
Instructions for completing the HUD MHLS 2010-2 Confidentiality Agreement and Qualification Statement

Important Notes:

- Changes to the documents will not be accepted
- The Confidentiality Agreement and Qualification Statement must be completed in their entirety to review due diligence materials – partially completed documents will be rejected

- All original documentation must be received by the following dates:
 - September 20, 2010 - for assets bidding September 22
 - September 27, 2010 – for assets bidding September 29

Completed documents may be sent to KDX:

- Via email: MHLS2010-2@debtX.com
- Via fax: 978-967-8607

Original documents must be mailed to KDX:

KDX Ventures c/o DebtX
133 Federal Street, 10th Floor
Boston, MA 02110
Attn: HUD Sale Coordinator
Tel: 617-531-3400

HUD MULTIFAMILY AND HEALTHCARE LOAN SALE 2010-2 CONFIDENTIALITY AGREEMENT

THIS CONFIDENTIALITY AGREEMENT (this “Agreement”) is made and agreed to by the person designated as the Reviewer on the signature page hereof (the “Reviewer”).

Preamble

The U.S. Department of Housing and Urban Development (“HUD”) is offering for sale certain HUD-held mortgage loans secured by multifamily properties or healthcare facilities (the “Mortgage Loans”). In connection with the sale, HUD has determined to permit the Reviewer to review and inspect certain documents, databases containing imaged documents, data (including computerized data on tape or other media) and other information relating to the Mortgage Loans and may provide the Reviewer with a password in order to allow the Reviewer password-protected access to any or all of the foregoing (all or any portion of the foregoing, including any password provided to the Reviewer, referred to herein as the “Confidential Information”) on the condition that the Reviewer execute and deliver this Agreement.

In consideration of being granted the opportunity to review and inspect the Confidential Information, the Reviewer agrees as follows:

Agreement

Section 1. Purpose. The Reviewer agrees that its review, inspection and use of the Confidential Information shall be solely to conduct due diligence on its own behalf and not as an agent, representative or broker of any undisclosed party, for one or more of the following purposes: (i) determining whether or not to submit a bid to purchase one or more of the Mortgage Loans; (ii) determining whether or not to provide financing with respect to the purchase of one or more of the Mortgage Loans; or (iii) determining whether or not to provide insurance or other credit enhancement with respect to one or more of the Mortgage Loans or with respect to any securities or participation certificates backed by or representing an interest in one or more of the Mortgage Loans.

Section 2. Non-Disclosure and Use of Confidential Information. The Reviewer agrees that, except as set forth below, all Confidential Information shall be used by the Reviewer solely for one or more of the purposes stated in Section 1 of this Agreement. The Reviewer further agrees that it shall not, without the prior written consent of HUD, disclose any of the Confidential Information, or any notes, summaries or other information prepared by or on behalf of the Reviewer using the Confidential Information (the “Related Information”), to any party other than to (i) the Reviewer’s employees, officers and directors (including those of affiliates), (ii) the Reviewer’s agents and representatives, including attorneys, accountants and financial advisors, (iii) prospective providers of financing, (iv) insurance firms, (v) credit rating agencies and (vi) prospective purchasers of any Mortgage Loans (or interests therein) to be purchased by

the Reviewer from HUD (collectively, the “Representatives”). No Representative shall be permitted to review or use any of the Confidential Information or the Related Information unless such Representative: (i) has a need to review or use the Confidential Information and/or the Related Information for one or more of the purposes stated in Section 1 hereof, and (ii) has entered into an agreement with the Reviewer substantially in the form of this Agreement or is otherwise bound to review and use the Confidential Information subject to and only in accordance with the terms of this Agreement. In addition, the Reviewer acknowledges and agrees as follows:

(a) The term “Confidential Information” shall not include information which (i) is already available to the general public other than as a result of disclosure by the Reviewer or any of the Representatives, and which information is not subject to any confidentiality obligations to HUD; or (ii) is required to be disclosed by law or by regulatory or judicial process, provided that the Reviewer has provided HUD with reasonable notice so as to allow HUD an opportunity to seek a protective order in advance of such disclosure.

