

CONFIDENTIALITY AGREEMENTS[®]

BARBARA J. LEBARRON
Winstead Sechrest & Minick PC
Houston, Texas

State Bar of Texas
ADVANCED REAL ESTATE DRAFTING COURSE
March 6-7, 2003
Houston

CHAPTER 11

BARBARA J. LEBARRON
Winstead Sechrest & Minick PC
910 Travis, Suite 2400
Houston, Texas 77002
(713) 650-2795

EDUCATION

B.A. Baylor University
J.D. University of Texas

BOARD CERTIFICATION

Board Certified Commercial Real Estate Law – Texas Board of Legal Specialization

PROFESSIONAL ORGANIZATIONS

American Bar Association:
Real Property and Trust Law Section

State Bar of Texas:
Real Estate, Probate and Trust Law Section (Council Member 1997-2000)
Texas Disciplinary Rules of Professional Conduct Committee (1990-1995; 1997-2000)

College of the State Bar of Texas – Member

Texas Bar Foundation – Fellow

Texas College of Real Estate Attorneys – (Chairman 1994-1998)

LEGAL PUBLICATIONS, PRESENTATION AND ACTIVITIES

Course Director—3rd Annual Advanced Real Estate Drafting Course (January 1992)

Course Director—18th Annual Advanced Real Estate Law Course (June/July 1996)

Frequent speaker at CLE programs

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CONFIDENTIALITY AGREEMENTS

I. INTRODUCTION

There are a combination of federal and state laws that govern the protection of proprietary information (e.g. patent law, copyright law, trade secrets law, and economic espionage law). A discussion of these laws is beyond the scope of this outline. It will, instead, focus on confidentiality agreements that fill in the gaps between the protections offered by these laws and the needs of the parties.

Confidentiality agreements have been a part of the business community for years. In fact, it would be highly unusual not to see one in corporate acquisitions and dispositions, intellectual property investments, contract worker agreements, and litigation discovery orders. They also have made significant in-roads into real estate transactions. They create the contractual framework within which one party discloses to another confidential and proprietary information.

The requirement for an agreement usually comes before the transaction begins, and the term usually lasts for a period after the transaction is consummated or discussions have terminated.

It is important to distinguish between a confidentiality agreement and a non-competition agreement. Confidentiality agreements generally forbid the misuse and disclosure of confidential information. Courts recognize an employer's need to protect confidential information and are much more receptive to enforcing properly drawn confidentiality agreements.¹ Non-competition agreements, however, seek to prohibit one's ability to compete against the contracting party for a defined period of time.² Unless carefully drafted, courts on public policy grounds often void these agreements.

II. ENFORCEABILITY

As previously stated, confidentiality agreements are generally enforceable in a court of law.³ A breach of a confidentiality agreement can be addressed with an injunction to prohibit the disclosure of the confidential information. Even though courts look more favorably on confidentiality agreements than they do on non-competition agreements, care still must be

taken to avoid pitfalls that could undermine their effectiveness.⁴

A. Definition of Confidential Information

One of the early pitfalls to be aware of is the definition of "confidential information." If the definition of confidential information is overreaching, especially in the context of employment-related agreements, the agreement may be unenforceable on grounds that it infringes on an employee's ability to use his or her skills. If the definition includes a significant amount of information that is, in fact, widely known, the agreement may be unenforceable even if some portions of the information is confidential. If the definition is vague, the agreement may be unenforceable on grounds that the party did not have reasonable notice of what constitutes confidential information. In common law states such as Texas, confidential information often is deemed protectable only to the extent that it rises to the level of a trade secret.⁵

B. Restrictions on Time and Geography

Restrictions on time and geography always apply to non-competition agreements. The various jurisdictions differ as to whether they should apply to confidentiality agreements, and Texas law is not clear on this issue. In 1985, the Fifth Circuit, applying Texas law, held that a nondisclosure provision is different from a non-competition provision and that under Texas law, even if a noncompetition provision was unenforceable, this would have no effect on the enforceability of a non-disclosure provision that was in the same document.⁶ In 1987, a Texas court of appeals grouped a noncompetition provision and a nondisclosure provision together and analyzed them under the standards for a noncompetition agreement.⁷ In 1992, a different Texas court of appeals held that under Texas law time and geographical restraints do not apply to nondisclosure agreements and rejected *Unitel* to the extent that it stands for a different proposition.⁸ In 1995, the Fifth Circuit, applying Georgia law, held that there must be a limit on the duration of a nondisclosure agreement for it to be

¹ Gary M. Lawrence & Carl Baranowski, *Representing High-Tech Companies* p. 3-2, 1999 (referred to in this article as "High-Tech").

² *Id.*

³ *ZEP Manufacturing Co. v Harthcock*, 824 S.W.2d 654 (Tex.App.-Dallas, 1992) (no writ).

⁴ *High-Tech* at 3-10.

⁵ *CRC-Evans Pipeline International v Myers*, 927 S.W.2d 259, 266 (Tex. App. 1996) (no writ)

⁶ *Hi-Line Electrical Co. v Dowco Electrical Products*, 765 F.2d 1359, 1363 n.5 (5th Cir 1985).

⁷ *Unitel Corp. v Decker*, 731 S.W.2d 636, 636 (Tex.App. 1987) (no writ).

⁸ *ZEP Manufacturing Co. v Harthcock*, 824 S.W.2d 654, 662 (Tex. App. 1992) (no writ).

enforceable.⁹ Until Texas law is settled, it would be prudent to include geographical and time restraints.

III. SELECTED DRAFTING CONSIDERATIONS

Although confidentiality agreements may vary in different areas of law and in different purposes for their use, there are a number of provisions that should always be included.

A. Scope of the Agreement

This provision consists primarily of the definition of the information to be protected. Among items most often included are business strategies, studies, and analyses, along with a general provision that allows specific unenumerated material specially marked confidential or proprietary to enjoy such treatment.¹⁰ The most typical items excluded from the definition are (i) information that becomes generally available to the public without the disclosure of one of the parties to the agreement, (ii) information that was already in a party's possession before signing (and which clearly can be so established); (iii) information gained from a third party on a nonconfidential basis (provided such party had a right to possess and distribute the information); and (iv) information that is developed independently by party (and which clearly can be so established).¹¹ These exceptions are usually significant in determining the unenforceability of the agreement.

If you are the party disclosing the information, you will want a comprehensive definition. The definition should include all information actually disclosed, whether before or after the execution of the agreement, whether tangible or intangible, and in whatever form or medium provided.¹² It also should include all information generated by the receiving party or by its representatives that contains, reflects, or is derived from the provided information.¹³

B. Use of the Information

The agreement should contain a provision specifying that the information covered by the agreement must be used solely for the purpose of the approved business transaction or transactions between the parties to the agreement. All other uses of the information should be expressly prohibited.¹⁴

C. Standard of Care

The agreement should require that the person receiving the information keep it confidential so as to prevent the information from being broadly circulated in a manner that would destroy its confidential nature and render the nondisclosure and use provisions relating to it unenforceable.¹⁵ It should define the categories of persons to whom the receiving party may disclose the information. These typically include officers, directors, partners, employees, affiliates, agents, and representatives of the receiving party.¹⁶ In addition, this section of the agreement frequently includes a provision or provisions allowing for the authorized disclosure of the information to third parties who may need it for the purpose of evaluating a possible transaction with one of the parties to the agreement. This authorization, however, is usually coupled with a requirement that any third party receiving the information must also keep the information confidential and agree to be bound by the terms of the confidentiality agreement. Disclosure is typically defined in the agreement to include means of disclosure that are permitted in writing, by delivery of tangible things, by initiation of access to information (such as computerized databases), or by oral or visual presentations.¹⁷

D. Mandatory Disclosures

The agreement should contain a provision recognizing that there are possible limits to the effectiveness of a confidentiality agreement posed by the judicial process and allowing release of covered information when there is no other option.¹⁸ The receiving party should be required to provide notice to the disclosing party so that the disclosing party can seek a protective order or other remedy. Some agreements provide that the extent of the disclosed information is limited in accordance with the opinion of outside legal counsel as to what is necessary to comply with the court order.¹⁹

E. Return of the Information

Agreements usually require that all information be returned or destroyed at the end of the relationship. Even though the information is returned, the parties still remain obligated by the terms of the confidentiality agreement. This provision should be drafted with care in light of the advances in Internet and information technology. With computer-based fax machines, LAN-based personal computers, e-mails and the Internet, image-processing scanners, backup tape

⁹ *TDS Healthcare System v Humana Hospital Illinois, Inc.*, 880 F. Supp. 1572, 1585 (N.D. Ga 1995).

