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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

AMERICAN LEASING COMPANY, an
Oregon corporation, and AMERICAN
LEASEFUND, INC., an Oregon corporation,

Plaintiffs,

v.

CONTINENTAL BANK, a Utah corporation,
and SUMMIT LEASING, INC., a Washington
corporation,

Defendants.

Case No.

COMPLAINT

**(Breach of Contract; Unfair Competition
-- Oregon Trade Secrets Act; Injunctive
Relief)**

JURY TRIAL DEMANDED

Plaintiffs allege the following:

I. THE PARTIES

1. Plaintiffs American Leasing Company (“ALC”) and American Leasefund, Inc. (“ALI”) are both Oregon corporations with their principal place of business located in Washington County, Portland, Oregon. ALC and ALI are sometimes collectively referred to as “Plaintiffs” herein.

2. Defendant Continental Bank (“Continental”) is a Utah corporation, with its principal place of business located at 15 W South Temple, Suite 420, Salt Lake City, UT 84101.

3. Defendant Summit Leasing, Inc. (“Summit”) is a Washington corporation, with its principal place of business located at 3901 Fairbanks Ave., Yakima, WA 98902. Continental and Summit are sometimes collectively referred to as “Defendants” herein.

II. JURISDICTION AND VENUE

4. This is a civil action seeking damages in excess of \$75,000, exclusive of interest and costs, and is between citizens of different states. Diversity jurisdiction exists pursuant to 28 U.S.C. §1332.

5. Pursuant to 28 U.S.C. § 1391(a), venue is proper in this district because a substantial portion of the events or omissions giving rise to this action took place here.¹

III. GENERAL ALLEGATIONS COMMON TO ALL CLAIMS

Plaintiffs’ Business and Proprietary Credit Scoring Model/Processes

6. ALC was formed in 1993 by one of ALI’s Principals, and at all material times was and is a brokerage for commercial equipment transactions, assisting businesses with funding their capital purchases, through an outside lending institution, and later with the formation of ALI, through their own in-house funding arm. More specifically, ALC generates commissions from brokering equipment financing and working capital transactions through ALI, or through outside lenders.

7. ALI was later formed in 1999, providing lease based financing for commercial equipment to small and medium-sized businesses in the \$5,000.00 to \$150,000.00 market, many of whom do not have ready access to financing through one of the national institutions.

¹ As further alleged herein, the parties entered into a Confidential Information Agreement (the “Agreement”) which contains a venue selection clause providing that any dispute among them “shall be in any state or federal court located in Multnomah County, Oregon, and all Parties hereby submit to the personal jurisdiction of such courts.” A true and correct copy of the Agreement is attached to the Complaint as Exhibit “A.”

8. ALI and ALC, with shared interests in the performance of lease finance and working capital transactions to which they participated, set to develop a credit scoring model to better understand and underwrite the risks pertaining to any given transaction.

9. In that endeavor ALI and ALC, over a period of approximately four years, expending substantial sums/resources, including thousands of hours in evaluating *all* prior deals ever funded since their inception, developed a proprietary Score Workbook (in 2013-2014), the first of its kind credit scoring model to consider cash flow and a myriad of other non-traditional factors in the “approval or decline” logic that permits a dynamic scoring capability, enhancing the confidence in underwriting any particular deal by imposing a structure upon any such deal in the weight assigned to credit weaknesses in other categories, all based on the experience derived from the actual performance of all prior deals where nontraditional factors were present, isolated, and carefully analyzed/scrutinized for their impact on the ultimate performance of those transactions (“Proprietary Scoring Model”). Additionally, to ALI’s and ALC’s knowledge, the Proprietary Scoring Model is the first that can be used in real time credit decisions, allowing an underwriter to enter and change details at the point of review and to amend those details to consider possible structure scenarios, to the end of offering an approval.

