

# CONFIDENTIALITY AGREEMENT

## Instructions

This Confidentiality Agreement ("Agreement") is designed in two parts. When executing this Agreement, you will be agreeing to either Confidentiality Agreement Part A ("Part A") or to Confidentiality Agreement Part B ("Part B"), as appropriate.

Part A applies to an individual ("Bidder") who is authorized, in its individual capacity and on behalf of a disclosed principal, to enter a bid and bind the principal according to the terms and conditions of a sale.

Part B, which begins on page 5 of this Agreement, applies to an individual ("Assisting Party") who is an employee, officer or director of either (a) Bidder (including those of its affiliates), (b) Bidder's agent or representative (including its attorney, accountant or financial advisor) or (c) a third party (such as an equity investor, servicer or contractor), and who has a need to access the Evaluation Material for the purpose of assisting and advising Bidder in evaluating the Loans or entering a bid.

## Part A: Bidders

By executing this Agreement, Bidder hereby enters into and agrees to be bound by all terms and conditions of this Part A as of the Effective Date (defined below) in favor of and for the benefit of the Federal Deposit Insurance Corporation, in its Corporate and/or Receivership capacity ("FDIC").

WHEREAS, from time to time, FDIC offers for sale certain assets ("Loans") from failed depository institutions in offerings ("Offering(s)"), and in connection therewith FDIC distributes or otherwise makes available to prospective bidders a package of materials ("Bid Package"), including, among other things, a form of Loan Sale Agreement (the "LSA");

WHEREAS, Bidder is a substantial, sophisticated purchaser who has expressed interest in having FDIC provide Bidder with certain documents and/or other information relating to the Loans for inspection and review;

WHEREAS, in consideration of FDIC's furnishing Bidder with such information regarding the Loans, Bidder desires to make certain agreements regarding such information and any other information FDIC, its agents and representatives furnish to Bidder regarding the Loans (including all notes, analyses, compilations, studies or other documents, whether prepared by Bidder or others, which contain or otherwise reflect such information) (such information, and such documents, are collectively herein referred to as the "Evaluation Material"); and

WHEREAS, Bidder's execution of this Part A, **without modification**, is a prerequisite to receipt of such Evaluation Material; and

WHEREAS, this Part A incorporates all Instructions to this Agreement, including the definitions contained therein.

NOW, THEREFORE, in order to induce FDIC 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:

Section 1. Term. This Part A will be a continuing agreement, effective upon Bidder's execution ("Effective Date") for any Offering that FDIC makes available to Bidder thereafter. With respect to the Evaluation Material related to Loans purchased by Bidder from FDIC pursuant to an Offering, this Part A will terminate only upon closing on the purchase of such Loans and the expiration of all repurchase options that may be provided for in any LSA between FDIC and Bidder with respect to such Loans. With respect to the Evaluation Material related to Loans which are not so purchased by Bidder, or are thereafter repurchased by FDIC ("Non-Purchased Loans"), this Part A will terminate on the 5th anniversary of the Effective Date for the Offering in which such Non-Purchased Loans were contained; provided, however, that with regard to any personal identifying information<sup>1</sup>, including, without limitation, the full name, social security number, telephone number, street address, e-mail address, driver's license number or credit card number of any borrower or guarantor contained within the Evaluation Material related to any Non-Purchased Loans, this Part A will not terminate. Bidder acknowledges that in connection with a particular Offering, Bidder may be required to assent to a subsequent update to this Agreement, the terms of which may differ from this Part A, or to reaffirm or otherwise assent to this Part A, in writing, electronically or otherwise, as required by FDIC. Bidder agrees that such agreement or reaffirmation will be binding upon Bidder and its directors, officers, employees, agents, successors and assigns, regardless of whether assent thereto is in written or electronic form.

Section 2. Limitation on Use. Bidder may use the Evaluation Material solely for the purpose of evaluating any Loans offered for sale by FDIC.