¹⁰ *High-Tech* at 3-16.

¹¹ *Id.*

¹² Bowden, "Drafting and Negotiating Effective Confidentiality Agreements," *Texas Bar Journal*, June 1996 ("Bowden").

¹³ *Id.*

¹⁴ *High-Tech* at 3-17.

¹⁵ *Id.*

¹⁶ Bowden at 526.

¹⁷ *High-Tech* r 3-17.

¹⁸ *Id.*

¹⁹ *Id.*

archival procedures, and computer “undelete” applications, confidential information frequently can be retained by the receiving party without running afoul of the literal terms of many traditional confidentiality agreements.²⁰ Because confidential information can be easily changed from its original paper form, the disclosing party must assure itself that the recipient will use special security measures in order to restrict access to confidential information that is stored on its computer system.²¹ Since no agreement can fully anticipate the full range of possibilities, many agreements now add additional protection by requiring a post-transaction security audit. The disclosing party is permitted to conduct a security audit of the receiving party’s computers to ensure to the discloser’s satisfaction that all disclosed confidential information on the receiving party’s computer systems has been erased, returned, or adequately protect.²²

F. Injunctive Relief

Most agreements include a provisions stating that monetary damages alone will not provide an adequate remedy for breach of the agreement and that the disclosing party will be irreparably damaged if the agreement is breached. This helps the disclosing party meet the standard under civil procedure for injunctive relief, which typically requires a showing of irreparable harm.

G. Disclaimer of Accuracy and Completeness

The disclosing party should always make sure that a disclaimer is included in the agreement. The information that is being provided frequently was prepared by a third party and the disclosing party should not be required to warrant the accuracy or completeness of the information.

IV. CONCLUSION

It is not possible to consider every ramification in a confidentiality agreement. However, the party reviewing or drafting the agreement should use care to protect the disclosing party as much as possible. The provisions that are discussed in this outline are not all the provisions that should be included in the agreement, but they do include many of the more significant provisions.

²⁰ Feldman and Potamianos, “Mergers and Acquisitions,” *Insights*, Vol. 13, No. 10, November 1999 (“Feldman”) at p. 17.

²¹ Feldman at p. 20.

²² *Id.*

EXHIBIT A

[FDIC Agreement—Acquisition of Failed Bank Assets]

CONFIDENTIALITY AGREEMENT

This agreement is entered into between the Federal Deposit Insurance Corporation ('FDIC'), as Receiver of the former banks, and the undersigned ('you'), a potential purchaser interested in reviewing certain credit and/or collateral files of the Bank for the purpose of determining if you wish to purchase any of the assets relating to such files.

1. **Confidential Information.** You agree that all loan files that you will review and/or any information provided you are categorized as "Confidential Information" and will be treated as confidential by you for a period of five (5) years and will be used by you solely for the above-mentioned purpose. You further agree not to disclose the Confidential Information to any third party without FDIC prior written consent; provided, however, that nothing contained herein will prevent you from producing the Confidential Information pursuant to any subpoena which you believe to be bonafide, but in such event you will give the FDIC immediate notice of such subpoena so that FDIC may seek a protective order. The foregoing obligation of confidentiality and non-use will not apply to information which is in, or hereinafter becomes part of, the public domain without breach of obligation hereunder or which is presently in your possession.

2. **Originals and Copies.** You will not make copies, in whole or in part, of any Confidential Information or marked original copies of Confidential Information (Reproductions) without prior written consent of FDIC. You will not remove any Confidential Information or Reproductions from the files without the prior written approval of FDIC. Any marked original copies of Confidential Information provided to you by FDIC will be returned to FDIC within ninety (90) days of your receipt of said copies or within ten (10) days of FDIC's request for them should you not be a successful purchaser.

3. **Limited Access.** You will limit access to the Confidential Information and Reproductions to the following persons and will bring the obligations of confidentiality and non-use contained herein specifically to the attention of your employees and require them to be bound thereby:

(a) those of your, or your parent company, employees or agents who require access for the above mentioned purpose; or

(b) your Board of Directors or any director's examination or audit committee thereof; or

(c) to any federal or state bank examiners or to any representative of the Internal Revenue Service in the course of their respective examinations of your institution.

4. **Safekeeping.** The Confidential Information and Reproductions will not be kept as part of your day-to-day credit files.

5. **Debtor Contact.** You will not contact any debtor, guarantor, accountant or attorney relative to any loan without prior written consent of FDIC.

6. **Termination.** Upon the purchase, if any, by you of any of the loan portfolio, this Agreement will be of no further legal force and effect as to that part of the loan portfolio purchased. The terms and conditions contained in this Agreement will continue to be of full legal force and effect as to the portion of the loan portfolio not purchased by you.

7. **Conflict of Interest.** By execution of the Agreement, you also represent that, to your knowledge, the examination of the Confidential Information represents no conflict of interest on the part of your company or any employee, and that you (and parent company, if any) are not presently involved in any litigation, or party to litigation, with FDIC or any debtors in these liquidations.

8. **Stipulated Damages.** It is agreed and stipulated by the parties that the breach of the agreement by you will cause certain damages to the FDIC. Accordingly, in the event that this contract is in any way breached, you agree to pay stipulated damages in the amount of \$10,000.00, per breach. Furthermore, if it is necessary to enforce this contract in any court, you agree to pay a reasonable attorney's fee and all court costs.

A breach is defined as failure to observe any of the provisions contained in this Agreement, including but not limited to, the release of any information contained in the files being reviewed by you, and/or any information provided you to any party without the prior written consent of the FDIC.

By your execution hereof, you agree to keep the Confidential Information confidential to the same extent as you keep sensitive information with regard to your own internal affairs confidential.

Please indicate your acceptance of the foregoing by signing and returning the enclosed duplicate of this Agreement.

Signature of Authorized Individual

Typed Name

Title

Firm

Date

Address

EXHIBIT B

[Acquisition of Assets—Multiple Locations]

Group A

Dear Group A:

There have been several discussions between your representatives, *i.e.*, representatives of Group A ("Group A") and Group B ("Group B") relating to the possibility of the transaction between Group A and Group B. This letter sets forth our agreement on certain matters relating to the proposed transaction and relating to the investigations and discussions which would be preliminary to any such transaction.

For convenience, I will refer to the following persons as "Group B Senior Executives":

Our agreements are as follows:

1. ***Non Disclosure of Investigation:*** Group B Senior Executives will not disclose to any person (other than "Exempt Persons," as herein defined) the fact that Group B is investigating the possibility of a transaction with Group A. If any newspaper reporters or other media representatives inquire of any Group B Senior Executives whether or not any investigation or negotiations relating to a possible transaction between Group B and Group A are in progress, Group B Senior Executives will neither confirm nor deny the existence of any such investigation or negotiations and will, in effect, state "no comment," in either those words or substantially equivalent words. For the purpose of this agreement, the term "Exempt Persons" means employees of Group B and also outside attorneys and accountants who need to know the information which is disclosed to them in order to assist Group B in the evaluation of a possible transaction between Group B and Group A.

2. ***Confidential Information:*** Group B Senior Executives will not disclose to any person (other than Exempt Persons) the "Confidential Information" (as herein defined). As of this date, the term "Confidential Information" means the following.

As to each location owned by Group A which Group A proposes to include in this transaction:

(a) actual annual cash flow for 1992 and 1993 and present stabilized cash flow, annualized (not pro formas);

(b) amount of mortgage debt applicable to each such property, the interest rate, maturity, and constant; and

(c) the name of the holder of the mortgage encumbering the property.

Any other provisions of this Agreement to the contrary notwithstanding, information shall not constitute Confidential Information to the extent that any of the following apply: (i) such information was known to Group B prior to the disclosure by Group A; (ii) such information was at the time of disclosure or thereafter became lawfully obtainable from other sources; or (iii) such information was generally known to the public.

From time to time Group A and Group B may agree that additional information shall be classified as "Confidential Information," provided that any such agreement shall be in the form of Exhibit "A" which is attached to this letter, shall generally describe such information, and shall be signed and dated by Group A and Group B.

