard or Visa operating regulations), all approved accounts shall receive Card(s) issued by FUSA. Group shall have the right to approve the front design of the Credit Card(s), such approval not to be unreasonably withheld. In the event of any change in its Marks, the Group shall bear and promptly reimburse FUSA for any additional expenses incurred by FUSA in connection with the use of the altered Marks mutually agreed upon by FUSA and by the Group. FUSA shall have the right to designate on the reverse side of the Card(s) such information as FUSA shall, in its sole discretion, deem appropriate.

(c) FUSA shall submit to Group, for its prior approval, samples of all marketing, promotional or solicitation materials, printed or otherwise, which FUSA intends to utilize to market the Affinity Program to and among Group Members. Group shall review such materials and respond to FUSA's requests for approval on a timely basis. In addition, approval by Group of any marketing materials submitted by FUSA for review shall not be unreasonably withheld. FUSA further reserves the right to communicate information to the cardmember, which it normally sends its other cardmembers and does not utilize the Group's name or logo, without having to obtain the prior approval of Group.

4. Direct Solicitations by Group. Upon request by Group and with prior written approval by FUSA, FUSA shall permit Group, subject to reasonable restrictions set forth by FUSA, to directly and indirectly solicit applications for Credit Cards from Group Members without the direct participation of FUSA ("Group Direct Promotions"). Any marketing materials developed by Group must be approved in writing by FUSA prior to distribution by Group, however, any Credit Card applications used for this Program must be supplied to Group by FUSA. Unless otherwise agreed to by FUSA and Group, all expenses associated with Group Direct Promotions shall be borne solely by the Group. In the event that FUSA prepares and pays for materials (including Credit Card applications) used in conjunction with a Group Direct Promotion, FUSA shall thereafter offset such expenditures against the total program Fees and Royalties earned by Group pursuant to this Agreement.

5. Issuance of Credit Cards.

(a) FUSA shall issue Credit Cards to interested Group Members in accordance with FUSA's standard consumer credit card issuing policies and credit practices. All decisions concerning the creditworthiness of any potential Group Member shall be made at the sole discretion of FUSA.

(b) Credit Card(s) issued by FUSA pursuant to the Affinity Program shall be governed by terms of cardmember agreements to be entered into between such persons and FUSA. Such cardmember agreement shall specify that the laws of the State of Delaware, and as applicable, federal law, shall govern the terms and conditions of such account and the extension of credit by FUSA to the cardmember. Notwithstanding any other limitations contained in this Agreement, FUSA shall have the right to amend such cardmember agreements at any time in accordance with applicable law.

(c) Group shall not possess any ownership interest in Cards issued and accounts established pursuant to this Agreement (the "Accounts"). In addition, any and all outstanding balances with respect thereto (including, without limitation, all amounts owing for the payments of goods and services, periodic finance charges, late and other charges) and all records developed and retained by FUSA in connection therewith shall be the sole property of FUSA or its assigns and Group shall have no rights or interests therein.

6. Royalties.

(a) During the term of this Agreement (including any renewal terms as provided in Paragraph 13 hereof) and in consideration of the use of Group's Marks and Group's Lists, FUSA shall pay to Group certain Account Fees and Sales Royalties (collectively, the "Royalties") as set forth on Exhibit A attached hereto.

(b) Notwithstanding any of the above, FUSA shall not be obligated to pay to the Group any duplicate Royalties described in subparagraph 6(a) and detailed in Exhibit A in the event that the accounts on which such Royalties are calculated represent

substitute accounts, including, but not limited to, accounts which are established due to the loss or theft of a cardmember's existing credit card or accounts which were established as a result of former joint cardmembers requesting individual accounts. In the event that Royalties are paid on any Accounts which do not remain open with charging privileges for a least 6 months following the calendar month in which they were opened by FUSA ("Closed Accounts"), FUSA shall deduct the Royalties paid on such Closed Accounts from subsequent payments to Group.

(c) FUSA shall provide Group with a reconciliation report within 60 days following the end of each calendar quarter setting forth the amount of Royalties earned by Group during such calendar quarter. Any amounts owing to Group and payable pursuant to the terms of this Paragraph 6 shall be paid to Group within 60 days following the end of such calendar quarter.

(d) FUSA's obligation to pay any of the aforementioned Royalties to the Group shall cease immediately upon the termination of this Agreement for any reason whatsoever, provided that such Royalties shall be reconciled and paid to the date of termination.

#### 7. Cardmember Statements.

(a) Subject to reasonable space, weight, size, content, and scheduling restrictions, and upon FUSA's prior review and approval, Group may periodically include informational inserts or statement messages in Group's cardholder statements mailed by FUSA to cardmembers.

(b) FUSA will pay for the normal cost of mailing statement insertions as described in subsection 7(a) above, excluding the cost of preparing and producing the actual insert which shall be the sole responsibility of the Group. In addition, if the inserts added by Group increase the postal expense incurred by FUSA to mail statements with such inserts, then FUSA shall inform Group in advance and, provided Group agrees to reimburse FUSA for such incremental postage expense, FUSA will use reasonable efforts to include such insertion.