10. The development of the Proprietary Scoring Model resulted from the substantial experience, practices and factors that had been internally identified and utilized – but not yet compiled and synthesized into a formal scoring model – by ALI/ALC over the approximately 25 years of combined participation in this space. Further, in developing the Proprietary Scoring Model, ALI/ALC at all times kept this scoring model and its underlying assumptions, compilations, inputs, and algorithms secret, and did not disclose such matters to persons or third-parties not employed by ALI/ALC. Such efforts to maintain the secrecy of said information included but were not limited to maintaining a locked premises and network, as well as password protecting the Proprietary Scoring Model, access to which was confined to the principals of ALI/ALC alone.

11. At all material times, ALI and ALC intended to and did use the Proprietary Scoring Model to enhance their own businesses, whether to book transactions internally through ALI, or to better identify the transactions that are more suited for outside lenders. Moreover, the Proprietary Scoring Model has been utilized to not just build principled credit structures around ALI's and ALC's own transactions, but also to build sufficient structure around the transactions they have syndicated, cementing their longstanding reputation as one of the most efficient, candid, and complete submitters in their industry.

The Parties' Prior Business Relationship

13. Prior to developing the Proprietary Scoring Model, ALC had a prior business relationship with Summit, which similar to ALI, at the time engaged in equipment financing for small and medium-sized companies, serving approximately 14 Western states. Specifically, ALC would sometimes broker deals through Summit, which, after its acquisition by Continental, were also funded by Continental.

14. On or about April 4, 2014, Continental announced its acquisition of Summit and, on information and belief, following the close of that acquisition Summit became a wholly-owned, direct operating subsidiary of Continental.

15. Both before and after the development of the Proprietary Scoring Model, the reputation, performance, and longevity of ALI and ALC, in the equipment lease and working capital finance space, were well known to Continental and Summit.

The 2015-2016 Acquisition Courtship By Continental/Summit

16. Beginning in 2015, Continental/Summit started making overtures and inquiries regarding a potential acquisition of ALI/ALC, inclusive of their existing clients, operations, accounts receivable, and all associated intellectual property.

17. Believing the inquiries and interest of Continental/Summit to be in earnest, to facilitate the parties' discussions regarding a potential acquisition, ALI/ALC conditioned the disclosure of any information/materials on the execution of a non-disclosure agreement.

18. On or about August 28, 2015, the parties executed what was styled a Confidential Information Agreement (the “Agreement”), expressly providing:

“**Covenant of Non-Use and Non-disclosure.** Receiving Party will hold the Confidential Information in strict confidence and will use the Confidential Information only for the purpose discussions of a potential business transaction with American Leasing. Receiving Party will not use the Confidential Information for any other purpose, including any commercial purpose, and will not use the same for its own benefit, without the prior written consent of American Leasing. Receiving Party will not disclose, reveal, communicate, or allow access to, Confidential Information to any person, directly or indirectly, by any means, without the prior written consent of American Leasing. ****.”

19. The Agreement defined Confidential Information broadly, encompassing a wide swath of financial and other confidential or propriety materials:

“‘Confidential Information’ means all information of American Leasing *** that: (I) is marked, designated, or referred to as confidential or proprietary, or with words of similar import; or (II) ***Receiving Party knows, or reasonably should know, is treated as confidential, proprietary, or the like, by American Leasing, *** including but not limited to its financial information, data, documents, processes, trade secrets, and know how, as well as any extracts, analysis, summaries, reviews, notes, and other materials that contain or are in any way derived from the same.*** Confidential Information includes the fact that Confidential Information was made available or disclosed to Receiving Party.”

(emphasis supplied)

20. Following execution of the Agreement, and pursuant to the parties’ discussions, ALI/ALC provided Continental/Summit a variety of internal information and documents, consisting of appraisals, extensive tax/financial and other confidential/proprietary materials, including the Proprietary Scoring Model, in its native state, along with its proprietary underlying assumptions, compilations, inputs, and algorithm.

21. In late 2015, through a representative at Summit, Continental relayed a verbal offer to ALI/ALC for \$1,000,000.00, a facially inadequate offer in that it totaled approximately 1/3 of the accounts receivable then held by ALI/ALC. Discussions continued into February

2016, as parties from both Summit and Continental continued to request further information in re-evaluating the dollar amount of a potential offer.