3. ***Exempt Persons:*** When Group B Senior Executives disclose to Exempt Persons the existence of the investigation of a possible transaction between Group A and Group B or disclose any Confidential Information, the

Group B Senior Executives shall advise all such Exempt Persons that the existence of the subject investigation and the Confidential Information are to be treated as confidential and are not to be disclosed to any person other than other Exempt Persons who need to know such information in order to perform their roles with respect to assisting Group B in evaluating the possible transaction. It is recognized that neither Group B nor the Group B Senior Executives can guarantee compliance by such Exempt Persons with such confidentiality request, and further, it is recognized that persons who are not Exempt Persons (such as secretaries, personnel transmitting or receiving materials by fax, messengers, and others) may learn of the existence of the subject investigation or the contents of some of the Confidential Information, and no guarantees can be made with respect to the actions of such persons either in retaining or failing to retain in confidence information so acquired by them.

4. **Accuracy:** Group A states that information which it gives to Group B will be accurate and complete to the best of Group A's knowledge and belief; however, at this point, Group A does not warrant the accuracy or completeness of such information.

5. **Termination:** Group A and Group B each retain the right, at any time, to discontinue the investigation or any discussions about a possible transaction. If such termination should occur, Group B will promptly deliver to Group A all Confidential Information then in the possession of Group B, including all copies, reproductions, summaries, analysis, and extracts or Group B will destroy all such materials.

6. **Remedies:** In the event of a breach or threatened breach of this agreement by Group B, Group A shall have the right to obtain injunctions prohibiting such breach and compelling specific performance of this agreement and further Group A shall be entitled to such damages as are permitted by law, excluding, however, consequential damages and excluding punitive damages (except in case of intentional, malicious violation of this agreement by one of the Group B Senior Executives).

7. **Severability:** If any term, provision, covenant, or restrictions of this agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the terms, provisions, covenants, and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

8. **Non-Waiver:** It is further understood and agreed that no failure or delay by Group A in exercising any right, power, or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise of any right, power, or privilege hereunder.

9. **Forced Disclosure:** In the event that Group B or any of its representatives become legally compelled to disclose any of the Confidential Information, Group B will provide Group A with prompt notice thereof so that Group A may seek a protective order or other appropriate remedy or, if Group A shall so choose, waive compliance with the provisions of this Agreement with regard to such specific disclosure. In the event that such protective order or other remedy is not obtained, or Group A waives compliance with the provisions of this agreement with regard to specific disclosure, Group B will furnish only that portion of the Confidential Information which Group B is advised by counsel that it is legally required to disclose and will exercise its best efforts to obtain reliable assurance that confidential treatment will be accorded to the Confidential Information by the recipient thereof.

10. **Applicable Law:** This agreement shall be governed by the internal laws of the State of Texas and is performable in Houston, Harris County, Texas, and each of the parties hereto consents to the venue and jurisdiction of the courts of Harris County, Texas.

11. **Expenses:** In the event any action or proceedings are instituted or commenced to enforce the provisions of this agreement, the prevailing party shall also be entitled to recover reasonable attorney's fees and costs.

12. **Entire Agreement:** This letter sets forth the entire agreement between Group A and Group B regarding confidentiality. No prior or contemporaneous representations or agreements, oral or written, shall be binding. This agreement may not be changed except by a writing signed by all of the undersigned parties. This agreement shall inure to the benefit of and be binding upon the undersigned parties and their respective heirs, executors, administrators, successors, and assigns.

Very truly yours,

GROUP B

By _____

Accepted and Agreed to this the
___ day of _____, _____:

GROUP A

EXHIBIT "A"

Reference is made to that certain letter agreement dated January __, 1994 by and between Group A ("Group A") and Group B ("Group B") (the "Letter Agreement"). Group A and Group B wish to supplement the Letter Agreement by agreeing (and they hereby agree) that in addition to the items as listed in the Letter Agreement which constitute Confidential Information, the following additional materials will also constitute Confidential Information:

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.

Signed and effective this ____ day of _____, _____.

GROUP B

By: _____

EXHIBIT C

[Acquisition of Investment Interest in Existing Entity]

Group A

Dear Group A:

You have advised me that you and your company represent Group B; that Group B has indicated an interest in making an investment in a substantial Houston real estate project; and that you contemplate submitting to them as such a potential investment, a proposal to acquire an ownership interest in Group C development. You have requested that we prepare financial information, including projections which would be helpful to Group B in evaluating any such proposed acquisition. We have prepared extensive information as requested and are turning such information over to you with the understandings and agreement respecting confidentiality set forth in this letter.

For purposes of this letter, the terms "Group A", means you, your company, and all persons who own any interest, directly or indirectly in your company, or are employees of such company. The term "Group C" means the developers and owners of Group C, namely Group C, a Texas limited partnership, with respect to Group C and all parties who own any interest, directly or indirectly, in either such partnership or such venture.

Group A agrees that all information relating to Group C development heretofore or hereafter given to Group A by Group C will be kept confidential by Group A. In no event shall Group A use such confidential information to the detriment of Group C. Group A agrees to show such confidential information only to Group B, and not to any other party. In presenting such information to Group B, Group A will inform them of the confidential nature of such information and will use reasonable efforts to insure that such information remains confidential, in the possession of Group B.

In the event that either Group B decide not to pursue a proposed acquisition of an interest in Group C or Group C decides not to go forward with any proposed transaction, then in either such event, Group A will return to Group C all confidential information furnished to it and all copies thereof. Group A further agrees to promptly destroy all copies of all material prepared by it which includes or is based on any of such confidential information.

The foregoing restrictions will not apply to any information which:

(a) is or hereafter becomes generally available to the public other than as a result of Group A's breach of the terms of this letter; or

(b) was available to Group A on a non-confidential basis prior to its disclosure to Group A by Group C.

If this letter accurately sets forth our understanding, please sign one copy in the space provided below and return it to me.

Very truly yours,

Group C

ACCEPTED AND AGREED TO:

Group A

EXHIBIT D

[Operating Expense Audit]

CONFIDENTIALITY AGREEMENT

CONFIDENTIALITY AGREEMENT, dated as of _____, 200__, by _____ a _____ ("Tenant"), and _____ ("Auditor").

WITNESSETH THAT:

A. In connection with that certain Office Lease Agreement (the "Lease") dated _____, between _____ ("Landlord") and Tenant, Tenant has the right to hire an independent accounting firm to audit Landlord's books and records pertaining to Basic Operating Costs (defined in the Lease).

B. It is expected that in connection with such audit, Tenant and Auditor will receive or have access to Confidential Information (defined below).

C. As a condition of Tenant's audit right, Landlord requires that Tenant and Auditor keep confidential the Confidential Information.

NOW, THEREFORE, in consideration of and as a condition of Tenant's audit right and in consideration of payment by Tenant for Auditor's services for performing the audit, and for other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, Auditor and Tenant agree as follows:

1. Auditor and Tenant acknowledge that information which Auditor and Tenant may receive in connection with such audit is nonpublic, confidential or proprietary relating to Landlord, its business operations and the Complex, and that Landlord would be irreparably damaged if Auditor and Tenant's confidential knowledge of this material were disclosed to or utilized on behalf of any other person (including Auditor and Tenant), firm, corporation or any other tenant of the Complex. Auditor and Tenant agree that any information given to Auditor or Tenant by Landlord during the course of such audit is, and shall remain property owned by Landlord, and neither Auditor nor Tenant shall have any right in or to such information other than to use the information for the purposes set forth in the Lease.

2. Auditor and Tenant agree to keep confidential and agree to cause their employees, associates, agents and advisors to keep confidential any information belonging to Landlord or its affiliates and any information not generally known to the public about the business and affairs of Landlord, including, without limitation, (a) all books, manuals, records, memoranda, projections, business plans, tenant lists, cost information, contractual relationships and (b) other information, whether computerized, written or oral, relating specifically or generally to operating costs, the Complex and business operations of Landlord (the "Confidential Information").

3. Auditor and Tenant each hereby represent and warrant that its internal policies, procedures and practices are adequate to safeguard against any breach of this Agreement by it or its employees, associates, agents and advisors and Auditor and Tenant each agree to maintain such internal policies, procedures and practices as are necessary to adequately safeguard against a breach of this Agreement.

