

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

(Re: Ocean Bank Loans and OREO Properties)

This Confidentiality and Non-Disclosure Agreement (the "Agreement") is entered into as of the ____ day of _____, 20__, by and between _____ (the "Recipient")

[Print the complete name of Recipient, the type of entity, and the state of formation]
and **Ocean Bank**, a Florida banking corporation ("Ocean Bank" or "Bank"). In reliance upon the execution and delivery of this Agreement, the mutual promises contained herein and other consideration, Ocean Bank shall deliver to Recipient certain Confidential Information as defined below concerning Ocean Bank loans or Ocean Bank properties solely for the purposes expressed in this Agreement.

In consideration of the foregoing, Recipient hereby agrees as follows:

1. **Confidential Information.** The term "Confidential Information" includes all documents, materials, non-public financial information, business and systems information, and other written or oral information of any nature concerning Ocean Bank and the loans and properties about which information is furnished, made available, or otherwise disclosed to Recipient by or on behalf of the Bank. Confidential Information shall exclude information which: (i) was or becomes generally available to the public other than as a result of a disclosure by Recipient or Recipient's agents or Representatives (as defined below); (ii) was available to Recipient on a non-confidential basis prior to its disclosure by the Bank; or (iii) becomes available to Recipient on a non-confidential basis from an independent source, provided that such source was not itself bound by an obligation of confidentiality owed to Ocean Bank and known to Recipient. Confidential Information shall specifically include all materials made available to Recipient on any restricted Ocean Bank web page, except any of such materials that appears in the public records of Broward County or is otherwise already in the public domain on a non-confidential basis from an independent source and which independent source was not itself bound by an obligation of confidentiality owed to Ocean Bank.

2. **Duty of Confidentiality.** Recipient shall not disclose, copy, reproduce, distribute, give, or otherwise permit transmittal in any manner the Confidential Information to any person other than to Recipient's Representatives (as defined below). The Confidential Information may be disclosed to Recipient's directors, officers, employees, agents, advisors, equity and financing sources, and representatives, and to individuals acting in similar capacities on Recipient's behalf, who need to know such information for the purpose of evaluating the proposed business transactions with Ocean Bank (Recipient's "Representatives"). Recipient shall inform its Representatives of the confidential nature of all Confidential Information and shall require Recipient's Representatives: (a) to comply with the duty of confidentiality and the other provisions of this Agreement; and (b) to return all Confidential Information to Recipient upon request.

3. **Purpose.** Recipient shall use the Confidential Information solely for the purpose of determining whether Recipient wishes to purchase selected loans or properties from Bank and for no other purpose (the "Purpose"). If Recipient is a real estate broker licensed in Florida (a "Recipient

Broker”), Recipient Broker may use the Confidential Information solely for the purpose of procuring purchasers (“Prospective Purchasers”) of selected loans or properties from the Bank and for no other purpose, provided however that any such Recipient Broker shall strictly comply with the provisions of Paragraph 11 of this Agreement.

4. **Permitted Disclosure.** In the event that Recipient is requested or required by law (by oral questions, interrogatories, requests for information or documents, subpoenas, civil investigative demand, or similar process) to disclose any Confidential Information, Recipient may, in the absence of a protective order, disclose such information without liability. Recipient shall, however, unless restrained by court order, furnish the Bank with prompt notice of all such requests or demands, and the documents requiring disclosure, as far in advance of such disclosure as may be practicable in order that Bank may, at its expense, seek an appropriate protective order. Recipient agrees to make reasonable efforts to cooperate with Bank should it seek any such protective measure. Recipient agrees to take all steps reasonably necessary to protect the confidentiality of the Confidential Information, and to prevent the Confidential Information from falling into the public domain or into the possession of unauthorized persons.

5. **Limitations.** Recipient agrees that, in connection with the Purpose defined in Section 3 above, it shall not: (a) initiate, solicit, enter into, or engage in any discussions, correspondence, negotiations, agreements, or understandings or otherwise have any contact with any officers or employees of Ocean Bank with respect to the proposed financing other than the officers and employees designated by the Bank for that purpose; (b) initiate, solicit, enter into, or engage in any discussions, correspondence, negotiations, agreements, or understandings or otherwise have any contact with any officers or employees of Ocean Bank’s borrowers whose loan(s) Recipient and/or Prospective Purchasers are considering purchasing from us; or (c) disclose to any person or entity any terms or conditions or status of any loan within Ocean Bank’s loan portfolio, except as provided in Paragraph 11 below.

6. **Return of Confidential Information.** Upon receipt of a written request from Ocean Bank, Recipient shall promptly redeliver to Bank the Confidential Information without retaining any copy thereof, and shall destroy all notes and other writings prepared by Recipient or Recipient’s directors, officers, employees, agents, advisors, and representatives based on the Confidential Information. Notwithstanding the foregoing, Recipient may retain all or a portion of the Confidential Information as required by law or by Recipient’s record retention policies, provided that Recipient shall continue to maintain the confidentiality of the Confidential Information so long as Recipient possesses such Confidential Information.

