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## Appendix 8 Mortgage Credit Underwriting and Processing Requirements

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### 8A. Individual Financial Statement, Supporting Schedules, REO Mortgage Debt Schedule

The guidance provides instructions on the type of required financial data the Underwriter must prepare for the loan application. The collection of the applicable documents should meet the requirements on the Underwriter checklist. A borrower (if fully capitalized), principal(s), and a general contractor must furnish current financial statements. This includes: a balance sheet, income and expense statement, supporting schedules, an REO schedule and a schedule of mortgage debt. The most recent three years of federal tax returns may be required, if submitted financial statements are determined to be underdeveloped or not acceptable.

1. Individuals must submit either:
  - a. Personal Financial and Credit Statement, Form HUD-92417 shall cover a period of no less than the most current 12-month period:
    - (1) The spouse of married sponsors or principals must also sign the form.
    - (2) If a spouse's signature cannot be obtained, the principal must prepare the form reflecting only those assets that are solely in their name and any liability, including those joint liabilities, for which they have any responsibility, or
  - b. A substitute statement, which contains at a minimum the information contained on Form HUD-92417. This form must contain the following certification and criminal warning:
    - (1) I HEREBY CERTIFY that the foregoing figures and statements contained herein submitted by me as agent of the borrower [owner] for the purpose of obtaining mortgage insurance under the National Housing Act are true and give a correct showing of \_\_\_\_\_'s (Name of borrower or owner) financial position as of \_\_\_\_\_ (the financial statement must include the most recent twelve month period).
    - (2) Signed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. Signature of authorized agent with name printed or typed under signature \_\_\_\_\_.
    - (3) Warning – HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)  
For married individuals, the spouse also must sign certification.
2. Business entities must submit the following separate statements and supporting documents for the last 3-years or the length of their existence. If less than 3 years, an authorized officer of the organization must provide the statements and supporting documents with a signed statement that there has been no material adverse change since the date of the statements.

- a. Balance Sheet which:
  - (1) Provides a breakdown of current and non-current assets; a list of all other assets including the market value of each asset, the basis for calculating value (for real estate owned assets this will be shown on the schedule of real estate), and any notes receivable from related entities;
  - (2) Identifies restricted and non-restricted funds.
  - (3) Provides a breakdown of current and non-current liabilities; identifies the current portion of long-term debt; contingent liabilities, including debts under secured or unsecured lines of credit or letters of credit, personal guaranties, obligations to limited partnerships and other obligations payable in the future, including the amount and duration of the obligation; and
  - (4) Lists details of any factors that may materially affect the borrower's or sponsors financial position now or during the term of the mortgage.
- b. Income and Expense Statement that reflects:
  - (1) Income from normal operations.
  - (2) Investment income.
  - (3) Other income; and
  - (4) Total expenses.
- c. If the financial statements are audited, a Statement of Changes in Financial Position or if a fund accounting system is used, a Statement of Changes in Fund Balance, and all notes.
- d. Supporting Schedules:
  - (1) An Aging Schedule of Accounts Receivable that provides the name, type of account (trade, affiliate, employee, relative or other), payment terms, amount and aging information.
  - (2) An Aging Schedule of Notes Receivable that provides the name, type of account, payment terms, maturity date, current portion (due within 1 year or one operating cycle of the business, whichever is less), past due amounts and non-current amounts.
  - (3) Schedule of Pledged Assets, if applicable. Identify the pledged asset, the amount pledged and the offsetting liability.
  - (4) Schedule of Marketable Securities that provides name, number of shares, current market values as of the date of the statement, and the exchange where the shares are listed.
  - (5) Schedule of Accounts Payable that provides name, type of account (trade, affiliate, employee, relative or other), payment terms, amount and aging information.
  - (6) Schedule of Notes and Mortgages Payable that provides name, type of account, payment terms, maturity date, current portion (due within 1 year or one operating cycle of the business, whichever is less), past due amounts and non-current amount.
  - (7) Schedule of Legal Proceedings, if applicable.
  - (8) In addition to the applicable schedules in the above paragraphs, general contracting firms must submit a schedule of jobs (work) in progress that identifies the:
    - (a) Original contract price.
    - (b) Construction start date.
    - (c) Construction completion date; and
    - (d) Percentage of completion.
- e. The REO schedule must contain the following information for each physical property listed:

- borrower/ principal's name
  - property name and address
  - type of property and number of units
  - property acquisition date
  - ownership role and interest
  - percent of current occupancy
  - annual net operating income
  - present market value
  - existing mortgage lien holder (FHA or Conventional) and maturity dates
  - If FHA insured, project number
  - interest rate and dates
  - sum of existing loan balances of mortgages and liens
  - current property equity
  - annual effective gross rental and commercial income (after deducting concessions and vacancy loss)
  - annual operating expenses
  - annual debt service
  - debt service coverage ratio
  - pending judgments, legal suits/actions or bankruptcy against the property.
- f. A Schedule of Mortgage Debt is applicable only when the event of mortgage maturity is in the next five (5) years or the property is a troubled asset. Provide the following for each property listed:
- name of creditor/ lien holder
  - type of debt (e.g. FHA mortgage (project number), conventional mortgage, bridge loan, balloon)
  - original mortgage amount or debt amount and origination date
  - interest rate and origination date (i.e. fixed, fixed bonds, variable, etc.)
  - unpaid principal balance or current debt amount and origination date
  - maturity dates for all debt
  - monthly payment
  - balloon payment
  - collateral (describe the security type for repayment of the mortgage or debt)
  - status of debt as current or delinquent
- g. Combined or consolidated financial statement(s), if applicable.
- h. Other financial data necessary to determine the financial responsibility and capacity of the sponsorship or general contractor,
- i. An authorized official of the company must sign and date the certification. The certification must reference the name of the business and the date of the financial statement(s).

## 8B. How to Analyze Financial Statements

Please follow the instruction below to correctly analyze financial statement(s) when determining the financial capability of the Borrower, Sponsor, General Contractor, and or Manager.

1. **Current Assets** are cash and other assets convertible into cash during the normal operating cycle of business operations or 1 year, whichever is less.
  - A. When reviewing cash, take into consideration compensating balances, which would limit the amount of cash actually available.
  - B. Determine the current value of readily marketable stocks and bonds.
  - C. Evaluate the accounts receivable and classify the following as noncurrent.
    1. Amounts due from officers and employees.
    2. Amounts advanced to subsidiary, affiliated or associated companies.
    3. Disputed accounts receivable.
    4. Accounts receivable past due for more than 60 days. Funds from a local, State or Federal source past due beyond this period may be considered if evidence is provided that source is historically late, and it can be expected that these funds will be received before initial closing.
  - D. Using a Schedule of Accounts Receivable by Age determine if the amount allowed for doubtful accounts, if any, is adequate.
  - E. Recognize only syndication proceeds from other projects and notes receivable to be collected during the normal operating cycle or 1 year, whichever is less.
  - F. If the statement is audited, evaluate inventory and establish its liquidation value, relying on the accountant's review. Do not consider inventory, if statement is unaudited.
  - G. Recognize only prepaid expenses for the project.
  - H. Do not include:
    1. Equity in the proposed site, since consideration is given on Form HUD-92264-A, Part A.
    2. Cash equity in land and/or properties unless they are readily marketable and intended for the sale market.
    3. Anticipated profits from business ventures.
    4. Equity in real estate encumbered by high ratios of loan to value mortgages, unlisted stocks, goodwill, and other intangible assets.
2. **Current liabilities** are payables due during the normal operating period or 1 year, whichever is less.
  - A. Include as current liabilities, regardless of term, those relating to marketable land and completed properties that were treated as current assets.