8. Records. During the term of this Agreement, FUSA agrees that it will maintain accurate records with respect to (a) Net Retail Sales and (b) all Accounts established by FUSA under this Agreement. Such records shall be open for inspection by representatives of Group at such reasonable times as shall be agreed upon by FUSA, provided that any inspection shall be subject to such security procedures as FUSA may reasonably impose and subject to such limitations as may be required under applicable rules, regulations or statutes governing the conduct of FUSA's business.

9. Relationship. Nothing in this Agreement is intended to or shall be construed to constitute or establish an agency, joint venture, partnership or fiduciary relationship between the parties, and neither party shall have the right or authority to act for or on behalf of the other party.

#### 10. Confidentiality.

(a) For the term of this Agreement and for a period of one (1) year following its termination for any reason whatsoever, FUSA and Group (including their respective officers, directors, employees and agents) shall keep confidential any and all information obtained from any other party concerning the assets, properties, or business of the other party and shall not use such information for any purpose other than that purpose

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contemplated under this Agreement. However, no party hereto shall be obligated to keep confidential any information which: (i) was in the possession of the receiving party prior to this Agreement; (ii) was lawfully obtained from a third party; or (iii) is required to be disclosed pursuant to applicable legal and/or regulatory requirements.

(b) Except as may be required by law, regulation or any Governmental Authority, neither Group, nor any of its affiliates, shall issue a press release or make public announcement or any disclosure to any third party related to the transactions contemplated by this Agreement without the prior consent of FUSA, which consent shall not be unreasonably withheld or delayed.

#### 11. Representations and Warranties.

(a) FUSA represents and warrants that (i) it is an FDIC-insured banking corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and (ii) the execution and delivery by FUSA of this Agreement, and the performance by FUSA of the transactions contemplated hereby, are within FUSA's corporate powers, have been duly authorized by all necessary corporate action, do not require any consent or other action by or in respect of, or filing with, any third party or governmental body or agency (other than informational filings required by MasterCard or Visa), and do not contravene, violate or conflict with, or constitute a default under, any provision of applicable law or regulation or of the charter or by-laws of FUSA or of any agreement, judgment, injunction, order, decree or other instrument binding upon FUSA.

(b) The Group represents and warrants that it is a Virginia not-for-profit association duly organized, validly existing and in good standing under the laws of the Commonwealth of Virginia. Group further represents and warrants that (i) the execution and delivery by Group of this Agreement, and the performance by Group of the transactions contemplated hereby, are within Group's powers, have been duly authorized by all necessary action, do not require any consent or other action by or in respect of, filing with, any third party or any governmental body or agency, and do not contravene, violate or conflict with, or constitute a default under, any provision of applicable law, regulation, or under any governing documents, charter or bylaw, or any agreement, judgment, injunction, order, decree or other instrument binding on Group; and (ii) it is the owner of, has the right to and is authorized to grant to FUSA the right and license to use the respective name, trademarks, servicemarks, copyrights and logos as set forth in paragraph 1 above and it is not currently aware of any claims, and is not currently involved in any litigation, challenging Group's ownership of the Marks. Group represents and warrants that it has the right, power and authority to execute this Agreement and act in accordance herewith.

#### 12. Release and Indemnification.

(a) FUSA shall not be responsible in any way for any misrepresentation, negligent act or omission or willful misconduct of Group, its affiliates, officers, directors, agents, or employees in connection with the entry into or performance of any obligation of Group under this Agreement.

(b) Group shall not be responsible in any way for any misrepresentation, negligent act or omission or willful misconduct of FUSA, its affiliates, officers, directors, agents, or employees in connection with the entry into or performance of any obligation of FUSA under this Agreement.

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(c) FUSA shall indemnify, defend and hold Group harmless from and against all claims, actions, suits or other proceedings, and any and all losses, judgments, damages, expenses or other costs (including reasonable counsel fees and disbursements), arising from or in any way relating to (i) any actual or alleged violation or inaccuracy of any representation or warranty of FUSA contained in Paragraph 11 above, (ii) any act or omission of FUSA in connection with the issuance of Credit Card(s) and/or the administration of credit card accounts which constitutes a violation of State of Delaware or federal banking or consumer credit laws or regulations, and (iii) any negligent act or omission or willful misconduct of FUSA or its directors, officers, employees, agents or assigns in connection with the entry into or performance of this Agreement.

(d) Group shall indemnify, defend and hold FUSA harmless from and against all claims, actions, suits or other proceedings, and any and all losses, judgments, damages, expenses or other costs (including reasonable counsel fees and disbursements), arising from or in any way relating to (i) any actual or alleged violation or inaccuracy of any representation or warranty of Group contained in Paragraph 11 above, (ii) any actual or alleged infringement of any trademark, copyright, trade name or other proprietary ownership interest resulting from the use by FUSA of the Marks of Group as contemplated by this Agreement, and (iii) any negligent act or omission or willful misconduct of Group or its directors, officers, employees, agents or assigns in connection with the entry into or performance of this Agreement.

