

## BANES CAPITAL GROUP MUTUAL NON-DISCLOSURE AGREEMENT

This Mutual Non-Disclosure Agreement (the “Agreement”) executed on \_\_\_\_\_ (the “Effective Date”) by and between BANES CAPITAL GROUP, LLC, a Tennessee limited liability company (“BCG”), and \_\_\_\_\_, a \_\_\_\_\_ organized  
(Company Name) (Corporation/LLC)  
under the laws of \_\_\_\_\_ (the “Company”).  
(State/US)

BCG and the Company intend to engage in discussions and negotiations concerning a possible transaction with respect to mortgage, consumer or commercial loans or loan participations (the “Possible Transaction”).

In the course of such discussions and negotiations, it is anticipated that either party (a "Disclosing Party") may disclose or deliver to the other party (the "Receiving Party") certain financial, product, technical, marketing, personal data, commercial or other proprietary information solely for the purposes of the Possible Transaction. The parties have entered into this Agreement in order to assure the confidentiality of such information in accordance with the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual premises and of the mutual covenants herein, and other good and valuable consideration, BCG and the Company hereby agree as follows:

**1. Definitions.** The following terms have the meanings set forth below.

- (a) “Affiliate” means a business entity controlling, controlled by, or under common control with another business entity. For the purpose of this definition, “control” (including, with correlative meanings, the terms “controlling,” “controlled by,” and “under common control with”) means the possession, directly or indirectly, by a business entity of the power to direct or cause the direction of the management and policies of another business entity, whether through the ownership of voting securities or by contract or otherwise.
- (b) “Confidential Information” means any and all information provided by a Disclosing Party to the Receiving Party related to the Possible Transaction. All Personal Data provided by a Disclosing Party to the Receiving Party shall be Confidential Information of the Disclosing Party. Confidential Information shall not include any information that: (a) enters the public domain through no fault of the Receiving Party; (b) is independently developed by the Receiving Party at any time without reference to Confidential Information, as shown by the Receiving Party’s records; (c) is rightfully obtained by the Receiving Party from a source other than the Disclosing Party that does not have a contractual, legal or fiduciary obligation of confidentiality to the Disclosing Party; or (e) the Disclosing Party agrees in advance in writing does not constitute Confidential Information.
- (c) “Personal Data” means any data, information and/or records of or pertaining to a party’s customers or prospective customers, including but not limited to names, addresses, telephone numbers, account numbers, account and transaction information and any other “Nonpublic Personal Information” as defined in the Gramm-Leach-Bliley Act, 15 U.S.C. 6801 et seq. relating to such individuals.

- (d) "Representatives" means, collectively, all of the directors, officers, employees, agents, subcontractors, representatives or advisors including, without limitation, attorneys, accountants, consultants, bankers, investment bankers, other potential financing sources and financial advisors, of a party and its Affiliates.