22. Continental/Summit discontinued further acquisition discussions/negotiations with ALI/ALC after February of 2016.

Subsequent Improper Use and Disclosure of Proprietary Scoring Model

23. Approximately eight (8) months later, ALI/ALC learned that Continental/Summit, without prior authorization and in violation of the express terms of the Agreement, were directly using the Proprietary Scoring Model in connection with their own businesses and improving/streamlining their own underwriting decisions, all to the detriment of ALI/ALC.

24. Further, on information and belief, Continental has, without prior authorization and in violation of the express terms of the Agreement, disclosed the Proprietary Scoring Model and its underlying inputs and functionality to multiple third-party brokers, vendors, and customers, in an apparent marketing effort to encourage those third-parties to “see how they score,” improperly driving said business to Continental, all to the detriment of ALI/ALC.

IV. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

(Breach of Contract – All Defendants)

25. ALI and ALC re-allege all preceding paragraphs as if fully set forth herein.

26. ALI and ALC would not have disclosed the Proprietary Scoring Model to Continental/Summit had the Agreement not been in place. The confidential/proprietary information, inputs, and compilations, and which comprise the Proprietary Scoring Model, are not known to the public or ALI/ALC competitors.

27. Continental/Summit breached the express and/or implied terms and covenants of the Agreement with ALI and ALC in one or more of the following particulars:

- a. Continental/Summit have directly used the Proprietary Scoring Model in connection with their respective businesses and improving/streamlining

their own underwriting decisions, all to the competitive disadvantage and/or detriment of ALI/ALC;

- b. Continental/Summit have disclosed the Proprietary Scoring Model and its underlying inputs and functionality to multiple third-party brokers, vendors, and customers, in an apparent marketing effort to encourage those third-parties to “see how they score,” improperly driving said business to Continental, all to the competitive disadvantage and/or detriment of ALI/ALC; and
- c. Continental/Summit breached the covenant of good faith and fair dealing by using the acquisition discussions with ALI/ALC to gain access to ALI’s/ALC’s confidential information, including the Proprietary Scoring Model, and have used and/or disclosed the same to the competitive disadvantage and/or detriment of ALI/ALC.

28. As a direct and proximate result of the breaches of the Agreement identified above, including the implied covenant of good faith and fair dealing, ALI/ALC have suffered losses, expenses and damages, and will continue to suffer losses and damages in connection with this matter, in an amount to be proven at trial, but not less than \$1,500,000.00.

29. Under express the terms of the Agreement, ALI/ALC are entitled to recoup their reasonable attorneys’ fees, expenses, and costs incurred herein.

SECOND CLAIM FOR RELIEF

(Unfair Competition/Oregon Trade Secrets Act – All Defendants)

30. ALI and ALC re-allege all preceding paragraphs as if fully set forth herein.

31. ALI and ALC have developed valuable trade secrets in the form of the Proprietary Scoring Model at its sole expense. These trade secrets are not generally known to the public and derive independent economic value.

32. Continental/Summit gained access to the Proprietary Scoring Model only after entering into the Agreement with ALI/ALC and solely because it was necessary for ALI/ALC to share the information for the purposes of the parties' acquisition discussions. As described above, at all times ALI/ALC intended for this information to remain confidential and to not be used and/or disclosed by Continental/Summit to the detriment of ALI/ALC.

33. The actions of Continental/Summit (i) constitute a "misappropriation" of the Proprietary Scoring Model in violation of the Agreement, and (ii) are wholly improper by affirmatively using and/or disclosing the proprietary/confidential information within the Proprietary Scoring Model, for the benefit of Continental/Summit or their clients/customers, all in violation of the Oregon Trade Secrets Act, ORS 646.461 *et seq.*

34. As a direct and proximate result of Continental's/Summit's unlawful acts, they have been unjustly enriched through the improper use and/or disclosure of Proprietary Scoring Model, and ALI/ALC have suffered irreparable harm and damages, in an amount to be determined at trial, but not to less than \$1,500,000.00.

