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Residence/Business: \_\_\_\_\_  
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Served Upon: \_\_\_\_\_

**THIS IS A TEN-DAY SUMMONS, PLEASE RETURN IMMEDIATELY UPON SERVING**

BRYAN W. CANNON #0561  
STEPHEN W. WHITING #11828  
BRYAN W. CANNON & ASSOCIATES, P.C.  
Attorney for Creditor  
8619 S. Sandy Pkwy., Ste. 111  
Sandy, UT 84070  
Telephone: (801) 255-7475  
Facsimile: (801) 255-7526  
File Reference No. 2100559

**SERVED**

DATE 5/13/10

TIME 1427

SERVED ON KRISTINE

SERVED BY KYO

DAVID A. EDMUNDS  
SUMMIT COUNTY SHERIFF

**THIRD DISTRICT COURT, STATE OF UTAH**

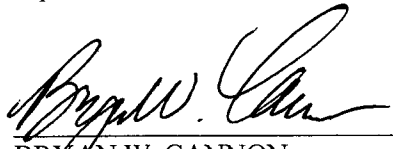
**SUMMIT COUNTY, SILVER SUMMIT DEPARTMENT**

ELAVON, INC.	<b>SUMMONS</b>
Plaintiff,	
vs.	
CISERO'S, INC, THEODORA MCCOMB	Civil No.
Defendant.	Judge

**THE STATE OF UTAH TO THE ABOVE-NAMED DEFENDANT:**

You are hereby summoned and required to file with the clerk of the above entitled court at **6300 N SILVER CREEK DR., PARK CITY UT 84098** an answer in writing to Plaintiff's Complaint, and to serve upon, or mail to Bryan W. Cannon, Plaintiff's attorney, at 8619 South Sandy Parkway, Suite 111, Sandy, Utah 84070, a copy of said answer within **TWENTY (20)** days after the service of this summons. If you fail to do so, judgment by default will be taken against you for the relief demanded in said Complaint. Said Complaint will be on file with the Court within ten (10) days after service of this summons. Should the Complaint not be filed within ten days after service of this summons, you need not answer the Complaint. You may contact the Clerk of the Court at least thirteen (13) days after service of this summons at **435/615-4300** to determine if the Complaint has been filed with the Court.

DATED this 3<sup>rd</sup> day of May 2010.

  
\_\_\_\_\_  
BRYAN W. CANNON  
Attorney for Plaintiff

**SERVE DEFENDANT AT:**  
**Stephen McComb -RA for Cisero**  
**2653 Aspen Springs Dr.**  
**Park City, UT 84060**

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**THIRD DISTRICT COURT, STATE OF UTAH**  
**SUMMIT COUNTY, SILVER SUMMIT DEPARTMENT**

ELAVON, INC.  Plaintiff,  vs.  CISERO's, INC., THEODORA MCCOMB  Defendants.	<b>COMPLAINT</b>   Civil No. Judge
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COMES NOW the Plaintiff and complains of Defendant and for cause of action alleges as follows:

1. Plaintiff, Elavon, Inc. (hereinafter referred to as "Elavon") is a foreign corporation properly registered to conduct business in the State of Utah.
2. Defendant, Cisero's Inc. (hereinafter referred to as "Cisero"), is a Utah Corporation.
3. Elavon is part of the same family of companies as the U.S. Bank National Association (hereinafter referred to as "U.S. Bank") and has been assigned the right to collect the debt owed by Cisero to U.S. Bank.

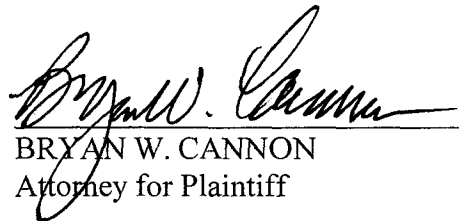
4. Cisero and U.S. Bank entered into a contract, whereby U.S. Bank had a duty to provide goods, wares, merchandise, and/or services to Cisero.
5. An accurate copy of the contract entered into between U.S. Bank and Cisero is attached as Exhibit A to this complaint.
6. U.S. Bank performed its duties under the contract.
7. Cisero is liable for the actions of its employees insofar as these actions negatively affect Cisero's performance of its duties under the contract.
8. Cisero is liable for the actions of third-parties hired by Cisero insofar as these actions negatively affect Cisero's performance of its duties under the contract.
9. In performing its duties under the contract, Cisero was required to secure and keep safe the credit card information of individuals who made charges at Cisero's place of business.
10. Cisero failed to secure and keep safe the credit card information of individuals who made charges at Cisero's place of business.
11. Unauthorized charges were made on some credit cards which had previously been used to make purchases at Cisero's place of business.
12. Upon information and belief, the principals, agents and/or employees of Cisero and/or third-parties hired by Cisero made unauthorized charges or allowed unauthorized charges using the credit card information of individuals who made purchases at Cisero's place of business.
13. As a result of Cisero's breach of contract, U.S. Bank has suffered \$82,692.29 worth of damage through March 18, 2010.

14. Demand for reimbursement under the contract has been made upon Cisero, but Cisero has refused to reimburse U.S. Bank and/or Elavon.
15. U.S. Bank has been damaged in the amount of \$82,692.29 as a result of Cisero's negligence.
16. Theodora McComb signed a personal guarantee, making her liable for the debt of Cisero owed to Elavon.

WHEREFORE, Plaintiff prays for relief as is hereinafter set forth.

1. For Judgment in the principal sum of \$82,692.29, together with interest accrued at the statutory interest rate of 10.00% from and after March 18, 2010.
2. For Plaintiff's costs incurred herein..
3. For such other and further relief as the Court deems just and equitable in the premises.