4. "To Keep Confidential", as used herein, means that the information or document, including the content, substance or effect of such information or document, (a) shall not be disclosed, discovered or distributed by Auditor or Tenant to any other person, firm, organization or entity, including any associate, agent, advisor or affiliate of Auditor or Tenant and any other tenant of the Complex, (b) shall not be utilized by either Auditor or Tenant for any purpose other than as described in the Lease.

5. Notwithstanding anything to the contrary herein, if Auditor or Tenant is required in legal, arbitration, governmental or regulatory proceedings, Auditor or Tenant may disclose only that portion of the Confidential

Information which its counsel advises in writing that it is legally compelled to disclose and will exercise its best efforts to obtain assurance that confidential treatment will be accorded such Confidential Information.

6. Auditor and Tenant acknowledge that the subject matter of this Agreement is unique and that an adequate remedy at law would not be available for breach of the obligations specified herein. Accordingly, in the event of a breach or threatened breach by Auditor or Tenant of the provisions of this Agreement, Landlord shall, in addition to any other rights and remedies available to it, at law or in equity, Landlord shall be entitled to injunctive relief by a court or agency of competent jurisdiction enjoining and restraining the violating party from committing or continuing any violation of this Agreement.

7. Any waiver by Landlord of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of the same of any other provision hereof.

8. In case any one or more of the provisions or parts of a provision contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision or part of a provision of this Agreement; and this Agreement shall, to the fullest extent possible, be reformed and construed as if such invalid or illegal or unenforceable provision, or part of a provision, had never been contained herein, and such provision or part shall be reformed so that it would be valid, legal and enforceable to the maximum extent possible.

9. This Agreement shall be binding upon Tenant and Auditor and their successors and assigns.

10. This Agreement may be amended or modified in whole or in part, only by an instrument in writing signed by Landlord, Tenant and Auditor.

11. This Agreement shall be construed in accordance with and governed for all purposes by the laws of the State of Texas, without regard to conflicts of law principles. Venue for any action arising herefrom shall be in Houston, Harris County, Texas, and the parties hereto submit themselves to the jurisdiction of the state and federal courts of Houston, Harris County, Texas.

IN WITNESS WHEREOF, Tenant and Auditor have duly executed this Agreement as of the date first above written.

TENANT:

a _____

By: _____
Name: _____
Title: _____
Date: _____

AUDITOR:

a _____

By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT E

[Evaluation of Property for Purchase]

CONFIDENTIALITY AGREEMENT

In connection with the proposed sale (“Proposed Sale”) of the property known as _____ (“Property”), _____ (“Listing Broker”) on behalf of _____ (“Seller”) is delivering to _____ (“Accepting Party”) certain information that is confidential and/or proprietary in nature (collectively, “Evaluation Material”).

By entering into this Confidentiality Agreement (“Agreement”) and accepting the Evaluation Material, Accepting Party agrees as follows:

1. Except for the sole purpose of evaluating the possible acquisition of the Property by Accepting Party (or if Accepting Party is a broker, by third parties, subject to the terms of this Agreement), Evaluation Material will not be used or duplicated for any other purpose, including, without limitation, for the purpose of contacting the Seller’s tenants. Accepting Party shall keep all Evaluation Material strictly confidential; provided, however, that such Evaluation Material may be delivered to such persons or entities who because of their involvement with the Proposed Sale need to know such information for the purpose of giving advice with respect to, or consummating, the Proposed Sale (all of whom are collectively referred to as “Related Parties”). Related Parties shall be informed by Accepting Party of the confidential nature of such information and shall be direct by Accepting Party (and Accepting Party shall cause such Related Parties) to keep all such information in the strictest confidence and to use such information only in connection with the Proposed Sale and in accordance with the terms of this Agreement. If Accepting Party (or if Accepting Party is a broker the party being represented by such broker) does not purchase the Property, or upon request of Seller, Accepting Party will promptly deliver to Seller all Evaluation Material furnished, whether furnished before or after the date of this Agreement, without retaining copies thereof.
2. If Accepting Party is a broker, Accepting Party agrees not to divulge any confidential information or release any Evaluation Material to prospective purchasers unless and until such prospective purchasers sign a duplicate of this Agreement, agreeing to all of the terms and conditions set forth herein, and such signed Agreement is delivered to Listing Broker.
3. Accepting Party shall not (I) disclose the fact that discussions or negotiations are taking place concerning the possible acquisition of the Property or any of the terms thereof, or (ii) conduct any discussions, negotiations, or make any inquiries concerning the possible acquisition of the Property with any other person or entity except for Seller and Listing Broker, except as may be permitted by the preceding paragraphs, or except as may be required by law.
4. If Accepting Party or a Related Party becomes legally compelled to disclose all or any part of the Evaluation Material, Accepting Party will provide Seller with prompt written notice so that Seller may seek a protective order or other appropriate remedy and/or waiver compliance with the provisions of this Agreement. If such protective order or other remedy is not obtained, or Seller waives compliance with the provisions of this Agreement, Accepting Party will furnish only that portion of the Evaluation Material that is legally required and will exercise best efforts to obtain reliable assurance that confidential treatment will be accorded the Evaluation Material.
5. Accepting Party acknowledges that remedies at law may be inadequate to protect against breach of this Agreement, and Accepting Party hereby agrees in advance to the granting of injunctive relief in Seller’s favor without proof of actual damages, in addition to any other remedies available at law or in equity. Accepting Party shall reimburse Seller for all costs and expenses, including reasonable attorneys’ fees incurred by Seller in successfully enforcing Accepting Party’s obligation under this Agreement.

6. Seller makes no representations or warranties as to the accuracy or completeness of the Evaluation Material or that actual results will conform to any projections. Seller expressly disclaims any and all liability for representation or warranties, express or implied, contained in the Evaluation Material, or in any other written or oral communications transmitted or made available to Accepting Party by Seller.
7. Seller is under no legal obligation of any kind whatsoever with respect to the Proposed Sale by virtue of this Agreement, except for the matters specifically agreed to herein.
8. This Agreement shall be governed by and construed in accordance with the laws of the State in which the Property is located which is applicable to contracts made and to be performed wholly within such State.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date last entered below.

LISTING BROKER:

ACCEPTING PARTY:

EXHIBIT F**[Service Provider]****CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**

THIS CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT (the "Agreement") is made and executed _____, 200_, by SERVICE PROVIDER ("SERVICE PROVIDER"), in favor and for the benefit of BANK ("CUSTOMER"), and its Affiliates (as hereinafter defined).

W I T N E S S E T H:

WHEREAS, SERVICE PROVIDER has provided, currently provides, or will provide certain goods and/or services to CUSTOMER and/or its Affiliates pursuant to one or more agreements (the "Contracts"); and

WHEREAS, SERVICE PROVIDER has had, has, or will have access to certain confidential information of CUSTOMER and/or its Affiliates in the course of providing such goods and/or services; and

WHEREAS, CUSTOMER desires to provide for the non-disclosure and security of such confidential information;

NOW THEREFORE, in consideration of the premises, the acceptance by CUSTOMER and/or its Affiliates of the Contracts, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by SERVICE PROVIDER, SERVICE PROVIDER does hereby covenant and agree as follows:

1. Definitions. As used in this Agreement, the following terms shall have the following meanings:

"Affiliate" shall mean (i) any person or entity controlling, controlled by, or under common control with CUSTOMER or (ii) any partner of or joint venturer with CUSTOMER. For purposes of this definition, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person or entity, whether through ownership of voting securities or otherwise. Hereinafter, the term "CUSTOMER" shall refer both to CUSTOMER and/or any of its Affiliates, as the context may require.

"Confidential Information" shall mean all documents, materials, data and/or information which relates to the provision of goods and/or services by SERVICE PROVIDER to or on behalf of CUSTOMER, or which shall be obtained as a result or in the course of the provision of such goods and/or services, including (without limitation) (i) the business systems and practices, know-how, documents, reports, plans, proposals, forecasts, personnel files, marketing and sales plans of CUSTOMER, (ii) any lists, statistics and/or data relating to the customers or consumers of CUSTOMER, (iii) all Nonpublic Personal Information (as hereinafter defined), and (iv) any other information which CUSTOMER designates, orally or in writing, as confidential or proprietary information or which SERVICE PROVIDER has reason to know is confidential or proprietary information; provided, however, that notwithstanding the foregoing, Confidential Information (except to the extent that it is Nonpublic Personal Information) shall not include information which (i) becomes generally available to the public other than as a result of a disclosure by or through SERVICE PROVIDER, or its agents, employees, representatives, contractors, subcontractors, successors and assigns, or (ii) becomes available to SERVICE PROVIDER on a non-confidential basis from a source other than CUSTOMER, provided that such source is not bound by a confidentiality agreement with CUSTOMER or is not otherwise prohibited from transmitting the information by a contractual, legal or fiduciary obligation, (iii) was in the possession of SERVICE PROVIDER prior to disclosure by CUSTOMER or (iv) is independently developed by SERVICE PROVIDER without reference to the Confidential Information.