**NOTE:** If the balance sheet does not reflect the amounts required to complete construction in progress, the sponsor/general contractor must submit a supplementary statement of such amounts, which contains the truth and accuracy certification. For a reference, see Appendix 8C.
  - B. Consider amounts due to officers, employees, affiliates or stockholders as current liabilities unless the obligations have a definite long-term maturity.
  - C. Consider amounts needed to satisfy broker's margin account (brokerage account allowing customers to buy securities with money borrowed from the broker).
  - D. Consider current portion of long-term liabilities.
  - E. Current year income tax payable. Normally, deferred income taxes are not considered

current as long as the economic outlook of company does not appear to be in an adverse trend.

- F. Do not include the amount outstanding on the project land, since this obligation is considered on Form HUD-92264-A, Part A.
3. **Working Capital** is the excess of current assets over current liabilities. If current liabilities exceed current assets, precede the difference with a minus sign to show a deficit.
4. **Adjust the net working capital to consider:**
- A. Effects of contingent liabilities.
  - B. Financial needs of other projects in the planning stage or under construction.
5. **When a sponsor's financial interests are represented by a number of corporations:**
- A. Require a certification from the Board of Directors, which evidences their willingness to make the required funds available.
  - B. Establish the availability of funds from such corporations.
  - C. Consider whether:
    - 1. Individual corporations have any operating capital to spare.
    - 2. Laws under which they are incorporated and/or their banks permit:
      - (a) Withdrawals, loans or advances to owners or sponsors.
      - (b) Stock investment in affiliated corporations.
      - (c) Guarantee of debts of associated corporations.
    - 3. In analyzing financial statement:
      - (a) Do not consider interlocking debts, receivables and investments between all affiliated corporations.
      - (b) Consider only those assets readily available for investment by the borrower.
      - (c) Do not consider the operating capital and/or net worth of rental project holding corporations as assets available for closing.
6. **If funds are being provided by a parent company or affiliate of the sponsor:**
- A. Require a certification from the Board of Directors or authorized agent which specifies the funds the parent company/affiliate is willing to commit.
  - B. Establish the availability of funds from parent company/affiliate.
  - C. Require the parent company/affiliate to submit a certification indicating that the lending institution will not make any claim against the mortgaged property, mortgage proceeds, any reserve or deposit required by HUD, or against the rents or other income from the mortgaged property for payment of the loan. This certification must contain the criminal warning reflected in Appendix 8A.

**8C. Prior Approval of Principals with Insured Balances - \$500 Million or 25 or More Commercial Real Estate Assets**

1. **Determination.** In determining whether a principal meets the threshold of insured loans totaling **\$500,000,000 or more**, lenders must include all FHA insured loans in the total, including healthcare loans, but excluding any state or local housing finance agency or GSE Risk Sharing loans. Lenders should not adjust insured loan balances to account for a principal's fractional ownership interests. It is the lender's responsibility to determine whether a principal to a proposed transaction(s) has or will have insured principal balances exceeding the threshold. This requirement for prior approval will not be waived.
  
2. **Lender's Analysis and Scope of Review.** The lender must conduct a complete mortgage credit review of active principals and prepare an analysis of the sponsors' character, capacity and creditworthiness, including a review of all observed risks and prospective mitigating factors together with a recommendation for credit approval. The review must describe any material changes in the active principals' financial position expected during the **24 months** following the date of the credit submission as well as any additional periods of time required for the stabilization of new developments or troubled assets. An essential element of the review is an assessment of the sponsors' ability to meet reasonably anticipated financial and management demands during the period when applications are under consideration and continuing through stabilization. HUD consideration of requests for prior approval does not relieve the lender of the responsibility to submit a properly underwritten MAP application for each project proposed for insured financing, nor does such consideration obligate any Regional Center or Satellite Office to reach a conclusion on the merits of any particular project application other than the creditworthiness of the active principals which already will have been reviewed and approved.
  
3. **Program Areas Responsible for Risk Reviews based on Levels of Exposure.** The program areas required to review risk applications and the authority to approve decision memos based upon the requested unpaid loan balance is as follows:
  - a. i. All reviews below \$800 million are to be conducted by the Technical Support Division and may be signed by Director of Technical Support, as is the current practice;
  - b. ii. Reviews exceeding \$800 million but less than \$1.2 billion are to be jointly reviewed by the Technical Support Division and the Multifamily Asset Counterparty Oversight Division (MACOD), with the decision and approval amount jointly approved by the Deputy Assistant Secretary for Multifamily Programs and the Deputy Assistant Secretary for the Office of Risk Management and Regulatory Affairs. In the event of a disagreement on approval, the borrower request and review will be elevated to the FHA Commissioner or his or her Designee for decision;
  - c. iii. Reviews exceeding \$1.2 billion are to be jointly reviewed by the Technical Support Division, MACOD, and ORM with decision and approval authority reserved to the FHA Commissioner or its Designee; and

- d. iv. Reviews exceeding \$2.4 billion will be subject to additional levels of review and approval.
3. **Maximum Insured Balance Limit.** A maximum insured balance limit above \$1.2 billion for any borrower will be determined on a case by case basis with criteria that include metrics such as the amount of loan balance of existing, FHA insured projects as a percentage of a Borrower's total portfolio, ratio of level of liquid assets to overall net worth, equity, geographic concentration of insured assets, ranked performance metrics, and other metrics as may be determined in the context of specific credit approval requests.
4. **Submission.** The lender should deliver the prior approval submission to the HUD Regional Center most relevant current and future application activity. The Regional Center will then forward this presentation to HUD Headquarters Office of Multifamily Housing Production for review.

Requests for prior approval may contemplate multiple project applications in varying locations over a period of time. The following steps are required for submission:

**Designation of lender, lead lender.** The sponsor must select a MAP lender to prepare and underwrite its request for prior approval. If the sponsor has or proposes to have individual project applications prepared by more than one MAP lender, then the MAP lender preparing the request for prior approval shall be the lead lender. The sponsor must disclose the identity of the lead lender to each of the other lenders and must authorize and direct the lead lender to share with any other lenders its request for prior approval and any HUD response to such requests.

**Form of submission.** The lender shall provide an original (with original signatures), a hard copy and a reproducible electronic version of the request for prior approval. REO and mortgage debt schedules must be provided in both a fixed, not editable form as well as in a legible sortable excel spreadsheet form allowing easy analysis of data.