35. Continental's/Summit's acts were and are willful and/or malicious, justifying the imposition of punitive damages – *i.e.*, double damages under ORS 646.465 – as well as the recovery of their reasonable attorney fees and costs under ORS 646.467.

THIRD CLAIM FOR RELIEF

(Injunctive Relief – All Defendants)

36. ALI and ALC re-allege all preceding paragraphs as if fully set forth herein.

37. The provisions of the Agreement – as well as the ORS 646.463 – provide broad authority for the Court to enter temporary and permanent injunctive relief regarding Continental's/Summit's improper use and/or disclosure of the Proprietary Scoring Model. Specifically, the Agreement expressly provides:

“RECEIVING PARTY ACKNOWLEDGES THAT THE REMEDIES AVAILABLE AT LAW FOR ANY BREACH OF THIS AGREEMENT BY RECEIVING PARTY WILL, BY THEIR NATURE, BE INADEQUATE. RECEIVING PARTY FURTHER ACKNOWLEDGES THAT A BREACH OF THIS AGREEMENT BY RECEIVING PARTY WILL CAUSE IRREPARABLE HARM TO AMERICAN LEASING THE EXTENT OF THE DAMAGES FOR WHICH IS DIFFICULT TO ASCERTAIN, AND FOR WHICH MONETARY DAMAGES ALONE ARE NOT AN ADEQUATE REMEDY. ACCORDINGLY, WITHOUT PREJUDICING ANY OTHER REMEDIES THAT MAY BE AVAILABLE TO IT, ***AMERICAN LEASING MAY OBTAIN INJUNCTIVE RELIEF OR OTHER EQUITABLE RELIEF TO RESTRAIN A BREACH OR THREATENED BREACH OF THIS AGREEMENT OR TO SPECIFICALLY ENFORCE THIS AGREEMENT, WITHOUT POSTING OF A BOND OR SECURITY, AND WITHOUT PROVING MONETARY DAMAGES HAVE BEEN, OR WILL BE, SUSTAINED.***”

(Emphasis supplied)

38. As such, ALI and ALC respectfully seek immediate provisional relief, forever enjoining Continental/Summit from any further use and/or disclosure of the Proprietary Scoring Model, whether now or at any time in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court enter a judgment in their favor as follows:

1. On Plaintiffs’ First Claim for Relief (Breach of Contract), for judgment in Plaintiffs’ favor against Defendants and for damages in an amount to be proven at trial but not less than \$1,500,000.00;

2. On Plaintiff’s Second Claim for Relief (Oregon Trade Secrets Act), for judgment in Plaintiffs’ favor against Defendants and for damages in an amount to be proven at trial but not less than \$1,500,000.00, as well as punitive damages in an amount to be proven at trial but not less than \$3,000,000.00;

EXHIBIT A

**AMERICAN LEASING AND FINANCIAL
CONFIDENTIAL INFORMATION AGREEMENT**

THIS CONFIDENTIAL INFORMATION AGREEMENT ("Agreement") is by and between AMERICAN LEASING COMPANY and AMERICAN LEASEFUND, Inc. (both Oregon Corporations ("American Leasing") and CONTINENTAL BANK, a Utah corporation and SUMMIT LEASING, INC., a Washington corporation (collectively, "Receiving Party"). American Leasing and Receiving Party are sometimes referred to as a "Party" and collectively as "Parties."

American Leasing and Receiving Party intend to discuss a business transaction. In connection with such discussions Receiving Party will have access to confidential or proprietary information of American Leasing, and its Affiliates. American Leasing is willing to engage in such discussions with Receiving Party if, and only if, Receiving Party agrees to the terms and conditions of this Agreement.