“Nonpublic Personal Information” shall have the meaning ascribed to such term by Title V of the Gramm-Leach-Bliley Act (Public Law No. 106-102) and the regulations promulgated pursuant thereto which are applicable to CUSTOMER with regard to the customers and/or consumers of CUSTOMER.

Other capitalized terms used in this Agreement are defined elsewhere herein.

2. Treatment of Confidential Information.

(a) Unless otherwise specifically provided in this Agreement or authorized in writing by CUSTOMER, and except as required by court order, SERVICE PROVIDER, for itself and for its agents, employees, representatives, contractors, subcontractors, successors and assigns, agrees (i) to keep all Confidential Information confidential and in its possession except as necessary to perform the Contracts; (ii) to restrict access to Confidential Information to those persons who are actively and directly participating in the performance of SERVICE PROVIDER’s responsibilities under the Contracts and who need to know such information in order to fulfill such responsibilities; (iii) SERVICE PROVIDER agrees to monitor contractors, sub-contractors and subservicers for compliance with the terms of this Agreement; (iv) to maintain physical, electronic, and procedural safeguards that comply with federal and other applicable legal standards to guard Confidential Information, and with respect to Nonpublic Personal Information, to implement and apply appropriate information security measures designed to meet the objectives of the Interagency Guidelines Establishing Standards for Safeguarding Customer Information which have been promulgated by the federal banking agencies and which may be in effect from time to time (the “Guidelines”); (v) not to copy or duplicate any Confidential Information except as necessary to perform the Contracts; (vi) to treat any and all copies of, and notes, memoranda, analyses, compilations, abstracts, synopses, studies of other material produced from, the Confidential Information as Confidential Information; (vii) to communicate only with the designated representatives of CUSTOMER concerning Confidential Information; (viii) not to use or disclose any Confidential Information for any purpose other than the purpose for which such information was provided in connection with the performance of the Contracts, except as permitted by applicable law in the course of performing the Contracts or as otherwise required by applicable law; (ix) not to disclose to any person the fact that Confidential Information has been made available to SERVICE PROVIDER or that SERVICE PROVIDER has reviewed or has in its possession any Confidential Information, except as necessary to perform the Contracts and as permitted by applicable law; and (x) to comply with all applicable law regarding the security, handling, use and disclosure of Confidential Information (including, without limitation, all laws and regulations pertaining to Nonpublic Personal Information).

(b) In the event that SERVICE PROVIDER or any of its agents, employees, representatives, contractors, subcontractors or subservicers (“SERVICE PROVIDER Representatives”) is required by law to disclose any of Confidential Information in violation of the terms and provisions of this Agreement, SERVICE PROVIDER or such SERVICE PROVIDER Representative, as the case may be, shall, to the extent legally permissible, provide CUSTOMER with prompt telephone and written notice of such requirement so that CUSTOMER may seek an appropriate protective order or other appropriate remedy and/or waive compliance by SERVICE PROVIDER or such SERVICE PROVIDER Representative with the provisions of this Agreement. In the event that such protective order or other remedy is not obtained, or in the event that CUSTOMER grants a written waiver of the affected provisions hereof, SERVICE PROVIDER or such SERVICE PROVIDER Representative may disclose that portion (and only that portion) of the Confidential Information which, in the opinion of SERVICE PROVIDER’s legal counsel SERVICE PROVIDER is legally compelled to disclose, and SERVICE PROVIDER will, at the written request of CUSTOMER and at the sole cost and expense of CUSTOMER, exercise its reasonable commercial effort to obtain reliable assurances that confidential treatment will be accorded to the Confidential Information so furnished.

(c) SERVICE PROVIDER agrees to notify CUSTOMER promptly, by facsimile or telephone, of any unauthorized disclosure of or access to Confidential Information known to SERVICE PROVIDER, including (without limitation) any instance of theft, unauthorized access by fraud,

deception, or other malfeasance or inadvertent access. In the event of any such breach, SERVICE PROVIDER shall further provide to CUSTOMER, in writing, such details concerning the incident in question as CUSTOMER may request.

(d) Notwithstanding anything to the contrary provided herein or in any of the Contracts, CUSTOMER is and shall remain the sole owner of the Confidential Information and all data derived from it. SERVICE PROVIDER agrees to separate the Confidential Information from all other information in its possession and to identify the Confidential Information as belonging to CUSTOMER. SERVICE PROVIDER recognizes and agrees that nothing contained in this Agreement or the Contracts shall be construed as granting SERVICE PROVIDER any property rights, by license or otherwise, in or to any Confidential Information. Promptly after termination or non-renewal of any Contract, SERVICE PROVIDER shall return to CUSTOMER, and delete and erase from SERVICE PROVIDER's systems, all Confidential Information relating to such Contract, and within thirty (30) days after such termination or non-renewal, SERVICE PROVIDER shall certify in writing to CUSTOMER that all such Confidential Information has been returned to CUSTOMER and deleted and erased from SERVICE PROVIDER's systems.

(e) In the event of a breach by SERVICE PROVIDER of any of its obligations hereunder, CUSTOMER shall have, in addition to any other rights and remedies available at law or in equity, the right to seek interim, interlocutory and permanent injunctive relief without the necessity of proving either pecuniary damage that any irreparable harm would or might result from a failure to obtain such injunctive relief, it being acknowledged and agreed by all parties hereto that any such breach might cause irreparable harm to CUSTOMER and that monetary damages, alone, might not provide an adequate remedy (provided, that no provision of this Agreement shall preclude CUSTOMER from seeking and collecting monetary damages).

3. Regulatory Examination. SERVICE PROVIDER acknowledges that CUSTOMER is subject to examination and audit by regulatory agencies. SERVICE PROVIDER further acknowledges that federal and state regulatory agencies having supervision over CUSTOMER may require access to SERVICE PROVIDER's facilities in order to examine and audit the performance of the Contracts by SERVICE PROVIDER. SERVICE PROVIDER agrees to cooperate fully, at written request of CUSTOMER and at the sole cost and expense of CUSTOMER, with respect to all such regulatory audits and further agrees to notify CUSTOMER as soon as practicable of any formal request by any governmental agency to examine records pertaining to CUSTOMER or its customers, if SERVICE PROVIDER is not prohibited from notifying CUSTOMER. CUSTOMER and SERVICE PROVIDER agree to amend this Agreement and/or the Contracts from time to time to the extent necessary to comply with privacy and information security requirements and directives (including, without limitation, the Guidelines) of regulators having jurisdiction over CUSTOMER.

4. Audit. For as long as SERVICE PROVIDER shall be in possession of any Confidential Information, in any form, SERVICE PROVIDER shall periodically test, monitor and audit SERVICE PROVIDER's information security systems, measures and procedures (and those of SERVICE PROVIDER's contractors or subcontractors, as the case may be) in order to insure that such systems, measures and procedures are consistent with industry best practices and standards. In addition, CUSTOMER shall have the right, in order to insure that such systems, measures and procedures are consistent with industry standards, but not the obligation, from time to time, in the sole and absolute discretion of CUSTOMER, to monitor, review and audit (either through its own representatives or by employing third parties) SERVICE PROVIDER's information security systems, measures, procedures, disaster recovery plans and security plans (as well as the results of any information security tests and audits conducted by SERVICE PROVIDER, including (without limitation) any SAS 70 reports). If any audit or review by CUSTOMER reveals any material security defects, problems, weaknesses or failure to comply with industry securities standards and practices, CUSTOMER shall notify SERVICE PROVIDER thereof, and SERVICE PROVIDER shall have (30) thirty days to cure the same. Failure of SERVICE PROVIDER to correct such problems, defects, weaknesses or failure shall be considered a material breach for purposes of this Agreement and the Contracts.