**Regional Center/Satellite administrative action.** The office receiving the lender's request for prior approval shall retain the original and forward the hard copy and the reproducible electronic version of the request to the Director, Technical Support Division of the Office of Multifamily Housing Production. The Director of Technical Support will copy the office on all correspondence arising from the request for prior approval. The office must retain the original of the lender's submission together with all relevant correspondence with the docket for the first project application it receives pursuant to any prior approval, and if there is no approval, then the submission must be retained consistent with the office's practice for rejected project applications. The Technical Support Division will retain the electronic version at headquarters.

5. **Reviewing Authority, Conditions and Duration of Prior Approval.** The Technical Support Division of the Office of Multifamily Production will review lender requests for prior approval. The Technical Support Division will notify Regional Center Directors of its determination of the principal's creditworthiness and will specify a date when the prior approval expires. Depending on the applicant's financial strength and credit history, the Director of Technical Support will approve the request, approve with conditions, or disapprove the request. When appropriate to specific circumstances the Director of Technical Support may condition an approval with conditions including, but not limited to, one or more of the following:

- a. A list of particular named projects for which new insurance applications may be submitted,
- b. Certain types of projects (e.g., refinance, but not new construction) or to specific markets or particular geography,
- c. A maximum amount of new insurance commitments for which the principal may apply,
- d. A maximum liquidity amount that may be required by new insurance commitments, or a minimum liquidity amount that the sponsor must maintain, or
- e. Requirements for specific measures or remedies to address identified credit issues.

The principal's continued credit worthiness will be confirmed during processing of each new Firm Commitment application, but normally, and absent material and adverse changes in the principal's financial condition, the prior approval will be effective and may be relied upon for 24 months or lesser period specified by HUD, from the date of the credit approval.

6. Process for Prior Approval. The lender's request for prior approval should provide all the exhibits and analyses required for active principals as described in 8.3 with the exception Previous Participation Certification (APPS/ HUD- 2530) which must be provided with each individual insured application. Except in cases where a sponsor or their affiliate(s) propose to act as general contractor, credit review for principals who are not sponsors (i.e., general contractors, property managers) should be completed with individual applications.
7. Decision. Upon receipt of the request for prior approval, the Technical Support Division will review the submission and within 45 days issue a decision that will:
  - a. Explain the reasons for the decision, identifying areas or issues of strength and/or weakness.
  - b. Define the terms and conditions, if any, which may attach to the decision.
  - c. If adverse, define remedies or conditions which would allow reconsideration.
  - d. Quantify the net worth and liquidity available to the principal(s) in light of analysis of the principal's existing business operations and pending transactions.
  - e. Identify specific projects proposed for insurance (or alternatively, when specific projects are yet to be determined, the location(s) and kinds of insured transactions, e.g. refinancing, new construction, etc.) which are given prior approval and the estimated aggregate sum of the principal's cash or other liquid assets required to close these transactions.
  - f. Identify FHA insured multifamily and/or healthcare projects currently in process within HUD's production offices indicating location, types of transactions, proposed loan amount and estimated aggregate sum of the principal's cash to close the transactions.
  - g. Identify steps, if any, that Regional/Satellite Offices and lenders must take to coordinate completion of the proposed schedule of applications and resulting commitments and closings.
  - h. Describe the process to be followed by the lender in the event of any appeal of the decision on the request for prior approval.

The Director of the Technical Support Division will send the written decision to the lender and to the originating Multifamily Regional Center/Satellite office as well as to each other office

with jurisdiction for any of the named projects proposed for insurance. In addition, the decision will be made available to all other Multifamily Regional Center/Satellite offices at the HUD Multifamily SharePoint site.

8. Project Applications after Prior Approval. Upon receipt of the prior approval, the lender(s) may file applications with the relevant Regional Center/Satellite for projects consistent with HUD's decision on the request. For each application, the mortgage credit exhibits shall include:

- a. A copy of the prior approval decision.
- b. Original, written certification(s) signed by each principal who is a subject of the prior approval decision stating that no material changes have occurred in the circumstances of the principal or the portfolio as described in the request for prior approval except as are fully described. The sponsor must disclose any and all loan applications filed, commitments issued, and transactions closed as well as loan delinquencies, modifications, settlements or forbearance agreements concluded or any other change bearing on its ability to execute the transactions for which prior approval was requested. In the event that material changes have occurred, the principal shall also certify to the accuracy and completeness of the description of the material changes. The certification must contain the following language: "HUD will prosecute false claims and statements. Convictions may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012, 31 U.S.C. 3729, 3802)".
- c. The lender's updated review and analysis of the creditworthiness of the principals in light of any materially changed circumstances. This review must consider all changed circumstances and describe how and why the lender concluded the changes were or were not material.
- d. The lender's updated or adjusted financing plan showing the sponsors available liquidity and how the sponsor's resources have been or will be used to meet cash requirements arising from existing or proposed assets in accordance with HUD's prior approval decision.
- e. In the event of a material change arising only from changes in the capital requirements of pending transactions, and not from altered and adverse performance of assets or the creditworthiness or behavior of the principal(s), then the lender may reallocate the principal's available resources to meet the cash requirements for particular projects, provided that the aggregate cash requirements do not exceed limits described in the prior approval. Any such reallocations must be documented in the updated financing plan. Such adjustments may result in the deletion of a project(s) proposed for financing and given prior approval, but additional or substitute transactions are not permitted unless additions or substitutions are authorized in the prior approval decision.
- f. In the event that material changes arise from altered and adverse performance of existing assets, adverse credit behavior of the principal(s) or adverse events arising from sponsors' acts (or inaction), or failure to meet terms and conditions of the prior approval decision, then the Regional Center/Satellite shall refer the description of the material changes, the lender's updated review and updated financing plan to the Director, Technical Support Division. The Division of Technical Support will:
- g. Confirm or amend the prior approval decision in light of the material changes and allow the

subject application and/or further applications, to proceed in accord with the confirmed or amended prior approval, or

1. Terminate the prior approval, in which event, the subject application and any further applications for mortgage insurance will require a new request for prior approval.
2. The Director of the Technical Support Division will send the lender and/or the lead lender and the Regional Center/Satellite(s) written notice of any confirmed, amended or terminated prior approval decision and any such notice will also be posted to the HUD Multifamily SharePoint site at <http://hudsharepoint.hud.gov/sites/DASMFH/OMHD/CRD/default.aspx>
3. In the event that the prior approval decision is terminated due to the behavior of the principal(s) and such behavior gives rise to an enforcement action, no new request for prior approval will be accepted until such enforcement action is resolved.

9. Prior Approval and Loan Committee Actions

Prior approval of principals does not alter thresholds for required Regional Center or National Loan Committee review and approval of insurance applications for specific projects.

10. Lender Fees for Prior Approval

Lenders may charge a reasonable fee for preparing a sponsor's prior approval package for submission to HUD. Subject to existing MAP limits on lender fees and charges on individual loan applications, the fee charged by the lender for preparing a request for prior approval, together with any third-party costs incurred, are mortgageable and may be allocated or prorated among one or more of the projects submitted for new insurance commitments at the discretion of and subject to the mutual agreement of the applicant and the lender(s).

