PRE-NEGOTIATION FORM LETTER NOI AND LOAN DOCUMENT PROVISIONS

Instructions

Prior to having any workout discussions with a Borrower in default, whether such discussions are in a casual or formal context, a pre-negotiation form letter (Fannie Mae **Form 4811** or Fannie Mae **Form 4812**) executed by the Borrower must be obtained. **DO NOT HAVE ANY DISCUSSIONS WITH A BORROWER WITHOUT A SIGNED PRE-NEGOTIATION LETTER.** The purpose of such a letter is to protect the Lender, the Servicer, and Fannie Mae from being subjected to the claim that discussions about the loan terms constitute an oral modification of the Loan Documents. Such claims by Borrowers are prevalent, and without an executed pre-negotiation letter, are likely to be upheld by a court.

You may delete paragraph 7 (in its entirety or either sentence) if the Borrower refuses to sign the letter with it included.

Under no circumstances may paragraph 9 of the letter (DUS Relationship) be deleted without Fannie Mae's Office of General Counsel's prior approval (assuming it is a DUS Mortgage Loan). Please be extremely careful about discussing the DUS relationship with the Borrower. Preferably, the DUS relationship should not be discussed with the Borrower at all. If it is, it should always be made clear that the DUS relationship is a separate and distinct servicing relationship between the Lender, the Servicer and Fannie Mae and that the Borrower is neither a party to, nor beneficiary of, such relationship.

**[PRE‑NEGOTIATION FORM LETTER-NOI AND LOAN DOCUMENT PROVISIONS]**

**[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 of 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 behalf of the Borrower.

Additionally, as discussed in paragraph 5 of this letter, and as a condition precedent to any workout discussions, Fannie Mae requires that the Borrower remit all Net Operating Income (as defined in paragraph 5) ***[****and/or additional requirements****]*** to the Servicer each month in conjunction with supporting operating statements and any additional information as requested by Fannie Mae or the Servicer.

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. Borrower hereby acknowledges that Borrower is in default under the Loan Documents (defined at the end of this paragraph) and that Fannie Mae is entitled to exercise any and all rights and remedies set forth in the Loan Documents, at law or in equity. 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 (hereinafter defined) 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 written 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 Mortgage 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 with 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. Net Operating Income. Borrower agrees that it will remit to Servicer, at a minimum, the monthly Net Operating Income from the Property. This shall not imply any waiver of any claim for payment under the Mortgage Loan, but rather as a condition to any further negotiations regarding the workout or restructuring of the Mortgage Loan. "Net Operating Income" is defined to be all revenues generated by operations of the Property, including, but not limited to, rental receipts, late fees, application fees, forfeited deposits, laundry and vending income, furniture rental and insurance proceeds, less the reasonable operating expenses for the Property. Reasonable operating expenses are limited to the following categories: management fees [not to exceed \_\_\_\_\_% of the actual collections (excluding insurance proceeds or condemnation awards) per month], administrative expenses, payroll, utilities, water and sewer taxes and fees, repair and maintenance expenses, real estate taxes, insurance premiums, and replacement reserve payments required under the Mortgage Loan documents. Reasonable operating expenses do not include expenses of the entity that owns the Property or the Borrower, if different, e.g., accounting or legal expenses for the Borrower. **[**In addition, Borrower may not make capital expenditures in excess of $\_\_\_\_\_\_\_\_\_\_ without first obtaining the approval of Servicer/Fannie Mae.**]**  Unless expressly agreed to herein, no fees, charges, or compensation, shall be paid to the Borrower, its general partners, its limited partners, or other related persons or entities, if any, or to any affiliates thereof. **[**The Parties expressly agree to allow \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, an affiliate of Borrower to manage the Property.**]**

 The monthly payments of Net Operating Income must be accompanied and supported by a statement of monthly income and expenses which has been certified by the Borrower. This statement shall be compiled on an accrual **[***or cash***]** basis, shall be in such detail as may be requested by Fannie Mae or the Servicer, and must be received with such cash payments by the Servicer no later than the 10th of the month following the month reported for. Such procedure will commence on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_. The Net Operating Income and statement for the period from \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_ to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_ must be received by the Servicer on or before \_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_.

 Fannie Mae shall be entitled to use the Net Operating Income in any order and for any purpose which is related directly or indirectly to the Loan Documents or to the Property including, without limitation, the payment of attorneys' fees or other charges incurred by Fannie Mae, application to principal or interest due under the Note evidencing the Mortgage Loan, payment for repairs or capital expenditures for the Property, or any other purpose determined by Fannie Mae in its sole and absolute discretion. The receipt and application of such funds by Fannie Mae shall not constitute a waiver of any amounts due under the Loan Documents nor shall it be deemed a waiver of any default in connection therewith.

6. 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.

 7. Loan Documents. The Borrower acknowledges that the Loan Documents are valid, legal and binding obligations and are in full force and effect. [Borrower hereby waives and releases any and all claims, demands or causes of action it has or may have against Fannie Mae or the Lender in connection with the Mortgage Loan. **[Please note that if you use the preceding sentence that you must accordingly modify the language in Paragraph 1, Sentence 2, from "Parties" to "Fannie Mae".]**

 8. 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.

 9. 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.

 10. 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.

 11. 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.

 12. 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) business days from the date of your receipt. No discussions shall be held until the undersigned are in receipt of this letter executed by the Borrower.

Sincerely,

FANNIE MAE

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

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

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

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

 **[Servicer]**

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

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

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

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

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

  **[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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