DATED this 3<sup>rd</sup> day of May, 2010.

  
BRYAN W. CANNON  
Attorney for Plaintiff

Plaintiff's Address:  
965 Keynote Circle  
Brooklyn Heights, OH 44131

This Complaint is an attempt to collect a debt, and any information obtained will be used for that purpose.

# Exhibit A

### Merchant Agreement

Corporate Name Cisero's, Inc.

Merchant DBA Name (if different from above) Cisero's Ristorante

Business Form:  Sole Proprietor  Partnership  Corporation  Medical/Legal Association  
 Association/Estate/Trust  Tax Exempt Organization  Govt.  International Organization  
 Limited Liability Company  Other (specify)

Business/Mailing Address:  
306 Main St.  
Park City UT 84060

U.S. Bank National Association  
 Merchant Payment Services  
 FBTT0410  
 1010 South 7th Street  
 Minneapolis, MN 55415

**MERCHANT INFORMATION**

Telephone Number (435) 649-4440 Depository Bank Name US Bank  
 Federal Tax ID Number 87-0427631 Designated Account Number 153190144037  
 State Tax ID Number \_\_\_\_\_ TransiVABA Number 124-302-150

**A. Card Acceptance Information** Initial \_\_\_\_\_ **B. Anticipated Qualification Level (check one)**  
 Visa/Mastercard \$850,000.00 \$53.00  Retail Qualified  DM/MOTO\* Qualified  
 Annual Sales Volume \$1,500,000.00  Lodge/Car Rental Qualified  Touch-Tone  
 Total Annual Sales Volume \_\_\_\_\_

**C. Processing Method**  Electronic Draft Capture  Touch Tone **D. Network Vendor** Vital

**E. Fee Options** (Based on Anticipated Qualification Level identified above. Fees vary for transactions not qualifying at the level indicated.)

**1. Merchant Discount Fees** Visa MasterCard JCB  
 (a) Discount Rate (%) 1.70% 1.70% 2.50%  
 (b) Per Item Fee (\$) \$0.11 \$0.11 \_\_\_\_\_

**2. Authorization Fees (per transaction)** Voice Authorization \$0.75 Debit Fees \$0.35

\* Electronic Check Processing (ECP)

Electronic Authorization	Visa	MasterCard	JCB	Discover	American	Diners	ECP	ECP	Other
(1) Per Transaction				\$0.10		\$ .10			

**3. Other Fees**

Application Fee	<u>\$30.00</u>	ACH Fee	_____	Chargeback Fee (per item)	<u>\$15.00</u>
Monthly Minimum Processing Fee	<u>\$25.00</u>	C.A.R.E. Set Up Fee	_____	Internet Set Up Fee	_____
Equipment Programming Fee	<u>\$100.00</u>	C.A.R.E. User Fee	_____	Internet Monthly Fee	_____
Training Fee	<u>\$0.00</u>	C.A.R.E. Monthly Fee	_____	Other	_____
Statement Fee	<u>\$0.00</u>	ECP* Net Fee	_____	Other	_____

**F. Merchant Representations and Certifications**

The applicant merchant ("Merchant") and its undersigned representative(s) represent and certify that all information provided and all statements made in this Merchant Application are true, complete and accurate and agree to notify U.S. Bank National Association ("U.S. Bank") of any important changes in the facts set forth in this Merchant Application. Each undersigned authorized representative of Merchant certifies by signing below, that representative: 1) is authorized to enter into this Merchant Agreement on behalf of Merchant; 2) has received and read the U.S. Bank Merchant Terms of Service (the "MTOS"); and 3) acknowledges on behalf of Merchant that the MTOS is hereby incorporated into this Merchant Agreement by this reference. Merchant certifies that the total percentage of its transactions which are mail order, telephone order or pre-authorized will be: \_\_\_\_\_ %

If accepted into the merchant program by U.S. Bank, Merchant agrees to abide by the terms and conditions set forth in the MTOS, the Merchant Processing Guide and this Merchant Agreement as they may be amended by U.S. Bank from time to time. Merchant and each of its representatives hereby authorize U.S. Bank, prior to U.S. Bank's acceptance of this Merchant Agreement and, if it is accepted, from time to time thereafter, to investigate the individual and business history and background of merchant, each such representative and any other officers, partners, proprietors and/or members of Merchant, and to obtain credit reports or other background investigation reports on each of them bearing upon the financial responsibility or creditworthiness for participation in U.S. Bank's merchant program. Merchant and each of its undersigned representatives agree that all business references, including without limitation banks, may release any and all credit and financial information to U.S. Bank. Merchant further agrees and acknowledges that any information provided in connection with this Merchant Agreement and all other relevant information may be supplied to U.S. Bank to its officers.

Signature Theodore McCorns Address (home) Box 3805  
 Name & Title Theodore McCorns, Director Park City, Utah 84060  
 SSN# 572027976 Date 11/28/01 Phone (home) 435-658-3594

**Personal Guaranty:** To induce and in consideration of U.S. Bank's acceptance of Merchant into U.S. Bank's merchant program, the undersigned Individual Guarantor unconditionally guarantees performance of Merchant's obligations and of all amounts due from Merchant in connection with this merchant Agreement and the U.S. Bank Merchant Terms of Service, as they may be amended from time to time by U.S. Bank, and in the event of Merchant's default, Individual Guarantor hereby waives notice and agrees to indemnify U.S. Bank against any losses incurred thereby.  
 Individual Guarantor's Signature Theodore McCorns  
 Name Theodore S. McCorns Date 11/28/01

ACCEPTED: U.S. BANK NATIONAL ASSOCIATION  
Kim Schommer 12/7/01 Kim Schommer SE  
 Signature Date Name & Title