Section 3. Limitation on Further Due Diligence. Bidder may not contact or attempt to contact any borrower or guarantor under any Loan in the Offering or any of their respective officers, employees, agents or attorneys, except as follows:

- (a) Prior to initiating any contact with such individual or entity, Bidder obtains the written consent of FDIC, which consent may be withheld in FDIC's sole discretion.
- (b) Bidder has an ongoing business relationship with such individual or entity or under a Loan, which relationship pre-dates the Bid Package under which the borrower's Loan is offered, and Bidder's communications with such individual or entity (i) are limited to usual and customary communications with respect to the ongoing relationship and (ii) do not involve information relating to the Offering.

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<sup>1</sup> For the purposes of this Part A, "personal identifying information" or "PII" means any piece of information which potentially can be used to uniquely identify, contact or locate a particular person.

(c) Any such individual or entity initiates contact with Bidder to establish a business relationship, including the refinancing of any Loan, provided Bidder's communications with such individual or entity do not involve information relating to the Offering.

Section 4. Limited Access. Without the prior, written consent of FDIC, to be granted or withheld in its sole discretion, Bidder may not disseminate or divulge the Evaluation Material to any individual or entity, other than to: (a) its employees, officers and directors (including those of its affiliates), (b) its agents and representatives (including its attorneys, accountants and financial advisors) and (c) any third parties (such as equity investors, servicers and contractors), in each case who (i) have a need for access to the Evaluation Material for the purpose of assisting and advising Bidder in the evaluation of the Loans or in the making of a bid therefor, and (ii) have entered into an agreement with Bidder substantially in the form of this Agreement, a copy of which executed agreement will be provided upon request to FDIC, or that are otherwise legally obligated under the terms of their engagement or relationship with Bidder to maintain the confidentiality of the Evaluation Material.

Section 5. Confidentiality; Destruction of Documents. Bidder agrees that Bidder will ensure that all individuals or entities to whom it discloses the Evaluation Material will keep the Evaluation Material confidential. With respect to any Loans not purchased by Bidder pursuant to the Offering, Bidder must destroy, and must ensure that all individuals or entities to whom it has disclosed the Evaluation Material destroy all copies of the Evaluation Material, unless otherwise directed by FDIC, 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 5 will remain confidential and subject to this Part A. Bidder will inform FDIC immediately of any improper disclosure of any of the Evaluation Material, and of any breach of any provision of this Part A, which may come to Bidder's attention.

Section 6. Other Disclosure. To the extent that Bidder is required to disclose the Evaluation Material pursuant to the requirements of any legal proceeding, Bidder must notify FDIC within one Business Day of its knowledge of such legally required disclosure so that FDIC may seek an appropriate protective order and/or waive Bidder's compliance with this Part A. 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 counsel, failure to disclose such Evaluation Material would subject Bidder to liability for contempt, censure or other legal penalty or liability.

Section 7. Liability. If FDIC determines that Bidder has breached any provision of Part A, or that Bidder's Assisting Party has breached any provision of Part B, then FDIC may, in its sole discretion, exercise any or all legal or equitable rights or remedies against Bidder to which FDIC is entitled on account of such breach. FDIC's rights will include, without limitation, the right in its sole discretion to bar Bidder from participation in present or future loan sales by FDIC. FDIC 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.

Section 8. Indemnification. Bidder must defend, indemnify and hold harmless FDIC 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 FDIC as a result of 1) any violation of, or failure to comply with, the provisions of this Part A by Bidder or any individual or entity to whom it has disclosed the Evaluation Material; or 2) any violation of, or failure to comply with, the provisions of Part B by Bidder's Assisting Party or any individual or entity to whom the Assisting Party has disclosed the Evaluation Material.

Section 9. Release of FDIC. Bidder acknowledges and understands that some or all of the Evaluation Material may have been prepared by parties other than FDIC, and further acknowledges and understands that FDIC makes no representation or warranty whatsoever, express or implied, with respect to the content, completeness or accuracy of the Evaluation Material except as otherwise provided in the LSA. Bidder hereby releases FDIC from all claims, demands, causes of action, losses, damages, liabilities, cost or 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 Offering.

