

## CONFIDENTIALITY AGREEMENT

THIS CONFIDENTIALITY AND PROPRIETARY INFORMATION AGREEMENT (the "Agreement") is made and entered into by \_\_\_\_\_, ("Recipient") for the benefit of the COBA Inc. ("Seller" and together with Recipient, collectively, the "Parties") and its affiliates including TD Bank, N.A.

WHEREAS, Recipient is interested in the commercial real estate from the Seller made to or for Seller's customers (the "Asset Sale"); and

WHEREAS, Seller is interested in potentially selling the commercial real estate and Seller desires all information regarding the potential Asset Sale be kept confidential and

WHEREAS, in the course of discussing the Asset Sale, Seller may directly or indirectly provide Confidential Information to Recipient and wants to ensure that such information is not used in any way to the detriment of Seller or in violation of applicable laws or regulations or in violation of Seller's confidentiality policy.

NOW, THEREFORE, in consideration of the promises and the mutual covenants herein contained, the Parties agree as follows:

1. "Confidential Information" means all information provided at any time, including prior to the date of this Agreement, by or on behalf of Seller to Recipient relating to the Asset Sale. "Confidential Information" also specifically includes, without limitation, any technical, financial, customer or business information, whether written, oral or graphic, that Seller or persons or entities on behalf of Seller may disclose or reveal to Recipient, including but not limited to financial plans and records, business systems, designs, marketing plans, business strategies and relationships with third parties, customer lists, present and proposed products, trade secrets, computer software programs and hardware system designs, specifications, analyses, studies, consumer and market research, evaluations, cost information, or any other marketing, business or technical research documents prepared based in whole or in part on any Confidential Information. This Agreement shall be inoperative as to any Confidential Information which (i) is or becomes generally available to the public other than as a result of disclosure by Recipient or its employees, officers, directors, representatives, agents or advisors in violation of this Agreement, (ii) is or becomes available to the Recipient on a non-confidential basis from a source other than Seller's, which source is entitled to make the disclosure to the Recipient without violating any obligation of confidentiality to Seller or any other party, or (iii) any Confidential Information that is legally compelled to be disclosed by applicable law, regulatory requirements, or court order or process.

2. Recipient has been advised that Seller is subject to the privacy provisions of the Gramm-Leach-Bliley Act and other federal and state laws, which unless certain

conditions are satisfied, prohibits Seller from disclosing Nonpublic Personal Information about consumers or customers and for purposes of this Agreement Nonpublic Personal Information about consumers or customers is deemed Confidential Information. Recipient agrees that as a condition of Seller providing Confidential Information to Recipient, Recipient will not make any disclosure of Nonpublic Personal Information of any consumer or customer of Seller nor will Recipient use any Nonpublic Personal Information about borrowers to solicit any borrower unless and until Recipient has acquired a loan from Seller to such borrower. When used in this agreement, "Nonpublic Personal Information" has the meaning ascribed to "Nonpublic Personal Information" in Title V of the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time.

3. The Recipient shall use the Confidential Information solely for the purpose of the Asset Sale and shall not use any Confidential Information for any other purposes or to any competitive advantage. Except as provided in this Agreement, Recipient shall not disclose any Confidential Information to any person or entity and all such matters and information shall be kept strictly and absolutely confidential. The Recipient may disclose Confidential Information to its employees, officers, directors, representatives, agents or advisors, but only if such persons need to know such Confidential Information in connection with such person's on behalf of the Recipient on the Asset Sale. Recipient will not make more copies of the Confidential Information received from Seller than is necessary for its use under the terms thereof. The Recipient also represents and warrants that those persons to whom the Confidential Information may be disclosed under this Paragraph will have undertaken the same confidentiality obligations in writing as Recipient has similar to those undertaken hereunder. Recipient will use the same degree of care to protect such Confidential Information of the other party as it uses to protect its own information of like importance.

4. Recipient acknowledges that a breach of this Confidentiality Agreement may give rise to irreparable injury to Seller that cannot be compensated for adequately by damages. Consequently, Seller shall be entitled without the necessity of proving actual damages or of posting any bond, in addition to all other remedies available, to specific performance and to injunctive and other equitable relief to prevent a breach of this Agreement and to secure the enforcement of this Agreement in any court of competent jurisdiction of the United States or any state.

5. All tangible forms of Confidential Information shall remain the property of Seller. Upon completion of the Asset Sale and in the absence of further agreement of the parties including the failure to enter into the Asset Sale, Recipient shall cease all use and make no further use of the Confidential Information and shall promptly return to Seller or destroy all tangible Confidential Information delivered to it by Seller or on behalf of, all copies thereof, and all work papers and memoranda prepared by Recipient or its representatives related to the Information.

6. The parties hereby expressly acknowledge that the dealings between the parties pertaining to Asset Sale shall not be exclusive and that Seller shall continue to have the right to have discussions and enter into contracts with third parties regarding the subject matter of the Asset Sale hereunder. This Confidentiality Agreement shall not constitute an offer to sell or an agreement to purchase any loan.

7. This Agreement constitutes the entire understanding between the parties and supersedes any previous understandings relating to the subject matter of this Agreement. This Agreement shall inure to the benefit of and shall be binding upon the parties and their respective related or affiliated entities, successors and assignees. Amendments or modifications to this Agreement shall be made only in writing, duly executed by the parties. This Agreement shall be governed and construed in all respects in accordance with the laws of the State of New York. If it is determined by a court of competent jurisdiction that any provision hereof is illegal or unenforceable, such determination shall affect only such provision and shall not affect the remaining provisions hereof. This Agreement may be executed in original counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument representing the agreement of the parties.

8. In any dispute that arises between the parties hereto concerning the provisions of this Agreement or the rights and duties of any in relation thereto, the party prevailing in such dispute shall be entitled, in addition to such other relief as may be granted by any court, to a reasonable sum as and for its attorneys' fees in connection with such dispute, including fees incurred before or during any litigation which shall be determined by the court in such litigation or in a separate action brought for that purpose and such attorneys' fees shall be deemed to include the right to a separate award for paralegal or legal assistant's fees.

9. Electronic Records and Signature. It is agreed by the Parties that, notwithstanding the use herein of the words "writing," "execution," "signed," "signature," or other words of similar import, the Parties intend that the use of electronic signatures and the keeping of records in electronic form be granted the same legal effect, validity or enforceability as a signature affixed by hand or the use of a paper-based record keeping system (as the case might be) to the extent and as provided for in any applicable law including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

10. Term of this Agreement. Recipient's confidentiality and non-use obligations under this Agreement pertaining to Confidential Information for the Asset Sale shall expire upon the earlier of (a) the date of the consummation of a Transaction with Recipient and (b) one (1) year from the date hereof except with respect to Nonpublic Personal Information in the Confidential Information (for which the obligations under this Agreement shall survive such term indefinitely).

11. The Recipient is not and agrees not to communicate with any Borrower, debtor, guarantor, borrower's or debtor's or guarantor's accountant, attorney or any other person or party, including any tenant, connected with, related to or whose name is obtained from Confidential Information with respect to the Assets without prior written consent of the Seller, which can be arbitrarily withheld.

12. Recipient acknowledges that it has no contractual or other relationship with any Borrower, debtor or guarantor relative to the loan(s) that are part of the Asset Sale, including without limitation a relationship where Recipient provides advisory, brokerage or consulting services to such parties.

IN WITNESS WHEREOF, Recipient has executed this Agreement as of the date and year first above written.

**RECIPIENT:**

\_\_\_\_\_

By: \_\_\_\_\_

Name:

Title: