

NON-DISCLOSURE, NON-CIRCUMVENTION and NON-COMPETITION AGREEMENT

This NON-DISCLOSURE, NON-CIRCUMVENTION and CONFIDENTIALITY AGREEMENT ("Agreement") is made and entered into as of **January XX, 2012** by **Vendor Name or Participant Name ("XX")**, and **Kinecta Federal Credit Union ("KFCU")** and each and all of their directors, officers, employees, agents, representatives, transferees, successors and assigns (collectively "Parties", individually "Party"), with reference to the following facts:

A. The Parties desire to obtain disclosure of, and review and analyze, certain Confidential Information (as hereinafter defined) regarding certain commercial real estate loans (the "Loans"), strategy for originating the Loans and processes for selling and/or servicing the Loans for the purpose of determining whether to enter into a business arrangement (collectively "Business Arrangement").

B. The Parties recognize and agree that the Confidential Information, as defined below, is now, and is intended by both Parties hereafter to remain, confidential and not subject to disclosure to third parties except for the limited purposes and under the limited circumstances set forth herein.

C. The Parties will not disclose the Confidential Information or any portion thereof to each other except on the condition that the Parties mutually execute and deliver this Agreement.

NOW, THEREFORE, in consideration of the disclosures by and between the Parties of the Confidential Information, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the undersigned hereby agree as follows:

1. Representations and Warranties of Recipient. The Parties each represent and warrant to each other as follows:

a. **Authority.** The person executing this Agreement on behalf of each Party is the duly constituted, appointed and acting agent of Party and has been duly authorized to execute and deliver this Agreement and to conduct, or to delegate to third parties the authority to conduct, a review or reviews of the Confidential Information pursuant to this Agreement;

b. **Limitation on Use.** In acquiring possession of, and in reviewing and analyzing, the Confidential Information, The Party receiving the Confidential Information ("Recipient") is doing so for the express purpose of determining whether to pursue a business arrangement involving the Loans and for no other purpose and will not make any use of the Confidential Information which is, or could be, in any way detrimental to the interests of the Party providing the Confidential Information ("Beneficiary");

c. **Capacity.** In receiving, reviewing, inspecting, examining and discussing, analyzing and evaluating the Confidential Information, Recipient is acting solely on its own behalf and not as agent, representative or in any other capacity for or on behalf of any other person or entity whatsoever.

2. Definition of Confidential Information. As used in this Agreement, the term "Confidential Information" shall mean and include any and all information, in whatever form, concerning any aspect of the business, affairs or prospects of the Loans, each of the respective borrowers, and/or Beneficiaries or its affiliates disclosed or made accessible to Recipient by or on behalf of Beneficiaries, or otherwise, except information which Recipient can establish through competent documentation was known by Recipient on a nonconfidential basis prior to the date of this Agreement or information which is now, or at any time hereafter becomes, readily accessible to the public from nonconfidential, published sources, except if such accessibility shall have resulted from a disclosure of Confidential Information by Recipient or any of its officers, directors, employees, agents or representatives (collectively with Recipient, the "Representatives"). Without limiting the generality of the foregoing, Confidential Information shall include all records, files, documents, tapes, transcriptions, interviews, discussions and other means of imparting

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information, as well as the contents

3. Definition of Confidential Information. (continued) thereof, and any and all business processes, strategies, inferences, opinions, analyses, compilations, studies, statistics or conclusions derived therefrom or based thereon.

4. Preservation of Confidentiality. Recipient, on behalf of itself and its Representatives, transferees, successors and assigns, hereby undertakes and agrees to receive, review, inspect, examine, discuss, analyze, evaluate and retain all Confidential Information in strictest confidence and to maintain and preserve the confidentiality thereof at all times in accordance with the terms and provisions of this Agreement and to such additional extent as may be necessary or appropriate to realize the objectives of this Agreement. Recipient shall not disclose, and shall prevent its Representatives and others acting on its behalf or under its control from disclosing, to any person or entity (except to the extent such Representatives have a need to know the information in order to assist Recipient) any of the Confidential Information subject to the provisions of this Agreement; provided, however, that in each case of a permissible disclosure of Confidential Information, Recipient shall inform the intended recipient of such Confidential Information of the provisions and requirements of this Agreement and shall require each such recipient to comply fully therewith.

4. Privacy of Consumer Information. Beneficiary may from time to time provide Recipient with information or access to information concerning consumers. Recipient acknowledges that its right to use and re-disclose information concerning consumers is limited by the Gramm Leach Bliley Act of 1999, P.L. 106-102, 113 Stat. 1138 (the "Gramm Act") and its implementing regulations and other federal and state laws and regulations regarding privacy and the confidentiality of consumer records.

To protect the privacy of information concerning consumers, Recipient agrees that it shall:

- (a) Limit access to information concerning consumers to Recipient or its Representatives who have a need to know, but only to the extent that such disclosure is reasonably necessary for the performance of Recipient's duties and obligations under this Agreement;
- (b) Use information concerning consumers solely to carry out the purposes under this Agreement for which the information was disclosed and for no other purpose; and
- (c) Maintain the confidentiality of the information concerning consumers and not directly or indirectly disclose same to any person or entity in violation of (i) Title V of the Gramm Act and implementing regulations, as the same may be amended from time to time, and (ii) applicable federal and state laws and regulations regarding privacy.

