

Borrower's Organizational Document Provisions

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and Urban Development
Office of Housing

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{Use in accordance with MAP Guide Chapter 19.}

The Borrower's organizational governing document (partnership agreement, operating agreement, or by-laws, as applicable) must provide that the Borrower will be in existence at least as long as the term of the Loan and must include the following provisions (that may automatically terminate when the Loan is no longer insured or held by HUD):

Notwithstanding any clause or provision in the *[identify both the formation document(s) and the governing document(s)]* to the contrary, and so long as the United States Department of Housing and Urban Development ("HUD"), or its successors or assigns, insures or holds any loan to *[Borrower]* ("the HUD-insured Loan"), including the loan secured by a *[insert type of security instrument used in Project state, e.g., mortgage]* lien on *[insert project's name and FHA project number]* in *[insert city, county and state]* (the "Project") the following provisions apply:

Terms. The terms listed below shall have the following definitions:

"Borrower" means *[insert name of FHA Borrower]*.

"Lender" means the entity identified as "Lender" in the first paragraph of the Security Instrument, or any subsequent holder of the HUD-insured Note.

"HUD Regulatory Agreement" means the Regulatory Agreement between Borrower and HUD with respect to the Project, as the same may be amended from time to time.

"Security Instrument" means the mortgage or deed of trust from Borrower in favor of Lender, as the same may be amended from time to time.

"HUD-insured Note" means the Note executed by Borrower, and described in the Security Instrument, including all schedules riders, allonges and agenda, as such Note may be amended from time to time.

Requirements.

1. If any of the provisions of Borrower's organizational documents conflict with the terms of the HUD-insured Note, Security Instrument, or HUD Regulatory Agreement ("HUD Loan Documents"), the provisions of the HUD Loan Documents shall control.
2. No provision required by HUD to be inserted into the organizational documents may be amended without HUD's prior written approval. Additionally, if there is a conflict between any HUD-required provisions inserted into this Agreement and any other provision of this Agreement, the terms of the HUD-required provisions will govern; and if there is a conflict between any of the provisions in the [insert appropriate document, *i.e.*, Articles of Organization] and any HUD-required provisions of this Agreement, the HUD-required provisions will govern.
3. Unless otherwise approved in writing by HUD, Borrower's business and purpose shall consist solely of the acquisition, ownership, operation and maintenance of the Project and activities incidental thereto. Borrower shall not engage in any other business or activity. The Project shall be the sole asset of the Borrower entity, which shall not own any other real estate other than the aforesaid Project.
4. None of the following will have any force or effect without the prior written consent of HUD:
 - a. Any amendment that modifies the term of Borrower's existence;
 - b. Any amendment that triggers application of the HUD previous participation certification requirements (as set forth in Form HUD-2530, Previous Participation Certification, or 24 CFR § 200.210, et seq.);
 - c. Any amendment that in any way affects the HUD Loan Documents;
 - d. Except as permitted under section 10 below, any amendment that would authorize any member, manager, partner, owner, officer or director, other than the one previously authorized by HUD, to bind the Borrower entity for any matters concerning the Project which require HUD's consent or approval;
 - e. A change that is subject to the HUD TPA requirements contained in Chapter 13 of HUD Handbook 4350.1 REV-1;
 - f. Any change in a guarantor of any obligation to HUD (including those obligations arising from violations of the HUD Regulatory Agreement); and
 - g. Any grant of a security interest in any of Borrower's assets or mortgaged property.
5. Borrower is authorized to execute a Note and Security Instrument in order to secure a loan to be insured by HUD and to execute the HUD Regulatory Agreement and other documents required by the Secretary in connection with the HUD-insured loan.
6. Any incoming member/partner/owner of Borrower must, as a condition of receiving an interest in the Borrower entity, agree in writing to be subject to the HUD Loan Documents and all other documents required in connection with the HUD-insured loan, to the same extent and on the same terms as the other members/partners/owners.

7. Upon any dissolution, no title or right to possession and control of the Project, and no right to collect the rents from the Project, shall pass to any person or entity that is not bound by the HUD Regulatory Agreement in a manner satisfactory to HUD.
8. The key principals of Borrower identified in the HUD Regulatory Agreement are liable in their individual capacities to HUD to the extent set forth in the HUD Regulatory Agreement.
9. Borrower shall not voluntarily be dissolved or converted to another form of entity without the prior written approval of HUD.
10. Borrower has designated _____ [insert name, individual must be 2530 Previous Participation Certified] as its official representative for all matters concerning the Project that require HUD consent or approval. The signature of this representative will bind Borrower entity in all such matters. Borrower may, from time to time, appoint a new representative to perform this function, provided that the individual so appointed is 2530 Previous Participation Certified, and within three business days of doing so, will provide HUD with written notification of the name, address, and telephone number of its new representative. When a person other than the person identified above has full or partial authority with respect to management of the Project, Borrower will promptly provide HUD with the name of that person and the nature of that person's management authority.
11. Any obligation of the [Corporation / Partnership / Limited Liability Company] to provide indemnification under this [Operating Agreement / Partnership Agreement / Bylaws] shall be limited to (i) amounts mandated by state law, if any, (ii) coverage afforded under any liability insurance carried by the [Company / Partnership] and (iii) available "surplus cash" of the Borrower as defined in the HUD Regulatory Agreement. Until funds from a permitted source for payment of indemnification costs are available for payment, the [Corporation / Partnership / Limited Liability Company] shall not (a) pay funds to any members, partners, officers and directors, or (b) pay the deductible on an indemnification policy for any members, partners, officers and directors.
12. *[To be included in Projects with LIHTC financing, only]* No amendment or change to the obligations or rights of the tax credit investor(s), as approved by HUD, *[insert title of the entity or individuals, or defined term used in the governing doc.]*, may be made without the prior written consent of HUD and Lender.