13. Term/Termination.

(a) Subject to the provisions of subparagraphs 13(b), (c), (d) and (e) below, this Agreement shall be effective as of the date hereof and shall continue for an initial term of five (5) years (the "Initial Term") from the date of FUSA's first marketing effort for this Program (the "Commencement Date"). Following the Initial Term, this Agreement shall be automatically renewed for successive renewal terms of two (2) years each unless, at least 90 days prior to the termination of the Initial Term or the then current renewal term, either party shall have notified the other in writing of its decision not to renew this Agreement. If the terms hereof are to be amended in connection with any renewal, an appropriate addendum shall be added hereto reflecting, as applicable, the revised terms hereof.

(b) If there is a material default by either party in the performance of the terms and conditions of this Agreement, and such default shall continue for a period of 30 days after receipt of written notice thereof (setting forth in detail the nature of such default), then this Agreement shall terminate as of the 31st day following the receipt of such written notice.

(c) This Agreement shall be deemed immediately terminated, without the requirement of further action or notice by either party, in the event that either party, or a direct or indirect holding company of either party, shall become subject to voluntary or involuntary bankruptcy, insolvency, receivership, conservatorship or like proceedings (including, but not limited to, the takeover of such party by the applicable regulatory agency) pursuant to applicable state or federal law.

(d) In the event that any material change in any federal, state or local law, statute, operating rule or regulation, or any material change in any operating rule or regulation of either MasterCard or Visa makes the continued performance of this Agreement under the then current terms and conditions unduly burdensome, then FUSA shall have the right to terminate this Agreement upon 90 days advance written notice. Such written notice

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shall include a detailed explanation and evidence of the burden imposed as a result of such change.

(e) In the event that any representation set forth in Paragraph 11 of this Agreement shall prove to be untrue, FUSA shall have the right to immediately terminate this Agreement and all of its obligations contained herein by notice to the party making the misrepresentation.

(f) Upon termination of this Agreement:

(i) Group shall promptly return to FUSA all take-one and other marketing materials that have been supplied to Group by FUSA;

(ii) All Accounts which have been opened pursuant to the terms hereof, together with all Accounts for which applications have been received but not yet processed by FUSA as of the effective date of such termination, shall remain the sole and exclusive property of FUSA;

(iii) FUSA shall have the right, but not the obligation, to reissue Card(s) previously issued to Cardmembers pursuant to this Agreement and to issue Card(s) to applicants whose applications are received after the effective date of such termination, in its own name and without any reference to Group on such Card(s). All obligations to Group shall cease after the effective date of such termination.

(iv) If this Agreement is terminated due to an uncured material default by FUSA or by either party's election not to renew this Agreement, Group shall not be required to remit to FUSA any unearned portion of the Advance as of the effective date of termination, if any.

14. Exclusivity. During the term of this Agreement, FUSA shall have the exclusive right to perform the credit card services contemplated by this Agreement, and Group agrees that during the term hereof it shall not by itself or in conjunction with others, directly or indirectly, or through any parent, affiliate or subsidiary, offer or endorse, or enter into any agreement with others for the provision of credit card or credit card related products or services to Group Members.

15. Non-Competition. With respect to all Accounts established pursuant to this Agreement, Group agrees that neither Group nor any entity which Group controls shall by itself or in conjunction with others, directly or indirectly, during the term of this Agreement (including any Renewal Term) and for a period of one (1) year following the termination of this Agreement for any reason whatsoever, specifically target any offer of a credit card or credit card related product to cardmembers possessing an Account.

16. Notices. Any and all notices or other communications required or permitted under this Agreement shall be in writing and shall be delivered either by personal delivery; by telex, telegram, mailgram or telecopy; by nationally recognized overnight courier service; or by certified or registered mail, return receipt requested, addressed as follows:

If to FUSA, to:

FIRST USA BANK  
Three Christina Centre  
201 North Walnut Street

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Wilmington, DE 19801  
Attention: Patrick E. Regan  
Vice President

with a copy to:  
General Counsel

If to Group, to:

SIGMA NU FRATERNITY INC.  
9 Lewis St.  
Lexington, VA 24450

with copies to:

or to such other person or address as either party shall have previously designated to the other by written notice given in the manner set forth above. Notices shall be deemed given one day after sent, if sent by telex, telegram, mailgram, telecopy or by overnight courier; when delivered and receipted for, if hand delivered; or when receipted for (or upon the date of attempted delivery where delivery is refused) if sent by certified or registered mail, return receipt requested.

17. Entire Agreement/Amendment. This Agreement, including exhibits, constitutes the entire understanding between the parties with respect to the subject matter, and supersedes all prior written and oral proposals, understandings, agreements and representations, all of which are merged herein. No amendment or modification of this agreement shall be effective unless it is in writing and executed by all of the parties hereto.

18. Non-Waiver of Default. The failure of either party to insist, in any one or more instances, on the performance of any terms or conditions of this Agreement shall not be construed as a waiver or relinquishment of any rights granted hereunder or of the future performance of any such term or condition, and the obligations of the non-performing party with respect thereto shall continue in full force and effect.