Section 10. Bidder Qualifications. Bidder hereby represents and warrants to FDIC that Bidder is a substantial, sophisticated purchaser having such knowledge and experience in financial and business matters, and in particular in matters relating to the purchase, sale, origination or ownership of loans and loan participations such as the Loans, that it is capable of evaluating the merits and risks of investment in the Loans and understands and is able to bear the economic risks of such a purchase (including a total loss of its investment and the risk that Bidder might be required to hold the Loans for an indefinite period of time).

Section 11. Public Information. Notwithstanding anything to the contrary set forth above, nothing in this Part A will prevent Bidder from using or disseminating information that is or becomes generally available to the public other than as a result of a disclosure by Bidder, Bidder's Assisting Party, or any individual or entity to whom Bidder or Bidder's Assisting Party has disclosed such information.

Section 12. Verification of Statements. By entering into and agreeing to the terms of this Part A, Bidder hereby acknowledges that FDIC may perform a credit check or other investigation to verify the accuracy of any statement made by Bidder herein.

Section 13. Governing Law. Federal law will control this Part A. To the extent that federal law does not supply a rule of decision, this Part A will be governed by and construed and enforced in accordance with, the laws of the State of New York. Nothing in this Part A requires any unlawful action or inaction by either party.

Section 14. Miscellaneous. This Part A represents the entire agreement between Bidder and FDIC relating to the receipt, use and disclosure of the Evaluation Material and supersedes any and all prior understandings and agreements with respect thereto. This Part A will apply to and be binding upon Bidder and its directors, officers, employees, agents, successors and assigns. The

representative(s) signing this Part A on behalf of Bidder represents that he or she is fully authorized to enter into the terms and conditions of this Part A and to legally bind Bidder.

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## Part B: Assisting Parties

By executing this Agreement, I, an Assisting Party, hereby enter into and agree to be bound by all terms and conditions of Part B as of the Effective Date (defined below) in favor of and for the benefit of the Federal Deposit Insurance Corporation, in its Corporate and/or Receivership capacity ("FDIC").

WHEREAS, from time to time, FDIC offers for sale certain assets ("Loans") from failed depository institutions in offerings ("Offering(s)"), and in connection therewith FDIC distributes or otherwise makes available to prospective bidders a package of materials ("Bid Package"), including, among other things, a form of Loan Sale Agreement (the "LSA");

WHEREAS, in consideration of FDIC or Bidder furnishing Assisting Party with such information regarding the Loans, Assisting Party desires to make certain agreements regarding such information and any other information FDIC, its agents and representatives, or Bidder, furnish to Assisting Party regarding the Loans (including all notes, analyses, compilations, studies or other documents, whether prepared by Assisting Party, Bidder or others, which contain or otherwise reflect such information) (such information, and such documents, are collectively herein referred to as the "Evaluation Material"); and

WHEREAS, Assisting Party's execution of this Part B, **without modification**, is a prerequisite to receipt of such Evaluation Material; and

WHEREAS, this Part B incorporates all Instructions to this Agreement, including the definitions contained therein.

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

Section 1. Term. This Part B will be a continuing agreement, effective upon Assisting Party's execution ("Effective Date") for any Offering that FDIC makes available thereafter. With respect to the Evaluation Material related to Loans which are not purchased by Bidder, or are thereafter repurchased by FDIC ("Non-Purchased Loans"), this Part B will terminate on the 5th anniversary of the Effective Date for the Offering in which such Non-Purchased Loans were contained; provided, however, that with regard to any personal identifying information,<sup>2</sup> including, without limitation, the full name, social security number, telephone number, street address, e-mail address, driver's license number or credit card number of any borrower or guarantor contained within the Evaluation Material related to any Non-Purchased Loans, this Part B will not terminate. Assisting Party acknowledges that in connection with a particular Offering, Assisting Party may be required to assent to a subsequent update to this Agreement, the terms of which may differ from this

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<sup>2</sup> For the purposes of this Part B, "personal identifying information" or "PII" means any piece of information which potentially can be used to uniquely identify, contact or locate a particular person.

Part B, or to reaffirm or otherwise assent to this Part B, in writing, electronically or otherwise, as required by FDIC. Assisting Party agrees that such agreement or reaffirmation will be binding upon Assisting Party regardless of whether assent thereto is in written or electronic form.

