

CONFIDENTIALITY AGREEMENT

This Confidentiality 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 assets ("**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 Confidentiality Agreement is effective as of the date on which Bidder first clicks on the "I Agree" button at the end of this Confidentiality Agreement (the "**Effective Date**").

RECITALS

WHEREAS, from time to time, Seller offers for sale certain assets (the "**Loans**") that Seller intends to transfer in a proposed sales transaction (the "**Sale**"); and

WHEREAS, in connection with the Sale, Seller is distributing or otherwise making available to prospective bidders, such as Bidder, among other things, the documents for the Sale of the Loans, all as they may be modified, amended, revised, or supplemented from time to time (the "**Bid Package**"), together with access to the Evaluation Material (defined below); and

WHEREAS, all capitalized terms in this Confidentiality Agreement that are not otherwise defined have the meaning assigned to such terms in the Bid Package; and

WHEREAS, Bidder has expressed interest in having Seller provide Bidder with the Evaluation Material for Bidder's due diligence review; and

WHEREAS, in consideration of Seller's furnishing Bidder with Evaluation Material, Bidder desires to enter into certain agreements regarding the Evaluation Material; and

WHEREAS, Bidder's execution of this Confidentiality Agreement, without modification, is a prerequisite to receipt of, or access to, any Evaluation Material.

NOW, THEREFORE, in consideration of the foregoing, and in order to induce Seller to furnish the Evaluation Material to Bidder for its due diligence 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. **Additional Definitions.** For purposes of this Confidentiality Agreement, the following terms have the following meanings:

"**Affiliate**" means, with respect to any specified Person, (1) any other Person or Third Party directly or indirectly controlling or controlled by or under common control with such specified Person, (2) any other Person or Third Party owning or controlling 10% or more of the outstanding voting securities, voting equity interests, or beneficial interests of such specified Person, or (3) any officer, director, partner, member, trustee, employee, or promoter of such specified Person 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 such 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 specified Person, whether through the ownership of voting securities or interests, by contract or otherwise.

“Evaluation Material” means any information that Seller or Seller’s Representatives (as used hereafter in this Confidentiality Agreement, the term “Seller” includes, collectively, Seller and Seller’s Representatives, unless otherwise specifically noted) directly or indirectly furnish or make available to Bidder in connection with the Sale and all copies (electronic or otherwise) thereof and all notes, analyses, compilations, studies, or other documents, whether prepared by Bidder or Bidder’s Representatives (as used hereafter in this Confidentiality Agreement, the term “Bidder” includes, collectively, Bidder and Bidder’s Representatives, unless otherwise specifically noted), which include or otherwise reflect any such information, provided that the term “Evaluation Material” does not include information that (1) is, or becomes, generally available to the public other than as a result of a disclosure by Bidder that results in a breach of this Confidentiality Agreement, (2) was in Bidder’s possession prior to its disclosure by Seller, or (3) becomes available to Bidder from a Person other than Seller, who, to the knowledge of the Bidder after due inquiry, is not otherwise bound by confidentiality obligations to Seller in connection with such information.

“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, stepchildren, grandchildren, and grandchildren-in-law.

“Obligor” means any Person liable for the full or partial payment or performance of any Loan, whether such Person is obligated directly, indirectly, primarily, secondarily, jointly, or severally, as a borrower, a guarantor, a surety, or otherwise, with respect to any Loan.

“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.

“Representatives” means, with respect to any Person, the Affiliates of such Person, and its and their (1) directors, officers, partners, owners, nominees, and employees, and (2) agents, contractors, investment bankers, financial experts, potential financing sources, legal counsel, accountants, or other advisors that are working on the Sale.

“Third Party” means any bidder, potential bidder, firm, equity investor, servicer, rating agency, lender, Person, or third party other than Bidder.

2. **Term.** This Confidentiality Agreement will terminate as to Bidder with respect to Loans purchased, directly or indirectly, by Bidder in connection with the Sale, but only upon closing of the

purchase of such Loans as provided in any document contained in the Bid Package for the Sale. This Confidentiality Agreement will terminate as to Bidder with respect to Loans not purchased, directly or indirectly, by Bidder upon the later of (1) the date that is five years after the Effective Date, or (2) the date that all copies of the Evaluation Material held or controlled by Bidder 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 in connection with the Sale and for no other purpose.

4. Limitation on Further Due Diligence. Bidder will not contact or attempt to contact any Obligor or Obligor's Representatives (as used hereafter in this Confidentiality Agreement, the term "Obligor" includes, collectively, Obligor and Obligor's Representatives, unless otherwise specifically noted), unless (1) prior to initiating any contact with any Obligor other than pursuant to clause (2) of this Section 4, Bidder obtains the written consent of Seller, which consent may be withheld in Seller's sole and absolute discretion; or (2) (a) Bidder has an ongoing business relationship with any Obligor, which relationship pre-dates the date of this Confidentiality Agreement, or (b) any Obligor initiates contact with Bidder to establish a business relationship, including, without limitation, the refinancing of any Loan, in which case Bidder may communicate with Obligor as identified in clause (1) or (2) in the ordinary course of Bidder's business, so long as Bidder does not use or disclose any of the Evaluation Material in its communications with Obligor or disclose Bidder's involvement in the Sale.