19. Severability. In the event that any provision of this Agreement shall, for any reason, be deemed to be invalid and unenforceable, the remaining provisions of this Agreement shall remain in full force and effect.

20. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of Delaware.

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IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first above written.

SIGMA NU FRATERNITY INC.

By:   
type/print name & title under signature line

*JAMES A. OWENS*  
*Associate Executive Director*  
FIRST USA BANK

By:   
Patrick E. Regan, Vice President

June 10, 1997

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FIRST USA BANKS

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EXHIBIT A  
FEES AND ROYALTIES

During the term of this Agreement and any renewal terms thereof, FUSA agrees to pay to Group the following fees and royalties in conjunction with the Affinity Program which is the subject of this Agreement.

1. A \$1.00 fee for each new Group credit card account approved by FUSA pursuant to the Affinity Program and \$1.00 for each existing Account on such Account's annual anniversary date, unless each such Account has been canceled prior to such anniversary date (the "Account Fees").

2. Five-tenths of one percent (0.50%) of the amount of Net Retail Sales posted to an Account (the "Sale Royalty"). For purposes of this Agreement, "Net Retail Sales" shall mean the aggregate amount of individual purchases posted to Accounts, but shall not include the aggregate amount of (i) all refunds to cardmember Accounts, such as credits for returned merchandise or disputed billing items, (ii) those amounts representing annual fees, finance charges and other bank fees or charges posted to cardmember Accounts (such fees to include, but not be limited to, late fees, return check fees, overlimit fees, credit insurance premiums, cash advance fees, collection costs and administrative fees), and (iii) the amount of all cash advance transactions and/or cash advance transaction fees (which include the use of convenience checks). The Sale Royalty shall also exclude any Net Retail Sales posted to Accounts whose cards have been reported lost or stolen and which have not been subsequently replaced or reissued by FUSA.

3. If this Program is to include marketing of Credit Cards to student members of Group ("Student Accounts") then FUSA shall pay Group four tenths of one percent (0.40%) of the amount of Net Retail Sales posted to Student Accounts.

4. FUSA shall pay to Group a one-time payment in the sum of \$10,000 (the "Advance") which shall be offset against all amounts earned by Group hereunder. The Advance shall be paid to Group by FUSA upon the delivery of at least 90,000 different Group Member names and addresses (the "Qualifying List") and, further, receipt of the Qualifying List by FUSA shall also occur within thirty (30) days of execution of this Agreement. In the event that Group delivers a list to FUSA within the 30 day period but such list contains less than 90,000 names, FUSA shall deduct \$0.55 per name under the 90,000 minimum referenced above (the "Deduction") and the Guarantee described in section 5 below shall be reduced by an amount equal to the Deduction.

5. Unless decreased by the Deduction described above, FUSA shall guarantee Group minimum earnings from this Program of \$50,000 (the "Guarantee") provided that Group: (a) fulfills all its obligations hereunder; (b) shall approve the marketing materials and programs proposed or submitted by FUSA; and (c) continues to provide Group Member names to FUSA in accordance with this Agreement. The Guarantee shall be disbursed as follows:

\$10,000 Advance as described in 3 above  
\$10,000 within 30 days of the two year anniversary of this Agreement  
\$10,000 within 30 days of the three year anniversary of this Agreement  
\$10,000 within 30 days of the four year anniversary of this Agreement  
\$10,000 within 30 days of the five year anniversary of this Agreement

At such time as actual earnings by Group exceed the \$50,000, FUSA shall pay Group as described in section 6 of this Agreement.

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EXHIBIT B  
LICENSED MARKS

[please affix]

*See attached.*  
*J.P.*

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June 18, 2003

David Hoyt  
Senior Vice President  
Bank One, Delaware, N.A.  
201 N. Walnut Street  
Wilmington, DE 19801

Jeffrey M. Fincher  
Executive Vice President  
MBNA America Bank, N.A.  
1100 North King Street  
Wilmington, DE 19884-0211

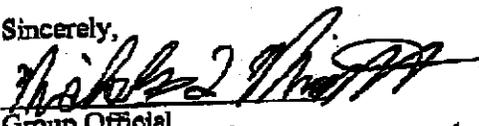
Dear Messrs. Hoyt and Fincher:

By returning this letter, SIGMA NU has agreed to enter into a relationship with MBNA America Bank, N.A. ("MBNA") to continue our affinity credit card program under the terms of the existing contract (and any such existing amendments) between SIGMA NU and Bank One, Delaware, N.A. (formerly known as First USA Bank, N.A.) (the "Agreement"). The Agreement with MBNA will go into effect on the date (the "Closing Date") that MBNA acquires from Bank One the credit card accounts and related receivables that were originated by Bank One and its predecessors pursuant to the Agreement with Bank One (collectively, the "Accounts"). At our request, Bank One has agreed to amend our contract to permit us to (1) terminate the Agreement with Bank One prior to the Closing Date and (2) direct Bank One to sell the Accounts to MBNA no later than June 30, 2003, or such other date as mutually agreed to by MBNA and Bank One. Consequently, we are providing you with our written agreement to: (1) terminate the Agreement with Bank One, (2) authorize and direct Bank One to sell the Accounts to MBNA, and (3) assign to MBNA on the Closing Date, all of Bank One's rights and obligations under the Agreement that existed prior to the date of this letter.

