

Sample Confidentiality Agreement—Bank Debt

Master Confidentiality Agreement dated as of _____, _____ (this "**Agreement**") between _____ and _____.

This Agreement sets forth the terms and conditions that will apply, in each instance, to the treatment of certain non-public information that either party hereto (the "**Assigning Lender**") may supply to the other party hereto (the "**Prospective Lender**") in connection with the consideration by the Prospective Lender of its participating in any financing or proposed financing (a "**Financing**") for any borrower or group of borrowers (each a "**Borrower**") specified in a Schedule described below.

As used herein: (a) "**Evaluation Material**" refers to (i) the non-public information furnished to the Assigning Lender, including any Information Memorandum, in respect of a particular Financing of a Borrower that the Assigning Lender supplies to the Prospective Lender on or after the date of the Schedule in respect of such Financing, (ii) all memoranda, notes, and other documents and analyses (collectively, "**analyses**") internally developed by the Assigning Lender that it supplies to the Prospective Lender and (iii) all analyses developed by the Prospective Lender using any information specified under clauses (i) and (ii) above; (b) "**Internal Evaluation Material**" refers to analyses specified under clause (iii) of the definition of Evaluation Material; and (c) "**participation**" refers to a transfer of a lender's interest in a Financing (or a grant of derivative rights in respect thereof), whether by assignment, participation or otherwise (and "**participate**" and "**participating**" shall have correlative meanings thereto).

As a condition to the Assigning Lender's furnishing the Prospective Lender with any Evaluation Material in the Assigning Lender's possession in respect of a particular Financing, the Prospective Lender shall execute and return to the Assigning Lender a schedule, in substantially the form of Exhibit A attached hereto, that the Assigning Lender may have completed, executed and delivered to it (a "**Schedule**"). Each Schedule shall identify which party hereto is the Assigning Lender and which party is the Prospective Lender in respect of such Financing and the related Evaluation Material, the name of each Borrower that the Prospective Lender has under consideration and a description of the documentation (the "**Operative Documentation**") in respect thereof.

The Prospective Lender in respect of a particular Financing agrees that it will use all Evaluation Material in respect of such Financing solely for the purpose of evaluating its possible participation, or obtaining the participation of another eligible person (an "**Additional Assignee**"), in such Financing and that the Prospective Lender will use reasonable precautions in accordance with its established procedures to keep such information confidential; provided, however, that any such information may be disclosed to the partners, directors, officers, employees, agents, counsel, auditors, affiliates, advisors and representatives (collectively, "**Representatives**") of the Prospective Lender's institution who need to know such information for the purpose of evaluating its participation in such Financing (it being understood that such Representatives shall be informed by the Prospective Lender of the confidential nature of such information and shall be directed by it to treat such information in accordance with the terms of this Agreement) and to any Additional Assignee and its Representatives (provided that such Additional Assignee shall have previously executed and delivered to the Prospective Lender an agreement in substantially the same substance as this Agreement in respect of the Evaluation Material). The Prospective Lender agrees to be responsible for any breach of this Agreement that results from the actions or omissions of its Representatives. Notwithstanding the foregoing, the Prospective Lender will not use such information to obtain an Additional Assignee if otherwise prohibited by agreements binding on the Prospective Lender.

In addition, the Prospective Lender in respect of a particular Financing agrees that prior to the settlement of its participation in such Financing, it will not disclose to any person, other than its Representatives, the identity of the Assigning Lender with which discussions or negotiations are taking place concerning the Prospective Lender's possible participation in the related Financing or any of the terms or conditions of such proposed participation. The term "**person**" as used in this Agreement shall be broadly interpreted to include

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the media and any corporation, partnership, group, individual or other entity and, if the Prospective Lender's participation in the Financing would constitute a secondary market transaction, the Borrower.

The Prospective Lender in respect of a particular Financing shall be permitted to disclose any related Evaluation Material (and the fact that such Evaluation Material has been made available to it and that discussions or negotiations are taking place concerning the transaction or any of the terms, conditions or other facts with respect thereto) in the event that the Prospective Lender is required by law or regulation or requested by any governmental agency or other regulatory authority (including any self-regulatory organization having or claiming to have jurisdiction) or in connection with any legal proceedings. The Prospective Lender agrees that it will notify the Assigning Lender as soon as practical in the event of any such disclosure (other than as a result of an examination by any regulatory agency), unless such notification shall be prohibited by applicable law or legal process.