5. Procedures Following a Determination Not to Pursue a Business Arrangement. In the event that a Business Arrangement is not effected after Recipient has been provided with Confidential Information, Recipient hereby undertakes and agrees, promptly upon request therefor by Beneficiary, to deliver to Beneficiary all Confidential Information and copies thereof, including all Confidential Information which consists of analyses, compilations, studies, statistics or conclusions prepared by Recipient or its representatives, without retaining a copy thereof. As to any portion of the Confidential Information which Recipient is permitted to retain in accordance with the provisions of the immediately preceding sentence, Recipient undertakes and agrees that the same shall be maintained by it and its representatives in strict compliance with the provisions of this Agreement (including, without limitation Section 1(b) hereof), or, at the election of Recipient, destroyed, with confirmation of such destruction

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being given in writing to Beneficiary promptly upon the occurrence thereof.

6. Obligation of Non-Competition. Recipient agrees it shall not use any advantages derivable from such Confidential Information in its own business or affairs, unless the same is done pursuant to a new agreement executed by all signatories to this document.

7. Non-Circumvention. Recipient agrees that for a period of thirty-six (36) months from the date of this Agreement it will not, directly or indirectly, contact, deal with or otherwise become involved with any borrower, guarantors or entity involved in the Loans introduced to Confidant by or through Confidant's contact with and review of Confidential Information without Kinecta's specific written approval.

8. Beneficiary's Disclaimer of Representations or Warranties. Although Beneficiary has endeavored to include in the Confidential Information materials known to Beneficiary which Beneficiary believes is relevant for the purpose of Recipient's evaluation of a potential Business Arrangement, any and all such Confidential Information provided to Recipient is provided "AS IS" and Beneficiary makes no representations or warranties of any kind or nature whatsoever (including, without limitation, any representations or warranties regarding the accuracy or completeness of the Confidential Information). Accordingly, Recipient recognizes and agrees that Beneficiary shall have no responsibility or liability to Recipient, the Representatives or their respective directors, officers, employees, agents, representatives, transferees, successors and assigns resulting directly or indirectly from such party's use of, or reliance upon, any of the Confidential Information. Additionally, inasmuch as Recipient is merely investigating the desirability of a possible Business Arrangement, Recipient recognizes and agrees that there shall exist no agreement between Recipient and Beneficiary regarding any Business Arrangement unless and until a definitive agreement contemplating such a transaction has been duly negotiated, documented, authorized, executed and delivered by each of the Parties.

9. Termination. In the event of the consummation of a Business Arrangement between the Parties, this Agreement shall terminate and be of no further force or effect immediately upon the closing of such transaction, with all matters relating to the confidentiality of the Confidential Information to be governed thereafter by the terms and conditions of the instruments pursuant to which the Business Arrangement shall have been consummated.

10. Miscellaneous. The rights, powers and remedies provided for herein shall not preclude the exercise of, and shall be in addition to, all other rights, powers, remedies and causes of action available to Beneficiary at law or in equity. No forbearance, delay in asserting or failure to assert any such right, power, remedy or cause shall operate as a waiver thereof or preclude its assertion at a later date, nor shall any waiver of any such right, power, remedy or cause of action in any other instance. In the event of any action, suit or other proceeding arising out of or relating to this Agreement, the prevailing party shall, in addition to any other relief that may be granted, be entitled to recover from the other party all of such prevailing party's costs and expenses, including, without limitation, attorneys' fees, incurred in such action, suit or proceeding, including any and all appeals and petitions arising therefrom. The Parties stipulate and agree that the tribunal before which such action, suit or proceeding is brought shall designate a prevailing party on the basis of which party has obtained the greater relief under the provisions of this Agreement.

11. Legally Required Disclosures. If Recipient is required (by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar judicial process) to disclose any of the Confidential Information, Recipient shall provide Beneficiary with prompt written notice of such

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requirement, and shall, prior to any such disclosure, cooperate with Beneficiary to seek a protective order or other appropriate remedy or if appropriate, waive compliance with the terms of this Agreement. In the event that such protective order or other remedy is not obtained, or Beneficiary waives compliance with the provisions hereof, Recipient or its Representative may only reveal that portion of the Confidential Information which is legally required to be disclosed.

DOCUMENT SIGNATURES ON PROCEEDING PAGE

IN WITNESS WHEREOF, the undersigned Parties have caused this Confidentiality Agreement to be executed and delivered on its behalf as of the date first above written.

Vendor Name

By: _____
Name: Vendor Authorized Signer
Its: Authorized Signer Title _____
Address: Vendor Address
Vendor City, State, Zip
Office: Phone Number
Email: Vendor Email

Kinecta Federal Credit Union

By: _____
Name: Kari Hallowell
Its: Vice President,
Member Business Services
Address: 4041 MacArthur Blvd., Suite 100
Newport Beach, CA 92660
Office: (714) 429 - 5725
Email: khallowell@kinecta.org