

Form RD 3565-3
(Rev. 02-05)

Position 5
**UNITED STATES DEPARTMENT OF AGRICULTURE
RURAL HOUSING SERVICE**

Form Approved
OMB No. 0575-0174

LENDER'S AGREEMENT
(Guaranteed Multifamily Housing)

Lender:	Tax Identification Number:
Business Address:	Telephone Number:

I. General Provisions

A. Purpose.

The Lender ("Lender") is approved to process and request Loan Note Guarantees and to service those loans as authorized herein and under 7 CFR part 3565. The Lender enters into this Agreement as a condition for obtaining the guarantees.

Lenders must meet and maintain the following requirements at a level consistent with the nature and size of their portfolio of guaranteed loans:

1. **Commitment.** Lender must have a commitment for a guaranteed loan or an agreement to purchase a guaranteed loan.
2. **Certification.** Lender must provide certification on an annual basis that it has maintained its overall financial strength, including capital, liquidity, and loan loss reserves to maintain an acceptable rating by a lender rating service, or that it has maintained its status as an approved Fannie Mae, Ginnie Mae, Freddie Mac, or HUD Federal Housing Administration multifamily lender, or, if a state housing finance agency, to have a top tier rating by a rating agency.
3. **Previous participation.** Lender may not be delinquent on a federal debt or have an outstanding finding of deficiency in a federal housing program.
4. **Ongoing requirements.** Lender must have:
 - (a) An adequate overall level of capital to ensure stability of business operations;
 - (b) Adequate liquidity to respond to continuing demands for cash;
 - (c) Bonding and insurance to cover business related losses, including directors and officers insurance, business income loss insurance, and bonding to secure cash management operations;
 - (d) Adequate loan loss reserves to cover the Lender's projected losses on the guaranteed loan portfolio;
 - (e) A minimum of two years experience in originating and servicing multifamily loans;
 - (f) A positive record of past performance when participating in federal loan programs;
 - (g) Adequate staffing and training to perform the program obligations;
 - (h) Demonstrated overall financial stability over the past five years;
 - (i) Evidence of reasonable and prudent business practices for management of the program; and
 - (j) Addressed, to the Government's satisfaction, those financial and organizational issues that the Government deems relevant to the Lender's ability to properly originate and service guaranteed loans.

The Government agrees to enter into Loan Note Guarantees with the Lender issued pursuant to the regulations for Guaranteed Rural Rental Housing loans and to participate in a percentage of any loss on any such loans not to exceed the amount established in the Loan Note Guarantee. The terms of any Loan Note Guarantee are controlling.

B. Full Faith and Credit.

This Agreement is backed by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the Lender had knowledge at the time the Lender acquired the guarantee or assigned the loan, or in which a Lender participates in or condones. The guarantee will be unenforceable by the lender to the extent any loss is occasioned by a violation of usury laws, negligent servicing, or origination by the Lender, including failure to acquire the required security, or as a result of a use of loan funds for purposes other than those authorized by the Agency. These acts constitute grounds for the refusal to make full payment under the guarantee to the Lender. The Agency gives the Lender notice of the acts or omissions that it considers to constitute such grounds, specifying the applicable provisions of the Statute, Regulations, Loan Note Guarantee or Lender's Agreement; the Lender has not cured the acts or omissions within 90 calendar days after

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This form is the signed agreement between USDA and the Lender setting forth the Lender's loan making and servicing responsibilities. This form will be executed to designate participating Lenders for the purpose of processing and requesting Loan Note Guarantees authorized under 7 CFR Part 3565. The form is executed on a lender by Lender basis rather than a loan by loan basis.

(see reverse)

PROCEDURE FOR PREPARATION : 7 CFR part 3565 and HB-1-3565.

PREPARED BY : State Office and Lender.

NUMBER OF COPIES : Original and two copies.

SIGNATURES REQUIRED : Original - Lender.
Original - State Director or designee.

DISTRIBUTION OF COPIES : Original to State Office Lender file.
Copy to National Office.
Copy to Lender.