11. Lender Appeals of Prior Approval Decisions

If the lead lender disagrees with HUD's determination with respect to a prior approval decision, the lender may appeal. Any such appeal must be filed within 30 days of the date of HUD's written decision on the prior approval request and must be documented with an electronic, a hard original and one hard copy of the appeal.

- a. The appeal should be filed with the same Regional Center/Satellite office to which the original request for prior approval was submitted. The Regional Center/Satellite will retain the original appeal with the docket file and forward the electronic and hard copies to the Director, Office of Multifamily Housing Production.
- b. The lender's appeal shall:
  1. Cite the specific cause or issue which is the occasion of the appeal.
  2. State the specific change requested in the decision of the Technical Support Division.
  3. Cite any published guidance, standard industry underwriting practice, or evidence of error which supports the change.
  4. Provide any other new or additional evidence not previously presented to HUD.
- c. The Director of Multifamily Production must review the appeal and within 15 business

days after receipt by HUD of the lender's appeal (30 days if the lender's appeal offers new or additional evidence not previously presented), the Director will prepare and send a written decision to the lender, with a copy to the Regional Center/Satellite Director.

- d. When conducting the review of the appeal, the Director of Multifamily Production must ensure a wholly independent review and, except for ascertaining matters of fact, rely only on staff with no prior engagement or participation in the initial decision on the request for prior approval.
- e. The decision of the Director of Multifamily Production on the appeal shall be dispositive and shall detail in writing the substance of and the reasons for any denial of the appeal or revision of any earlier decisions and will be posted to the same HUD Multifamily SharePoint site as original prior approval decisions.

The Multifamily Regional Center will retain the original of the appeal submission and related materials. If a lender's appeal is approved, then the Regional Center will retain the original materials with the docket for the initial project application received pursuant to the prior approval. If denied, the submission must be retained consistent with the Regional Center's practice for rejected project applications. The Office of Multifamily Production will retain the electronic version at headquarters.

12. Detailed Guidance for Exhibits and Analysis. The location of the required exhibits shall be identified by the Lender's Table of Contents. The following groups of items represent the suggested guidance for preparing a prior credit approval request:

Group 1: Lead Lender's Request and Summary

- (a) A cover letter, signed by the lead lender, summarizing the request to HUD.
- (b) The letter should explicitly state the requested total dollar amount of authority, based on the proposed FHA projects, rounded up to the nearest \$5 million (i.e. existing balances are \$450 million, proposed FHA loans are \$67 million, then the request should be for \$520 million.)
- (c) The letter should identify each principal scoped within the request, and if the request is mandatory or voluntary (see MAP Guide Chapter 8.6).

Group 2: Role and Experience of Active Principal(s)

- (a) A narrative analysis of the Active Principal's experience. The narrative should disclose exactly what role causes the principal to be subject to mortgage credit analysis (e.g. managing member of borrower, etc.).
- (b) Include a description of expertise areas or resources the Active Principal contributes to the portfolio (e.g. the principal is relied on for his expertise in acquisition sourcing, ownership structuring, and affordable housing regulatory compliance).
- (c) Include a description of the Active Principal's experience, emphasizing commercial/multifamily real estate experience. Include summary metrics (e.g.

developed 10 projects with 2,000 units since 1995).

- (d) Include a description of the Active Principal's high-level experience with HUD programs (i.e. general experience is a given because this is prior credit review, so this should segment experience such as construction, market rate vs affordable rents, FHA healthcare projects, etc.)

#### Group 3: Credit Analysis of Active Principal(s) and/or Related/Affiliated Organizations

- (a) A narrative analysis of the Active Principal's and/or Related/Affiliated Organizations financial history and strength, credit history and related credit worthiness (e.g. residential and/or business credit reports, OFAC searches, etc.)
- (b) Include a specific conclusion as to the underwritten net worth, current liquidity and cash flow of the Active Principal(s) and the Related/Affiliated Organization(s) and whether financial resources are adequate to meet anticipated needs during the 24 month period following the request for prior approval and any additional period required to stabilize new developments or troubled assets.
- (c) Active Principals or Guarantors and/or Related/Affiliated Organizations providing the FHA insured multifamily project with all or a sufficient portion of the required capital must submit reviewed, compiled, and/or consolidated financial statements prepared in accordance with Generally Accepted Accounting Principles (GAAP) financial statements for the most recent three-year period and Y-T-D prepared by a third-party independent CPA Audited or certified financial statements prepared by a third-party independent CPA may be submitted, but are optional and not required.
- (d) Individual financial statements (HUD form 92417) must show a reporting period of no less than the most recent twelve-month period, the reporting period shall be documented in the, "Date of Statement" (e.g. 1/1/18 to 12/31/18). The most recent three years of federal tax returns may be required, if individual financial statements are underdeveloped and are not prepared by a third-party.
- (e) The Active Principal's providing required capital into the proposed transactions should be able to show at least a minimum of two percentage (2%) of working capital in relationship to the total development costs of each proposed FHA-insured projects.(g) Passive Principals contributing a majority of equity to the Active Principal(s) and/or Related Entities/Affiliates shall be subject to a financial and credit analysis.

#### Group 4: Succession Plan

- (a) A succession plan of the active principal(s), which should describe the provisions made by the principals to assure continuity and orderly succession in leadership and/or orderly disposition of assets in the event of any incapacity of the principal. This description must include a brief summary of partner buy/sell agreements, provisions for key person insurance and/or similar measures sufficient to evidence careful planning for these contingencies. Descriptions of prior changes in

leadership, if any, should be provided if they document how the principal would deal with future changes.

#### Group 5: Ownership and Equity Analysis

- (a) Lender's narrative describing the principal's approach to ownership strategy and construct of this strategy. The strategy described should be internally consistent with other exhibits, such as affiliate entities and the source of revenue on financial statements.
- (b) Organizational Chart for the typical ownership entity and an Organizational Chart for the parent company with the Active Principals identified with accompanying percentage of ownership and roles clearly defined. See Section 8.3.B. for organization chart guidance.

#### Group 6: REO/Mortgage Debt Analysis

- (a) A REO schedule listing all FHA insured projects with accompanying project numbers, HUD's Section 8 subsidized/assisted projects, insured healthcare projects and conventional projects.
- (b) A status report for FHA insured projects currently in process with the local Regional/Satellite Production Office, projects in lease-up and the percentage of completion of all FHA insured loans in construction.
- (c) The REO must include a full year of operational history, a disclosure of mortgage debt, e.g. type, maturity, age, interest rate, vacancy rate, NOI, LTV, DSCR and a financial plan for mortgage debt maturing within five years of submission of the prior approval credit package. The REO schedule must also include a financial chart indicating an analysis of the occupancy change, NOI change, revenue change, expense change, the lowest 10% (DSCR) and the highest 10% (LTV) over the latest 3-year period. (For an example of the suggested format for the analysis of the REO schedules, see Addendum 8G)
- (d) A narrative addressing geographic concentration risk. Describe potential circumstances that would impact the stability of the principals' portfolio such as mitigating factors if the primary market area is experiencing slower lease-up periods (longer than 18 months) or the over saturation of available rental units in the primary market area because of new projects coming on line, the existence of declining market values, or regional economic distress.

