

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (this “**Agreement**”) is entered into by the Person (defined below) registered with Seller (defined below), or with Seller’s independent contractor engaged to serve as its loan sale advisor, to bid on Loans (“**Bidder**”), in favor and for the benefit of the Federal Deposit Insurance Corporation in its corporate capacity and in its capacity as receiver for various failed financial institutions (in any capacity, “**Seller**”). This Agreement is effective as of _____, 20__ (“**Effective Date**”).

RECITALS

WHEREAS, from time to time, Seller offers for sale certain assets (the “**Loans**”), which Loans will be transferred by Seller (the “**Proposed Transaction**”); and

WHEREAS, in connection with the Proposed Transaction, Seller is distributing or otherwise making available to prospective bidders a package of materials, including, among other things, various transaction documents (“**Bid Package**”) and access to other information about the Loans; and

WHEREAS, Bidder has expressed interest in having Seller provide Bidder with access to certain documents and/or other information relating to the Proposed Transaction for inspection and review; and

WHEREAS, in consideration of Seller’s furnishing Bidder with information regarding the Proposed Transaction, Bidder desires to enter into certain agreements regarding the Evaluation Material (defined below);

WHEREAS, Bidder’s execution of this Agreement, without modification, is a prerequisite to receipt of or access to any Evaluation Material; and

WHEREAS, capitalized terms not otherwise defined in this Agreement have the meaning ascribed to them in the Bid Package.

NOW, THEREFORE, in consideration of the foregoing and in order to induce Seller to furnish the Evaluation Material to Bidder for its inspection and review, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Bidder hereby acknowledges and agrees as follows:

1. **Definitions.** For purposes of this Agreement: “**Evaluation Material**” means any information that Seller, directly or indirectly, or its Representatives furnish or make available to Bidder in connection with the Proposed Transaction and all copies (electronic or otherwise) thereof and all notes, analyses, compilations, studies or other documents, whether prepared by Bidder or its Representatives, which contain or otherwise reflect any such information, provided that the term “Evaluation Material” does not include information that (a) is or becomes generally available to the public other than as a result of a disclosure by Bidder which results in a breach of this

Agreement, (b) was in Bidder's possession prior to its disclosure by Seller or its Representatives, or (c) becomes available to Bidder from a person other than Seller or its Representatives, who, to the knowledge of the Bidder after due inquiry, is not otherwise bound by confidentiality obligations to Seller or its Representatives in connection with such information. "**Representatives**" means, with respect to any Person, the Affiliates of such Person and its and their (a) directors, officers and employees and (b) agents, contractors, investment bankers, financial experts, potential financing sources, legal counsel, accountants or other advisers that are working on the Proposed Transaction. "**Affiliate**" means, with respect to any specified Person, (i) any other person directly or indirectly controlling or controlled by or under common control with such specified Person, (ii) any Person owning or controlling 10% or more of the outstanding voting securities, voting equity interests, or beneficial interests of the Person specified, (iii) any officer, director, partner, member, trustee, employee or promoter of the Person specified or any Immediate Family Member of such officer, director, partner, member, trustee, employee or promoter. For the purposes of this definition, the term "control" (including the phrases "controlled by" and "under common control with") when used with respect to any specified Person means the possession, direct or indirect, of the power to direct or cause the direction of the actions, management or policies of such Person, whether through the ownership of voting securities or interests, by contract or otherwise. "**Person**" means any individual, corporation, partnership (general or limited), limited liability company, limited liability partnership, firm, joint venture, association, joint-stock company, trust, estate, unincorporated organization, governmental or regulatory body or other entity. "**Immediate Family Member**" means, with respect to any individual, his or her spouse, parents, parents-in-law, grandparents, descendants, nephews, nieces, brothers, sisters, brothers-in-law, sisters-in-law, children (whether natural or adopted), children-in-law, step children, grandchildren and grandchildren-in-law.

2. **Term.** This Agreement will terminate as to Bidder with respect to Loans purchased (directly or indirectly) by Bidder in connection with the Proposed Transaction, but only upon closing of the purchase of such Loans as provided in any document included in the Bid Package for the Proposed Transaction. This Agreement will terminate as to Bidder with respect to Loans not purchased (directly or indirectly) by Bidder upon the later of (i) the date that is five years after the Effective Date, or (ii) the date that all copies of the Evaluation Material held or controlled by the Bidder or any of its Representatives have been destroyed in accordance with Section 6.

3. **Limitation on Use.** Bidder must use the Evaluation Material solely for the purpose of evaluating a purchase of the Loans, including the Loans, in connection with the Proposed Transaction and for no other purpose.

4. **Limitation on Further Due Diligence.** Bidder will not contact or attempt to contact any borrower, obligor or guarantor or any of their respective officers, employees, agents or attorneys with respect to any Loan, unless:

- (a) Prior to initiating any contact with such individual or entity other than pursuant to clause (b) of this Section 4, Bidder obtains the written consent of Seller, which consent may be withheld in Seller's sole and absolute discretion or;

(b) (i) Bidder has an ongoing business relationship with such individual or entity or under a Loan, which relationship pre-dates the date of this Agreement, or (ii) any such individual or entity initiates contact with Bidder to establish a business relationship, including the refinancing of any Loan, in which case Bidder may communicate with such individual or entity identified in clause (i) or (ii) in the ordinary course of Bidder's business so long as Bidder does not use or disclose any Evaluation Material in its communications with such individual or entity or disclose Bidder's involvement in the Proposed Transaction.