5. Indemnification. SERVICE PROVIDER agrees to indemnify, defend and hold harmless CUSTOMER (including, without limitation, its officers, directors, shareholders, employees, agents, successors,

and assigns) from and against any and all claims, debts, liabilities, damages, demands, obligations, costs, expenses (including, without limitation, reasonable attorneys’ fees and court costs), actions and causes of action in any way arising from or related to (i) the breach of any of the terms and provisions of this Agreement by SERVICE PROVIDER or any party acting by or through SERVICE PROVIDER (including, without limitation, any SERVICE PROVIDER Representative) or (ii) the enforcement of this indemnity.

6. Notices. All notices, demands, requests, or other communications which may be or are required to be given, served, or sent under this Agreement shall be in writing (except for telephonic notice of a breach or attempted breach of security, as provided herein) and shall be delivered by (i) personal or hand delivery, (ii) facsimile transmission, (iii) nationally recognized express overnight delivery service (with charges therefor prepaid) that provides for “proof of delivery”, or (iv) certified or registered mail, return receipt requested (with postage therefor prepaid). Notices shall be deemed received upon (a) receipt, if hand or personally delivered, (b) the next business day after the notice has been transmitted by facsimile or deposited with a nationally recognized express overnight delivery service, or (c) the third business day after the notice has been deposited with the United States Postal Service. Notices shall be provided at the following addresses:

If to SERVICE PROVIDER:

Attention: _____
Telephone: _____
Facsimile: _____

If to CUSTOMER:

Attention: _____
Telephone: _____
Facsimile: _____

With a copy to:

Attention: _____
Telephone: _____
Facsimile: _____

Any party may change the address at which it is to receive notices or the representative to whom notices are to be given by written notice to the other party in the manner set forth above.

7. Remedies Cumulative. The remedies afforded to CUSTOMER in this Agreement are not intended to be exclusive, and each remedy shall be cumulative and shall be in addition to all other remedies available to CUSTOMER at law or in equity. Any breach of this Agreement by SERVICE PROVIDER shall constitute a breach under any Contracts affected by such breach of this Agreement and shall entitle

CUSTOMER to terminate such Contracts, without penalty, in addition to any other rights or remedies available to CUSTOMER under such Contracts.

8. No Third-Party Beneficiaries. Except as expressly set forth herein, this Agreement shall not be construed to confer any rights or remedies upon any person or entity, except CUSTOMER and its officers, directors, shareholders, employees, agents, successors, and assigns.

9. Waivers. No delay or omission in exercising any rights or remedies under this Agreement or applicable law shall impair such right or remedy or be construed as a waiver of any such right or remedy. Any single or partial exercise of a right or remedy shall not preclude further exercise of that right or remedy or the exercise of any other right or remedy. No waiver shall be valid unless in writing signed by the party to be bound.

10. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama, without regard to its conflict of laws principles, and, where applicable, the laws of the United States.

11. Captions and Headings. The captions and headings contained in this Agreement are for convenience of reference only and shall not be used to limit the applicability or meaning of any provisions of this Agreement.

12. Pronouns and Plurals. All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, shall include all other genders where the context so requires. The use of the singular form shall include the plural and the use of the plural shall include the singular where the context so requires.

13. Severability. If any provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each provision shall be valid and enforceable to the fullest extent permitted by law.

14. Construction. This Agreement shall be interpreted and construed in a fair and impartial manner without regard to such factors as the party that prepared the instrument or drafted any provision thereof, the relative bargaining powers of the parties or the domicile of any party.

15. Modification and Amendment. This Agreement shall not be modified or amended in any respect except by a written instrument executed by the parties; provided, that in the event the provisions of this Agreement shall conflict with the requirements of applicable law concerning the use, handling, disclosure and/or treatment of Confidential Information (including, without limitation, the Guidelines), this Agreement shall be deemed amended as necessary to conform to such legal requirements.

16. Assignments. This Agreement shall be binding upon SERVICE PROVIDER and its successors and assigns and shall inure to the benefit of CUSTOMER and its successors and assigns.

17. Entire Agreement. This Agreement contains the entire agreement of SERVICE PROVIDER in respect of the subject matter hereof, and neither CUSTOMER nor SERVICE PROVIDER is bound by any previous representations or agreements of any kind regarding the subject matter hereof except as herein contained. In the event of a conflict between the terms hereof and those of any Contract, the terms hereof shall govern and control.

IN WITNESS WHEREOF, SERVICE PROVIDER has caused this Agreement to be executed under seal by its duly authorized representative as of the date first above written.

AGREED TO BY:

Authorized Signature

Name (Type or Print)

Title

Date

Authorized Signature

Name (Type or Print)

Title

Date

EXHIBIT G

[Mutual Confidentiality Agreement]MUTUAL CONFIDENTIALITY AGREEMENT

This mutual confidentiality agreement (the "Agreement") is made as of the _____ day of _____, _____, by and between _____, a _____ corporation ("XXX"), and _____, a _____ corporation ("YYY").

RECITALS:

The parties are engaged in discussions (the "Discussions") in contemplation or furtherance of **[Describe purpose of discussions]** (the "Relationship") between them.

In the course of such Discussions each party may have access to or have disclosed to it Confidential Information (as hereinafter defined) of the other.

The parties each desire to establish and set forth their individual obligations with respect to the other's Confidential Information and certain other matters.

AGREEMENT:

In consideration of the foregoing and the mutual covenants contained herein, the parties mutually agree as follows:

1. "Confidential Information" as used in this Agreement will mean any and all technical and non-technical information disclosed pursuant to or in contemplation of this Agreement, including trade secrets and proprietary information, techniques, sketches, drawings, models, inventions, know-how, processes, apparatus, equipment, algorithms, software programs, software source documents and formulae related to the current, future and proposed products and services of each of the parties and/or their respective parents, subsidiaries, customers and/or vendors, whether delivered in written (or other tangible) form or verbally and whether delivered by a party to this Agreement or their respective Representatives (as hereinafter defined), and includes, without limitation, information concerning network and system settings and configurations, user interface designs, architecture, class libraries, objects, research, experimental work, design details and specifications, financial data, procurement requirements, customer lists, business forecasts and purchasing, manufacturing, sales, merchandising, development, engineering and marketing plans. Without limiting the generality of the foregoing, the term "Confidential Information" will also be deemed to include all analyses, compilations, forecasts, studies or other documents prepared by a party in connection with such party's review/evaluation of Confidential Information provided by the other party or its Representatives.

-or-

1. "Confidential Information" as used in this Agreement will mean any and all data disclosed pursuant to or in contemplation of this Agreement (i) which if in writing or other media which can be converted to readable form is conspicuously identified as "confidential" or (ii) which is verbally disclosed or disclosed by demonstration or observation (other than data disclosed in writing or other media which can be converted to readable form); provided it is identified as "confidential" at the time of disclosure and confirmed as such, in writing, within _____ (_____) days thereafter. Without limiting the generality of the foregoing, the term "Confidential Information" will also be deemed to include all analyses, compilations, forecasts, studies or other documents prepared by a party in connection with such party's review/evaluation of information provided by the other party or its Representatives (as hereinafter defined). If the party disclosing written information or information contained in a media capable of being converted to a readable form which is intended to be treated as Confidential Information inadvertently fails to identify such information as "confidential," the disclosing party may promptly inform the recipient of such failure and identify the information to which such failure

relates. Thereupon, the recipient will promptly return the applicable information to the disclosing party to be marked "confidential." If, upon verbal disclosure of information or disclosure of information by observation or demonstration, the disclosing party, at the time of disclosure, inadvertently fails to identify such information as "confidential," it may promptly notify the recipient of such failure, identify the information to which such failure relates and confirm such designation/identification in writing within _____ (____) days thereafter. The recipient's obligations with respect to information which was inadvertently not identified as "confidential" at the time of disclosure will commence upon receipt of notice of such inadvertent failure; provided, in the case of information disclosed verbally or via observation or demonstration, such notification is timely confirmed in writing as required by this Paragraph 1.

2. Each of the parties agrees that it will not make use of or in any way circulate within its own organization any Confidential Information of the other party which is supplied to or obtained by it in writing, verbally or by observation, except to the extent necessary for evaluating the contemplated Relationship and for conducting negotiations, discussions and consultations on that subject with authorized Representatives of the other party; or any other purpose the other party to whom such information is confidential may hereafter authorize in writing.

