

Form RD 3565-4
(Rev. 02-05)
7 CFR Part 3565

Position 5

**UNITED STATES DEPARTMENT OF AGRICULTURE
RURAL HOUSING SERVICE
LOAN NOTE GUARANTEE
(Guaranteed Multifamily Housing)**

This form is the signed guarantee instrument issued by USDA which sets forth the terms and conditions of the guarantee.

State	County	Date of Note
Borrower		USDA Loan Identification Number
Lender		Lender's IRS Tax ID Number
Lender's Address		Principal Amount of Loan \$
		Project Total Development Costs \$

The guaranteed portion of the loan is \$ _____ which is _____ (_____ %) percent of loan principal. The principal amount of loan is evidenced by _____ notes (includes bonds as appropriate) (Note) described below.

Lender's Identifying Number 1/	Interest Rate on Promissory Note 2/	(For interest Credit Only) Basis Points 3/	(For Interest Credit Only) Int. Credit Rate 4/	Interest Credit Loan Amt. 5/	Face Amt. 6/ \$	% of Total Face Amt. 7/ %	Amt. Guar. 8/ \$
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TOTAL \$ _____ 100% 9/ \$ _____ 10/

In consideration of the making of the subject loan by the above named Lender, the United States of America, acting through the United States Department of Agriculture ("Government"), pursuant to title V of the Housing Act of 1949 (42 U.S.C. §1471 et seq.), does hereby agree that in accordance with and subject to the conditions and requirements herein, it will pay to the Lender the lesser of paragraph 1 or 2 below:

- Any loss sustained by the lender on the guaranteed portion, including principal, interest and accrued interest up to 90 days evidenced by the notes or assumption agreements and secured advances for protection and preservation of collateral made with the Agency's authorization; or
- The guaranteed principal advanced to or assumed by the borrower and any interest and accrued interest up to 90 days due thereon.

Net proceeds received from liquidation of the collateral will be used in the amount of loss sustained by the Lender. If the Lender acquires the collateral, the net proceeds from collateral for calculating loss shall be determined by the Government as follows: (i) the collateral will be appraised at its current market value as of the date of acquisition by the Lender then (ii) deduct from such appraised value an estimate of liquidation costs which will include an allowance for the estimated time the property will be held by the Lender.

If the Government conducts the liquidation of the loan, loss occasioned to a Lender by accruing interest after the date the Government accepts responsibility for the liquidation will not be covered by the Loan Note Guarantee.

Lender may sell the servicing of the guaranteed loan only to a Lender which meets the qualifications and in the manner as provided in 7 CFR part 3565. Such loan must not be in default at the time of the sale.

Lender may obtain participation in its loan under its procedures. Participation means a sale of an interest in the loan wherein the Lender retains the Note, collateral securing the Note, and all responsibility for all loan servicing and liquidation. A participant has no rights under this instrument.

(see reverse)

PROCEDURE FOR PREPARATION

: 7 CFR part 3565 and HB-1-3565.

PREPARED BY

: State Office.

NUMBER OF COPIES

: Original and three copies.

SIGNATURES REQUIRED

: Original signed by authorized USDA official in State Office.

DISTRIBUTION OF COPIES

: Original to Lender attached to original note. Copy to State Office, copy to Finance Office, copy to National office.

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CONDITIONS OF THE GUARANTEE

1. **Loan Servicing**

Lender will be responsible for servicing the entire loan and Lender will remain mortgagee or secured party of record. The Lender may sell the loan servicing rights to a Government approved Lender when the purchasing Lender agrees to be bound by all of the same terms as the selling Lender and this Agreement and the Regulatory Agreement.

2. 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 the Lender participates 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 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 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.

3. 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.

4. The Lender must approve the Borrower's management plan and assure that the Borrower is in compliance with Government standards regarding property management, including the requirements set forth in 7 CFR part 3565, subparts E and F.

5. Lender will receive all payments or principal and interest and any loan subsidy on the account of the entire loan.

6. Protective advances made by the Lender pursuant to Government regulations will be guaranteed against a percentage of the loss as provided in this Agreement.

7. This Agreement will terminate automatically (a) upon full payment of the guaranteed loan; or (b) upon full payment of any loss obligation hereunder; (c) upon return of the Loan Note Guarantee to the Government with a written request for termination of the guarantee; or (d) Lender's failure to pay the annual fee.

8. Any amount due under this Agreement will be determined and paid as provided in 7 CFR part 3565 in effect on the date of this Agreement.

9. 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 the loan will not be paid first nor given any preference or priority over the guaranteed portion.

10. Combination construction and permanent loans. For combination construction and permanent loans, the Agency 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 Agency 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 Agency 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:

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- (i) Surety bonding or performance and payment bonding (the preferred credit enhancement);
- (ii) An irrevocable letter of credit acceptable to the Agency; 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 payment guarantee 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.

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.

11. As a condition of the guarantee, the Lender must ensure that the complex is constructed in accordance with the Fair Housing Amendments Act of 1988(FHAA) and certify that all requirements of the FHAA are met. Furthermore, the Lender must also ensure that the Borrower complies with 7 CFR, part 1901, subpart E, Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973 when interest credit assistance is provided.

12. As a condition of the guarantee, the Lender has certified that the loan amount does not exceed the applicable maximum per dwelling unit limitations.

13. All notices and actions will be sent to the Government through _____ (Agency) for _____ (State) at the following mailing address:

UNITED STATES OF AMERICA

RURAL DEVELOPMENT

By: _____

Title: _____

Date: _____

Assumption Agreement by: _____ Dated: _____
 (Transferee)

Assumption Approved by the Agency _____ Dated: _____
 (new note, if taken, is attached)

Assumption Agreement by: _____ Dated: _____
 (Transferee)

Assumption Approved by the Agency _____ Dated: _____
 (new note, if taken, is attached)

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- 1/ Lender Identifying Number. Generated by Guaranteed Loan System. Insert Number.
- 2/ Interest Rate on Promissory Note. Insert Interest Rate on Promissory Note between Lender and Borrower.
- 3/ (For Interest Credit only) Basis Points. Insert basis points that Lender is charging the project at the closing or the loan. The basis points may differ from the original Notice of Funds Availability response because of the Long Term Monthly Applicable Federal Rate at loan closing.
- 4/ (For Interest Credit only) Interest Credit Rate. Insert Interest Credit Rate minus Interest Credit Basis Points.
- 5/ Interest Credit Loan Amount. Insert Face Amount of Loan to receive interest credit.
- 6/ Face Amount. Insert Amount of the principal loan amount.
- 7/ % of Total Face Amount. Insert % of guarantee.
- 8/ Amt. of Guarantee. Insert product of Face Amt. multiplied by % of Total Face Amt.
- 9/ \$ _____ 100%. Insert result of 6/. This number is the principal loan amt.
- 10/ \$ _____. Insert result of 8/. This number is the guaranteed loan amt.