(b) The Reviewer shall defend, indemnify and hold harmless HUD, its employees, representatives, agents and contractors (“Indemnified Parties”), from and against any and all claims, demands, causes of action, losses, damages, liabilities, judgments, costs and expenses (including reasonable attorney’s fees) asserted against or incurred by any Indemnified Party as a result of the breach of any of the terms or conditions of this Agreement by the Reviewer or any other person or entity to whom the Reviewer has disclosed the Confidential Information and/or the Related Information. In addition, if HUD determines that the Reviewer (or any other such person or entity) has breached any of the terms or conditions of this Agreement, HUD may refuse to accept any bids made by or on behalf of the Reviewer.

(c) The rights, powers and remedies provided for in the preceding subsection 2(b) shall be in addition to and do not preclude the exercise of any other right, power or remedy available to HUD under law or in equity. No forbearance, failure or delay in exercising any such right, power or remedy shall operate as a waiver thereof or preclude its further exercise.

(d) Any unauthorized use of the Confidential Information and/or the Related Information may result in the imposition of criminal penalties under 18 U.S.C. § 641.

Section 3. Duplication. The Reviewer shall not, without the prior written consent of HUD, make any reproductions of the Confidential Information or the Related Information for any person other than a Representative.

Section 4. Limited Access. The Reviewer shall inform each of its Representatives that receives any of the Confidential Information and/or the Related Information of the requirements of this Agreement and shall require each such Representative to comply with such requirements.

Section 5. Debtor Contact. The Reviewer agrees not to communicate with any debtor, guarantor, debtor's management or leasing company, debtor's or guarantor's accountant or attorney relative to the Mortgage Loan.

Section 6. Termination. The restrictions in this Agreement shall terminate as to any Mortgage Loan if the Reviewer acquires such Mortgage Loan or if the Reviewer provides, directly or indirectly, financing, insurance, or other credit enhancement with respect to such Mortgage Loan; provided, however, that any claim by HUD based on a breach of this Agreement occurring prior to such acquisition or provision of financing, insurance or other credit enhancement shall survive the acquisition or provision of financing, insurance or other credit enhancement unless waived by HUD in writing. The terms and conditions of this Agreement shall remain in full force and effect with respect to any Mortgage Loan that the Reviewer does not acquire or with respect to any Mortgage Loan for which the Reviewer does not provide financing, insurance or other credit enhancement. The Reviewer shall promptly destroy any Confidential Information or Related Information relating to the Mortgage Loans that the Reviewer does not acquire or for which the Reviewer does not provide financing, insurance or other credit enhancement.

Section 7. Release of HUD. Reviewer acknowledges and understands that some or all of the Confidential Information may have been prepared by parties other than HUD, that HUD has not independently verified the Confidential Information, and that except as may be contained in any loan sale agreement executed by HUD and a bidder in connection with the sale of some or all of the Mortgage Loans, neither HUD, its employees, representatives, agents or contractors nor any other entity which provides or makes available Confidential Information to Reviewer at the direction of HUD, makes any representation or warranty whatsoever, whether express, implied or by operation of law, with respect to the content, completeness or accuracy of the Confidential Information. Reviewer hereby releases HUD and its employees, representatives, agents and contractors, including the preparers of any of the Confidential Information, from all claims, demands, causes of action, losses, damages, liabilities, costs and expenses (including attorneys' fees) asserted against or incurred by Reviewer by reason of Reviewer's reliance on or knowledge of the Confidential Information or for any other reason. Notwithstanding Section 6, this section shall survive the termination of this Agreement.

Section 8. Entire Agreement. This Agreement represents the entire agreement between the Reviewer and HUD relating to the treatment of the Confidential Information and the Related Information heretofore or hereafter reviewed or inspected by the Reviewer. This Agreement supersedes all other negotiations and agreements relating to such matters.

IN WITNESS WHEREOF, a duly authorized representative of the Reviewer has executed this Agreement as of the date set forth below.

REVIEWER:

(Name of Reviewer)

By: _____

Printed Name: _____

Title: _____

Company Name: _____

Address: _____

Phone: _____

Fax: _____

E-mail Address: _____

Date of Execution: _____

Confidential and other information will be accessible via the KDX Ventures site at:

<http://www.debt.com>

AFFILIATE USERS: If you would like to allow additional users to access materials under your Confidentiality Agreement, please list them below. Each Affiliate User will be issued a unique username and password to access the KDX Ventures site. Please note that Affiliate Users are limited to two in order to access the Bidder Information Package.

Affiliate Users will receive notification of their usernames and passwords by email.

1. Name: _____ E-Mail: _____

Phone: _____

2. Name: _____ E-Mail: _____

Phone: _____

**HUD MULTIFAMILY AND HEALTHCARE LOAN SALE 2010-2
QUALIFICATION STATEMENT**

The U.S. Department of Housing and Urban Development (“HUD”) is planning to sell certain HUD-held notes and mortgages secured by multifamily and healthcare facilities (the “Mortgage Loans”) in loan sale MHLS 2010-2 (the “Loan Sale”). The undersigned understands and acknowledges that, before it can register for the Loan Sale, it must meet certain requirements to be a “qualified bidder.” The undersigned understands further that the information requested herein is to allow HUD to determine whether the undersigned is a qualified bidder. All or part of the information provided on this form may also be subject to disclosure under the Privacy Act of 1974, 5 U.S.C. § 552(a). Providing the requested information is voluntary; however, failure to furnish all of the requested information may result in the prospective purchaser, or agent, if any, not being permitted to bid at the Loan Sale or other loan sale initiatives and/or not receiving notice of future loan sale initiatives.

Anyone who knowingly or willfully makes false or fraudulent statements or representations in connection with the disclosures or certifications will be referred to the Office of Inspector General and/or the appropriate law enforcement officials for investigation and legal enforcement. The penalty for knowingly making a false statement or report shall be a fine of not more than \$1,000,000 or imprisonment for not more than 30 years, or both. 18 U.S.C. Sections 1001, 1007, and 1014.

The following information is being solicited with respect to the individual or entity whose name will appear on the Loan Sale Agreement as the Purchaser (“Purchaser”) and to whom the Mortgage Loans will be transferred after the Loan Sale:

- I. Purchaser Information (identify Purchaser exactly as the name will appear on the Loan Sale Agreement):
 - A. _____
Name of Purchaser Entity (or Individual, if Purchaser is purchasing in its individual capacity)
 - B. _____
Corporate or Partnership Designation and State of Formation/Origination (if applicable)
 - C. _____
Address of Purchaser
 - D. _____
City, State, Zip Code

E. _____ F. _____
Phone Facsimile

G. _____ H. _____
Purchaser Tax I.D./S.S. No. E-mail Address

I. Please check the description that best describes Purchaser's business designation:

- | | |
|---|---|
| <input type="checkbox"/> Commercial Bank | <input type="checkbox"/> Insurance Company |
| <input type="checkbox"/> Savings Association/Bank | <input type="checkbox"/> Financial Services Company |
| <input type="checkbox"/> Mortgage Banker | <input type="checkbox"/> Pension Fund |
| <input type="checkbox"/> Investment Bank | <input type="checkbox"/> Individual |
| <input type="checkbox"/> Real Estate Company | <input type="checkbox"/> Non Profit |
| <input type="checkbox"/> Project Mortgagor | <input type="checkbox"/> Other, please describe |
- _____

II. Purchaser Qualification. The undersigned understands that if it is determined to be a "qualified bidder" for the Loan Sale, its status as such does not necessarily mean that it will be a "qualified bidder" for any other loans or assets offered in any other HUD sale. The undersigned also understands that its status as a "qualified bidder" for any other HUD sale does not necessarily mean that it will be a "qualified bidder" for the Loan Sale. Purchaser hereby certifies, represents and warrants to HUD that it is a "qualified bidder" based upon Purchaser's satisfaction of one or more of the following qualifying statements 1 through 7. Purchaser must check one or more of the following qualifying statements 1 through 7 to qualify as a "qualified bidder" for the Mortgage Loans being sold in the Loan Sale. (CHECK ALL THAT ARE APPROPRIATE):

- () 1. Purchaser is a corporation, partnership, limited liability company or business trust with total assets in excess of \$5,000,000, or a wholly-owned subsidiary of such an entity, and was not formed for the specific purpose of acquiring the Mortgage Loans to be offered for sale at the Loan Sale.
- () 2. Purchaser is a bank (as defined in Section 3(a)(2) of the Securities Act of 1933, as amended (the "Act")); savings and loan association or other institution (as defined in Section 3(a)(5)(A) of the Act); insurance company (as defined in Section 2(13) of the Act); investment company registered under or business development company as defined in the Investment Company Act of 1940, as amended; Small Business Investment Company licensed by the U.S. Small Business Administration under Section 301(c) or (d) of the Small Business Investment Company Act of 1958, as amended; or a broker or dealer registered under Section 15 of the Securities Exchange Act of 1934 as amended.
- () 3. Purchaser is a trust with total assets in excess of \$5,000,000 not formed for the specific purpose of acquiring the Mortgage Loans to be offered for sale at the Loan Sale, whose investment decisions are directed by a person who has such

knowledge and experience in financial and business matters that he or she is capable of evaluating the merits and risks of purchasing the Mortgage Loans offered for sale at the Loan Sale.

- () 4. Purchaser is a business entity, all of whose equity owners are either entities that are “accredited investors” as defined in Rule 501 of the Act or individuals who (i) have a net worth, or joint net worth with his or her spouse, in excess of \$1,000,000, or (ii) had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person’s spouse in excess of \$300,000 in each of those years, and has a reasonable expectation of reaching the same level of income in the current year.

- () 5. Purchaser is an individual (i) whose individual net worth, or joint net worth with his or her spouse, currently exceeds, and at the time of purchase of the Mortgage Loans will exceed, \$1,000,000, or (ii) who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person’s spouse in excess of \$300,000 in each of those years, and has a reasonable expectation of reaching the same level of income in the current year.

- () 6. Purchaser either (i) is in the business of buying, originating or selling some or all of the types of mortgage loans being offered for sale in this Loan Sale or (ii) otherwise deals in the ordinary course of Purchaser’s business in assets identical or similar to the types of mortgage loans being offered for sale in this Loan Sale.

- () 7. Purchaser is a mortgagor with respect to one or more of the Mortgage Loans being offered in the Loan Sale and, as such, has the requisite knowledge and experience with respect to those Mortgage Loans and the properties securing those Mortgage Loans to enable it to evaluate the merits and risks of a purchase of and to make an informed decision with respect to those Mortgage Loans. The projects securing the Mortgage Loans with respect to which Purchaser is the mortgagor or is an affiliate of the mortgagor are listed below. **(Checking only this box and meeting the requirements in Paragraphs J and K below will enable Purchaser to be qualified to bid only on Purchaser’s Mortgage Loans as identified below).** If Purchaser checked Number 7, please indicate the appropriate Mortgage Loans below:

<u>FHA Project No.</u>	<u>Project Name</u>
_____	_____
_____	_____
_____	_____

By executing this Qualification Statement, Purchaser certifies, represents and warrants to HUD that EACH of the following statements A through and including K is true and correct as to such Purchaser:

- A. Purchaser is a sophisticated person or entity and, without limiting the foregoing, has such knowledge and experience in the origination, sale and/or purchase of performing and non-performing or distressed loans, including, without limitation, loans secured by real estate, as well as knowledge and experience, by itself or with its advisers, in other financial and business matters, as to enable Purchaser to utilize the information available in connection with the Loan Sale to evaluate the merits and risks of a prospective acquisition and ownership of the Mortgage Loans and to make an informed decision with respect thereto.
- B. Purchaser acknowledges, understands and is able to bear the economic risks associated with the acquisition and ownership of the Mortgage Loans, including, without limitation, the risk of a total loss of Purchaser's purchase price for and other costs and expenses and losses as might be incurred in connection with the Mortgage Loans and/or the risk that Purchaser may be required to hold the Mortgage Loans for an indefinite period of time.
- C. Purchaser acknowledges and agrees that, whether or not it chooses to review any information made available to it regarding the Mortgage Loans being offered for sale at the Loan Sale, Purchaser has the ability and shall be responsible for making its own independent investigation and evaluation of the Mortgage Loans and the economic, credit or other risks involved in a purchase of the Mortgage Loans, including, without limitation, the ability to resell or otherwise liquidate any of the Mortgage Loans purchased at the Loan Sale.
- D. Purchaser is bidding for and will purchase the Mortgage Loans for its own account and not for or with a view toward resale (in whole or in part) in a "distribution" within the meaning of the Act, and Purchaser's ownership and intended use and disposition of the Mortgage Loans will comply fully with all applicable federal and state laws, regulations and requirements, including, without limitation, any and all laws and/or restrictions imposed on resale of the Mortgage Loans by federal and state securities or Blue Sky laws, rules, regulations or requirements.
- E. Purchaser acknowledges and agrees that (i) the proposed sale of the Mortgage Loans in the Loan Sale does not involve, nor is it intended in any way to constitute, the sale of a "security" within the meaning of the Act or any applicable federal or state securities laws, (ii) no inference as to whether the Mortgage Loans are or are not "securities" under such federal or state securities laws shall be drawn from any of the certifications, representations or warranties made by Purchaser in this Qualification Statement for purposes of qualifying Purchaser as a "qualified bidder" at the Loan Sale, (iii) it is not contemplated that any filing will be made with the Securities and Exchange Commission or pursuant to the

Blue Sky or securities laws of any jurisdiction, and (iv) if the Mortgage Loans are securities, they may not be resold or otherwise transferred by Purchaser except in accordance with any and all applicable securities and Blue Sky laws.

- F. Purchaser represents and warrants that it is not: (i) an employee of HUD, a member of such employee's household, or an entity owned or controlled by any such employee or member of such an employee's household; (ii) an individual or entity that is debarred, suspended, or excluded from doing business with HUD pursuant to Title 24 of the Code of Federal Regulations, Part 24; (iii) a contractor, subcontractor and/or consultant or advisor (including any agent, employee, partner, director, principal or affiliate of any of the foregoing) who performed services for, or on behalf of, HUD in connection with the Loan Sale; (iv) an individual who was a principal, partner, director, agent or employee of any entity or individual described in subsection (iii) above, at any time during which the entity or individual performed services for or on behalf of HUD in connection with the Loan Sale; (v) an individual or entity that uses the services, directly or indirectly, of any person or entity ineligible under subsections (i) through (iv) above to assist in preparing any of its bids on any Mortgage Loans; or (vi) an individual or entity which employs or uses the services of an employee of HUD (other than in such employee's official capacity) who is involved in the Loan Sale.

In addition, Purchaser represents and warrants that (i) within the two-year period prior to September 1, 2010, it has not, and it is not an affiliate, principal or employee of any person or entity that, within such two-year period, serviced any of the Mortgage Loans or performed other services for or on behalf of HUD with respect to any of the Mortgage Loans, (ii) within the two year period prior to September 1, 2010, it was not a contractor or subcontractor to and it did not otherwise have access to information concerning the Mortgage Loans or provide services to any person or entity which, within such two-year period, had access to information with respect to the Mortgage Loans, and (iii) no employee, officer, director or any other person that provides or will provide services to Purchaser with respect to such Mortgage Loans during any warranty period established for the Loan Sale, within the two-year period prior to September 1, 2010, (x) serviced any of the Mortgage Loans or performed other services for or on behalf of HUD with respect to any of the Mortgage Loans or (y) had access to information concerning the Mortgage Loans or provided services to any person or entity which, within such two-year period, serviced, performed services for HUD or otherwise had access to information with respect to the Mortgage Loans.

- G. Purchaser acknowledges and agrees that HUD has the right to request additional or updated information at any time, including, without limitation, financial statements, bank references, corporate brochures, experience resume, etc., and/or confirmation of the representations, warranties and certifications made herein, and, in its sole discretion, to refuse to qualify any prospective bidder who, in HUD's sole judgment, does not have the requisite financial capability to complete

the purchase of the Mortgage Loans and/or knowledge and experience to enable such prospective bidder to evaluate the merits and risks of purchasing and to make an informed decision with respect to the purchase of the Mortgage Loans to be offered for sale at the Loan Sale. The undersigned further understands that this Qualification Statement is being furnished to permit HUD to qualify Purchaser and, in connection therewith, Purchaser authorizes HUD and its agents to conduct credit investigations of Purchaser and all principals of Purchaser through appropriate third-party reporting agencies.