7. **Reservation of Rights.** Ocean Bank hereby retains its entire right, title and interest in and to all Confidential Information and all copyright, trademark, patent, trade secret and other proprietary rights therein. Nothing in this Agreement shall be construed to transfer or convey any such right, title or interest to Recipient.

8. **Non-Exclusive.** Recipient understands that Confidential Information is given to Recipient on a non-exclusive basis. Nothing in this Agreement shall limit in any way Ocean Bank’s freedom to deal with third parties and provide Confidential Information to third parties at any time without in any way incurring liability to Recipient.

9. **No warranty regarding Confidential Information.** Although Bank has endeavored to include in the Confidential Information certain information known to Bank which Bank believes to be appropriate and relevant for the purpose of Recipient’s investigation, Recipient understands and agrees that Bank does not make any representation or warranty of any kind (including the accuracy or

completeness) with respect to the Confidential Information. Recipient agrees that neither Ocean Bank nor its representatives shall have any liability to Recipient or Recipient's Representatives resulting from the use of the Confidential Information supplied by Bank or its representatives. Recipients and Prospective Purchasers acknowledge that Ocean Bank is selling OREO properties on an "As Is, Where Is" basis, and so all Recipients and Prospective Purchasers: (a) agree not to rely upon the Confidential Information in any respect; and (b) to make rely solely upon their own investigations and their own experts with respect to all aspects of the property, including but not limited to their own engineering, environmental or other reports, and their own attorneys, accountants, marketing experts, engineers and environmental experts.

10. **Notice to Bank if Unauthorized Disclosure; Injunctive Relief.** In the event of any disclosure of Confidential Information in breach of this Agreement, Recipient shall notify Ocean Bank of the improper disclosure in the most expedient time possible, without unreasonable delay, and in no even less than 48 hours after Recipient first learns of such disclosure. Recipient understands and agrees that money damages may not be a sufficient remedy for any breach of this Agreement by Recipient, and that Bank may be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach. Such remedy shall not be deemed to be Bank's exclusive remedy if Recipient breaches this Agreement, but such remedy shall be in addition to all other remedies which may be available to Bank at law or equity.

11. **Recipient Brokers' Additional Covenants.** If Bank has agreed by separate agreement to allow a Recipient Broker (as defined in Paragraph 3 above) to receive Confidential Information to attempt to locate Prospective Purchasers or to act as agent for Bank in one or more particular transactions, and if Bank has also agreed that Recipient may disclose Confidential Information to certain third parties who are Prospective Purchasers, then Recipient may disclose Confidential Information to certain third parties who are *bona fide* Prospective Purchasers, provided however that Recipient further agrees:

11.1 Before Recipient may disclose any Confidential Information to any Prospective Purchaser, Recipient Broker shall confirm that Ocean Bank has received either: (a) an executed copy of the Ocean Bank form of Confidentiality Agreement signed by the Prospective Purchaser; or (b) the electronic signature of each Prospective Purchaser or the equivalent electronic agreement of each Prospective Purchaser, by which each Prospective Purchaser agrees to be bound by the Ocean Bank form of Confidentiality Agreement.

11.2 Recipient shall not be entitled to any compensation from Ocean Bank, as agent or otherwise (even if Recipient is the procuring cause of any transaction), except as provided in a separate, written agency agreement which provides for compensation, if any, which separate agreement must be executed by an officer of Ocean Bank on behalf of the Bank.

12. **Recipient's No Agency Representation to Bank; Broker's Disclosure.** Unless Recipient has given Ocean Bank a separate written Broker's Disclosure on a form acceptable to Ocean Bank, Recipient hereby warrants to Ocean Bank that Recipient: (a) is not working with a broker in connecting with the possible purchase of loans or property from Ocean Bank; and (b) is not under any obligation, oral or written, to any third party for any commission or compensation in connection with the procurement of a purchase of loans or property from Ocean Bank. To be a form of Broker's Disclosure acceptable to Ocean Bank, the Broker's Disclosure must be in writing, must be executed by the broker and by the Recipient or Prospective Purchaser, and specify the material terms of the brokerage relationship.

13. **Agreement to be Bound; Electronic Signature.** If Recipient takes any affirmative action to receive or access any Confidential Information, such action shall be conclusively deemed to be

Recipient's agreement to be bound by the provisions of this Agreement. Such affirmative actions shall include accessing any Ocean Bank sponsored web site and viewing or downloading any Confidential Information. Recipient agrees to be bound by the provisions of this Agreement if Recipient takes any action which qualifies as an electronic signature or as an electronic acknowledgement of Recipient's agreement to be so bound.