DEFINITIONS

"Confidential Information" means all information of American Leasing, or its Affiliates, provided to, or otherwise received, obtained, or accessed by Receiving Party, before or after the date of this Agreement – through whatever means or medium, whether in oral, graphic, or written form – that: (i) is marked, designated, or referred to as confidential or proprietary, or with words of similar import; or (ii) Receiving Party knows, or reasonably should know, is treated as confidential, proprietary, or the like, by American Leasing, and/or its Affiliates; including but not limited to its financial information, data, documents, processes, trade-secrets, and know-how, as well as any extracts, analyses, summaries, reviews, notes, and other materials that contain or are in any way derived from the same. Confidential Information includes the fact that Confidential Information was made available or disclosed to Receiving Party.

Notwithstanding the foregoing, the term Confidential Information does not include any information that Receiving Party can demonstrate with clear and convincing evidence: (i) is or becomes generally available to the public other than through disclosure or other wrongful conduct by Receiving Party or its Representative(s); (ii) was received by Receiving Party from another Person (excluding any Affiliates, or Representatives of American Leasing) without any limitations on use or disclosure, but only if to the knowledge of Receiving Party – after due inquiry – such other Person is not prohibited from using or disclosing the information by any legal, contractual or fiduciary obligation to American Leasing or its Representatives; or (iii) was independently developed by Receiving Party without reference to or use of Confidential Information.

"Affiliates" means, with respect to a Party, any Person that directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with such Party. With respect to an entity, the terms "own" and "control" shall include the possession, the right to possession, or beneficial ownership of at least fifty percent (50%) of the voting securities of such entity; and specifically, with respect to American Leasing, includes American Leasefund, Inc.

"Representatives" means directors, officers, managers, employees, employers, partners, subcontractors, agents, principals, consultants, advisors, and authorized representatives.

"Person" means any natural person, corporation, limited liability company, partnership, trust, organization, association or other entity, including any government entity.

NON-USE & NONDISCLOSURE

Covenant of Non-Use and Nondisclosure. Receiving Party will hold the Confidential Information in strict confidence and will use the Confidential Information only for the purpose of discussions of a potential business transaction with American Leasing. Receiving Party will not use the Confidential Information for any other purpose, including any commercial purpose, and will not use the same for its own benefit, without the prior written consent of American Leasing. Receiving Party will not disclose, reveal, communicate, or allow access to, Confidential Information to any Person, directly or indirectly, by any means, without the prior written consent of American Leasing, provided however that Receiving Party may disclose Confidential Information – on a need-to-know basis – to those of its Representatives who are informed by Receiving Party of the confidential nature of the Confidential Information and the obligations of Receiving Party under this Agreement, and who have agreed to be bound by and comply with the provisions of this Agreement. Receiving Party will cause its Representatives to comply with the provisions of this Agreement, and Receiving Party will be liable to American Leasing for any breach of this Agreement by its Representatives or Affiliates.

Receiving Party may disclose Confidential Information in accordance with a judicial or other governmental order, if prior to such disclosure Receiving Party: (i) promptly notifies American Leasing in writing of the order to enable American Leasing to seek a protective order or other appropriate remedy; (ii) provides reasonable assistance to American Leasing in obtaining such protective order; and (iii) complies with any applicable protective or similar order.

Receiving Party agrees to exercise the same degree of care, but no less than reasonable care, as it uses to safeguard the confidentiality and avoid the unauthorized use, disclosure, publication, or dissemination of its own confidential and proprietary information.

Notification and Assistance Obligations. Receiving Party will: (i) promptly notify American Leasing of any unauthorized use or disclosure of Confidential Information, or other breach of this Agreement; (ii) exercise all commercially reasonable efforts to assist American Leasing to retrieve any Confidential Information used or disclosed by Receiving Party or its Representatives without specific prior written authorization of American Leasing; and (iii) to mitigate the harm caused by the unauthorized use or disclosure.

Return of Confidential Information. Upon termination of this Agreement or otherwise at the request of American Leasing, Receiving Party will promptly return to American Leasing all materials containing Confidential Information, as well as all copies, extracts, analyses, summaries, reviews, notes, and other materials that contain or are in any way derived from Confidential Information and that are in the possession or under the control of Receiving Party or its Representatives.

