Instructions

PRE-NEGOTIATION FORM LETTER

This Form 4812 is identical to the letter in Form 4811, except that it does not contain the provisions relating to Net Operating Income (requiring the Borrower to turn over the NOI to the Lender) and Loan Documents (requiring the Borrower to acknowledge that the Loan Documents are valid, legal, and binding and having the Borrower release all claims against Fannie Mae and the Lender). You may elect to use this Form 4812 instead of Form 4811. You may also use this form and add either the NOI or Loan Documents provision to it, in its discretion. You may not delete the DUS Relationship paragraph (paragraph 7) without prior approval from the Office of General Counsel of Fannie Mae.  **DO NOT HAVE ANY DISCUSSIONS WITH A BORROWER WITHOUT A SIGNED PRE-NEGOTIATION LETTER.**

**[PRE‑NEGOTIATION FORM LETTER]**

**[Date]**

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Re: Fannie Mae Mortgage Loan Number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Mortgage Loan (the "Mortgage Loan") from \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ("Borrower") made on or about \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **[date of Note]** and secured by certain real property and improvements known as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and located in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the "Property") which Note was subsequently endorsed to Federal National Mortgage Association ("Fannie Mae");

Ladies and Gentlemen:

Borrower has requested to meet with the undersigned in order to discuss the problems associated with this Mortgage Loan and a potential workout/restructuring plan for the Mortgage Loan. In order to be prepared to meet with you, we will need to be furnished as soon as possible with the items detailed on the attached list. **[You may want to set a deadline for furnishing these items]**

Please be advised that it is Fannie Mae's policy to pursue "dual tracks" whereby we initiate the pursuit of our rights and remedies under the Loan Documents while we are evaluating and negotiating a possible workout/restructuring of the Mortgage Loan. Accordingly, the Note has been ***[****or will be****]*** accelerated and the holding discussions with you does not waive any rights Fannie Mae may have due to the default by the Borrower, does not constitute an agreement to refrain from or delay the exercise of any of the noteholder's rights or remedies nor should it be considered an agreement by Fannie Mae or \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ("Servicer") to any proposals submitted by or on the behalf of the Borrower.

Pursuant to the foregoing, Fannie Mae and Servicer are willing to hold those discussions with Borrower upon the following terms and conditions:

 1. Rights and Remedies Not Affected. Holding discussions with the Borrower, or any correspondence among Borrower, Servicer and Fannie Mae (any one or more, hereinafter referred to as the "Parties"), or remitting to the Servicer the Net Operating Income from the Property shall not in any way affect or impair any rights or remedies any of the Parties may have, nor shall any of the foregoing be deemed to be a waiver of, or preclude, any rights or remedies of any of the Parties under the Loan Documents or at law or equity, or from commencing the exercise of such rights or remedies. As used herein, Loan Documents shall mean all documents executed by Borrower in connection with the Mortgage Loan including without limitation, the Note and Security Instrument.

 2. No Oral Modifications. The contemplated discussions may be lengthy and complex. While the Parties may reach verbal agreement on one or more preliminary issues, no Party shall be bound by any agreement, verbal or written, on individual issues, and no rights or liabilities, either express or implied, shall arise on the part of the Parties until and unless (a) agreement is reached on all issues, and (b) our agreement on all issues has been prepared, negotiated, agreed to, executed and delivered by all Parties thereto. Agreement with regard to any such documents and all terms contained therein shall be within the sole discretion of each Party and no Party shall have any liability for failing to reach any such agreement. Borrower hereby waives reliance on any alleged oral modifications of the Loan Documents or the matters, conditions, or events related to such alleged oral modifications.

 3. Confidential and Privileged. The Parties agree that any discussions relating to the Loan are confidential and privileged and shall not be revealed to any third party nor shall they be used or referred to in any litigation which may ensue by or among the Parties.

 4. Preliminary Information. Borrower further agrees to provide Servicer and Fannie Mae all documentation and information regarding the Mortgage Loan, the Property or the Borrower as may be reasonably requested by them in connection with the discussions. Such documentation should include, but not be limited to the documentation pertaining to the presence and condition of lead-based paint in the subject Property, including but not limited to the written results of a visual lead-based paint risk assessment conducted by a HUD-certified assessor following the visual risk assessment protocol proposed by HUD; information concerning if the Property has been, is currently, or is likely to be in the future the subject of litigation related to the lead-based paint health hazards; and documentation that the Property manager is complying with HUD's lead-based paint disclosure requirements.

 5. Termination of Discussions. Borrower or Fannie Mae may in their sole and absolute discretions, unilaterally discontinue the discussions at any time for any reason without any liability whatsoever to the Parties by reason of any such discontinuation or termination.

 6. Authorized Representatives. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ is authorized on behalf of Fannie Mae and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ is authorized on behalf of Servicer to hold discussions with the Borrower. Servicer has no authority to bind Fannie Mae. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ is authorized on behalf of Borrower to hold such discussions. Such authorization shall remain in effect until changed in writing by the applicable party.

 7. DUS Relationship. Borrower acknowledges that Fannie Mae is the holder of the Note executed in connection with the Mortgage Loan and that the Servicer is servicing the Mortgage Loan under Fannie Mae's Delegated Underwriting and Servicing ("DUS") product line. Borrower acknowledges that the DUS relationship is a separate and distinct relationship between the Servicer and Fannie Mae and that Borrower is neither a party to, nor a beneficiary of, such relationship.

 8. Entire Agreement. This agreement constitutes the entire agreement between the Parties concerning its subject matter and supersedes any prior or contemporaneous representations or agreements not contained herein and this agreement may only be amended or modified by an agreement in writing executed by all Parties.

 9. Captions. The captions used herein are for convenience of reference only and do not define or limit the scope, content or intent of this Agreement.

 10. Counterparts. This agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall be deemed one instrument.

If you are in agreement with the foregoing, please execute a copy of this letter and return the same to the undersigned within five (5) banking days from the date of your receipt. No discussions shall be held until the undersigned are in receipt of this letter executed by you.

Sincerely,

FANNIE MAE

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

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

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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 **[Servicer]**

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

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

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ACKNOWLEDGED AND AGREED TO THIS \_\_\_\_\_ DAY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 19\_\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 [Borrower]

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

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

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

 Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**LIST OF ITEMS TO BE FURNISHED BY BORROWER**

**Property Ownership**

1. Organizational documents of Borrowing Entity e.g., partnership agreement, articles of incorporation, shareholders' agreement

2. Financial Statement (most recent) for Borrowing Entity [and other principals, if applicable]

3. Financial Statement (most recent) for General Partner(s)

4. List and status of other loans with Fannie Mae

5. Documentation for subordinate liens on the property

**Property Operations**

1. Operating Statements: last full year-to-date and most recent year-to-date statements

2. Current rent roll, certified on Form 4243

3. Accounting of cash flow since first delinquent month

4. Schedule of capital improvements made during last 3 years

5. Management and marketing plan

**Property Condition**

1. Schedule of capital improvements required, including estimated cost

2. Evidence of compliance with environmental operations and maintenance plan, if applicable

**Borrower's Proposed Plan of Workout**

1. Brief narrative of borrower's plan clearly identifying terms of the proposed workout and exit strategy

2. Workout Pro Forma for workout period through projected stabilization

**Miscellaneous**

1. [Any other documents or information warranted by the actions of the borrower, the peculiarities of the loan, or the condition of the property.]

Please send items to: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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[With a copy to]: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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