14. **Term.** The obligations and liabilities of Recipient under this Agreement shall continue for a period of two (2) years after the date of this Agreement, except as otherwise stated in this Section 14 and in Section 6 above. Notwithstanding the forgoing sentence, so long as the Recipient has possession of any Confidential Information and even if this Agreement is terminated: (a) the obligations and liabilities of Recipient, Recipient's Representatives, and Prospective Purchasers with respect to Confidential Information that is "non-public personal information" (as defined in the Gramm-Leach-Bliley Act of 1999, as amended) shall survive the termination of this Agreement; and (b) the rights and remedies of Ocean Bank under this Agreement with respect to all such Confidential Information that is "non-public personal information" shall survive the termination of this Agreement.

15. **General Provisions.**

15.1 Binding Agreement. This Agreement shall not be construed as a legally binding obligation of the parties hereto to enter into any other agreements. The consummation of any such other agreement(s) is subject to, among other things, the approval of Recipient's authorized officers and the negotiation, preparation, and execution of mutually satisfactory definitive written agreements by all parties thereto.

15.2 No Waiver. Recipient agrees that no failure or delay in exercising any right, power, or privilege hereunder shall operate as a waiver thereof, and that no single or partial exercise thereof shall preclude any other or further exercise thereof or the exercise of any right, power, or privilege hereunder.

15.3 Entire Agreement. This Agreement contains the entire agreement between the parties relating to the subject matter hereof and supersedes all oral statements and prior writings with respect thereto. No modification or waiver of this Agreement or any provision hereof, nor consent to any departure by the Bank from this Agreement, shall in any event be effective, irrespective of any course of dealing between the parties, unless the same shall be in a writing executed by the parties' duly authorized officers, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which it is given. The remedies herein provided are cumulative and not exclusive of any other remedies provided by law.

15.4 Florida Law. This agreement shall be subject to and construed under the laws of the State of Florida excluding the principles thereof governing conflicts of law. Venue and jurisdiction shall be in Miami-Dade County, Florida for any legal proceedings in connection with, based upon, or arising out of, under, or in connection with this Agreement and any related documents, instruments or agreements.

15.5 Attorney's Fees. If any suit, action, or claim is filed by any party in connection with the terms and subject matter of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs incurred in preparation or in prosecution or in defense of such suit, action, or claim.

15.6 Successor's, Assigns, No Third Party Beneficiaries. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.

Wherever used herein, the term “Bank” or “Ocean Bank” includes its successors and assigns, officers, directors, employees, agents and representatives, unless expressly otherwise. Nothing in this Agreement, express or implied, is intended to confer upon any person other than the parties hereto, or their respective successors and assigns, any right or benefits under or by reason of this Agreement.

11.7 Attorney’s Fees. If any suit, action, or claim is filed by any party in connection with the terms and subject matter of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys’ fees and costs incurred in preparation or in prosecution or in defense of such suit, action, or claim.

15.8 WAIVER OF JURY TRIAL. EACH OF THE PARTIES AND SIGNATORIES HERETO (COLLECTIVELY AND INDIVIDUALLY, THE “PARTIES”) HEREBY WAIVES THE PARTIES’ RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM, CAUSE OF ACTION, DEFENSE, COUNTERCLAIM, AND THIRD PARTY ACTION BASED UPON OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT OR WITH THE TRANSACTIONS AND OTHER DOCUMENTS CONTEMPLATED HEREBY AND/OR EXECUTED BETWEEN AND AMONGST THE PARTIES. THIS WAIVER APPLIES IN THE EVENT ANY THIRD PARTIES INSTITUTE, JOIN, OR DEFEND ANY LITIGATION. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE IN ANY WAY TO THIS AGREEMENT AND/OR TO THE PARTIES’ INTERACTIONS, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, CLAIMS BASED UPON STATEMENTS (WHETHER ORAL OR WRITTEN), BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW, STATUTORY, AND OTHER CLAIMS AND/OR DEFENSES, COUNTERCLAIMS, AND THIRD PARTY ACTIONS. THE PARTIES FURTHER REPRESENT AND WARRANT THAT THEY HAVE HAD THE OPPORTUNITY TO REVIEW THIS WAIVER WITH THEIR RESPECTIVE LEGAL COUNSEL, AND THAT THEY KNOWINGLY, INTENTIONALLY, AND VOLUNTARILY WAIVE THEIR JURY TRIAL RIGHTS. THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER’S EXECUTION OF THIS AGREEMENT. THE PARTIES EXPRESSLY AGREE THAT NO PARTY OR ENTITY HAS REPRESENTED THAT THIS JURY TRIAL WAIVER WILL NOT BE ENFORCED, AND THAT THEY WILL NOT RELY ON ANY REPRESENTATION THAT THIS JURY TRIAL WAIVER WILL NOT BE ENFORCED.

In witness hereof, the undersigned have executed this Agreement on the dates as set forth below.

Recipient:

Date: _____

Recipient’s Contact Information:

Ocean Bank

By: _____

Name: _____

Title: _____

Date: _____

Ocean Bank's Contact Information:

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