NO REPRESENTATIONS OR WARRANTIES

NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, IS MADE AS TO THE ACCURACY OR COMPLETENESS OF THE CONFIDENTIAL

INFORMATION OR ANY OTHER INFORMATION CONCERNING AMERICAN LEASING, OR ITS AFFILIATES, PROVIDED TO, OR OTHERWISE RECEIVED, OBTAINED, OR ACCESSED BY, RECEIVING PARTY REGARDLESS OF THE REASON FOR THE INACCURACY OR INCOMPLETENESS. IN NO EVENT WILL AMERICAN LEASING OR ITS AFFILIATES BE LIABLE TO RECEIVING PARTY, OR ANY OTHER PERSON ARISING OUT OF OR RELATED TO RELIANCE ON THE CONFIDENTIAL INFORMATION OR ANY SUCH OTHER INFORMATION. ONLY THOSE REPRESENTATIONS AND WARRANTIES MADE IN A SEPARATE DEFINITIVE AGREEMENT WHEN, AS, AND IF, IT IS EXECUTED, AND THEN SUBJECT TO SUCH RESTRICTIONS AS MAY BE SPECIFIED IN SUCH AGREEMENT, SHALL HAVE ANY LEGAL EFFECT.

NO RELATIONSHIP

RECEIVING PARTY ACKNOWLEDGES THAT NO CONTRACT OR AGREEMENT PROVIDING FOR ANY TRANSACTION OR RELATIONSHIP BETWEEN RECEIVING PARTY AND AMERICAN LEASING EXISTS, OR SHALL BE DEEMED TO EXIST, UNLESS AND UNTIL A SEPARATE DEFINITIVE AGREEMENT HAS BEEN EXECUTED AND DELIVERED, AND RECEIVING PARTY WAIVES IN ADVANCE ANY CLAIMS, LOSS, ACTIONS, PROCEEDINGS, DAMAGES, LIABILITIES, AND EXPENSES OF EVERY KIND, WHETHER KNOWN OR UNKNOWN, INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEYS' FEES IN CONNECTION WITH ANY SUCH TRANSACTION OR RELATIONSHIP UNLESS AND UNTIL RECEIVING PARTY AND AMERICAN LEASING HAVE ENTERED INTO A DEFINITIVE AGREEMENT.

EQUITABLE RELIEF

RECEIVING PARTY ACKNOWLEDGES THAT THE REMEDIES AVAILABLE AT LAW FOR ANY BREACH OF THIS AGREEMENT BY RECEIVING PARTY WILL, BY THEIR NATURE, BE INADEQUATE. RECEIVING PARTY FURTHER ACKNOWLEDGES THAT A BREACH OF THIS AGREEMENT BY RECEIVING PARTY WILL CAUSE IRREPARABLE HARM TO AMERICAN LEASING THE EXTENT OF THE DAMAGES FOR WHICH IS DIFFICULT TO ASCERTAIN, AND FOR WHICH MONETARY DAMAGES ALONE ARE NOT AN ADEQUATE REMEDY. ACCORDINGLY, WITHOUT PREJUDICING ANY OTHER REMEDIES THAT MAY BE AVAILABLE TO IT, AMERICAN LEASING MAY OBTAIN INJUNCTIVE RELIEF OR OTHER EQUITABLE RELIEF TO RESTRAIN A BREACH OR THREATENED BREACH OF THIS AGREEMENT OR TO SPECIFICALLY ENFORCE THIS AGREEMENT, WITHOUT POSTING OF A BOND OR SECURITY, AND WITHOUT PROVING MONETARY DAMAGES HAVE BEEN, OR WILL BE, SUSTAINED.