3. Each of the parties agrees that it will not disclose the Confidential Information of the other party only to those of the recipient's officers, directors, employees, agents, attorneys, financial advisors, accountants or consultants (hereinafter individually referred to as a "Representative" and collectively referred to as the "Representatives") who have a need (related to the evaluation of the Relationship) to know such information and certifies that such Representatives have previously agreed, either as a condition to employment or in order to obtain the Confidential Information, to be bound by terms and conditions substantially similar to those of this Agreement, including, without limitation, terms and conditions restricting the use and disclosure of Confidential Information. Each of the parties agrees that it will inform each of its Representatives to whom Confidential Information of the other party is to be disclosed of the confidential nature of such Confidential Information and direct such Representatives not to (i) disclose such Confidential Information to any third party or (ii) use such Confidential Information except in connection with evaluating the contemplated Relationship, conducting negotiations, discussions and consultations on that subject with authorized Representatives of the other party and any other purpose the other party to whom such Confidential Information is confidential may hereafter authorize in writing. Each party will be liable for the unauthorized use or disclosure by its Representatives of the Confidential Information of the other party or other breach of this Agreement by its Representatives.

4. Without limiting the generality of the other provisions of this Agreement, each of the parties agrees that it will treat all Confidential Information of the other party with the same degree of care as it affords to its own Confidential Information, and each of the parties represents that it exercises reasonable care to protect its own Confidential Information. Each party agrees that it will keep a record in reasonable detail of the Confidential Information of the other party furnished to it, the persons to whom such Confidential Information has been disclosed and the location of such Confidential Information.

5. Each of the parties further agrees that (i) it will not publish, copy or disclose (to any third party) any Confidential Information of the other party, (ii) it will use its reasonable best efforts to prevent inadvertent disclosure of such Confidential Information to any third party, and (iii) it will not and will direct its Representatives not to disclose to any person (x) that Confidential Information has been received or disclosed pursuant to this Agreement, (y) that Discussions regarding the Relationship are or have been underway or (z) any other facts relating to such Discussions, including, without limitation, the terms and conditions of this Agreement. Notwithstanding the foregoing, the parties agree that either party may disclose the existence of this Agreement and the terms hereof to the extent (but only to the extent) reasonably required to enforce the rights of such party under this Agreement.

6. Each party's obligations under Paragraphs 2, 3, 4 and 5 with respect to any portion of the other party's Confidential Information will terminate if the party seeking to avoid its obligations under such paragraphs (the "disclosing party") can document that:

(a) such Confidential Information was in the public domain at the time it was communicated to the disclosing party by the other party;

(b) such Confidential Information entered the public domain subsequent to the time it was communicated to the disclosing party by the other party (but prior to the use or public disclosure of such Confidential Information by the disclosing party) through no fault of the disclosing party;

(c) such Confidential Information was in the disclosing party's possession free of any obligation of confidence at the time it was communicated to the disclosing party by the other party;

(d) such Confidential Information was rightfully communicated to the disclosing party free of any obligation of confidence subsequent to the time it was communicated to the disclosing party by the other party (but prior to the use or public disclosure of such Confidential Information by the disclosing party); or

(e) such Confidential Information was developed by employees or agents of the disclosing party independently of and without reference to any information communicated to the disclosing party by the other party.

Any communication of Confidential Information made in response to a valid order by a court or other governmental body or that is otherwise required by law (but only to the extent of such order or requirement) will not be deemed to be a violation of the disclosing party's obligations under Paragraphs 2, 3, 4 or 5. Under such circumstances, the disclosing party agrees that the disclosing party will (to the extent permitted by applicable law) use the best efforts of the disclosing party to provide the other party with reasonable prior notice of any disclosure to be made pursuant to such order or requirement and cooperate (at the expense of the other party) with the efforts of the other party to obtain a protective order or other assurance of confidential treatment of any Confidential Information to be disclosed pursuant to such order or requirement. If, in the absence of a protective order, the disclosing party is compelled as a matter of law to disclose such Confidential Information, the disclosing party will disclose only that part of such Confidential Information as is required by law to be disclosed and (prior to such disclosure) will (to the extent permitted by applicable law) advise and consult with the other party as to such disclosure and the nature and wording of such disclosure. Further and without limitation on any particular obligation of confidence recited herein, the parties hereto will not be permitted to justify disregarding the obligations of confidence herein by using the Confidential Information of the other party to guide a search for publications or other publicly available information, and fitting together otherwise unrelated information contained therein to contend Confidential Information of the other party is in the public domain.

7. Neither party to this Agreement will be deemed to have acquired by reason of this Agreement any intellectual property rights in or with respect to the Confidential Information of the other party. All Confidential Information furnished to one party by the other in electronic, written or documentary form (including, without limitation, documents, drawings, models, apparatus, sketches, designs and lists), together with all copies thereof, or extracts made therefrom, will remain the property of the party who furnished it and will, at the request of the party who furnished such Confidential Information, be destroyed or returned to the party who furnished such Confidential Information. At the request of the party who furnished Confidential Information, the recipient of such Confidential Information agrees to destroy (and certify such destruction in writing) all (i) analyses, compilations, forecasts, studies or other documents derived therefrom (including all copies thereof) and (ii) software, models, sketches, drawings, designs, apparatus and lists into which such Confidential Information has been incorporated (including all copies thereof). Any verbally disclosed or visually observed Confidential Information will remain subject to the terms of this Agreement. Neither party nor their respective Representatives nor any officer, director, employee, agent or "controlling person" (within the meaning of Section 20 of the Securities Exchange Act of 1934, as amended) of the parties or their respective Representatives will be deemed to have made any express or implied representation or warranty regarding the truth, accuracy or completeness of any information furnished pursuant to this Agreement. None of the foregoing persons, parties or other legal entities will have any liability as a result of the inaccuracy or incompleteness of any information furnished pursuant to this Agreement or for any errors therein or omissions therefrom. Each party acknowledges and agrees that (i) it is not entitled to rely on the truthfulness, accuracy or

completeness of any information furnished pursuant to this Agreement and (ii) it will only be entitled to rely on such representations and warranties, if any, as may be included in a Definitive Agreement (as hereinafter defined), subject to any limitations and restrictions which may be contained therein.

8. When requested by the intended recipient of Confidential Information, the disclosing party will provide a non-confidential summary of the Confidential Information to be disclosed (in sufficient detail for the intended recipient to determine whether it wishes to receive such Confidential Information). Either party may decline to accept Confidential Information. Neither party is obligated to disclose any particular Confidential Information.

9. YYY agrees as follows:

(a) During the course of the Discussions, none of YYY, its affiliates or their respective Representatives will, except in accordance with the terms of a specific written request made by XXX, initiate contact with any director, officer, employee or person known by YYY, or who reasonably should be known by YYY, to hold XXX Securities (as hereinafter defined) in connection with any matter relating to the acquisition, purchase, sale or voting of such XXX Securities. If the Discussions are terminated by YYY or by XXX, YYY, its affiliates and their respective Representatives will for a period of two (2) years cease all such contacts in connection with any matter relating to the acquisition, purchase, sale or voting of such XXX Securities, whether or not previously authorized.

(b) As of the date of this Agreement, except as previously disclosed by YYY to XXX in writing, YYY confirms that neither it nor its affiliates beneficially own any debt or equity securities of XXX, or any direct or indirect options or other rights to acquire any such securities (hereinafter collectively referred to as "XXX Securities"). YYY agrees that for a period of two (2) years from the date of this Agreement, except in accordance with the terms of a specific request from XXX, none of YYY, its affiliates or any of their respective Representatives, will (A) propose or publicly announce or otherwise disclose an intent to propose, or enter into or agree to enter into, singly or with any other person (directly or indirectly), (i) any form of business combination, acquisition (whether of securities or assets), or other transaction relating to XXX or any majority-owned affiliate thereof or (ii) any form of restructuring, recapitalization or similar transaction with respect to XXX or any majority-owned affiliate thereof, (B) make, initiate or participate in any demand, request or proposal (other than a proposal made privately to the board of directors of XXX) to amend, waive or terminate any provision of this Agreement, or (C) (i) acquire, or offer, propose or agree to acquire, by purchase or otherwise, any XXX Securities (now existing or hereafter created), (ii) make, initiate, or in any way participate in, any solicitation of proxies with respect to any XXX Securities (now existing or hereafter created) (including by the execution of action by written consent), (iii) become a participant in any election contest with respect to XXX, (iv) seek to influence any person with respect to any XXX Securities, (v) demand a copy of XXX's list of its stockholders or other books and records, (vi) participate in or encourage the formation of any partnership, syndicate, or other group which owns or seeks or offers to acquire beneficial ownership of any XXX Securities or which seeks to effect control of XXX or for the purpose of circumventing any provision of this Agreement, or (vii) otherwise act, alone or in concert with others (including by providing financing for another person), to seek or to offer to control or influence, in any manner, the management, board of directors, or policies of XXX and or its affiliates.

