

## FNBN CMLCON I, LLC

(As Seller of Commercial Notes/Properties)

**CONFIDENTIALITY AGREEMENT:** Between prospective Bidder/Buyer and Seller

In connection with your consideration of bidding and possible acquisition (“Transaction”) from FNBN CMLCON I LLC, and its affiliates or assigns (the “Seller”) of commercial note(s) and/or real estate owned by the Seller, you (“Bidder”) have requested certain confidential and other information concerning the note(s) and/or real estate from the Seller to perform due diligence and to bid on the transaction.

Bidder agrees to treat confidentially any information it obtains concerning the notes or properties, including all documents executed in connection with the notes or properties, including, without limitation, all loan agreements, deeds of trust, mortgages, guarantees, assignments, pledges, security agreements, certificates, resolutions, closing instructions, settlement statements, and title policies; any information concerning the makers of the notes and guarantors of repayment, including, without limitation, credit reports, tax returns, financial statements, full names, telephone numbers, email addresses, street and mailing addresses, driver’s license numbers, account numbers, social security numbers, and credit card numbers; and any information concerning the real estate, including, without limitation, appraisals, environmental reports, title policies, property reports, leases, and contracts, together with any and all analysis or other documents prepared by Bidder or any of Bidder’s directors, officers, employees, advisors, attorneys, accountants, consultants, representatives, investors, or lending institutions (collectively “Representatives”), whether furnished before or after the date of this agreement, that contain or otherwise reflect such information (collectively “Evaluation Materials”) in accordance with this agreement. The term Evaluation Materials does not include information that (a) was already in Bidder’s possession prior to the time of disclosure to Bidder by the Seller, (b) was or becomes generally available to the public other than as a result of a disclosure by Bidder or its Representatives, (c) becomes available to Bidder on a non-confidential basis from a source other than the Seller provided that such source is not known by Bidder or its Representatives without reference to the Evaluation Materials.

The Evaluation Materials will be used solely for the purposes of evaluating the potential Transaction between the Seller and Bidder, and will be kept confidential by Bidder and its Representatives, except to the extent that disclosure (a) has been consented to in writing by the Seller, (b) is required by judicial, legislative, regulatory process law, or other applicable judicial or governmental order, or (c) is made to Bidder’s Representatives who need to know such information for the purpose of evaluating the Transaction (it being understood that such Representatives shall be informed by Bidder of the confidential nature of the Evaluation Materials and agree to be bound by the terms of this agreement). In any event, Bidder shall be responsible for any disclosure of Evaluation Materials by its Representatives that would constitute a breach of this agreement.

In the event that Bidder or any of its Representatives are requested or required by judicial, legislative, regulatory or other applicable judicial or government order to disclose any Evaluation Materials, Bidder and its Representatives shall provide the Seller with prompt, advance notice of such request or requirement so that the Seller may seek a protective order or other appropriate remedy and/or waive compliance with the terms of this agreement. In the event that such protective order or other remedy is

obtained, or that the Seller waives compliance with the terms hereof, Bidder may disclose only that portion of the Evaluation Materials which is legally required.

Further, Bidder agrees that the Evaluation Materials may contain sensitive third-party or customer information. Bidder agrees to treat such "sensitive customer information" as confidential and in accordance with the Interagency Guidelines Establishing Information Security Standards ("Security Guidelines"<sup>1</sup>) and the Interagency Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice ("Guidance"<sup>2</sup>), adopted jointly by the Federal Deposit Insurance Corporation, The Federal Reserve Board, the Office of the Comptroller of the Currency and the office of Thrift Supervision. Confidential information shall include all nonpublic personal information as defined by the Gramm-Leach-Bliley Act, 15 U.S.C. section 6801 et.seq.<sup>3</sup> ("Act") and regulations promulgated pursuant to that Act, as applicable. According to the Act, "the term nonpublic personal information means personally identifiable financial information provided by a consumer to a financial institution, resulting from any transaction with the consumer or any service performed for the consumer, or otherwise obtained by the financial institution." The definition also includes any list, description, or other grouping of consumers (and publically available information pertaining to them) that is derived using any nonpublic personal information other than publically available information.

