

PART 2000 - GENERAL

Subpart TTT - Memorandum of Understanding between the United States
Department of Agriculture and Fannie Mae

§ 2000.3601 General.

The United States Department of Agriculture (the "Secretary") has entered into a Memorandum of Understanding (MOU) with the Federal National Mortgage Association (Fannie Mae). The Secretary, through the Rural Housing Service, administers the Guaranteed Rural Rental Housing Program (GRRHP) pursuant to section 538 of the Housing Act of 1949 under which the Secretary partially guarantees the obligations of borrowers under mortgages financing multi-family housing located in rural areas. Fannie Mae was created by Congress for the purposes, among others, of providing stability and ongoing assistance to the secondary market in residential mortgages. In pursuit of those purposes, Fannie Mae is in the business of purchasing mortgages on multi-family properties. To facilitate Fannie Mae purchases of mortgages guaranteed by the Secretary under the GRRHP, the parties have set forth in an MOU their understanding as to certain issues under the statute, regulations, and handbook, and their understanding as to certain other matters.

§ 2000.3602 Implementation.

The MOU is attached as Exhibit A of this subpart.

§§ 2000.3603 - 2000.3650 [Reserved]

Attachment: Exhibit A

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DISTRUBUTION: WSAL

ADMINISTRATION
GENERAL

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING is entered into as of the 17th day of November, 2004, by and between the UNITED STATES DEPARTMENT OF AGRICULTURE (the "Secretary") and FANNIE MAE, a corporation organized under the laws of the United States ("Fannie Mae").

PRELIMINARY STATEMENT

The Secretary administers a Guaranteed Rural Rental Housing Program (the "Program") pursuant to section 538 of the Housing Act of 1949 as amended by the Housing Opportunity Program Extension Act of 1996, 42 U.S.C. section 1490p-2 ("Section 538" or the "Statute"), under which the Secretary partially guarantees the obligations of borrowers under mortgages financing multifamily housing located in rural areas. The Secretary has issued administrative guidance regarding the Program in the form of regulations at 7 C.F.R. part 3565 (the "Regulations") and the Guaranteed Rural Rental Housing Program Origination and Servicing Handbook (the "Handbook").

Fannie Mae was created by Congress for the purpose, among others, of providing stability in and ongoing assistance for the secondary market in residential mortgages. In pursuit of those purposes, Fannie Mae is in the business of, among other things, purchasing mortgages on multifamily properties.

In order to make it possible for Fannie Mae to purchase mortgages guaranteed by the Secretary under the Program, the parties wish to set forth in this Memorandum of Understanding their understanding as to certain issues arising under the Statute, Regulations, and Handbook, and their understanding as to certain other matters.

NOW, THEREFORE, in consideration of the mutual promises set forth below, the parties agree as follows when Fannie Mae has an interest in the RHS guaranteed loan:

AGREEMENT

1) Definitions.

The following terms shall have the following meanings when used in this Memorandum of Understanding:

- a) "Program," "section 538," "Regulations," and "Handbook" shall have the meanings assigned to them in the above Preliminary Statement.

- b) "Fannie Mae Guides" shall mean the Fannie Mae Delegated Underwriting and Servicing Guide applicable to the Fannie Mae loan program or product lines under which the Guaranteed Mortgage was originated and sold to Fannie Mae, including the Fannie Mae Delegated Underwriting and Servicing Guide (the "DUS Guide"), the Fannie Mae Negotiated Transactions Guide (the "NT Guide"), and the Fannie Mae 3MaxExpress Streamlined Mortgage Manual (the "3Max Manual"), as each may be amended from time to time.
- c) "Claim Denial Standards" shall have the meaning assigned to it in section 9(b) of this MOU.
- d) "Foreclosure" shall mean the judicial or non-judicial foreclosure of a mortgage, deed of trust, or deed to secure debt, or the acceptance of a deed in lieu of foreclosure by the holder of a mortgage, deed of trust, or deed to secure debt or by an affiliate of that holder.
- e) "Guaranteed Mortgage" means a mortgage that has been guaranteed by the Secretary pursuant to the Program.
- f) "Lender's Agreement" means the Lender's Agreement (present Form RD 3565-3, Rev. 6-99) entered into or to be entered into by the lender originating the Guaranteed Mortgage and the Secretary.
- g) "Loan Note Guarantee" refers to the form of Loan Note Guarantee that the Secretary requires be executed to memorialize each guarantee of a Guaranteed Mortgage, present Form RD 3565-4 (Rev. 6-99). References in this Memorandum of Understanding to specific provisions of the "Loan Note Guaranty" shall be construed as referring to comparable provisions of any other form that the Secretary in the future may employ for the same purposes.
- h) "RHS-Approved Lender" means a lender which, under the Statute, Regulations and the Handbook, is both eligible to participate in the Program and approved by the Secretary to do so. Any RHS-Approved Lender may be designated by Fannie Mae under section 6 of this Memorandum of Understanding to service a Guaranteed Mortgage held by Fannie Mae.