PAGE 2 OF FORM RD 3565-3

such notice; and the acts or omissions can reasonably be expected to have a material adverse effect on the credit quality of the guaranteed mortgage or the physical condition of the property securing the guaranteed mortgage. If such acts or omissions cannot be cured within a 90 calendar day period, the 90 calendar day cure period automatically shall be extended so long as curative activities are commenced during the 90 calendar day period. At no time shall the curative period extend more than 270 calendar days from the expiration of the original 90 calendar day cure period. When a guaranteed portion of a loan is sold to a Holder, the Holder shall succeed to all rights of the Lender under the Loan Note Guarantee to the extent of the portion purchased. The lender will remain bound to all obligations under the Loan Note Guarantee, Lender's Agreement, and the Agency program regulations.

II. Loan Origination

- A. The Lender agrees loan funds will be used for the purposes authorized in 7 CFR part 3565 and in accordance with the terms of Form RD 3565-2, "Conditional Commitment."
- B. The Lender certifies that none of the Lender's officers or directors, stockholders, or other owners (except stockholders in a Farm Credit Bank or other Farm Credit System ("FCS") Institution with direct lending authority that have normal stock or share requirements for participation) will have a financial interest in any borrower receiving a Government Guaranteed Multi-family Loan (Borrower). The Lender certifies that neither Borrower nor the Borrower's officers or directors, stockholders or other owners have a financial interest in the Lender. If a Borrower is a member of the board of directors or an officer of a Farm Credit Bank or other FCS Institution with direct lending authority, the Lender certifies that an FCS institution on the next highest level will independently process the loan request and will act as the Lender's agent in servicing the account.
- C. The Lender will certify to the Government, prior to issuance of the Loan Note Guarantee for each loan, that there has been neither any material adverse change in a Borrower's financial condition, nor any other material adverse change in a Borrower, for any reason, during the period of time from the Government's issuance of the Conditional Commitment to issuance of the Loan Note Guarantee regardless of the cause or causes of the change and whether the change or causes of the change were within the Lender's or a Borrower's control. The Lender's certification must address all adverse changes of a Borrower, any parent, affiliate, or subsidiary of a Borrower, and guarantors.
- D. Lender certifies that a Regulatory Agreement or loan instruments concurred in by the Government have been or will be signed by the Borrower.
- E. Lender pays required guarantee fee due on the date the Loan Note Guarantee is issued. An annual guarantee fee of _____ (_____ percent) of the outstanding principal amount of the loan will be charged each year that the guarantee is in effect. This fee will be collected in accordance with 7 CFR 3565, subpart B.
- F. Combination construction and permanent loans. For combination construction and permanent loans, the Government will guarantee advances during the construction loan period, which cannot exceed 24 months. The guarantee of construction loan advances will cover a permanent loan once the minimum level of acceptable occupancy of 90% for 90 consecutive days is attained or an additional operating reserve equal to 2% of the appraised value of the project or total development cost, whichever is greater, is set aside prior to closing the construction loan. This cash contribution is an additional amount, over and above the required initial operating and maintenance reserve contribution. The maximum guarantee of construction advances related to a combination construction and permanent loan will not at any time exceed the lesser of 90 percent of the amount of principal and interest up to default advanced for eligible uses of loan proceeds or 90 percent of the original principal amount and interest up to default of the combination loan. Penalties incurred as a result of default are not covered by the guarantee. The Government may provide a lesser guarantee based upon its evaluation of the credit quality of the loan. Conversion to a permanent loan guarantee will become effective when the Government provides the lender with written confirmation of the conversion date. In addition, the lender shall require credit enhancements to protect the Government's interest. Acceptable credit enhancements include:
 - (i) Surety bonding or performance and payment bonding (the preferred credit enhancement);
 - (ii) An irrevocable letter of credit acceptable to the Government; or
 - (iii) A pledge by the lender of acceptable collateral.

