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FSA-2682

U.S. DEPARTMENT OF AGRICULTURE

Position 2

(07-07-14)

Farm Service Agency

### LAND CONTRACT AGREEMENT FOR STANDARD GUARANTEE

This Land Contract Agreement For Standard Guarantee (hereinafter called "Agreement") is made by and among (1) \_\_\_\_\_ (hereinafter called "Buyer"), whose address is (2) \_\_\_\_\_, (3) \_\_\_\_\_ (hereinafter called "Seller"), whose address is (4) \_\_\_\_\_, (5) \_\_\_\_\_ (hereinafter called "Servicing 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, Servicing Agent and Agency that this Agreement is entered into for the purpose of the Agency guaranteeing 90 percent of the outstanding principal on the attached Land Contract (hereinafter called "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.

In consideration of the guarantee of the principal in the attached Contract by the Agency as provided herein, the Buyer, Seller, Servicing 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 obligation will terminate at the earliest of:

- (1) full payment of the Contract;
- (2) the Agency makes payment of a loss claim;
- (3) sale of real estate without guarantee being properly assigned;
- (4) the Seller terminates the Contract for reasons other than monetary default;
- (5) if for any reason the Contract becomes null and void; or
- (6) 10 years from the effective date of the guarantee.

#### 2. Payment of Claims.

The Agency will pay to the Seller through the Servicing Agent the amount of the remaining principal balance on the loan after liquidation according to Agency regulations, or the loss amount calculated in accordance with the appraisal performed by the Agency provided:

A. The Buyer fails to pay an annual amortized installment or a portion of an installment on the Contract;

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- B. The Servicing Agent makes written demand on the Buyer for payment of the defaulted amount within 30 days of the missed payment and sends a copy of the demand letter to the Agency and the Seller;
- C. The Servicing Agent must immediately inform the Agency which option the seller has chosen for establishing the amount of the loss, in the event the Buyer does not make the payment within 60 days of the demand letter.
- D. 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 servicing 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 servicing 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 Servicing Agent by the due date.
- B. The Buyer hereby authorizes and permits the Servicing Agent to make routine inspections of the farm each year.
- C. The Buyer will promptly notify the Agency in writing if the Buyer ceases to operate the property, or if the Buyer's name, location, address, or organizational structure changes.
- D. The Buyer will not employ farming practices 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. The Buyer will supply the Servicing Agent a current balance sheet, income statement, and cash flow budget annually.
- F. In the event that the Agency pays any loss claim, 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 the 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 claim.
  - (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. Buyer will 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

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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.

- G. 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 loss 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.
- E. If the Seller reacquires the property through liquidation, the loss claim amount will be based on the appraisal method.
- F. If the Seller chooses to receive a loss claim based on an appraisal rather than liquidation, the Agency will complete an appraisal on the real estate, and the loss claim amount will be based on the difference between the appraised value at the time the loss is calculated and the unpaid principal balance of the Contract at the time. The Seller will give the Agency a lien on the security property in the amount of the loss claim payment. If the property sells within five years from the date of the loss payment for an amount greater than the appraised value used to establish the loss claim, the Seller must repay the difference, up to the amount of the loss claim. For purposes of determining the amount of recapture, the market value of the property may be reduced by the contributory value of certain capital improvements made to the property in the time period from the loss claim to final disposition. If the property is not sold within five years from the date of the loss payment, the mortgage will be released and the Seller will have no further obligation to the Agency.

**5. Covenants and Agreements by Servicing Agent.**

- A. The Servicing 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 Servicing Agent's agreement with the Seller.
- B. The Servicing 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 Servicing 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(B) and (C) above.
- D. The Servicing Agent will send a notice of payment due to the Buyer at least 30 days prior to the installment due date.
- E. The Servicing Agent will maintain the original Land Contract Agreement for Standard Guarantee executed by all parties and will return the Agreement to the Agency upon its termination.

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- F. The Servicing Agent will perform a physical inspection of the collateral on an annual basis, and provide an annual inspection report to the Agency.
- G. The Servicing Agent will obtain from the Buyer a current balance sheet, income statement, cash flow budget, and any additional information needed, perform and provide the Agency an analysis of the Buyer's financial condition on an annual basis.
- H. In the case where a default is not cured in the required timeframe and the Seller chooses the liquidation option, liquidate the real estate.

**6. General Provisions.**

- A. The Buyer and Seller will pay all Servicing Agent charges in accordance with their written agreement with the Servicing 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 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, Servicing Agent, and Agency.
- F. The undersigned signing for the Buyer, Seller, Servicing 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.

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## 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

(11) \_\_\_\_\_ .

\_\_\_\_\_  
(12) Buyer's Signature(s) (include all entity members)

\_\_\_\_\_  
(13) Date

\_\_\_\_\_  
(14) Seller's Signature (include all entity members)

\_\_\_\_\_  
(15) Date

\_\_\_\_\_  
(16) Servicing Agent's Signature

\_\_\_\_\_  
(17) Date

\_\_\_\_\_  
(18) Authorized Agency Official's Signature

\_\_\_\_\_  
(19) 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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