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(07-07-14)

U.S. DEPARTMENT OF AGRICULTURE
Farm Service Agency

Position 2

**LAND CONTRACT AGREEMENT FOR
PROMPT PAYMENT GUARANTEE**

This Land Contract Agreement for Prompt Payment Guarantee (hereinafter called "Agreement") is made by and among (1) _____ (hereinafter called "Buyer"), whose address is (2) _____, (3) _____ (hereinafter called the "Seller"), whose address is (4) _____, (5) _____ (hereinafter called "Escrow Agent"), whose address is (6) _____

and the United States of America acting through the Farm Service Agency of the U.S. Department of Agriculture (hereinafter called "Agency") whose address is (7) _____.

It is understood and agreed between the Buyer, Seller, Escrow Agent and Agency that this Agreement is entered into for the purpose of the Agency guaranteeing annual amortized installments on the attached Land Contract for the purchase and sale of real estate in (8) _____ County, in the State of (9) _____, dated (10) _____ entered into by the Buyer and Seller ("Contract").

The maximum amount the Agency will pay under this guarantee will be (11) \$ _____, an amount equal to three amortized annual installments of principal and interest on the Contract, and in addition, the Agency guarantees three years of real estate taxes and hazard insurance. Principal and interest payments on the Contract have been amortized over a (12) _____-year period with interest accruing at a maximum of (13) _____ percent per year. Payments on the Contract are due on or before (14) _____ each year.

In consideration of the guarantee of the Land Contract installments by the Agency as provided herein, the Buyer, Seller, Escrow Agent, and the Agency agree to the following:

1. Conditions of Guarantee.

- A. This guarantee is supported by the full faith and credit of the United States and is not contestable except under the circumstance of fraud or misrepresentation of which the Seller has actual knowledge at the execution of the Agreement or which the Seller participates in or condones.
- B. This guarantee and the Agency's obligations will terminate at the earliest of the following circumstances: (1) Full payment of the Contract; (2) Agency payment to the seller of 3 annual installments plus property taxes and insurance, if applicable, if not repaid in full by the buyer. An Agency approved repayment plan will not constitute payment in full until such time as the entire amount due for the Agency approved repayment plan is paid in full; (3) Sale of real estate without guarantee being properly assigned; (4) The seller terminates the Contract for reasons other than monetary defaults; or (5) If for any reason the Contract becomes null and void.

If none of the events mentioned above occur, the guarantee will automatically expire, without notice, 10 years from the effective date of the guarantee.

Initials _____ date _____

2. Payment of Claims.

- A. The Agency will pay to the Seller through the Escrow Agent the delinquent amortized installment, to the extent of its delinquency provided:
 - (1) The Buyer fails to pay an annual amortized installment or a portion of an installment on the Contract or taxes or insurance when due;
 - (2) The Escrow Agent makes written demand on the Buyer for payment of the defaulted amount within 30 days of the missed payment, taxes, or insurance and sends a copy of the demand to the Agency, and to the seller; and
 - (3) The Escrow Agent makes written demand on the Agency within 90 days from the original payment, taxes, or insurance due date for the missed payment in the event the buyer has not made the payment.
- B. Loss claim will not be paid if Seller does not have proper title to the property.
- C. The Agency may deny a loss claim in whole or in part due to negligence that contributed to the loss claim. This could include, but is not limited to:
 - (1) The Escrow Agent failing to seek payment of a missed installment from the buyer within the prescribed timeframe or otherwise does not enforce the terms of the Contract;
 - (2) Losing the collateral to a third party, such as a taxing authority, prior lien holder, etc;
 - (3) Not performing the duties and responsibilities required of the Escrow Agent;
 - (4) The Seller's failure to disclose environmental issues; or
 - (5) Any other action in violation of the Contract or guarantee agreement that does not terminate the guarantee.

3. Covenants and Agreements by Buyer.

- A. The Buyer agrees to remit principal and interest payment amounts specified in the Contract to the Seller through the Escrow Agent by the due date.
- B. The Buyer hereby authorizes and permits the Agency to make routine inspections of the farm acreage.
- C. The Buyer will promptly notify the Agency in writing if the Buyer ceases operating the property, or if the Buyer's name, location, address, or organizational structure changes.
- D. The Buyer will not use the real estate covered by the Contract and this Agreement for a purpose that will contribute to excessive erosion of highly erodible land or for the conversion of wetland to produce or make possible the production of an agricultural commodity, as provided in 7 CFR Part 1940, Subpart G, or any successor regulation.
- E. In the event that the Agency pays a defaulted installment or a portion of a defaulted installment under this Agreement, the Buyer agrees to the following:
 - (1) Buyer promises to pay the Agency the total amount paid by the Agency to the Seller on behalf of the Buyer. Once Buyer is notified by the Agency that it has paid a loss claim, this debt is immediately due and payable to the Agency and accrues interest from the date of advance by the Agency, until paid in full. Interest on the debt will be at the Agency's non-program real property loan interest rate in effect as of the date of the first Agency payment of a loss.
 - (2) If such a repayment plan can be established and approved by the Agency, the terms of the repayment plan cannot exceed seven years. Buyer will grant the Agency the best lien obtainable on all the Buyer's assets, including interest in the real estate being purchased by the Contract. Buyer will

Initials _____ date _____

promptly execute and deliver to the Agency all documents deemed necessary by the Agency to fully evidence and perfect security interests, including but not limited to real estate mortgages, security agreements, financing statements, and promissory notes.

(3) Buyer acknowledges that any payment made under this Agreement by the Agency on behalf of the Buyer shall be immediately due and payable after the Agency notifies the Buyer that a loss claim has been paid to the Seller, and creates a Federal debt owing to the Agency by the Buyer. The Buyer further acknowledges that the Agency may use all remedies available, including offset under the Debt Collection Improvement Act of 1996, to collect the resulting Federal debt from the Buyer.