Notwithstanding the preceding terms of this letter, by execution hereof, Bank One Delaware (N.A.) ("Bank One") and MBNA agree to be jointly and severally liable for the full payment of any and all Royalties (as defined in the Agreement) that, as of the day preceding the effective date hereof, are due or will become due SIGMA NU under (i) the Agreement with Bank One and/or (ii) any successor agreement with MBNA; in no event shall the amount of such Royalties to be paid by either MBNA and/or Bank One to SIGMA NU be less than \$0 as provided for in Exhibit A of the Agreement.

Please sign below to indicate each party's acceptance of these terms and return to me a fully executed copy of this letter.

Sincerely,

  
Group Official

Director of Finance and Accounting

Title

Accepted and Agreed:

Bank One, Delaware, N.A.

By: [Signature]  
David Hoyt  
Senior Vice President  
Date: 6/24/03

MBNA America Bank, N.A.

By: [Signature]  
Name: \_\_\_\_\_  
Title: VP  
Date: 6/24/03

**AMENDED AND RESTATED  
AFFINITY AGREEMENT**

This Agreement is entered into as of this 1<sup>st</sup> day of July, 2010 (the "Effective Date") by and between FIA Card Services, N.A., f/k/a MBNA America Bank, N.A., a national banking association having its principal place of business in Wilmington, Delaware ("Bank"), and Sigma Nu Fraternity, Inc., a corporation having its principal place of business in Lexington, Virginia (including its Affiliates, collectively, the "Group"), for themselves and their respective successors and assigns.

WHEREAS, Group and Bank are parties to that certain affinity agreement between the parties as the same may have been amended ("Original Agreement"), wherein Bank provides certain financial services to certain persons included in certain lists provided to Bank by or on behalf of Group; and,

WHEREAS, Group and Bank mutually desire to amend and restate the Original Agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, Group and Bank agree as follows:

The initial term of this Agreement will begin on the Effective Date and end on June 30, 2012. This Agreement will automatically extend at the end of the initial term or any renewal term for successive two-year periods. After the full initial term, either party may terminate this Agreement, without cause, with ninety (90) day written notice to the other party.

IN WITNESS WHEREOF, each of the parties, by its representative, has executed this Agreement as of the Effective Date.

**Sigma Nu Fraternity, Inc.**

By:



Name:

D. Justin Wenger

Title:

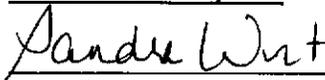
Dir. of Financial Operations

Date:

5/24/10

**FIA Card Services, N.A.**

By:



Name:

SANDEA WIRT

Title:

SVP

Date:

6/8/10

**Group Contact Information as pertaining to Schedule C, Section f(1):**

Contact Name/Title: D. Justin Wenger  
Director of Financial Operations  
Sigma Nu Fraternity, Inc.  
Street: 9 Lewis Street  
PO Box 1869  
City, State, Zip: Lexington, Virginia 24450  
Fax #: 540-463-1869  
E-mail address: justin.wenger@sigmanu.org

1. USE OF BANK WEB PORTAL

- (a) Subject to the terms of this Agreement, Bank will provide Group with access to Bank's affinity web portal ("Web Portal") containing Bank-designed advertising, solicitation, and promotional material for Group's use in marketing the Program.
- (b) Group will only use materials provided by Bank in marketing the Program. All marketing materials generated by Bank for Group's marketing of the Program will be coded by Bank for tracking purposes. Marketing materials or inquiries from Members which do not contain or reference such coding will not be considered eligible for any Royalty.
- (c) Group will not deviate from the approved materials for any Program marketing without the prior written approval of Bank.
- (d) Bank has control over, in its sole discretion, the commencement and continuation of any marketing of the Program.

2. RIGHTS AND OBLIGATIONS OF GROUP

- (a) Group agrees to use reasonable efforts to market the Program to Members using the materials provided on the Web Portal.
- (b) Group agrees that during the term of this Agreement it will endorse the Program exclusively, and neither Group nor any Group Affiliate will, by itself or in conjunction with others, directly or indirectly: (i) sponsor, advertise, aid, develop, market, solicit proposals for programs offering, or discuss with any organization (other than Bank) the providing of, any Financial Service Products of any entity other than Bank; (ii) license, allow others to license, or use or allow to exist the use by others of the Group Trademarks in relation to or for promoting any Financial Service Products of any entity other than Bank; and (iii) sell, rent or otherwise make available or allow others to sell, rent or otherwise make available any of its mailing lists or information about any current or potential Members in relation to or for promoting any Financial Service Products of any entity other than Bank. In addition, if Group sells any product or service, in connection with such sales, Group shall not favor any payment product or method of payment over any payment product or method of payment offered under the Program.
- (c) Group will only provide information to or otherwise communicate with Members or potential Members about the Program with Bank's prior written approval, except for current advertising and solicitation materials provided by Bank to Group.
- (d) Any correspondence received by Group that is intended for Bank (e.g., applications, payments, billing inquiries, etc.) will be forwarded to Bank via overnight courier within twenty-four (24) hours of receipt. All reasonable overnight courier expenses incurred by Group will be paid by Bank.
- (e) Group hereby grants Bank and its Affiliates an exclusive license to use the Group Trademarks with the Program. This license transfers to the assignee of this Agreement. This license will remain in effect for the duration of this Agreement and will apply to the Group Trademarks, notwithstanding the transfer of such Group Trademarks by operation of law or otherwise to any permitted successor, corporation, organization, or individual. Group will provide Bank all Group Trademark production materials (e.g., camera ready art) required by Bank for the Program upon Bank's request. Nothing stated in this Agreement prohibits Group from granting to other persons a license to use the Group Trademarks in