Permanent loans. The Agency will issue a permanent loan guarantee after a minimum level of acceptable occupancy of 90% for 90 consecutive days is attained or an additional operating reserve equal to 2% of the appraised value of the project or total development costs, whichever is greater, is set aside. This cash contribution is an additional amount, over and above the required initial operating and maintenance reserve contribution. In either case, the permanent guarantee will be issued when the 2% additional reserve amount is set aside prior to closing the construction loan or the minimum level of occupancy is attained prior to the expiration of this Agreement, including any extensions thereto. The maximum guarantee payment for a permanent loan will be 90 percent of the unpaid principal and interest up to default and accrued interest 90 calendar days from the date the liquidation plan is approved by the Agency, as defined in 7 CFR 3565.452. Penalties incurred as a result of default are not covered by the guarantee. The Agency may provide a lesser guarantee percentage based upon its evaluation of the credit quality of the loan. The Agency liability under any guarantee will decrease or increase, in proportion to any increase or decrease in the amount of the unpaid portion of the loan, up to the maximum amount specified in the Loan Note Guarantee.

PAGE 3 OF FORM RD 3565-3

III. Project Management.

- A. Regulatory Agreement. A Regulatory Agreement, which meets the requirements as contained in 7 CFR part 3565, subpart H, between a Borrower and Lender must be executed at the time of loan closing.
As a condition of the guarantee, the Lender is to obtain borrower certification annually that the project is in compliance with the Regulatory Agreement and program requirements with respect to all aspects of project management.
- B. Management plan. The Lender must approve a Borrower's management plan and assure that Borrowers are in compliance with Government standards regarding property management, including the requirements contained in 7 CFR, part 3565, subparts E and F.
- C. Tenant protection and grievance procedures. Tenants in properties subject to a guaranteed loan are entitled to the grievance and appeal rights contained in 7 CFR part 1944, subpart L. Borrowers must inform tenants in writing of these rights.
- D. Preservation of affordable housing. During the period of the guarantee, the Lender must assure that the housing or related facilities are not used for any purpose other than an approved program purpose.
- E. Use restriction. The Lender will assure that, for the original term of the guaranteed loan, the rental housing remains available for occupancy by low and moderate income households, in accordance with 7 CFR §3565.352. This requirement will be included in a deed restriction. The restriction will apply unless the housing is acquired by foreclosure or an instrument in lieu of foreclosure, or the Government waives the applicability of this requirement for reasons authorized in 7 CFR part 3565, subpart H.
- F. Civil Rights Requirements. It is the Lender's responsibility to ensure that the Borrower complies with Title VIII of the Fair Housing Acts as amended by the Fair Housing Amendments of 1988. The Lender must also ensure that the complex is in compliance with Section 504 of the Rehabilitation Act of 1973 and Title VI of the Civil Rights Act of 1964 when Federal financial assistance (e.g., interest credit) is provided.

IV. Servicing Objectives.

The Lender must originate and service guaranteed loans in accordance with applicable regulatory and program requirements throughout the life of the loan or guarantee, whichever is less. In exceptional circumstances the Government, in its sole discretion, may permit the transfer of servicing from the originating Lender to a Servicer. A lender-servicing plan must be designed and implemented to achieve the following objectives.

- A. To preserve the value of the loan and the collateral.
- B. To avoid a loss to the Lender or the Government and to limit exposure to potential loss.
- C. To protect the interest of the tenants.
- D. To further program objectives.