#### Group 7: Proposed FHA Projects & Financing Plan

- (a) The project name or a description of properties that are proposed for FHA insurance with an estimate of the cash requirements for closing each transaction and indicating whether the properties proposed for insurance are already held in the principal's portfolio, the purpose of the anticipated financing (refinance, rehabilitation, new construction) and the rationale and criteria used for selection of the proposed new insured properties (e.g. potential for cash flow or physical improvement, asset type, size, target market, geography, etc.). Generally,

proposed projects should be specifically named and identified by address, but where acquisition, development or refinancing targets are to be determined, tentative or contingent, projects may be described generically.

(b) Financing plan disclosing equity/cash requirements for new construction, acquisition and substantial rehabilitation projects at the time of anticipated loan closing and future cash requirements of the existing REO portfolio for the period of time covered in the prior approval request.

#### Group 8: Management Agent Analysis & REAC Inspections

(a) Narrative summary of the management agent of the Multifamily portfolio. If concentrated, identify the firm of the management agent(s) representing the concentration. Describe the management agent's experience in high-level metrics (e.g. 5,000 units under management among 25 properties in 6 states) and key staff. If an IOI relationship or an equity interest exists between the management entity and the Active Principal(s) and/or Affiliates a business credit report shall be required. A financial analysis may be required if there is a concern about the capacity of the management agent to perform its assigned role.(b) Narrate the current physical condition and REAC scores in summary form (ranges, least favorable scores, etc.) of the active Principal's existing FHA insured and/or HUD's assisted/subsidized properties. Provide narrative explanations for any REAC scores of 65 or below.

**8D. Mortgage Credit Underwriting Documentation Matrix**

| FHA/MAP Mortgage Credit Documentation Matrix                  |      |                |                |                  |                  |                    |
|---|------|----------------|----------------|------------------|------------------|--------------------|
| Principal/ Participant Role                                   | LLCI | Resume         | Org. Docs. (1) | Financial Stmts. | VOD/ Bank Stmts. | REO/ Mortgage Debt |
| Mortgagor   | N/A  | No             | Yes            | Yes              | No               | N/A                |
| Active Principal (5,6):                                       |      |                |                |                  |                  |                    |
| Entity (Par 50)   | N/A  | Yes            | Yes            | Yes              | Yes              | Yes                |
| Individual (Par 50)   | N/A  | Yes            | N/A            | Yes              | Yes              | Yes                |
| Entity (Non-Par 50)   | N/A  | Yes            | Yes            | Yes              | No (2)           | No                 |
| Individual (Non-Par 50)                                       | N/A  | Yes            | N/A            | Yes              | No (2)           | No                 |
| Foreign National Non-Par 50 (entity or individual)            | N/A  | Yes            | Yes            | Yes              | No (2)           | No                 |
| Large Borrower Non-Par 50 (entity or individual)              | N/A  | Yes, if entity | Yes            | Yes              | No (2)           | Yes                |
| Passive Principal (5,6):                                      |      |                |                |                  |                  |                    |
| Board Members or Officers of Non-Profits                      | No   | No             | No             | No               | No               | No                 |
| Public Housing Authority                                      | No   | No             | No             | No               | No               | No                 |
| Tax Credit Investor   | Yes  | No             | No (3)         | No               | No               | No                 |
| Special Limited Partner                                       | Yes  | No             | No (3)         | No               | No               | No                 |
| > 25% (or 10%, if Corp.) Interest with Passive Ownership      | No   | No             | No             | No               | No               | No                 |
| Foreign National Passive Principal (entity or individual) (5) | N/A  | Yes            | Yes            | Yes              | No               | Yes                |
| Large Borrower Passive Principal (entity or individual)       | N/A  | Yes            | No             | Yes              | No               | Yes                |
| Other Deal Participants:                                      |      |                |                |                  |                  |                    |

OMB Ready

|  |     |                        |     |  |     |    |
|--|-----|------------------------|-----|--|-----|----|
| General Contractor                         | N/A | Yes (A305)             | No  | Yes, incl. Work In Progress and A/R Report | Yes | No |
| Management Agent (no Identity of Interest) | N/A | Yes (Company Brochure) | No  | No   | No  | No |
| Management Agent (Identity of Interest)    | N/A | Yes (Company Brochure) | Yes | No   | No  | No |

**Mortgage Credit Underwriting Documentation Matrix Continues:**

| Other Business Concerns | 92013-Supp (4 questions only) | APPS/ 2530 | EIN/SSN Verification | Credit Authorization | Credit Report | Trade References  |
|-------------------------|-------------------------------|------------|----------------------|----------------------|---------------|-------------------|
| N/A                     | Yes                           | Yes        | Yes                  | Yes                  | Yes           | See Credit Report |
| Yes                     | Yes                           | Yes        | Yes                  | Yes                  | Yes           | See Credit Report |
| Yes                     | Yes                           | Yes        | Yes                  | Yes                  | Yes           | See Credit Report |
| No (6)                  | Yes                           | Yes        | Yes                  | Yes                  | Yes           | See Credit Report |
| No (6)                  | Yes                           | Yes        | Yes                  | Yes                  | Yes           | See Credit Report |
| Yes                     | Yes                           | Yes        | Yes                  | Yes                  | Yes           | See Credit Report |
| Yes                     | Yes                           | Yes        | Yes                  | Yes                  | Yes           | See Credit Report |
| No                      | No                            | No (5)     | No                   | No                   | No            | No                |
| No                      | No                            | No         | No                   | No                   | No            | No                |
| No                      | No (3)                        | No (3)     | No (3)               | No (3)               | No (3)        | No (3)            |
| No                      | No (3)                        | No (3)     | No (3)               | No (3)               | No (3)        | No (3)            |
| No                      | No                            | No         | No                   | No                   | No            | No                |
| Yes                     | Yes                           | Yes        | Yes                  | Yes                  | Yes           | See Credit Report |
| Yes                     | Yes                           | Yes        | Yes                  | Yes                  | Yes           | See Credit Report |
| No                      | Yes                           | Yes        | Yes                  | Yes                  | Yes           | See Credit Report |

## **Mortgage Credit Underwriting Documentation Matrix Legion –**

1. Organizational Documents include the following:
  - a. Corporation - Articles of Incorporation & Bylaws; Authorizing Resolution.
  - b. Partnership - Certificate of Partnership & Limited Partnership Agreement; Authorizing Resolution.
  - c. LLC - Articles of Organization & Operating Agreement; Authorizing Resolution.
  - d. Trust Documents. All Document Amendments are required.
2. VOD/ Bank Statements (must include a three-month average balance for VOD or three months of consecutive bank statements) may be requested by the Lender’s Underwriter for the non-par 50 Participants to ensure there is enough cash to close, if required.
3. If a Passive Participant (Entity) does not want to provide an “Identification and Certification of Limited Liability Investor Entities”(click to view Certification) they must submit in place of the certifications the following items: Organizational Documents, HUD 92013-Supp, Credit Authorization, EIN Verification, Credit Report.
4. Board Members and Officers are not required to do 2530s unless the Board Member also has a controlling role in the corporation (i.e. Executive Director, Manager, or Director of Non-Profit).
5. In addition to requirements applicable to all Active and Passive Principals, the MAP Lender must perform a thorough and independent background evaluation of foreign national Principals and Domestic Principals as described in Housing Notice 2019-01. II.A.2 and II.A.3, respectively.
6. Instructions for submission of concentrated risk or large borrower review is found in Housing Notices 2018-09 and MAP Guide Appendix 8C and 8G.