The Prospective Lender in respect of a particular Financing and its Representatives shall have no obligation hereunder with respect to any information in any related Evaluation Material to the extent that such information (i) is or becomes generally available to the public other than as a result of a disclosure by the Prospective Lender in violation of this Agreement, (ii) was within the Prospective Lender's possession prior to its being furnished to it pursuant hereto, provided that the source of such information was not known by the Prospective Lender to be bound by a confidentiality agreement with or other contractual, legal or fiduciary obligation of confidentiality to the Borrower or any other party with respect to such information or (iii) is or becomes available to the Prospective Lender on a non-confidential basis from a source other than the Borrower or the Assigning Lender, or their respective Representatives, provided that such source is not known by the Prospective Lender to be bound by a confidentiality agreement with or other contractual, legal or fiduciary obligation of confidentiality to the Assigning Lender, the Borrower or any other party with respect to such information.

To the extent the Operative Documentation for a particular Financing contains provisions regarding the use of non-public information which conflict with, are more restrictive than or are in addition to the provisions of this Agreement, then (so long as such Operative Documentation shall be effective as to the Assigning Lender) solely with application to any Evaluation Material concerning the Borrower that is the subject of such Financing (and without application hereunder to any other Evaluation Material or otherwise), such provisions of the Operative Documentation shall be incorporated herein by this reference and shall supersede and control the terms of this Agreement to the extent that such provisions are in conflict with or more restrictive than the terms hereof or are in addition to those contained herein. Upon the Prospective Lender's request, the Assigning Lender will furnish to the Prospective Lender the provisions of the Operative Documentation for such Financing regarding the use of non-public information. In addition, in the event that the Prospective Lender actually becomes a lender (bound as a party to the Operative Documentation) with respect to a particular Financing, the application of this Agreement in respect of all Evaluation Material in respect of such Financing shall terminate and the applicable confidentiality provisions, if any, contained in the Operative Documentation shall govern and control.

If the Prospective Lender in respect of a particular Financing chooses not to participate in such Financing, the Prospective Lender agrees on request of the Assigning Lender to return to the Assigning Lender as soon as practical all related Evaluation Material (other than Internal Evaluation Material) or destroy such Evaluation Material (other than Internal Evaluation Material) without retaining any copies thereof unless prohibited from doing so by its internal policies and procedures.

The Prospective Lender in respect of a particular Financing understands and agrees that the Assigning Lender will have received the related Evaluation Material from third party sources (including the Borrower) and that the Assigning Lender bears no responsibility (and shall not be liable) for the accuracy or completeness (or lack thereof) of such Evaluation Material or any information contained therein.

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The Prospective Lender hereby acknowledges that United States securities laws prohibit any person with material, non-public information about an issuer from purchasing or selling securities of such issuer or, subject to certain limited exceptions, from communicating such information to any other person. The Prospective Lender agrees to comply with its internal compliance policies and procedures with respect to material confidential information.

The Prospective Lender agrees that money damages would not be a sufficient remedy for breach of this Agreement, and that in addition to all other remedies available at law or in equity, the Assigning Lender shall be entitled to seek equitable relief, including injunction and specific performance, without proof of actual damages.

This Agreement (including each Schedule delivered pursuant hereto and the provisions of any Operative Documentation incorporated herein by reference) embodies the entire understanding and agreement between the parties with respect to all Evaluation Material for each Financing and supersedes all prior understandings and agreements relating thereto. Unless otherwise agreed in writing between the parties hereto, the application of this Agreement shall terminate with respect to all Evaluation Material concerning each Financing on the date falling one year after the Schedule in respect of such Financing.

This Agreement shall be governed by and construed in accordance with the law of the State of New York, without regard to principles of conflicts of law (except Section 5-1401 of the New York General Obligation Law to the extent that it mandates that the law of the State of New York govern).

This Agreement may be signed in counterparts, each of which shall be an original and both of which taken together shall constitute the same instrument.

It is understood by the parties that the custom in the loan syndications and loan trading markets is to execute and deliver any confidentiality agreement, schedule, confirmation or other transaction documents by fax or scanned and emailed. The parties agree that all faxed or scanned and emailed copies of this Agreement, the Schedules, confirmations and other transaction documents, and signatures hereto and thereto, shall be duplicate originals.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective authorized officers as of the date first written above.

[NAME OF INSTITUTION]

By: _____
Name:
Title:

[NAME OF INSTITUTION]

By: _____
Name:
Title:

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EXHIBIT A

[Form of Schedule]

This Schedule, dated as of _____, is one of the Schedules referred to in the Master Confidentiality Agreement dated _____ between _____ and _____. Terms used herein, unless defined herein, shall have the respective meanings given them in said Master Confidentiality Agreement.

1. Name(s) of the Borrower(s): _____
2. Description of the Operative Documentation:*

Assigning Lender
[NAME OF INSTITUTION]

By: _____
Name:
Title:

Received and accepted as of the
date first written above:

Prospective Lender
[NAME OF INSTITUTION]

By: _____
Name:
Title:

* Include a description of the primary credit document(s) and all other documents in respect of the Financing that contain any provision regarding the confidentiality of information.