## **2. Non-Disclosure and Limitations of Use of Confidential Information.**

- (a) Purpose. The Receiving Party agrees that (a) the Receiving Party shall use Confidential Information solely for the purpose of evaluating a Possible Transaction (the "Purpose"), (b) all Confidential Information will be kept confidential, and (c) the Receiving Party shall not disclose any Confidential Information in any manner whatsoever, directly or indirectly, to any third party except as expressly permitted in this Agreement.
- (b) Limited Disclosure; Care. The Receiving Party may disclose Confidential Information to its Representatives who have a need to know such Confidential Information for the Purpose, so long as Representatives who are employees of the Receiving Party have been advised to keep all such Confidential Information confidential consistent with the terms of this Agreement, and all other Representatives have entered into a written confidentiality agreement at least as restrictive as this Agreement. Both the Receiving Party and its Representatives shall exercise the same degree of care in safeguarding Confidential Information against any and all loss or other inadvertent disclosure as the Receiving Party uses for its own confidential information of like importance, but in any case not less than reasonable care. The Receiving Party shall take commercially reasonable steps necessary to keep confidential any Confidential Information and assure observation of this Agreement by its Representatives. Receiving Party shall be solely responsible for all actions and obligations of its Representatives as if they were the actions and obligations of the Receiving Party.
- (c) Court Order. In the event that the Receiving Party or any of its Representatives are required (by oral question, interrogatories, requests for information or documents, subpoenas, civil investigation or similar process) to disclose any Confidential Information, the Receiving Party will, unless prohibited by law, provide the Disclosing Party with prompt notice of such requests so that the Disclosing Party may seek an appropriate protective order, or if appropriate, waive compliance with the provisions of this Agreement. The Receiving Party will use commercially reasonable efforts to assist the Disclosing Party in obtaining such a protective order at the Disclosing Party's sole cost and expense.
- (d) Ownership of Confidential Information. The Disclosing Party shall retain all right, title, and interest in its Confidential Information and all copies thereof in whatever form, unless and until the ownership of any such Confidential Information is transferred to Receiving Party pursuant to the terms of a Business Agreement. No copyright, patent, trade secret, or any other intellectual property rights or licenses are granted to the Receiving Party by the Disclosing Party hereunder.
- (e) Non-Solicit. For a period of two years following the date of this Agreement, each party agrees not to directly or indirectly solicit any person known by Receiving Party to be a client, customer, or similar third party of Disclosing Party that became known to Receiving Party directly or indirectly

pursuant to any proprietary information of Disclosing Party or in connection with Receiving Party's evaluation of a Transaction (each a "Customer") without the prior written consent of Disclosing Party; provided, however, that the foregoing will not apply (i) so long as Receiving Party does not use any of the proprietary information to identify such Customer, or other similar third party; or (ii) to a party's solicitation of business from, or engaging in business with, any Customer with whom Receiving Party previously conducted business in its normal course of business.

- (f) Return or Destruction of Confidential Information. If the Possible Transaction is not undertaken or completed, or upon request by Disclosing Party at any time, Receiving Party will, and will cause its Representatives to, promptly return all Confidential Information (including all copies, extracts and other reproductions thereof) to Disclosing Party; however, at Disclosing Party's election, Receiving Party may destroy any Confidential Information in lieu of returning the same to Disclosing Party, provided that such destruction is certified in writing to Disclosing Party by a duly authorized officer of Receiving Party who supervised such destruction, and (b) Receiving Party may retain in its confidential legal files any Confidential Information to the extent necessary for, providing legal advice on the scope of Receiving Party's obligations under this Agreement and may retain archival copies of any Confidential Information to comply with any applicable records retention policies. The term "destroy" as used in this Section means to shred, permanently delete or otherwise irretrievably destroy and render unreadable all such Confidential Information, including from all computers, servers and storage devices and media owned by or operated by or for the Receiving Party, except to the extent that through the exercise of reasonable commercial efforts the same cannot be removed from databases or other electronic records.

3. **Information Security.** Receiving Party shall implement and maintain commercially reasonable security measures to protect against unauthorized access to or use of Confidential Information, and will treat all Confidential Information with the same degree of protection and care as Receiving Party accords its own confidential information of a similar nature. Without limiting the generality of the preceding subsection, if Receiving Party receives, transmits or stores Personal Data received from Disclosing Party, Receiving Party shall implement and maintain appropriate administrative, technical, and physical safeguards designed to ensure the security of Personal Data, which protection will include (1) encryption of all Confidential Information that Receiving Party possesses in electronic form, including on any laptop or desktop computer or on external storage media such as CDs and "flash drives," (2) the logical and physical security of any servers and their back-up media on which Confidential Information is stored, and (3) the logical and physical security of Receiving Party's internal data networks over which Confidential Information is transmitted. Receiving Party shall promptly notify Disclosing Party of and fully disclose any breach of security resulting in unauthorized access to Confidential Information and will be fully responsible and liable for any and all damages resulting from the breach of any such confidentiality obligations.