conjunction with the providing of any other service or product, except for any Financial Service Products.

- (f) All Program Trademarks, with the exception of Program Trademarks that consist of or contain a Group Trademark, with or without other elements, shall belong exclusively to Bank and Bank may use such Program Trademarks in any manner not prohibited by this Section 2(f). Group may not use any Program Trademark, except to promote the Program or any goods or services offered by Bank through the Program. Group shall not register or attempt to register any Program Trademark. Bank shall not register or attempt to register any Group Trademark. Bank may use Program Trademarks that contain Group Trademarks to promote or identify the Program and any products or services offered by Bank through the Program at no cost to Bank, but only during the term of this Agreement.
- (g) Group will advertise the Program, for the purpose of generating new accounts, in at least one prominent location within the internet site(s) of Group at no cost to Bank. Bank may establish a hyperlink from such advertisements to another internet site to enable a person to apply for a Credit Card Account. Group will modify or remove such advertisements within twenty-four (24) hours of Bank's request. To enable Bank to view all Program material, Group will provide Bank with the ability to access any and all pages within the Group internet site(s), including without limitation any "members only" or other restricted access pages.
- (h) Group will comply with all applicable laws, including, without limitation, the Truth in Lending Act, the Equal Credit Opportunity Act and the CAN-SPAM Act of 2003, with respect to any Program marketing. Group will comply with Bank's instructions and all applicable law concerning Program advertisements or links included by Group in emails sent to Members, including without limitation the CAN-SPAM Act.
- (i) Group will complete an updated W-9 form and ACH form upon Bank's request. Bank will not pay Royalties until a W-9 Form and ACH Form or other IRS required form (e.g., W-8) is completed by Group and received by Bank.

### 3. RIGHTS AND RESPONSIBILITIES OF BANK

- (a) Bank will maintain and administer the Program for the Members.
- (b) Bank will design all advertising, solicitation, and promotional materials used in the Program.
- (c) Bank will make all credit decisions and will bear all credit risks with respect to each Customer's account(s) independently of Group.
- (d) Bank may maintain separately and will own all information that it obtains as a result of an account relationship or an application for an account relationship. This information becomes a part of Bank's files and will not be subject to this Agreement; provided however that Bank will not use this separate information in a manner that would imply an endorsement by Group.
- (e) Bank has the right to make periodic adjustments to the Program, including, without limitation, changes to its terms and features. In addition, Customers may, as a benefit under the Program, be offered opportunities to select credit protection and other products and services.
- (f) During the term of this Agreement, Bank will pay Royalties to Group. Except as otherwise provided in Schedule B, payment of Royalties then due will be made approximately forty-five (45) days after the end of each calendar quarter.

4. REPRESENTATIONS AND WARRANTIES

- (a) Group and Bank each represents and warrants to the other party that as of the Effective Date and throughout the term of this Agreement:
- (i) It is duly organized, validly existing and in good standing;
  - (ii) It has all necessary power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement;
  - (iii) This Agreement constitutes a legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, receivership, reorganization or other similar laws affecting the enforcement of creditors' rights generally and by general principles of equity;
  - (iv) No consent, approval, or authorization from any third party is required in connection with the negotiation, execution, delivery and performance of this Agreement, except such as have been obtained and are in full force and effect;
  - (v) The execution, delivery and performance of this Agreement by such party will not constitute a violation of any law, rule, regulation, court order or ruling applicable to such party.
- (b) Group represents and warrants to Bank as of the date hereof and throughout the term of this Agreement that it has the right and power to license the Group Trademarks to Bank for use as contemplated by this Agreement. Group will indemnify, defend and hold harmless Bank, and its directors, officers, agents, employees, Affiliates, successors and assigns, from and against all liability, causes of action, and claims, and will reimburse Bank's costs, fees and expenses in connection therewith (including reasonable attorneys' fees and court expenses), arising from the Group Trademarks license granted herein. Each party will promptly notify the other party upon learning of any claims or complaints relating to the license or the use of any Group Trademarks.