**8E. Payoff Letter for Existing Mortgage**

Name and Address Bank: \_\_\_\_\_

Madam/ Sir: \_\_\_\_\_

Subject: \_\_\_\_\_

Name and Address of Project: \_\_\_\_\_

Borrower's Account No. \_\_\_\_\_

This office has received an application for FHA mortgage insurance for the subject project. We are advised that your firm is the mortgagee. Please provide us with the following information:

Date of Mortgage: \_\_\_\_\_

Original Amount: \$\_\_\_\_\_ Monthly Payment Amount: \$\_\_\_\_\_

Next Payment Due: \$\_\_\_\_\_

Present Mortgage Balance: \$\_\_\_\_\_ As of (Date): \_\_\_\_\_

Other Amounts Due: Interest \$\_\_\_\_\_ Penalties: \_\_\_\_\_

Total Payoff Balance (Excluding Forgiven Indebtedness, Rebates, etc.): \$\_\_\_\_\_

Balance of Escrow, Reserves, etc. (Itemize): \$\_\_\_\_\_

\$\_\_\_\_\_ \$\_\_\_\_\_

Is Debt Current: Yes: \_\_\_\_\_ No: \_\_\_\_\_ Satisfactory: \_\_\_\_\_ Unsatisfactory: \_\_\_\_\_

Other known Indebtedness against property (explain): \_\_\_\_\_

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Remarks

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Date \_\_\_\_\_ Signature \_\_\_\_\_

Title \_\_\_\_\_

Information provided will be used solely for our evaluation and will otherwise be held in confidence. We are enclosing a stamped, self-addressed envelope. Please replay at your earliest convenience.

Sincerely,

## **8F. Subordination, Non-Disturbance and Attornment Agreements**

### **1. Purpose and Applicability**

This Section provides guidance on the use of Subordination, Non-Disturbance and Attornment Agreements (SNDA) for commercial leases in certain FHA insured projects and delegates approval authority of SNDAs to Satellite Office and Regional Centers.

Applicability:

- Applicable in its entirety to non-assisted or non-subsidized FHA insured multifamily projects under all Sections of the Act, except Section 232.
- Section C.1 only is applicable to FHA insured projects that are subsidized under Section 202/811, 236, 221(d) (3) BMIR, or FHA insured projects with Project Based Rental Assistance.

A predictable, stable income stream from commercial leases with high quality, credit worthy commercial tenants provides a benefit to a property's operating stability, particularly if the commercial tenants are nationally recognized or have national brands. FHA benefits by allowing borrowers the latitude to negotiate with the widest pool of credit qualified commercial tenants. A stronger tenant increases the certainty of the commercial income stream, enhances the property's marketability and decreases risk to the FHA Insurance Fund.

Permitting the use of SNDAs is necessary to induce higher quality commercial tenants to rent in insured properties. Therefore, guidance permits the use of SNDAs when a commercial lease is negotiated at a property with an existing insured mortgage, for a new property with a newly originated insured loan, or when a building owner with existing commercial tenants seeks an insured loan for refinancing.

### **2. Background**

Prior to the issuance of Mortgagee Letter H 2011-14, HUD's policy on SNDAs was based on a concern over lack of flexibility in the event of a mortgage default, since an SNDA gives a commercial tenant the right to remain in its space under the existing lease terms and conditions after a loan default and foreclosure. If there were a borrower approved SNDA, HUD would be bound to continue the commercial lease even after assignment of the insured loan. Because of HUD's prohibition on SNDAs, borrowers were negotiating into commercial leases the required lease termination language, were leasing to commercial tenants that would not insist on an SNDA or were deciding not to apply for financing under the FHA insurance programs.

Commercial tenants generally desire, and in many instances require, an SNDA in recognition of the expense put into lease negotiations and to enable them to continue to enjoy the business location and the economic benefits and certainty of the lease terms. In many cases, the tenant incurs costs to design and build out their unique tenant improvements, which costs must be amortized over the lease term. Nor does the tenant want to lose the good will and customer base

associated with continuing to operate on the premises. Indeed, MAP lenders report that most national retail chains require an SNDA and will not execute a long-term lease without the non-disturbance assurance.

### 3. Implementation

A sample form of SNDA is attached. This form should be used for all SNDAs approved by Satellite Offices and Regional Centers.

For guidance related to underwriting commercial rents and commercial tenants and the reviewing and setting rents for commercial space in insured and assisted properties, see Chapter 7 Section 7.7.

- A. SNDAs are permitted for Rooftop, Cell Phone Tower, Cable Television and Internet Access Leases on all properties with an existing insured mortgage or on all properties applying for an insured mortgage subject to the following:
  - 1. New, existing or renegotiated rooftop leases (including for cell phone towers, cable television or internet access) in all properties with currently insured mortgages, in all properties applying to refinance, or in all new construction or substantial rehabilitation properties, may use an SNDA. In those cases, the commercial lease and income that is or will be in place is a benefit to the property, while imposing little or no additional property operating expense. The presence of a rooftop cell phone tower or cable access to the building should not negatively affect the residents, the marketability of the units or HUD's recovery value on the note in the event of a default.
  - 2. With respect to all such leases, the underwriting and review process should ensure that there are no exclusivity requirements under the leases that would prevent the owner from attracting competing services for the benefit of the residential tenants in the future.
- B. SNDAs are permitted for Commercial Leases, other than Rooftop, Cell Phone Tower, Cable Television or Internet Access Leases on all non-assisted or non-subsidized properties with an existing insured mortgage or on all non-assisted or non-subsidized properties applying for an insured mortgage subject to the following:
  - 1. New, existing or renegotiated commercial leases with commercial tenants in properties with currently insured mortgages, in properties applying to refinance, or in new construction or substantial rehabilitation properties may use an SNDA.
  - 2. A lease may be approved if the lease calls for a fair market rent in the local area and the activities to be conducted by, or the structures and equipment to be installed by, the proposed tenant will not have an adverse effect on the residents.
  - 3. If any Identity of Interest (IOI) relationship (defined as a financial interest or family relationship with the officers, directors, stockholders, or partners of the Borrower) exists

between the borrower as lessor and the commercial tenant as lessee, an SNDA is not permitted.