(c) The provisions of this Paragraph 9 will survive for two years from the date of this Agreement notwithstanding that some or all of the Confidential Information has become publicly disclosed or outdated or that any portion of this Agreement has become inoperative as to any portion of the Confidential Information.

10. No agreement providing for any Relationship will be deemed to exist unless and until a Definitive Agreement has been executed and delivered by XXX, YYY and each of the other parties thereto, if any. Unless and until a Definitive Agreement has been so executed and delivered, none of XXX, its affiliates or any of their respective Representatives has any legal obligation to YYY of any kind with respect to any Relationship because of this Agreement, except for the matters specifically agreed to herein. XXX and its Representatives will be free to conduct the process for any Relationship as they in their sole discretion

determine (including, without limitation, changing any procedures relating to a Relationship, or negotiating with and entering into agreements with any other person, without in any such case giving prior notice to YYY or to any other person).

11. Each party agrees that it will not communicate any information to the other in violation of the proprietary rights of any third party.

12. Since unauthorized disclosure of Confidential Information will diminish the value to the parties of the proprietary interests that are the subject of this Agreement, if either party or its Representatives breaches any of its obligations hereunder, the other will be entitled to equitable relief to protect its interest therein, including but not limited to injunctive relief, as well as monetary damages.

13. This Agreement will govern all communications between the parties that are made by the parties (whether before or after the execution of this Agreement) in connection with the Discussions and/or the Relationship until the date on which either party receives written notice from the other party that subsequent communications will not be so governed, provided, however, that each party's obligations under Paragraphs 2, 3, 4 and 5 with respect to Confidential Information of the other party which it has received prior to the receipt of such notice will continue in perpetuity unless terminated pursuant to Paragraph 6.

14. Except as may be specifically set forth or referred to herein, nothing in this Agreement is intended or will be construed to confer upon or give to any party other than the parties hereto and their successors and permitted assigns, if any, any rights or remedies under or by reason of this Agreement.

15. In the course of Discussions regarding the Relationship, the parties may become privy to information (including, without limitation, the existence of the Discussions) which is considered material inside information within the meaning and intent of applicable securities laws and the rules and regulations promulgated thereunder. Neither party will use any of such information and will direct any of its Representatives to whom such information is disclosed not to use any of such information, directly or indirectly, as a basis for any decision to buy, sell or otherwise deal in any securities.

16. Neither party has an obligation under this Agreement to purchase any property or services from the other party, or offer any products using or incorporating the Confidential Information of the other party. This Agreement does not create any agency, partnership, joint venture or similar arrangement by or among the parties hereto.

17. Each party agrees that neither it nor any of its affiliates will, for a period of twelve (12) months commencing with the date hereof, hire any person employed by the other party (i) who is engaged in the Discussions or (ii) whose identity is learned as a result of such Discussions.

18. THIS AGREEMENT AND THE AGREEMENTS, INSTRUMENTS AND DOCUMENTS CONTEMPLATED HEREBY WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS (EXCLUSIVE OF CONFLICTS OF LAW PRINCIPLES) AND WILL, TO THE MAXIMUM EXTENT PRACTICABLE, BE DEEMED TO CALL FOR PERFORMANCE IN _____ COUNTY, TEXAS. COURTS WITHIN THE STATE OF TEXAS WILL HAVE JURISDICTION OVER ANY AND ALL DISPUTES BETWEEN THE PARTIES HERETO, WHETHER IN LAW OR EQUITY, ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE AGREEMENTS, INSTRUMENTS AND DOCUMENTS CONTEMPLATED HEREBY. THE PARTIES CONSENT TO AND AGREE TO SUBMIT TO THE JURISDICTION OF SUCH COURTS. VENUE IN ANY SUCH DISPUTE, WHETHER IN FEDERAL OR STATE COURT, WILL BE LAID IN _____ COUNTY, TEXAS. NOTHING CONTAINED HEREIN WILL BE DEEMED TO BE A WAIVER OF ANY RIGHT THAT MAY EXIST TO REMOVE AN ACTION FILED IN STATE COURT TO FEDERAL COURT. EACH OF THE PARTIES HEREBY WAIVES, AND AGREES NOT TO ASSERT IN ANY SUCH DISPUTE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY CLAIM THAT (i) SUCH PARTY IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF SUCH COURTS, (ii) SUCH PARTY AND/OR SUCH PARTY'S PROPERTY IS IMMUNE FROM ANY LEGAL PROCESS

ISSUED BY SUCH COURTS OR (iii) ANY LITIGATION COMMENCED IN SUCH COURTS IS BROUGHT IN AN INCONVENIENT FORUM.

19. All notices, demands, requests or other communications that may be or are required to be given, served or sent by either party to the other party pursuant to this Agreement will be in writing and will be mailed by first-class, registered or certified mail, return receipt requested, postage prepaid, or transmitted by hand delivery, telegram or facsimile transmission addressed as follows:

If to XXX: _____

Facsimile Transmission Number: _____
Attn: _____

with a copy (which will not constitute notice) to: _____

Facsimile Transmission Number: () _____
Attn: _____

If to YYY: _____

Facsimile Transmission Number: _____
Attn: _____

with a copy (which will not constitute notice) to: _____

Facsimile Transmission Number: _____
Attn: _____

Either party may designate by written notice a new address to which any notice, demand, request or communication may thereafter be given, served or sent. Each notice, demand, request or communication that is mailed, delivered or transmitted in the manner described above will be deemed sufficiently given, served, sent and received for all purposes at such time as it is delivered to the addressee with the return receipt, the delivery receipt, the affidavit of messenger or (with respect to a facsimile transmission) the answer back being deemed conclusive evidence of such delivery or at such time as delivery is refused by the addressee upon presentation.

20. Words of any gender used in this Agreement will be held and construed to include any other gender, and words in the singular number will be held to include the plural, unless the context otherwise requires.

21. This Agreement represents the parties' entire agreement with respect to the subject matter of this Agreement and supersedes and replaces any prior agreement or understanding with respect to that subject matter. This Agreement may not be amended or supplemented except pursuant to a written instrument signed by the party against whom such amendment or supplement is to be enforced.

22. This Agreement may be executed in multiple counterparts, each of which will be deemed to be an original and all of which will be deemed to be a single agreement. This Agreement will be considered fully

executed when all parties have executed an identical counterpart, notwithstanding that all signatures may not appear on the same counterpart.

23. If any of the provisions of this Agreement are determined to be invalid or unenforceable, such invalidity or unenforceability will not invalidate or render unenforceable the remainder of this Agreement, but rather the entire Agreement will be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the parties will be construed and enforced accordingly. The parties acknowledge that if any provision of this Agreement is determined to be invalid or unenforceable, it is their desire and intention that such provision be reformed and construed in such manner that it will, to the maximum extent practicable, be deemed to be valid and enforceable.

24. Neither this Agreement nor any rights or obligations under this Agreement may be assigned or delegated without the written consent of the other party. Any attempted assignment in violation of the immediately preceding sentence will be void.

25. The parties understand and agree that no failure or delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof, and no single or partial exercise thereof shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

26. As used in this Agreement, (a) the terms or phrases "affiliate", "beneficial owner," "election contest," "equity security," "group," "participant," "proxy," "security," "solicitation" and "person" (and the plurals thereof) will be ascribed a meaning no less broad than the broadest definition or meaning of such terms under the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder and (b) a definitive, written agreement providing for a Relationship that is executed by XXX and YYY and that states it is intended to be binding is herein referred to as a "Definitive Agreement"; provided, however, that a Definitive Agreement does not include a letter of intent or any other preliminary agreement, whether or not executed, nor does it include any actual or purported written or verbal acceptance of any offer or bid.

[BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the undersigned have executed this Agreement effective as of first above written.

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____