V. Servicing

- A. The Lender will service the entire loan. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. The unguaranteed portion of a loan will not be paid first nor given any preference or priority over the guaranteed portion of the loan. The Lender must receive written Government concurrence before transferring mortgage services to another servicing Lender.
- B. It is the Lender's responsibility to see that all construction is properly planned before any work proceeds; that any required permits, licenses or authorizations are obtained from the appropriate regulatory agencies; that Borrowers have obtained contracts through acceptable procurement procedures; and that periodic inspections during construction are made.
- C. Lender's servicing responsibilities include, but are not limited to:
1. Obtaining compliance with the covenants and provisions in the note, Loan Agreement, security instruments, and any supplemental agreements and notifying in writing the Government and Borrowers of any violations. None of the aforesaid instruments will be altered without the Government's prior written concurrence. The Lender must service the loan in a reasonable and prudent manner.
 2. Funds management. The Lender must have a funds management system to receive and process Borrower payments, including the following:
 - (a) All principal and interest (P&I) funds and guarantee fees collected and deposited into the appropriate custodial accounts;
 - (b) Payments to custodial escrow accounts for taxes and insurance premiums (T&I), assessments that might impair the security (such as ground rent), and reserve accounts for repair and capital improvement of the property;
 - (c) Asset management. The Lender must ensure that the property securing the guaranteed loan remains in good physical and financial condition, in accordance with project management requirements contained in 7 CFR part 3565, subpart H;

PAGE 4 OF FORM RD 3565-3

- (d) Management of delinquencies and defaults. Each month the Lender must report to the Government any delinquencies and defaults in accordance with 7 CFR part 3565, subpart I; and
- (e) Reserve releases. The Lender is responsible for approving all Borrower requests for release of funds from the reserve and escrow accounts. Security deposit accounts will not be considered a reserve or escrow account.
- 3. Assuring that adequate insurance is maintained. This includes hazard insurance obtained and maintained with a loss payable clause in favor of the Lender as the mortgagee or secured party.
- 4. Assuring that: taxes, assessment or ground rents against or affecting collateral are paid; the loan and collateral are protected in foreclosure, bankruptcy, receivership, insolvency, condemnation, or other litigation, insurance loss payments, condemnation awards, or similar proceeds are applied on debts in accordance with lien priorities on which the guarantee was based; proceeds from the sale or other disposition of collateral are applied in accordance with the lien priorities on which the guarantee is based, except that proceeds from the disposition of collateral, such as machinery, equipment, furniture or fixtures, may be used to acquire property of similar nature and at least equal value for which the Lender will obtain a lien position equal or superior to the position previously held and obtain the written approval of the Government when the cumulative value is in excess of 20 percent of the original loan; and that Borrowers comply with all laws and ordinances applicable to the loan, the collateral and operation of the business.
- 5. Assuring that if personal or corporate guarantees are part of the collateral, current financial statements from such loan guarantors will be obtained and copies provided to the Government at such time and frequency as required by the Loan Agreement or Conditional Commitment. In the case of guarantees secured by collateral, Lenders must assure that security is properly maintained.
- 6. Obtaining the lien coverage and lien priorities specified by the Lender and agreed to by the Government, properly recording or filing lien or notice instruments to obtain or maintain such lien priorities during the existence of the guarantee by the Government.
- 7. Assuring that Borrowers obtain marketable title to the collateral.
- 8. Assuring that any party liable is not released from liability for all or any part of the loan, except in accordance with Government regulations.
- 9. Obtaining from Borrowers periodic financial statements as required in the Loan Agreement with Borrowers. At a minimum, annual financial statements must be forwarded by the Lender, with a credit analysis, to the Government.
- 10. Providing the Government with quarterly loan status reports on Form RD 1980-41, "Guaranteed Loan Status Report," or its replacement form. Status reports to the Government will be required on a monthly basis when a loan is in default.
- 11. Ensuring that Borrowers comply with the measures identified in the Government's environmental impact analysis for this facility for the purpose of avoiding or reducing the adverse environmental impacts of the facility's construction or operation. The Lender will monitor the use of loan funds to assure they will not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity (see 7 CFR part 1940).
- 12. Protecting the interest of the tenants. The actions of the servicing Lender must not unduly harm the property's tenants through unnecessary displacement.
- 13. Providing the Government with copies of Form RD 3565-5, "Assignment Guarantee Agreement" or other Agency approved form used to ratify the sale of participation of a guaranteed loan.