4. The commercial tenant must be appropriate for a residential building.

4. Approval

- A. Satellite Offices and Regional Center Directors are authorized to approve all SNDAs for rooftop, cell phone tower, cable television and internet access leases.
- B. For any property applying for a new mortgage insurance commitment, the Satellite Offices and Regional Center Directors will review and approve of the commercial lease terms and the form of SNDA when processing the application for Firm Commitment.
- C. For existing properties with insured mortgages, the Satellite Offices and Regional Center Directors may approve the proposed SNDA between the property owner and the commercial tenant.
- D. The following is the typical supporting documentation, although depending on the circumstances, additional documentation may also be required:
  1. Proposed commercial lease and SNDA agreement.
  2. Forms HUD-92458 and HUD-92264.
  3. Commercial market rent study.
  4. Details of any proposed build out or finish of the commercial space or rooftop tower.
  5. Disclose the existence of any related documents such as: Memorandum of Lease, Guaranty of Lease, Tenant Estoppels' Certificate, Lease Guaranties or Amendments, etc.

SNDA

**U.S. Department of Housing and Urban Development** OMB Approval #2502-0029  
Exp. (xx/xx/xxxx)  
Office of Housing  
Federal Housing Commissioner

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

\_\_\_\_\_  
(Space above this line for Recorder’s Use)

**SUBORDINATION, NON-DISTURBANCE  
AND ATTORNMENT AGREEMENT**

THIS AGREEMENT, made as of this \_\_ day of \_\_\_\_\_, 20\_, by and between \_\_\_\_\_ (“Owner” or “Lessor”), as lessor under the lease hereinafter described, and \_\_\_\_\_ (“Operator” or “Lessee”), lessee under the aforementioned lease, in favor of \_\_\_\_\_ (“FHA Lender”), the owner and holder of the Mortgage hereinafter described.

**W I T N E S E T H:**

WHEREAS, Lessor has executed, or will execute that certain Mortgage/Deed of Trust with Assignment of Rents, dated as of \_\_\_\_\_, 20\_, (the “Mortgage”), in favor of FHA lender and covering certain real property (the “Property”) located in the City of \_\_\_\_\_ County of \_\_\_\_\_, State of \_\_\_\_\_, with a legal description as set forth in Exhibit “A” attached hereto and incorporated herein by this reference, and covering the improvements situated thereon (the “Improvements”); and

WHEREAS, Lessor and Lessee entered into that certain unrecorded Lease dated \_\_\_\_\_, 20\_, and all amendments thereto (the “Lease”), covering the Improvements for the term and upon the conditions set forth therein; and

WHEREAS, the parties hereto now desire to enter into this Agreement to establish certain rights and obligations with respect to their interests, and to provide for various contingencies as hereinafter set forth.

NOW, THEREFORE, in consideration for the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and of the mutual benefits to accrue to the parties hereto, it is hereby declared, understood and agreed that the Lease, all terms and conditions set forth in the Lease, the leasehold interests and estates created thereby, and the priorities, rights, privileges and powers of Lessee and Lessor there under shall be and the same are hereby, and with full knowledge and understanding of the effect thereof, unconditionally made subject and subordinate to the lien and charge of the Mortgage, all terms and conditions contained therein, any renewals, extensions, modifications or replacements thereof, and the rights, privileges and powers of the trustee and FHA lender there under, and shall hereafter be junior and inferior to the lien and charge of the Mortgage. The parties further agree as follows:

1. It is expressly understood and agreed that this Agreement shall supersede, to the extent inconsistent herewith, the provisions of the Lease relating to the subordination of the Lease and the leasehold interests and estates created thereby to the lien or charge of the Mortgage.

2. FHA lender consents to the Lease.
3. In the event FHA lender or any other purchaser at a foreclosure sale or sale under private power contained in the Mortgage, or by acceptance of a deed in lieu of foreclosure, succeeds to the interest of Lessor under the Lease by reason of any foreclosure of the Mortgage or the acceptance by FHA lender of a deed in lieu of foreclosure, or by any other manner, it is agreed as follows:
  - (a) Lessee shall be bound to FHA lender or such other purchaser under all of the terms, covenants and conditions of the Lease for the remaining balance of the term thereof, with the same force and effect as if FHA lender or such other purchaser were the lessor under such Lease, and Lessee does hereby agree to attorn to FHA lender or such other purchaser as its lessor, such attornment to be effective and self-operative without the execution of any further instruments on the part of any of the parties to this Agreement, immediately upon FHA lender or such other purchaser succeeding to the interest of Lessor under the Lease.
  - (b) Subject to the observance and performance by Lessee of all the terms, covenants and conditions of the Lease on the part of the Lessee to be observed and performed, FHA lender or such other purchaser shall recognize the leasehold estate of Lessee under all of the terms, covenants and conditions of the Lease for the remaining balance of the term (as the same may be extended in accordance with the provisions of the Lease) with the same force and effect as if FHA lender or such other purchaser were the lessor under the Lease and the Lease shall remain in full force and effect and shall not be terminated, except in accordance with the terms of the Lease or this Agreement; provided, however, that FHA lender or such other purchaser shall not be (i) liable for any act or omission of Lessor or any other prior lessor, (ii) obligated to cure any defaults of Lessor or any other prior lessor under the Lease which occurred prior to the time that FHA lender or such other purchaser succeeded to the interest of Lessor or any other prior lessor under the Lease, (iii) subject to any offsets or defenses which Lessee may be entitled to assert against Lessor or any other prior lessor, (iv) bound by any payment of rent or additional rent by Lessee to Lessor or any other prior lessor for more than one (1) month in advance, (v) bound by any amendment or modification of the Lease made without the written consent of FHA lender or such other purchaser, or (vi) liable or responsible for or with respect to the retention, application and/or return to Lessee of any security deposit paid to Lessor or any other prior landlord, whether or not still held by Lessor, unless and until FHA lender or such other purchaser has actually received for its own account as lessor the full amount of such security deposit.

Lessee hereby agrees that it will not exercise any right granted it under the Lease, or which it might otherwise have under applicable law, to terminate the Lease on account of a default of Lessor there under or the occurrence of any other event without first giving to FHA lender prior written notice of its intent to terminate, which notice shall include a statement of the default or event on which such intent to terminate is based. Thereafter, Lessee shall not take any action to terminate the Lease if FHA lender (a) within thirty (30) days after service of such written notice on FHA lender by Lessee of its intention to terminate the Lease, shall cure such default or event if the same can be cured by the payment or expenditure of money, or (b) shall diligently take action to obtain possession of the leased premises (including possession by receiver) and to cure such default or event in the case of a default or event which cannot be cured unless

and until FHA lender has obtained possession, but in no event to exceed ninety (90) days after service of such written notice on FHA lender by Lessee of its intention to terminate.