It is understood and agreed that money damages may not be a sufficient remedy for any breach of this agreement, and that the Seller is entitled to seek specific performance and injunctive or other equitable relief. Such remedy shall not be deemed to be the exclusive remedy for breach of this agreement, but shall be in addition to all other remedies available at law or equity to the Seller.

The Seller does not make any representations or warranties as to the accuracy or completeness of the Evaluation Materials. Only those representations or warranties which are made by the Seller in a final definitive agreement regarding the Transaction, when, as and if executed, and subject to such limitations and restrictions as may be specified therein, will have any legal effect. UPON REQUEST OF BIDDER, A SAMPLE DEFINITIVE ASSIGNMENT AND ASSUMPTION AGREEMENT WITH ALL DISCLOSURES AND WARRANTIES IS AVAILABLE FOR INSPECTION BEFORE THE AUCTION OR SALE IS CONDUCTED.

Within ten days after request by the Seller, except to the extent Bidder is advised by legal counsel that complying with such request would be prohibited by law, Bidder will return or destroy all Evaluation Materials. Any destruction of materials should be confirmed by Bidder in writing. Any Evaluation Materials that cannot be returned or destroyed (such as oral Evaluation Materials) shall remain confidential, subject to the terms of this agreement.

This agreement binds the parties only with respect to the matters expressly set forth herein. As such, unless and until a subsequent definitive written agreement regarding a Transaction between the Seller and Bidder has been executed, (a) neither the Seller nor Bidder shall be under any legal obligation of any kind whatsoever to negotiate or consummate a Transaction, and (b) Bidder shall have no claim whatsoever against the Seller; the Seller's predecessors in interest; including, without limitation, the Federal Deposit Insurance Corporation, First National Bank of Nevada, and First National Bank of Arizona;

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<sup>1</sup>[www.federalreserve.gov/boarddocs/press/bcreg/2005/20051214/attachment.pdf](http://www.federalreserve.gov/boarddocs/press/bcreg/2005/20051214/attachment.pdf)

<sup>2</sup> [www.occ.treas.gov/consumer/Customernoticeguidance.pdf](http://www.occ.treas.gov/consumer/Customernoticeguidance.pdf)

<sup>3</sup> [www.gpo.gov/fdsys/pkg/PLAW-106publ102/content-detail.html](http://www.gpo.gov/fdsys/pkg/PLAW-106publ102/content-detail.html)

or any of their respective directors, officers, owners, affiliates, consultants or representatives arising out of or relating to any Transaction.

This agreement shall be governed by the internal laws of the state of Utah, without regard to the conflict of laws principles. The parties hereto consent to the exclusive jurisdiction of Third Judicial District Court of the State of Utah or the United States District Court, District of Utah, for any action, suit or other proceeding relating to this agreement.

This agreement may be amended only in writing and signed by the parties hereto. No failure or delay by the Seller in exercising any right hereunder or any partial exercise thereof shall operate as a waiver thereof or preclude any other or further exercise of any right hereunder. If any portion of this agreement is determined by a court of competent jurisdiction to be invalid or otherwise unenforceable, such a determination shall not affect the validity and enforceability of the remainder of this agreement.

Bidder's obligations under this agreement shall remain in effect for a period of two-years from the date hereof or as in the case of sensitive customer or personal information then according to federal law, unless and until this agreement is terminated by the Seller or is superseded by another agreement with Bidder that concerns its use of the Evaluation Materials.

This agreement is binding upon Bidder and all of its Representatives and/or other affiliates. Bidder agrees to indemnify, defend, and hold harmless the Seller and its affiliates, subsidiaries, agents, officers, directors, shareholders, employees consultants, and its or their successors and/or assigns harmless, from any loss or liability resulting from Bidder's breach of any of the provisions of this agreement.

By signing below, Bidder hereby agrees that it understand its obligations under this agreement and that Bidder agrees to be fully bound by the terms of this agreement. This agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement and may be executed via facsimile or electronic signature and electronic mail.

Agreed and Accepted by Bidder this \_\_\_\_ days of \_\_\_\_\_, 2010.

Bidder: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_