5. CONFIDENTIALITY OF AGREEMENT

The terms of this Agreement, any proposal, financial information and proprietary information provided by or on behalf of one party to the other party prior to, contemporaneously with, or subsequent to, the execution of this Agreement ("**Information**") are confidential as of the date of disclosure and shall not be used for any purpose not related to the Program. Such Information will not be disclosed by such other party to any other person or entity, except as permitted under this Agreement or as mutually agreed in writing. Bank and Group will be permitted to disclose such Information (i) to their accountants, lawyers, financial advisors, marketing advisors, affiliates and employees (its "Agents") as necessary for the performance of their respective duties, provided that said persons agree to treat the Information as confidential in the above described manner or (ii) as required by law or requested by any governmental regulatory authority. Notwithstanding the foregoing, the party disclosing Information to its Agents shall be liable for any breach of this Section 5 by their Agents.

6. STATE LAW GOVERNING AGREEMENT

This Agreement will be governed by and subject to the laws of the State of Delaware (without regard to its conflict of laws principles) and will be deemed for all purposes to be made and fully performed in Delaware.

7. TERM/TERMINATION

- (a) In the event of any material breach of this Agreement by Bank or Group, the other party may terminate this Agreement by giving notice to the breaching party. This notice will (i) include a description of the material breach; and (ii) state the party's intention to terminate this Agreement. If the breaching party does not cure or substantially cure such breach within thirty (30) days after receipt of notice, as provided herein (the "Cure Period"), then this Agreement will terminate thirty (30) days after the Cure Period.
- (b) If either Bank or Group becomes insolvent in that its liabilities exceed its assets or it is unable to meet or it has ceased paying its obligations as they generally become due, or it is adjudicated insolvent, or takes advantage of or is subject to any insolvency proceeding, or makes an assignment for the benefit of creditors or is subject to receivership, conservatorship or liquidation then the other party may immediately terminate this Agreement.
- (c) Upon the expiration or earlier termination of this Agreement, Bank will, except as set forth in Section 7(d) of this Agreement, cease to use the Group Trademarks for Program marketing purposes, provided that Bank may conclude all solicitations required by law. Upon the expiration or earlier termination of this Agreement, Bank will not claim any right, title, or interest in or to the Group Trademarks.
- (d) Bank will have the right to prior review and approval of any notice in connection with, relating or referring to the expiration or earlier termination of this Agreement to be communicated by Group or any Group Affiliate to the Members. Such approval will not be unreasonably withheld. Upon the expiration or earlier termination of this Agreement, Group will allow Bank to continue to use the Group Trademarks on, and will not attempt to cause the removal of Group Trademarks from, any person's credit devices, checks or records of any Customer existing as of expiration or earlier termination of this Agreement until their normally scheduled reissue date or exhaustion.

8. ADDITIONAL PROVISIONS

Schedules A, B and C are incorporated by reference.

## Schedule A

### DEFINITIONS

When used in this Agreement, the following initially capitalized words and phrases will have the meanings ascribed to them as set forth below:

**"Affiliate"** means, with respect to any entity or organization, any other entity or organization directly or indirectly controlling, controlled by, or under common control with such entity or organization. The term "controlling," "controlled by" and "under common control with" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies, whether through the ownership of voting securities, by contract or otherwise.

**"Agreement"** means this affinity agreement and Schedules A through C.

**"Credit Card Account"** means an open-end consumer credit account opened pursuant to the Program that is accessed utilizing a card, plate and/or any other device or instrument.

**"Customer"** means any Member who is a participant in the Program.

**"Financial Service Product"** means any credit card or charge card program.

**"Group Affiliate"** means any Affiliate of Group.

**"Group Trademarks"** means any design, image, visual representation, logo, service mark, trade dress, trade name, or trademark used or acquired by Group or any Group Affiliate prior to or during the term of this Agreement.

**"Information"** has the meaning ascribed to such word in Section 7.

**"Member"** means a member or customer of Group and/or other potential participants mutually agreed to by Group and Bank.

**"Program"** means those programs and services, and the promotion thereof, of the Financial Service Products Bank agrees to offer pursuant to this Agreement to the Members from time to time.

**"Program Trademarks"** means any design, image, visual representation, logo, service mark, trade dress, trade name, or trademark developed either jointly or by either party (including its Affiliates) during the term of this Agreement and used to promote or identify products or services offered by Bank through the Program. Program Trademarks may but need not necessarily consist of a Group Trademark, with or without other elements.

**"Royalties"** means the compensation set forth in Schedule B.

Schedule B

ROYALTY ARRANGEMENT

During the term of this Agreement, Bank will pay Group a Royalty calculated as follows, for those accounts with active charging privileges. All Royalty payments due hereunder are subject to adjustment by Bank for any prior overpayment of Royalties by Bank:

A. CREDIT CARD ACCOUNTS

1. \$75.00 (seventy-five dollars) for each Credit Card Account opened, which remains open for at least sixty (60) consecutive days and which is utilized by the Customer within the first sixty (60) consecutive days of the Credit Card Account's opening for at least one (1) purchase or cash advance which is not subsequently rescinded, the subject of a charge back request, or otherwise disputed.
2. \$1.00 (one dollar) for each Credit Card Account for which the annual fee is paid by the Customer. If no annual fee is assessed by Bank (other than as a result of a courtesy waiver by Bank), then such Royalty will be paid for each Credit Card Account that: 1) has a balance greater than zero as of the last processing day of every twelfth month after the opening of that Credit Card Account; and 2) has had active charging privileges for each of the preceding twelve (12) months.
3. 0.20% (twenty basis points) of all retail purchase transaction dollar volume generated by Customers using a Credit Card Account (excluding those transactions that (1) relate to refunds, returns and/or unauthorized transactions, and/or (2) are cash equivalent transactions (*e.g.*, the purchase of wire transfers, person to person money transfers, bets, lottery tickets, or casino gaming chips)).