GENERAL

Term. Either Party may terminate this Agreement at any time and for any reason upon written notice to the other Party, provided however that the obligations under this Agreement shall remain in effect and survive with respect to any Confidential Information that is disclosed to, otherwise received, obtained, or accessed by Receiving Party before the termination of this Agreement: (i) with respect to a trade secret, so long as such Confidential Information remains a trade secret; or (ii) for all other Confidential Information (including information that loses its status as a trade secret), for a period of two (2) years after the date of disclosure.

Ownership of Confidential Information. Neither this Agreement nor any exchange of information will be construed as creating, conveying, transferring, granting or conferring upon the Receiving Party any rights, license, or authority in or to the Confidential Information.

No Obligation to Disclose. This Agreement imposes no obligation on American Leasing to provide any Confidential Information, or any other information whatsoever.

Waivers and Consents. No waiver will be binding on a Party unless it is in writing and signed by the Party making the waiver. A Party's waiver of a breach of a provision of this Agreement will not be a waiver of any other provision or a waiver of a subsequent breach of the same provision. Any written consent of American Leasing required pursuant to this Agreement may be withheld in the sole discretion of American Leasing.

Notices. All notices or other communications required or permitted by this Agreement: (i) must be in writing; (ii) must be delivered to the Parties at the addresses set forth below, or any other address that a Party may designate by notice to the other Party; and (iii) are considered delivered upon actual receipt if delivered personally, by fax, or by a nationally recognized overnight delivery service, or at the end of the third business day after the date of deposit in the United States mail, postage pre-paid, certified, return receipt requested.

Remedies. American Leasing will have all remedies available to it at law or in equity, including the remedy of disgorgement of profits from the unauthorized use of Confidential Information. All available remedies are cumulative and may be exercised singularly or concurrently.

Governing Law and Venue. This Agreement is governed by the laws of the State of Oregon, without giving effect to any conflict-of-law principle that would result in the laws of any other jurisdiction governing this Agreement. The jurisdiction and venue for any action arising out of or relating to the subject matter of this Agreement shall be in any state or federal court located in Multnomah County, Oregon, and all Parties hereby submit to the personal jurisdiction of such courts.

Attorney's Fees. If any arbitration or litigation is instituted to interpret, or enforce, this Agreement, the prevailing Party on a claim will be entitled to recover with respect to the claim, in addition to any other relief awarded, the prevailing Party's reasonable attorney's fees, expert witness fees, and other fees, costs, and expenses of every kind. American Leasing will be considered the prevailing party if a breach of Non-Use and Nondisclosure provisions of this Agreement by Receiving Party is demonstrated by American Leasing, regardless of whether any damages are awarded in its favor.

Construction. This Agreement contains the entire understanding of the Parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and agreements, whether written or oral, between the Parties with respect to the subject matter of this Agreement. If a provision of this Agreement is determined to be unenforceable in any respect, the enforceability of the provision in any other respect and of the remaining provisions of this Agreement will not be impaired. This Agreement will be binding on the Parties and their respective heirs, personal representatives, successors, and permitted assigns, and will inure to their benefit. This Agreement shall be enforceable by American Leasing, its Affiliates, and each of their respective successors and assigns. This Agreement may be amended only by a written document signed by all the Parties. This Agreement is not assignable or transferable without the prior written consent of the other Party. This Agreement may be executed in two or more identical counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute the agreement when a duly authorized representative of each Party has signed the

counterpart.

Effective Date:

**RECEIVING PARTY: IN ADDITION TO SIGNING BELOW,
PLEASE INITIAL EACH PAGE OF THE AGREEMENT.**

American Leasing:
AMERICAN LEASING COMPANY, AMERICAN LEASEFUND, INC.



By: Tom Davis
Its: President

Address:

11501 SW Pacific HWY
200 Corporate Plaza
Portland, OR 97223
Attn: Tom Davis

Receiving Party:
CONTINENTAL BANK



By: Nathan J. Morgan
Its: CEO

Address:

15 W South Temple
Suite 420
Salt Lake City, UT 84101
Attn:

SUMMIT LEASING, INC.



By: Nathan J. Morgan
Its: President

Address:

3901 Fairbanks Ave.
Yakima , WA 98902