Section 2. Agreement with Bidder. Assisting Party (a) has entered into an agreement with Bidder substantially in the form of this Part B, a copy of which executed agreement will be provided upon request to FDIC, or (b) is otherwise legally obligated under the terms of the engagement or relationship with Bidder to maintain the confidentiality of the Evaluation Material; which in either case requires at a minimum that:

- (i) Assisting Party may use the Evaluation Material solely for the purpose of evaluating, on behalf of Bidder and with Bidder's consent, any Loans offered for sale by FDIC.
- (ii) Assisting Party may not contact or attempt to contact any borrower or guarantor under any Loan in the Offering or any of their respective officers, employees, agents or attorneys, except as follows:
  - (a) Prior to the initiation by Assisting Party of any contact with such individual or entity, Bidder or Assisting Party will have obtained the written consent of FDIC, which consent may be withheld in FDIC's sole discretion.
  - (b) Bidder or Assisting Party has an ongoing business relationship with such individual or entity or under a Loan, which relationship pre-dates the Bid Package under which the borrower's Loan is offered, and Assisting Party's communications with such individual or entity (i) are limited to usual and customary communications with respect to the ongoing relationship and (ii) do not involve information relating to the Offering.
  - (c) Any such individual or entity initiates communications with Bidder or Assisting Party to establish a business relationship, including the refinancing of any Loan, provided such communications with such individual or entity do not involve information relating to the Offering.
- (iii) Assisting Party may not disseminate or divulge the Evaluation Material to any individual or entity, other than to: (a) other employees, officers and directors of Assisting Party's employer, (b) Bidder's employees, officers and directors (including those of its affiliates), (c) Bidder's agents and representatives (including its attorneys, accountants and financial advisors) and (d) any third parties (such as equity investors, servicers and contractors), in each case who (i) have a need for access to the Evaluation Material for the purpose of assisting and advising Bidder in the evaluation of the Loans or in the making of a bid therefor, and (ii) have entered into an agreement with Bidder substantially in the form of this Part B, or that are otherwise legally obligated under the terms of their engagement or relationship with Bidder to maintain the confidentiality of the Evaluation Material.

Section 3. Liability. If FDIC determines that Assisting Party has breached any provision of this Part B, FDIC may, in its sole discretion, exercise any or all legal or equitable rights or remedies to which FDIC is entitled against Bidder and/or Assisting Party on account of Assisting Party's breach. FDIC's rights will include, without limitation, the right in its sole discretion to bar Bidder and/or Assisting Party from participation in present or future loan sales by FDIC. FDIC 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.

Section 4. Release of FDIC. Assisting Party acknowledges and understands that some or all of the Evaluation Material may have been prepared by parties other than FDIC, and further acknowledges and understands that FDIC makes no representation or warranty whatsoever, express or implied, with respect to the content, completeness or accuracy of the Evaluation Material except as otherwise provided in the LSA. Assisting Party hereby releases FDIC from all claims, demands, causes of action, losses, damages, liabilities, cost or expenses (including attorneys' fees) asserted against or incurred by Assisting Party by reason of Assisting Party's reliance on or knowledge of the Evaluation Material or for any other reason arising in connection with the Offering.

Section 5. Public Information. Notwithstanding anything to the contrary set forth above, nothing in this Part B will prevent Assisting Party from using or disseminating information that is or becomes generally available to the public other than as a result of a disclosure by Bidder, Assisting Party or any individual or entity to whom Bidder or Assisting Party has disclosed such information.

Section 6. Verification of Statements. By entering into and agreeing to the terms of this Part B, Assisting Party hereby acknowledges that FDIC may perform an investigation to verify the accuracy of any statement made by Assisting Party herein.

Section 7. Governing Law. Federal law will control this Part B. To the extent that federal law does not supply a rule of decision, this Part B will be governed by and construed and enforced in accordance with, the laws of the State of New York. Nothing in this Part B requires any unlawful action or inaction by either party.

Section 8. Entire Agreement. This Part B represents the entire agreement between Assisting Party and FDIC relating to the receipt, use and disclosure of the Evaluation Material and supersedes any and all prior understandings and agreements with respect thereto.

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