F. Buyer will not convey or assign the Contract, or any of the Buyer's rights under the Contract, without the prior written consent of the Agency.

4. Covenants and Agreements by Seller.

- A. Payment by the Agency under this Agreement will cure payment default under the Contract.
- B. While this Agreement remains in effect, the Seller will not declare the indebtedness secured by the Contract to be accelerated, nor will the Seller cancel or exercise any right of forfeiture under the Contract, without giving 90-day prior written notice to the Agency.
- C. If the Contract prohibits the Buyer from granting a security interest without the Seller's consent, the Seller hereby consents to the Agency taking a security interest in the Contract if payment has been made by the Agency under this Agreement.
- D. Should the Agency obtain the Buyer's interest in the real estate conveyed in the Contract either by foreclosure or voluntary conveyance, the Seller grants consent to the Agency to transfer the property subject to the Contract if the Contract prohibits such transfer without the Seller's consent.

5. Covenants and Agreements by Escrow Agent.

- A. The Escrow Agent will receive all principal and interest installments due under the Contract and remit them to the Seller. Servicing fees will be deducted in accordance with the Escrow Agent's agreement with the Seller.
- B. The Escrow Agent will maintain a loan accounting and notify the Agency and Seller semiannually, as of March 31 and September 30, of the outstanding balance on the Contract and the status of payment.
- C. The Escrow Agent will notify the Agency and the Seller in the event of default by the Buyer on any Contract installment, taxes, or insurance payment as set forth in paragraphs 2(A)(2) and (3) above.
- D. The Escrow Agent will send a notice of payment due to the Buyer at least 30 days prior to the installment due date.
- E. The Escrow Agent will maintain the original Land Contract Agreement for Prompt Payment Guarantee executed by all parties and will return the Agreement to the Agency upon its termination.

6. General Provisions.

- A. The Buyer and Seller will pay all Escrow Agent charges in accordance with their written agreement with the Escrow Agent.
- B. The terms of this Agreement supercede and modify any terms of the Contract that are inconsistent with this Agreement.
- C. The covenants, agreements, and representations contained in this Agreement shall be binding upon the parties, their successors, executors or administrators, receiver, trustees, or assigns.
- D. Any notice or demand given in accordance with the terms and provisions of or in connection with this Agreement shall be in writing or by facsimile transmission, and may be given and shall be conclusively

Initials _____ date _____

deemed and considered to have been given and received two (2) business days following the deposit thereof, in the U.S. mail, postage prepaid and addressed to any party at its address given at the beginning of this Agreement; provided, however, that actual notice, however given or received, shall always be effective.

- E. This Agreement may not be amended, altered, or modified except in writing and signed by the Buyer, Seller, Escrow Agent, and Agency.
- F. The undersigned signing for the Buyer, Seller, Escrow Agent, and Agency represent and warrant that they are duly authorized and empowered to execute this Agreement for their respective party.
- G. The section headings appearing in this Agreement have been inserted for convenience only and shall be given no substantive meaning or significance whatsoever in construing the terms and provisions of this Agreement.
- H. Notwithstanding the gender actually used, the pronouns used in this Agreement shall be construed as masculine, feminine, or neuter as occasion may require. Buyer and Seller shall be construed as plural as the occasion may require.
- I. This Agreement shall be governed by Federal law. In the event that any provision or clause in this Agreement or the Contract conflicts with the applicable law, such conflict shall not affect other provisions of this Agreement, which can be given effect without the conflicting provision. This Agreement shall be subject to all applicable Federal regulations and any future amendments not inconsistent with the express provisions hereof.

7. Additional Provisions.

LOSS CLAIMS CAN BE REDUCED OR DENIED IF PARTIES FAIL TO ABIDE BY THE COVENANTS AND AGREEMENTS ABOVE.

THIS WRITTEN AGREEMENT REPRESENTS THE FINAL AGREEMENT AMONG THE PARTIES TO THIS AGREEMENT AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.

THERE ARE NO UNWRITTEN AGREEMENTS BETWEEN THE PARTIES TO THIS AGREEMENT.

In witness whereof, the parties hereto have caused this instrument to be duly executed effective as of
(15) _____, 20 ____ .

(16) Buyer's Signature(s) (include all entity members) (17) Date

(18) Seller's Signature (include all entity members) (19) Date

(20) Escrow Agent's Signature (21) Date

(22) Authorized Agency Official's Signature (23) Date

NOTE: The following statement is made in accordance with the Privacy Act of 1974 (5 U.S.C. 552a - as amended). The authority for requesting the information identified on this form is the Consolidated Farm and Rural Development Act, as amended (7 U.S.C. 1921 *et. seq.*). The information will be used to determine eligibility and feasibility for loans and loan guarantees, and servicing of loans and loan guarantees. The information collected on this form may be disclosed to other Federal, State, and local government agencies, Tribal agencies, and nongovernmental entities that have been authorized access to the information by statute or regulation and/or as described in the applicable Routine Uses identified in the System of Records Notice for USDA/FSA-14, Applicant/Borrower. Providing the requested information is voluntary. However, failure to furnish the requested information may result in a denial for loans and loan guarantees, and servicing of loans and loan guarantees. The provisions of criminal and civil fraud, privacy, and other statutes may be applicable to the information provided.

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If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, found online at http://www.ascr.usda.gov/complaint_filing_cust.html, or at any USDA office, or call (866) 632-9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter by mail to U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, by fax (202) 690-7442 or email at program.intake@usda.gov. USDA is an equal opportunity provider and employer.