VI. Special servicing.

- A. The Lender will notify the Government when a Borrower is thirty (30) days past due on a payment or if a Borrower is otherwise in default. Lender will notify the Government of the status of a Borrower's default on Form RD 1980-44 "Guaranteed Loan Borrower Default Status." Actions taken by Lender with written concurrence of the Government will include, but are not limited to, the following or any combination thereof:
 - 1. Deferral of principal payments;
 - 2. An additional temporary loan by the Lender to bring the account current;
 - 3. Reamortization of or rescheduling the payments on the loan;
 - 4. Transfer and assumption of the loan in accordance with the applicable subpart of 7 CFR part 3565;
 - 5. Reorganization;
 - 6. Liquidation; or
 - 7. Subsequent loan guarantees.
- B. Responsibility of Lender. It is the Lender's responsibility to ensure that maintenance of the property meets Government requirements and the tenants' rights are protected, until such time that the property is liquidated by the Lender or the loan is assigned to the Government. The Lender must update the Government monthly until the default is cured or a claim is filed. The Lender must maintain adequate records of any and all efforts to cure the default or to foreclose.

PAGE 5 OF FORM RD 3565-3

- C. Initiating special servicing. When special servicing is initiated, the Lender must submit for Government review a special servicing plan that includes proposed actions to cure the deficiencies and a time frame for completion. The Lender must obtain Government approval of the terms of any workout agreement with a Borrower.
- D. Due diligence by Lender. For all loan servicing actions where a market, net recovery or liquidation value determination is required, Lenders shall perform due diligence in conjunction with the appraisal and submit it to the Government for review. The Phase I Environmental Site Assessment published by the American Society of Testing and Materials (ASTM) is considered an acceptable format for due diligence.
- E. Environmental review. The Lender must provide the information needed by the Government to complete an environmental review under the National Environmental Policy Act, in accordance with 7 CFR part 1940, subpart G, prior to disposition of inventory property and prior to any authorization to the Lender to foreclose and dispose of property, and for any other servicing action requiring Government approval or consent.

VII. Liquidation

If the Lender concludes pursuant to Government regulations that liquidation of a guaranteed loan account is necessary because of one or more defaults or third party actions that a Borrower cannot or will not cure or eliminate within a reasonable period of time, liquidation may be considered. If the Lender concludes that liquidation is necessary, it must request the Government's concurrence. When the Government concurs with the Lender's conclusion, or at any time concludes independently that liquidation is necessary, it will notify the Lender and the Lender will liquidate the loan unless Government, at its option, decides to carry out liquidation.

- A. Lender's proposed method of liquidation. Within 30 calendar days after the decision to liquidate, the Lender will advise the Government in writing of its proposed detailed method of liquidation ("liquidation plan") and will provide the Government with:
 - 1. Satisfactory proof as the Government requires to establish the Lender's ownership of the guaranteed loan promissory notes and related security instruments;
 - 2. Information lists concerning the property's assets including real and personal property, fixtures, claims, contracts, inventory, accounts receivable, personal and corporate guarantees, and other existing and contingent assets, and advice as to whether or not each item is serving as collateral for the guaranteed loan;
 - 3. A proposed method of making the maximum collection possible on the indebtedness; and
 - 4. The Lender will obtain a complete appraisal report on all collateral securing the loan, which will reflect the fair market value and potential liquidation value, and an examination of the title on the collateral. All real property appraisals with Government guaranteed loanmaking and servicing transactions will meet the requirements set forth by the Financial Institutions Reform, Recovery and Enforcement Act of 1989 and appropriate guidelines set forth in Standards 1 and 2 of the Uniform Standards of Professional Appraisal Practices. Chattels will be evaluated in accordance with normal banking practices and generally accepted methods of determining value. The appraisal report is for the purpose of permitting the Lender and the Government to determine the appropriate liquidation actions.
- B. The Government will inform the Lender in writing whether it concurs in the Lender's liquidation plan. For interest accrual purposes, interest will accrue for 90 calendar days after the date the liquidation plan is approved by the Government. If within 20 calendar days of the Government's receipt of the liquidation plan, the Government fails to respond to the Lender's proposal or advise the Lender to make revisions to the plan that was submitted, the liquidation plan will be approved by default, and the 90 calendar day period for interest accrual will commence. Should the Government and the Lender not agree on the Lender's liquidation plan, negotiations will take place between the Government and the Lender to resolve the disagreement. The Lender will ordinarily conduct the liquidation; however, should the Government determine that it will conduct the liquidation, the parties will proceed as follows:
 - 1. The Lender will transfer to the Government all rights and interest necessary to allow the Government to liquidate the loan. In this event, the Lender will not be paid for any loss until after the collateral is liquidated and the final loss is determined by the Government.
 - 2. The Government will attempt to obtain the maximum amount of proceeds from liquidation.
 - 3. Options available to the Government include any one or combination of the usual commercial methods of liquidation.
- C. Acceleration. The Lender or the Government, if it liquidates, will proceed as expeditiously as possible when acceleration of the indebtedness is necessary including giving any notices and taking any other legal actions required by the security instruments. A copy of the acceleration notice or other acceleration document will be sent to the Government or the Lender, as the case may be.
- D. Liquidation: Accounting and Reports. When the Lender conducts the liquidation, it will account for funds during the period of liquidation and will provide the Government with periodic reports on the progress of liquidation, disposition of collateral, resulting costs and additional procedures necessary for successful completion of liquidation.
- E. Determination of Loss and Payment. In all liquidation cases, final settlement will be made with the Lender after the collateral is liquidated. The Government will have the right to recover losses paid under the guarantee from any party liable.

PAGE 6 OF FORM RD 3565-3

1. Maximum guarantee payment. The maximum guarantee payment will not exceed the product of 90%, or such lesser guarantee percentage as set forth in the guarantee agreement, times the allowable loss amount.
2. Date of loss. The date of loss is the earliest of the date on which the property is foreclosed or acquired or the proposed date of foreclosure or acquisition in the liquidation plan, unless an alternative date is approved by the Government. Where the Government chooses to accept an assignment of the loan or conveyance of title, the date of loss will be the date on which the Government accepts assignment of the loan or conveyance of title.
3. Allowable claim amount. The allowable loss amount must be calculated by adding to the unpaid principal and interest on the date of loss, an amount approved by the Government for payments made by the Lender for amounts due and owing on the property.
4. Form RD 449-30, "Loan Note Guarantee Report of Loss," will be used for calculations of all estimated and final loss determinations. Payments will be made in accordance with applicable Government regulations.
5. When the Lender is conducting the liquidation, and owns any of the guaranteed portion of the loan, the Lender will file an estimated loss claim with the liquidation plan if the Lender expects the liquidation to exceed 90 calendar days. The estimated loss claim will include 90 calendar days of interest accrual on the defaulted loan at the time the estimated loss claim is paid by the Government. If the Lender estimates that there will be no loss after considering the costs of liquidation, the Lender submits an estimated loss claim of zero. Interest accrual will cease 90 calendar days after the liquidation plan is approved by the Government. The Government will agree to pay an estimated loss settlement to the Lender provided the Lender applies such amount due to the outstanding principal balance owed on the guaranteed debt. Such estimate will be prepared and submitted by the Lender on Form RD 449-30, "Loan Note Guarantee Report of Loss, using the basic formula as provided on the report except that the appraisal value will be used in lieu of the amount received from the sale of collateral.
After the Report of Loss estimate has been approved by the Government, and within 30 calendar days thereafter, the Government will institute procedures to cause the issuance of payment of the estimated amount due the Lender.
After liquidation has been completed, a final loss report will be submitted on Form RD 449-30, "Loan Note Guarantee Report of Loss," by the Lender to the Government.
6. Before approval by the Government of any final loss report, the Lender must account for all funds during the period of liquidation, disposition of collateral, all costs incurred and any other information necessary for the successful completion of liquidation. Upon receipt of the final accounting and report of loss, the Government may audit the account and will determine the final loss. The Lender will make its records available to and otherwise assist the Government in making any audit. The documentation accompanying the report of loss must support the figures shown on Form RD 449-30, "Loan Note Guarantee Report of Loss."
7. When the Lender has conducted liquidation and after the final report of loss has been tentatively approved:
 - (a) If the loss is greater than the estimated loss payment, the Government will pay the additional amount owed by the Government to the Lender.
 - (b) If the loss is less than the estimated loss, the Lender will reimburse the Government for the overpayment.
8. If the Government has conducted liquidation, it will provide an accounting and report of loss to the Lender and will pay the Lender in accordance with the Loan Note Guarantee.
9. In those instances where the Lender has made authorized protective advances, it may claim recovery for the guaranteed portion of any loss of monies advanced as protective advances and interest resulting from such protective advances as provided above, and such payment will be made by the Government when the final report of loss is approved.
- F. Maximum amount of interest loss payment. Notwithstanding any other provisions of this agreement, the amount payable by the Government to the Lender cannot exceed the limits set forth in the Loan Note Guarantee. If the Government conducts the liquidation, any loss occasioned by accruing interest will be covered to the extent of the guarantee to the date the Government accepts this responsibility. Loss occasioned by accruing interest will be covered for 90 calendar days after the liquidation plan is approved by the Government.
- G. Application of Government loss payment. The estimated loss payment shall be applied as of the date of such payment. The total amount of the loss payment remitted by the Government will be applied by the Lender on the guaranteed portion of the loan debt. However, such application does not release Borrowers from liability. At time of final loss settlement the Lender will notify the delinquent Borrowers that the loss payment has been so applied. In all cases a final Form RD 449-30, "Loan Note Guarantee Report of Loss," prepared and submitted by the Lender must be processed by the Government.
- H. Income from collateral. Any net rental or other income that has been received by the Lender from the collateral will be applied on the guaranteed loan debt.
- I. Liquidation costs. Certain reasonable liquidation costs will be allowed during the liquidation process. A schedule of the liquidation costs will be submitted as a part of the liquidation plan. Such costs will be deducted from gross proceeds from the disposition of collateral unless the costs have been previously determined by the Lender (with the Government's written concurrence) to be protective advances. If changed circumstances after submission of the liquidation plan require a revision of liquidation costs,

PAGE 7 OF FORM RD 3565-3

the Lender will obtain the Government's written concurrence prior to proceeding with the proposed changes.

- J. **Foreclosure.** The Lender is responsible for determining who the necessary parties are to any foreclosure action or who should be named on a deed of conveyance taken in lieu of foreclosure. When the conveyance is received and the property is liquidated, the net proceeds will be applied to the guaranteed loan debt.
- K. **Payment.** Such loss will be paid by the Government within 60 calendar days after the review of the accounting of the collateral.
- L. **Protective Advances.** Protective advances must constitute an indebtedness of a Borrower to the Lender and be secured by the security instruments. The Government's written authorization is required for all protective advances in excess of \$5,000. Protective advances include, but are not limited to, advances made for property taxes, annual assessments, ground rent, hazard or flood insurance premiums affecting the collateral, and other expenses necessary to preserve or protect the security. Attorney fees are not a protective advance.
- M. **Future Recovery.** Upon payment, in whole or in part, to the Holder, the note or judgment evidencing the debt shall be assigned to the Government and the Holder shall have no further claim against the delinquent Borrowers or the Government. The Government shall then take such action to collect as the Government determines appropriate.
- N. **Refinancing.** Any loan guaranteed under this section may be refinanced and extended in accordance with the terms and conditions that the Government may prescribe, but in no event for an additional amount or term that exceeds the limitations under 7 CFR part 3565.
- O. **Nonassumption.** A Borrower under a loan that is guaranteed under 7 CFR part 3565 and under which any portion of the principal obligation or interest remains unpaid may not be relieved of liability with respect to the loan, notwithstanding the transfer of property for which the loan was made.

VIII. Bankruptcy

- A. The Lender is responsible for protecting the guaranteed loan and all collateral securing the loan in bankruptcy proceedings. When the loan is involved in reorganization bankruptcy proceedings, payment of loss claims may be made as provided in this section. For a liquidation proceeding only paragraphs 3 and 6 of this section are applicable.
- B. Loss Payments.
 - 1. **Estimated Loss Payments.**
 - (a) If a Borrower has filed for protection under title 11 of the United States Code and the debt has been reduced, the Lender will request a tentative estimated loss payment of accrued interest and principal discharged by the order of the court. This request can only be made after the bankruptcy plan is confirmed. Only one estimated loss payment is allowed during the bankruptcy process. All subsequent claims during reorganization will be considered revisions to the initial estimated loss. A revised estimated loss payment may be processed by the Government, at its option, in accordance with any court approved changes in the reorganization plan. At the time the performance under the confirmed reorganization plan has been completed, the Lender is responsible for providing the Government with the documentation necessary to review and adjust the estimated loss claim to (a) reflect the actual principal and interest reduction on any part of the guaranteed debt determined to be unsecured and (b) to reimburse the Lender for any court ordered interest rate reduction during the term of the reorganization.
 - (b) The Lender will use Form RD 449-30, "Loan Note Guarantee Report of Loss," to request an estimated loss payment and to review estimated loss payments during the course of the reorganization plan. The estimated loss claim as well as any revisions to this claim will be accompanied by applicable legal documentation to support the claim.
 - 2. **Interest Loss Payments.**
 - (a) Interest loss payments sustained during the period of the reorganization plan will be processed in accordance with section VIII. B. 1.
 - (b) Interest loss payments sustained after the reorganization plan is confirmed will be processed annually when the Lender sustains a loss as a result of a permanent interest rate reduction.
 - (c) Form RD 449-30, "Loan Note Guarantee Report of Loss," will be completed to compensate the Lender for the difference in interest rates specified on the Loan Note Guarantee and the rate of interest ordered by and in accordance with final order of a court of competent jurisdiction.
 - 3. **Final Loss Payments.** Payments will be processed when the loan is liquidated.
 - 4. **Payment Application.** The Lender must apply estimated loss payments first to the unsecured principal of the guaranteed portion of the debt and then to the unsecured interest of the guaranteed portion of the debt. In the event the court attempts to direct the payments to be applied in a different manner, the Lender will immediately notify the Government.
 - 5. **Overpayments.** Upon completion of the reorganization plan, the Lender will provide the Government with the documentation necessary to determine whether the estimated loss paid equals the actual loss sustained. If the actual loss sustained, as a result of the reorganization, is greater than the estimated loss payment, the Lender will submit a revised estimated loss in order to obtain payment of the additional amount owed by the Government to the Lender. If the actual loss payment is less than the estimated loss, the Lender will reimburse the Government for the overpayment plus interest

PAGE 8 OF FORM RD 3565-3

at the note rate from the date of the payment of the estimated loss.

6. Protective Advances. If approved protective advances were made prior to a Borrower having filed bankruptcy as a result of prior liquidation action, these protective advances and accrued interest will be entered on Form RD 449-30, "Loan Note Guarantee Report of Loss."

IX. Duration and Modification

1. Duration of Agreement. This Agreement applies to all Guaranteed Rural Rental Housing loans made by the Lender from the date of this Agreement until terminated or superseded by another Agreement.
2. Modification of Agreement. This Agreement may only be modified in writing.
3. Other Requirements. This Agreement is subject to all requirements of the applicable subpart of 7 CFR part 3565 in effect on the date of this Agreement.
4. All forms required by this Agreement may be obtained from any Rural Development state or local office.

X. Endorsement

Lender: Complete this block of Section X.

LENDER _____
(Name)

By: _____
(Signature)

(Name Typed or Printed)

Title: _____

Date: _____ Attest: _____

This block of Section X will be completed by USDA.

UNITED STATES OF AMERICA
Department of Agriculture

By: _____ Title: _____
(Signature)

(Name Typed or Printed) Date: _____