- H. Purchaser represents and warrants that, if it is an entity, it has full authority to deliver this Qualification Statement and that the individual executing this Qualification Statement has full authority to do so on behalf of the undersigned and all principals thereof, and that, to the best of such undersigned's knowledge, all information provided herein is true, complete and correct.
- I. If Purchaser is a mortgagor with respect to any of the Mortgage Loans being offered in the Loan Sale, Purchaser has identified such Mortgage Loans under Number 7 above. If Purchaser has only checked Number 7 under Part II above, Purchaser acknowledges and agrees that Purchaser will only be permitted to review information concerning the Mortgage Loans identified under Number 7 above and to bid on the Mortgage Loans identified under Number 7 above.
- J. If Purchaser is a mortgagor with respect to any of the Mortgage Loans being offered in the Loan Sale, before executing this Qualification Statement, Purchaser has submitted to HUD, in accordance with HUD's regulations and the regulatory agreements relating to the projects securing such Mortgage Loans, the annual audited financial statements for each such project for fiscal years 2005 – 2009. If any of the 2005 – 2009 audited financial statements for a project securing a Mortgage Loan have not already been submitted to HUD, Purchaser must meet the requirement for electronic submission of the audited financial statements. **If HUD does not receive the required financial statements by July 30, 2010, Purchaser will be ineligible to bid in the Loan Sale.** Purchaser agrees to provide any additional information relating to such a Mortgage Loan or project as HUD may reasonably request in connection with the Loan Sale.
- K. If Purchaser or any Related Party, as defined below, is a mortgagor in any of HUD's multifamily housing programs or a mortgagor and/or operator in a healthcare facility (regardless of whether such mortgage loan is included in the Loan Sale), Purchaser represents and warrants that: (i) neither Purchaser nor any of its Related Parties is in default (whether monetary or nonmonetary) under any HUD loan, and neither Purchaser nor any of its Related Parties has been notified by HUD that it is in violation of, or not in compliance with, any regulatory or business agreements with HUD; or (ii) if such a default or violation exists, Purchaser shall cure such default or violation on or before July 30, 2010. **If Purchaser does not cure such default or violation on or before July 30, 2010, Purchaser will be ineligible to bid in the Loan Sale.**

If Purchaser or any Related Party is in default under any HUD loan or in violation of any HUD regulatory or business agreement please check the following line and indicate on an attachment submitted with this Qualification Statement (A) the FHA loan number, the name of the project, the name of the mortgagor, and the nature of the default or violation; or (B) provide a complete listing or organizational chart of known Related Parties or affiliates which HUD will review, pursuant to its 2530 Previous Participation process, to determine whether Purchaser is a Qualified Bidder.

For purposes of this Qualification Statement, Related Parties shall include any principal of Purchaser, any affiliate of Purchaser, and any principal of any affiliate of Purchaser. An affiliate is any party that controls, is controlled by, or is under common control with Purchaser. A principal in a partnership is any general partner, or a limited partner with a 25% or greater equity or ownership interest. A principal in a corporation is any officer or director, and any stockholder with a 10% or greater equity or ownership interest. A principal in a limited liability company is any manager, officer or director, and any owner with a 10% or greater equity interest. Purchaser represents and warrants that each of its Related Parties that is a mortgagor in a HUD multifamily housing program or a mortgagor and/or operator in a healthcare facility identified on an attachment submitted with this Qualification Statement.

Purchaser understands that the above certifications, representations, and warranties are made for the purpose of qualifying Purchaser as a “qualified bidder” at the Loan Sale.

Purchaser hereby represents that the above certifications, representations, and warranties are true and correct in all respects as of the time they are made and as of the time Purchaser purchases any of the Mortgage Loans offered for sale at the Loan Sale and understands that HUD is relying upon the truthfulness and correctness of such statements.

Dated: _____, 2010

PURCHASER: _____
(Print Name – must match Entity Name on
Confidentiality Agreement)

By: _____
(Signature)
Print Name: _____

Print Title: _____