4. Lessor and Lessee hereby certify to FHA lender that the lease as previously submitted to FHA lender has not been further amended.
5. For the purposes of facilitating FHA lender's rights hereunder, FHA lender shall have, and for such purposes is hereby granted by Lessee and Lessor, the right to enter upon the Property and the Improvements thereon for the purpose of affecting any such cure.
6. Lessee hereby agrees to give to FHA lender concurrently with the giving of any notice of default under the Lease, a copy of such notice by mailing the same to FHA lender in the manner set forth herein below, and no such notice given to Lessor which is not at or about the same time also given to FHA lender shall be valid or effective against FHA lender for any purpose.
7. Subordination of Lease to Mortgage and Regulatory Agreements and Regulation by the U.S. Department of Housing and Urban Development ("HUD").
  - (a) The Lease and all estates, rights, options, liens and charges therein contained or created under the Lease are and shall be subject and subordinate to the lien or interest of (i) the Mortgage on the Lessor's interest in the Property in favor of FHA lender, its successors and assigns insofar as it affects the real and personal property comprising the Property (and not otherwise owned, leased or licensed by Lessee) or located thereon or therein, and to all renewals, modifications, consolidations, replacements and extensions thereof, and to all advances made or to be made there under, to the full extent of amounts secured thereby and interest thereon, and (ii) that certain Regulatory Agreement for Multifamily Housing Projects between Lessor and HUD to be recorded against the Property.
  - (b) The parties to the Lease agree to execute and deliver to FHA lender and/or HUD such other instrument or instruments as the FHA lender and/or HUD, or their respective successors or assigns, shall reasonably request from time to time to reconfirm the status of the lease and to effect and/or confirm the subordination of the Lease to the lien of the Mortgage and the above-described Regulatory Agreements. To the extent that any provision of the Lease shall be in conflict with the HUD Program Obligations (as such term is defined below), the HUD Program Obligations shall be controlling.
  - (c) In the event HUD, at a foreclosure sale or sale under private power contained in the Mortgage, or by acceptance of a deed in lieu of foreclosure, succeeds to the interest of Lessor under the Lease by reason of any foreclosure of the Mortgage or the acceptance by HUD of a deed in lieu of foreclosure, or by any other manner, it is agreed as follows:
    - (i) HUD can terminate the Lease for any violation of the Lease that is not cured within any applicable notice and cure period given in the Lease.
    - (ii) As used in this Agreement "**Program Obligations**" means (1) all applicable statutes and any regulations issued by the Secretary pursuant thereto that apply to the Project, including all amendments to such statutes and regulations, as they become effective, except that

changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and (2) all current requirements in HUD handbooks and guides, notices, and mortgagee letters that apply to the Project, and all future updates, changes and amendments thereto, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and provided that such future updates, changes and amendments shall be applicable to the Project only to the extent that they interpret, clarify and implement terms in this Agreement rather than add or delete provisions from such document. Handbooks, guides, notices, and mortgagee letters are available on HUD's official website: (<http://www.hud.gov/offices/adm/hudclips/index.cfm>, or a successor location to that site).

(d) To the extent there is any inconsistency between the terms of this Subordination, Non-Disturbance and Attornment Agreement, and the Lease, the terms of this Subordination, Non-Disturbance and Attornment Agreement shall be controlling.

8. For purposes of any notices to be given to FHA lender hereunder, the same shall be sent by U.S. certified mail, return receipt requested, postage prepaid, to FHA lender at the following address:

[Insert Address] or to such other address as FHA lender may hereafter notify Lessee in writing by notice sent to Lessee as aforesaid at Lessee's address at the Property, or such other address as FHA lender may hereafter be advised of in writing by notice sent to FHA lender as aforesaid.

9. The agreements contained herein shall run with the land and shall be binding upon and inure to the benefit of the respective heirs, administrators, executors, legal representatives, successors and assigns of the parties hereto.

10. This Agreement may be executed in one or more counterparts, all of which when taken together shall constitute a single instrument.

11. This Agreement shall, in all respects, be governed by and construed and interpreted in accordance with the laws of the \_\_\_\_\_.

**SIGNATURES**

**OWNER (or LESSOR)**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**OPERATOR (or LESSEE)**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**FHA LENDER**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**8G. Financial Reporting Information for Concentrated Risk REO schedules. Not all items apply to all financial situations and the order/sequence of items is for illustrative purposes only.**

| Underwriting Factor                                  | Yr X |  | Yr Y | %<> | YR Z | %<> | Comment/Conclusion   |
|--|------|--|------|-----|------|-----|--|
| DSCR Insured Assets                                  | #    |  | #    | %   | #    | %   |  |
| DSCR All Assets                                      | #    |  | #    | %   | #    | %   |  |
| DSCR (lowest 10%)                                    | #    |  | #    | %   | #    | %   |  |
| LtV Insured Assets                                   | #    |  | #    | %   | #    | %   |  |
| LtV All Assets                                       | #    |  | #    | %   | #    | %   |  |
| LtV (highest 10%)                                    | #    |  | #    | %   | #    | %   |  |
| Quick Ratio  | #    |  | #    | N/A | #    | N/A |  |
| Projected Liquidity-Lowest Quick Ratio               |      |  |      |     | #    |     | (applies only when future cash projection is deemed required metric, only some cases.) |
| Short-Term Maturities (\$ owed)                      | \$   |  | \$   | N/A | \$   | N/A |  |
| Short-Term Maturities-Estimated \$ Surplus (deficit) | \$   |  | \$   | N/A | \$   | N/A |  |
| Occupancy % Insured Assets                           | %    |  | %    | N/A | %    | N/A |  |
| Occupancy % All Assets                               | %    |  | %    | N/A | %    | N/A |  |
| Occupancy (lowest 10%, 3 years)                      | %    |  | %    | N/A | %    | N/A |  |
| NOI \$   | \$   |  | \$   | %   | \$   | %   |  |
| Revenue  | \$   |  | \$   | %   | \$   | %   |  |
| Expense  | \$   |  | \$   | %   | \$   | %   |  |

|                                   |           |                              |                               |
|-----------------------------------|-----------|------------------------------|-------------------------------|
| Dev - Lease Up: Prior Targets Met | Yes or No | Comments?                    |                               |
| Const: Prior Targets Met          | Yes or No | Comment?                     |                               |
| REAC Insp < 65                    | Yes or No | #                            | Comments?                     |
| Unfunded Repairs*                 | \$        | \$/unit:                     | Comments                      |
| Character: Credit Events          | Yes or No | #                            | If Yes, explain in narrative. |
| Full Disclosure                   | Yes or No | If no, explain in narrative. |                               |



## 8H. Addendum: Identification and Certification of Limited Liability Investor Entities

The following certification is to be submitted as part of the FHA loan application from each entity which claims to be a limited liability investor.

Project Name: \_\_\_\_\_

FHA Project #: \_\_\_\_\_

I, [*name of authorized signer*], am authorized to certify on behalf of [*name of investor entity*] to each and every item stated below.

I certify that [*name of investor entity*] is:

- a. Investing in [*name of owner/mortgagor entity*], which anticipates receiving [list applicable tax credits, e.g.: Low-Income Housing Tax Credits pursuant to Section 42 of the Internal Revenue Code].
- b. A limited liability company, an investor corporation, an investor limited partnership, an investor limited liability limited partnership or other similar entity with limited liability; and
- c. An investor with limited or no control over routine property operations or HUD regulatory and/or contract compliance, unless it should take control of the ownership entity or assume the operating responsibilities in the event of the default of the operating partner or upon specific events defined in the [*name of owner/mortgagor entity*]'s [operating agreement / partnership agreement I organizational documents].

I further certify that should any of the facts or circumstances that support the certifications above change or the entity for which this certification is made withdraws from participation in the owner/mortgagor, I will notify HUD immediately in writing, providing full disclosure and explanation of the change(s).