Schedule C

ADDITIONAL PROVISIONS

- (a) This Agreement cannot be amended except by written agreement signed by the authorized agents of both parties hereto.
- (b) The obligations in Sections 2(f), 2(h), 4(b), 5, 7(c), and 7(d) will survive the expiration or any earlier termination of this Agreement.
- (c) The failure of any party to exercise any rights under this Agreement will not be deemed a waiver of such right or any other rights.
- (d) The section captions are inserted only for convenience and are in no way to be construed as part of this Agreement.
- (e) If any part of this Agreement is, for any reason, found or held invalid or unenforceable by any court or governmental agency of competent jurisdiction, such invalidity or unenforceability will not affect the remainder of this Agreement which will survive and be construed as if such invalid or unenforceable part had not been contained herein and the parties hereto shall immediately commence negotiations in good faith to reform this Agreement to make alternative provisions herein that reflect the intentions and purposes of the severed provisions in a manner that does not run afoul of the basis for such unenforceability or invalidity.
- (f) All notices relating to this Agreement will be in writing and will be deemed given (i) upon receipt by hand delivery, facsimile or overnight courier (ii) three (3) business days after mailing by registered or certified mail, postage prepaid, return receipt requested, or (iii) via e-mail. All notices will be addressed as follows:

- (1) If to Group

(as specified on signature page)

- (2) If to Bank:

FIA Card Services, N. A.  
MS DE5-004-04-02  
1100 North King Street  
Wilmington, Delaware 19884

ATTENTION: Contract Administration

Fax #: (302) 432-1821

E-mail : [affinityteam@bankofamerica.com](mailto:affinityteam@bankofamerica.com)

- (3) Any party may change the address, e-mail address, and fax number to which communications are to be sent by giving notice, as provided herein, of such change of address.

- (g) This Agreement contains the entire agreement of the parties with respect to the matters covered herein and supersedes all prior promises and agreements, written or oral, with respect to the matters covered herein, including, without limitation, the Original Agreement, if applicable. This Agreement does not and is not intended to alter or amend any aspect or provision of any other agreement between the parties that survives termination of that other agreement. Without the prior written consent of Bank, which will not be unreasonably withheld, Group may not assign any of its rights or obligations under or arising from this Agreement. Bank may assign any of its rights or obligations under this Agreement to any other person without the prior consent of Group. Bank may utilize the services of any third party in fulfilling its obligations under this Agreement. Certain Financial Service Products or services under this Agreement may be offered through Bank's affiliates. Bank may utilize the services of any third party in fulfilling its obligations under this Agreement.
- (h) Bank and Group are not agents, representatives or employees of each other and neither party will have the power to obligate or bind the other in any manner except as otherwise expressly provided by this Agreement.
- (i) Nothing expressed or implied in this Agreement is intended or will be construed to confer upon or give any person other than Group and Bank, their successors and assigns, any rights or remedies under or by reason of this Agreement.
- (j) Group recognizes and agrees that Bank's goodwill and reputation in the marketplace are valuable and intangible assets; therefore, Group agrees that it will not conduct itself or engage in any activity in a manner that may adversely affect these assets. In the event Bank determines that Group does not so conduct itself, Bank may terminate this Agreement, effective immediately.
- (k) Neither party shall make any statement, whether written, oral or otherwise, to any person or entity which criticizes, disparages, condemns or impugns the reputation or character of the other or any of its Affiliates, whether or not the statement is true and whether or not it is characterized as confidential. This section shall survive the termination or expiration of this Agreement.
- (l) Neither party shall be held responsible for any delay or failure in performance to the extent such delay or failure is caused by fire, flood, explosion, terrorism, war, strike, embargo, government laws, rules, regulations or requirements, civil or military authority, act of God, act or omission of carriers or other similar causes beyond its control, that was not reasonably foreseeable or avoidable, and without the fault or negligence and/or lack of diligence of the delayed party ("force majeure condition"). The non-delayed party shall have the right to terminate this Agreement if such force majeure condition endures for more than one hundred twenty (120) days by providing the delayed party with least thirty (30) days prior written notice of such termination, which notice must be received by the delayed party within ten (10) days after the expiration of the one hundred twenty (120) day period.
- (m) This Agreement may be executed in two (2) or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. The parties hereto agree to accept a digital image of this Agreement, as executed, as a true and correct original and admissible as best evidence to the extent permitted by a court with proper jurisdiction.
- (n) No provision or section of this Agreement shall be read, construed or interpreted for or against either party by reason of ambiguity of language, rule of construction against the draftsman, or any similar doctrine.