5. Limited Access. Without the prior written consent of Seller, to be granted or withheld in Seller's sole and absolute discretion, Bidder will not disseminate or divulge any of the Evaluation Material to any Person, other than to: (1) Bidder's Representatives, and (2) to the extent not covered by clause (1), any Third Parties who are assisting Bidder in its review or analysis of the Loans, provided, however, that in each case (a) such Third Party (i) has a need for access to the Evaluation Material for the purpose of assisting or advising Bidder in the evaluation of or in the making of a Bid in connection with the Sale, (ii) has been advised by Bidder of the confidential nature of such Evaluation Material, and has been directed by Bidder, and has agreed with Bidder, to treat such Evaluation Material confidentially in a manner so as to comply with all the terms of this Confidentiality Agreement, and (iii) has entered into an agreement, or is otherwise legally obligated by law or under the terms of such Third Party's engagement or relationship with Bidder obligating such Third Party to use and maintain the confidentiality of the Evaluation Material in a way that is materially consistent with this Confidentiality Agreement, a copy of which executed agreement, or evidence satisfactory to Seller of such obligation, will be provided upon request to Seller; and (b) Bidder will be liable to Seller for any failure on the part of any such Person, including, without limitation, Bidder's Representatives, to comply with Bidder's obligations under this Confidentiality Agreement.

6. Confidentiality; Destruction of Documents. Bidder agrees that Bidder will take reasonable precautions to ensure that all Persons to whom any of 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 Bidder is treated within its organization and in compliance with all applicable laws, including, without limitation, laws

relating to privacy. In addition, Bidder acknowledges that (1) each part of the Evaluation Material is subject to the confidentiality provisions of 12 C.F.R. Part 309 and may include customer information subject to the Right to Financial Privacy Act, and (2) any unauthorized use of the Evaluation Material may result in the imposition of criminal penalties under 18 U.S.C. § 641. Bidder is responsible for any breach of the terms of this Confidentiality Agreement by Bidder or any other Person to whom Bidder provides access to the Evaluation Material. Bidder agrees to take all reasonable measures to restrain Bidder's 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 Sale, Bidder must destroy, and must ensure that all Persons to whom any of the Evaluation Material has been disclosed destroy, all copies of the Evaluation Material, unless otherwise directed by Seller, or unless doing so would violate: (x) record-keeping requirements mandated by applicable law or regulation, or (y) internal Bidder record maintenance policies and controls. Any of the Evaluation Material not destroyed because of clause (x) or (y) of this Section 6 remains confidential and subject to this Confidentiality 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 Confidentiality 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 any of 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, without limitation, 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 or waive Bidder's compliance with this Confidentiality 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 Confidentiality Agreement (including, without limitation, any failure by any Person to whom any of the Evaluation Material is disclosed to maintain such Evaluation Material as confidential in accordance with this Confidentiality 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, (1) Seller is entitled to equitable relief, including, without limitation, injunction, in the event of any breach of the provisions of this Confidentiality Agreement (or any threat thereof), in addition to whatever remedies Seller might have at law, and (2) 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 a due diligence review 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: (1) executed and delivered a Security Deposit Confidentiality Agreement, and (2) delivered the sum of \$50,000 to Seller as security for the performance and observance by Bidder of all of its obligations under this Confidentiality 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 Confidentiality Agreement.

9. **Indemnification.** Bidder must defend, indemnify, and hold harmless Seller from and against any and all claims, demands, causes of action, losses, damages, liabilities, judgments, costs, and expenses (including, without limitation, attorneys' fees) asserted against or incurred by Seller (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 Confidentiality Agreement by Bidder (including, without limitation, any failure by any Person to whom any of the Evaluation Material is disclosed to maintain such Evaluation Material as confidential in accordance with this Confidentiality 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 documents contained in the Bid Package. Bidder hereby releases Seller from any and all claims, demands, causes of action, losses, damages, liabilities, costs, and expenses (including, without limitation, 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 Sale.

11. **Governing Law; Waiver of Jury Trial.** This Confidentiality 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 Confidentiality 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 Confidentiality 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 Confidentiality Agreement.** Nothing in this Confidentiality Agreement will require any unlawful action or inaction by any party. In the event that any of the provisions of this Confidentiality 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 Confidentiality Agreement otherwise remains in full force and effect. Bidder and Seller intend that the terms and provisions of this Confidentiality Agreement be given the broadest possible interpretation to protect the interests of Seller under this Confidentiality Agreement.

12. **Capacity of Seller.** Bidder acknowledges that this Confidentiality 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 Confidentiality 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 Confidentiality Agreement must be given in accordance with the method provided in the applicable section of this Confidentiality Agreement. Notices required to be provided in writing must be given by (1) email, or (2) a hard copy (certified or registered mail [postage prepaid] or delivered by hand or by a nationally recognized air courier service). In any case, such notice or other communication must be directed to the following:

Federal Deposit Insurance Corporation
Manager, Asset Marketing
600 N Pearl Street, Suite 700
Dallas, Texas 75201
Email: AssetMarketing@FDIC.gov

and

Federal Deposit Insurance Corporation
Frederic A. Ortiz
Counsel, Section Chief, Asset Disposition
600 N Pearl Street, Suite 700
Dallas, Texas 75201
Email: FrOrtiz@FDIC.gov

14. **Miscellaneous.** This Confidentiality 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 Confidentiality 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.

15. **Electronic Execution – Bidder.** By clicking on the “I Agree” button below (or when electronically reaffirming this Confidentiality Agreement at any time and from time to time), Bidder evidences its intent to enter into this Confidentiality Agreement and agrees that it is bound by all the terms and conditions of this Confidentiality Agreement.