4. **No Representation or Warranty.** ALL CONFIDENTIAL INFORMATION IS DELIVERED IN A STRICTLY "AS IS," "WHERE IS," AND "WITH ALL FAULTS" CONDITION. THE DISCLOSING PARTY SPECIFICALLY MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING CONFIDENTIAL INFORMATION INCLUDING, WITHOUT LIMITATION, THAT CONFIDENTIAL INFORMATION IS ACCURATE OR COMPLETE. IN ADDITION, THE DISCLOSURE AND/OR RECEIPT OF CONFIDENTIAL INFORMATION BY

THE PARTIES DOES NOT, BY ITSELF, OBLIGATE EITHER PARTY TO ENTER INTO ANY BUSINESS AGREEMENT OR ANY OTHER BINDING CONTRACT.

5. **Remedies; Attorney's Fees.** The Receiving Party acknowledges and agrees that any disclosure of Confidential Information except as provided in this Agreement may cause serious and irreparable damage to the Disclosing Party for which there may be no adequate remedy at law. Without limiting the Disclosing Party's rights and remedies which are otherwise available, the Receiving Party will not contest or oppose any attempt by the Disclosing Party to seek equitable relief including, without limitation, an injunction, restraining order or specific performance for any breach of this Agreement by the Receiving Party on the basis that the Disclosing Party has an adequate remedy at law. The Receiving Party waives any securing or posting of any bond in connection with such equitable relief. If either Party brings an action at law or equity against the other in order to enforce the provisions of this Agreement or as a result of an alleged breach under this Agreement, the prevailing party in such action shall be entitled to recover court costs and reasonable attorney's fees from the other
6. **Assignment and Binding Effect.** Neither party may assign this Agreement or any of its interests hereunder or delegate any duty or responsibility incurred by it hereunder to another party. Any attempted assignment that does not comply with the terms of this Section shall be null and void.
7. **No Oral Modification.** This Agreement may not be waived, changed, modified, extended, or discharged orally, in whole or in part, but rather only by agreement in writing signed by all parties.
8. **Severability.** If any of the provisions of this Agreement are held to be invalid, illegal, or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.
9. **Governing Law.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Tennessee (without regard to the conflicts or choice of law principles thereof). By execution and delivery of this Agreement, each party irrevocably submits to and accepts jurisdiction of the courts located in the State of Tennessee and waives any objection (including any objection to venue, enforcement, or grounds of forum non-convenience) that might be asserted against the bringing of any such action, suit or other legal proceeding in such court.
10. **Waiver of Jury Trial.** EACH OF THE PARTIES WAIVES ANY AND ALL RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS NDA, REGARDLESS OF THE NATURE OF THE CLAIM OR FORM OF THE ACTION.
11. **Term.** The term of this Agreement shall be for two (2) years from the Effective Date. The parties' obligations and duties with respect to Confidential Information shall expire two (2) years from the date of disclosure of such Confidential Information and, with respect to Personal Data, until such time as such Personal Data fails to qualify for protection under applicable laws.
12. **Entire Agreement.** This Agreement is the final, complete and exclusive agreement of the parties with respect to the subject matter hereof and supersedes all prior discussions and agreements, whether written or oral, between the parties.

13. **Notices.** Any notice or other communication under this Agreement must be in writing and will be deemed given to a party when it is delivered to or received by the party at its mailing or street address or is sent by email to the party using its physical address or email address in each case as set forth on the signature page of this Agreement, or as otherwise provided in writing by one party to the other party, expressing referencing this Agreement.

14. **Execution of Agreement.** This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original of this Agreement, and all of which, when taken together, will be deemed to constitute one and the same Agreement. The exchange of copies of this Agreement and of signature pages by email or facsimile will constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by email or facsimile will be deemed to be their original signatures for all purposes.

**IN WITNESS WHEREOF**, the undersigned have hereto set their hands and seals as of the Effective Date above.

**BANES CAPITAL GROUP, LLC**

6410 Poplar Ave. Suite 500  
Memphis, TN 38119  
Attn: Joel Banes  
jbanes@banescapital.com

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Name/Title**

\_\_\_\_\_  
**Company Name**

Street Address \_\_\_\_\_

City, State Zip \_\_\_\_\_

\_\_\_\_\_  
**Signature**

Contact \_\_\_\_\_

Email \_\_\_\_\_

\_\_\_\_\_  
**Name/Title**