5. Limited Access. Without the prior, written consent of Seller, to be granted or withheld in its sole and absolute discretion, Bidder will not disseminate or divulge any of the Evaluation Material to any individual or entity, other than to: (a) Bidder's Representatives, and (b) to the extent not covered by clause (a), any third parties who are assisting Bidder in its review or analysis of the Loans (such as equity investors, servicers, rating agencies and lenders), provided, however, that (x) in each case such person (i) has a need for access to the Evaluation Material for the purpose of assisting and advising Bidder in the evaluation of the Proposed Transaction or in the making of a Bid in connection therewith, (ii) has been advised by Bidder of the confidential nature of such information and directed by Bidder, and has agreed with Bidder, to treat such information confidentially in a manner so as to comply with all the terms of this Agreement and (iii) has entered into an agreement with Bidder obligating such person to use and maintain the confidentiality of the Evaluation Material in a way that is materially consistent with this Agreement, a copy of which executed agreement will be provided upon request to Seller, or is otherwise legally obligated under the terms of such person's engagement or relationship with Bidder or by law to maintain the confidentiality of the Evaluation Material and can provide Seller with evidence satisfactory to Seller of such obligation upon request, and (y) Bidder will be liable to Seller for any failure on the part of any such individual or entity, including Representatives, to comply with Bidder's obligations under this Agreement.

6. Confidentiality; Destruction of Documents. Bidder agrees that Bidder will take reasonable precautions to ensure that all individuals or entities to whom the Evaluation Material is disclosed keep the Evaluation Material confidential. At a minimum, Bidder must treat the Evaluation Material according to the same internal security procedures and with the same degree of care regarding its secrecy and confidentiality as similar information belonging to it is treated within its organization and in compliance with all applicable laws, including laws relating to privacy. In addition, Bidder acknowledges that (i) the Evaluation Material is subject to the confidentiality provisions of 12 C.F.R. Part 309 and may contain customer information subject to the Right to Financial Privacy Act, and (ii) any unauthorized use of the Evaluation Material may result in the imposition of criminal penalties under 18 U.S.C. Section 641. Bidder is responsible for any breach of the terms of this Agreement by Bidder or any of its Representatives or any other person to whom Bidder provides access to the Evaluation Material. Bidder agrees to take all reasonable measures to restrain its Representatives and all other persons to whom Bidder provides access to the Evaluation Material from prohibited or unauthorized disclosure or use of any Evaluation Material. With respect to any Loans not directly or indirectly purchased by Bidder pursuant to the Proposed Transaction, Bidder must destroy, and must ensure that all individuals or entities to whom any Evaluation Material has been disclosed destroy, all copies of the Evaluation Material, unless otherwise directed by Seller, or unless doing so would violate: (a) record-keeping

requirements mandated by applicable law or regulation, or (b) internal Bidder record maintenance policies and controls. Any Evaluation Material not destroyed because of subsections (a) or (b) of this Section 6 remains confidential and subject to this Agreement. Bidder will inform Seller immediately of any improper disclosure of any of the Evaluation Material, and of any breach of any provision of this Agreement, which may come to Bidder's attention unless such notification would itself violate any applicable law, regulation or court order.

7. Other Disclosure. To the extent that Bidder is legally compelled to disclose the Evaluation Material pursuant to the requirements of any action, suit, subpoena, arbitration or other dispute resolution process or other legal proceedings, whether civil or criminal, including before any court or administrative or legislative body, Bidder must notify Seller within one business day after its knowledge of such legally required disclosure so that Seller may seek an appropriate protective order and/or waive Bidder's compliance with this Agreement. Notice must be both by telephone and in writing. In the absence of a protective order or waiver, Bidder may disclose the relevant Evaluation Material if, in the written opinion of its outside counsel (which opinion must be provided to Seller prior to disclosure pursuant to this Section 7), failure to disclose such Evaluation Material would subject Bidder to liability for contempt, censure or other legal penalty or liability.

8. Liability. If Seller determines that Bidder has breached any provision of this Agreement (including any failure by any individual or entity to whom any Evaluation Material is disclosed to maintain such Evaluation Material as confidential in accordance with this Agreement), then Seller may, in its sole and absolute discretion, exercise any or all legal or equitable rights or remedies against Bidder to which Seller is entitled on account of such breach. Seller will not be deemed to have waived any of its rights or remedies on account of its failure, delay or forbearance in exercising any such right or remedy in a particular instance. Bidder agrees that, due to the unique nature of the Evaluation Material, there can be no adequate remedy at law for any breach or threatened breach of Bidder's obligations hereunder and, accordingly, (i) Seller is entitled to equitable relief, including injunction, in the event of any breach of the provisions of this Agreement (or any threat thereof), in addition to whatever remedies it might have at law, and (ii) Bidder will not oppose the granting of such relief and hereby irrevocably waives any requirement for the security or posting of any bond in connection with such relief. In addition to all legal and equitable remedies, Seller may, in its sole and absolute discretion, also choose to refuse to consider selling the Loans to Bidder and may refuse to allow Bidder to conduct due diligence on or otherwise participate in the sale of any other Loans offered for sale by Seller now or in the future.

Bidder may have registered in order to gain more information to bid on Loans. In connection with any such registration, Bidder has: (i) executed and delivered a Security Deposit Agreement, and (ii) delivered the sum of \$50,000 to Seller. As security for the performance and observance by Bidder of all of its obligations under this Agreement, such sum will be held by Seller, pursuant to the Security Deposit Agreement, as security in connection with Bidder's performance, compliance and observance of any and all of the terms, conditions or covenants of this Agreement.

9. Indemnification. Bidder must defend, indemnify and hold harmless Seller and its Representatives from and against any and all claims, demands, causes of action, losses, damages,

liabilities, judgments, costs and expenses (including attorneys' fees) asserted against or incurred by Seller or any of its Representatives (whether as a result of a third party claim asserted against Seller or otherwise) as a result of any violation of, or failure to comply with, the provisions of this Agreement by Bidder (including any failure by any individual or entity to whom any Evaluation Material is disclosed to maintain such Evaluation Material as confidential in accordance with this Agreement).

10. Release of Seller. Bidder acknowledges and understands that some or all of the Evaluation Material may have been prepared by parties other than Seller, and further acknowledges and understands that Seller makes no representation or warranty whatsoever, express or implied or by operation of law, with respect to the content, completeness or accuracy of the Evaluation Material except as otherwise provided in written documents in the Bid Package. Bidder hereby releases Seller and its Representatives from any and all claims, demands, causes of action, losses, damages, liabilities, costs and expenses (including attorneys' fees) asserted against or incurred by Bidder by reason of Bidder's reliance on or knowledge of the Evaluation Material or for any other reason arising in connection with the Proposed Transaction.

11. Governing Law; Waiver of Jury Trial. This Agreement will be governed by and construed in accordance with the federal law of the United States. To the extent that federal law does not supply a rule of decision, this Agreement will be governed by and construed and enforced in accordance with the laws of the State of New York, without reference to any conflict of laws rule or principle that might refer the governance or construction to the law of another jurisdiction. Bidder hereby irrevocably agrees that any action or proceeding against it arising out of or in any manner relating to this Agreement may be brought in United States District Court in and for the District of Columbia. Bidder expressly and irrevocably assents and submits to the exclusive jurisdiction of such court in any such action or proceeding. **Bidder and Seller each irrevocably agrees to waive any rights it may have to a jury trial in any action or proceeding against it arising out of or relating in any manner to this Agreement.** Nothing in this Agreement will require any unlawful action or inaction by any party. In the event that any of the provisions of this Agreement is held by a court or other tribunal of competent jurisdiction to be illegal, invalid or unenforceable, such provision will be limited or eliminated to the minimum extent necessary so that this Agreement otherwise remains in full force and effect. Bidder and Seller intend that the terms and provisions of this Agreement be given the broadest possible interpretation to protect the interests of Seller under this Agreement.

12. Capacity of Seller. Bidder acknowledges that this Agreement runs to the benefit of Seller as receiver as well as to Seller in its corporate capacity, and that Seller in any capacity is entitled to exercise any and all of Seller's rights or remedies under this Agreement.

13. Notices. All notices, requests, demands and other communications required or permitted to be given or delivered to Seller under or by reason of the provisions of this Agreement must be given in accordance with the method provided in the applicable section of this Agreement. Notices required to be provided in writing must be given by a hard copy (certified or registered mail (postage prepaid) or delivered by hand or by a nationally recognized air courier service) or by

electronic mail or facsimile, followed by a hard copy as described above. In any case, such notice or other communication must be directed to the following:

Federal Deposit Insurance Corporation
Manager, Franchise and Asset Marketing Branch
1601 Bryan Street
Dallas, Texas 75201
Facsimile: (972) 761-2835
Email: AssetMarketing@fdic.gov

and

Federal Deposit Insurance Corporation
Regional Counsel, Litigation and Resolutions Branch
1601 Bryan Street
Dallas, Texas 75201
Facsimile: (972) 761-8180
Email: DMcKinley@fdic.gov

14. **Miscellaneous.** This Agreement contains the entire understanding and agreement between Bidder and Seller relating to the receipt, use and disclosure of the Evaluation Material and supersedes any and all prior understandings and agreements with respect thereto. This Agreement has been duly authorized, executed and delivered by Bidder and constitutes a legal and valid obligation of Bidder enforceable in accordance with its terms.

IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN DULY EXECUTED AS OF THE DATE FIRST WRITTEN ABOVE.

BIDDER:

By: _____

Name: _____

Title: _____

Bidder's Name and Address

Bidder Contact Person

Telephone Number of Bidder Contact Person

SAMPLE