2) **Purposes.**

The Secretary has set forth in the Federal Register, Vol. 68, No. 111, dated June 10, 2003, a notice to the public of proposed changes to 7 CFR Part 3565. As of the date hereof, such changes have not been finalized.

This Memorandum of Understanding is intended to clarify the meaning of certain provisions of the Loan Note Guarantee, the Lender's Agreement, the Regulations and the Handbook, and to clarify how those provisions will apply to Guaranteed Mortgages that Fannie Mae chooses to purchase.

3) **Lender Approval.**

- a) Any lender that has been designated by Fannie Mae as an approved rural housing multifamily seller/servicer and, in such capacity, is authorized by Fannie Mae to sell to Fannie Mae multifamily mortgages secured by rural multifamily housing automatically shall be an RHS-Approved Lender, unless RHS has notified Fannie Mae that such lender is not acceptable to RHS.
- b) The Secretary's execution of a Loan Note Guarantee with respect to a mortgage shall be conclusive evidence that the lender originating such mortgage is an RHS-Approved Lender.

4) **Transfer of Guaranteed Mortgages to Fannie Mae**

It is Fannie Mae's general practice to require that a lender from whom it purchases a mortgage make representations and warranties to Fannie Mae concerning the characteristics of the mortgage, the borrower and the property intended to secure the loan. Fannie Mae has the contractual right to require the lender to repurchase the mortgage if a breach of any representation or warranty later is identified. Recognizing that the representations and warranties and the repurchase remedy are indispensable to Fannie Mae's management of risk, the Secretary agrees that if Fannie Mae demands that a lender repurchase a Guaranteed Mortgage, Fannie Mae may proceed with the repurchase transaction without any prior transaction-specific approval by the Secretary, so long as the repurchasing lender is still an RHS-Approved Lender at the time of the repurchase.. Within thirty (30) business days after completion of any such repurchase, Fannie Mae shall notify the Secretary that the repurchase has taken place. Nothing in this section shall be deemed to limit Fannie Mae's remedies as against a lender nor require that Fannie Mae exercise any remedies as against a lender.

5) **Origination of Guaranteed Mortgages to be Purchased by Fannie Mae.**

- a) The Secretary hereby confirms its understanding and intention that, upon Foreclosure of a Guaranteed Mortgage, the applicable Regulatory Agreement's requirements (see 7 C.F.R. 3565.351(a)) as to both (1) reservation of units for occupancy by low and moderate income families, and (2) rents that may be charged for units will automatically lapse. After Foreclosure of a Guaranteed Mortgage owned by Fannie Mae, the Secretary shall not seek to enforce any such provision of the applicable Regulatory Agreement.
- b) The Secretary hereby approves the Fannie Mae standard forms of mortgage note and mortgage, deed of trust, or deed to secure debt, as appropriate to the applicable state where the property securing each Guaranteed Mortgage is located (together, the "Fannie Mae Standard Documents") for use in connection with Guaranteed Mortgages intended to be sold to Fannie Mae. There are versions of the Fannie Mae Standard Documents for every state. Specimens of the Fannie Mae Standard Documents may be obtained by accessing the efanniemae.com/multifamily website. The Fannie Mae Standard Documents may be modified from time to time by Fannie Mae and any such modification shall be deemed acceptable to the Secretary. Without limiting the generality of the foregoing, the Secretary agrees that the exceptions to exculpation of the borrower set forth in Section 9 of the Fannie Mae standard form mortgage note are acceptable for all purposes, including without limitation for purposes of Chapter 7 of the Handbook.

6) **Servicing.**

- a) The RHS-Approved Lender of each Guaranteed Mortgage purchased by Fannie Mae will be an approved Fannie Mae Multifamily seller/servicer or other RHS-Approved Lender. Fannie Mae reserves the right to assign servicing to a party other than the originating lender provided that such substitute servicer is an approved Fannie Mae Multifamily seller/service and RHS-Approved Lender. Servicing shall be performed by the RHS-Approved Lender in accordance with the requirements of the applicable Fannie Mae Guide governing the product line under which Fannie Mae purchased the loan. Servicing in accordance with the governing Fannie Mae Guide for the loan type will be deemed to satisfy the requirement of section IV of the Lender's Agreement that a servicing plan be designed and implemented. Notice by Fannie Mae or the originating RHS-Approved Lender to the Secretary that Fannie Mae has purchased a Guaranteed Mortgage shall be deemed notice to the Secretary that the Guaranteed Mortgage has been transferred to Fannie Mae.

- b) The Secretary may deal with and rely upon the RHS-Approved Lender of each Guaranteed Mortgage with respect to all servicing matters prior to the Secretary's receipt from the RHS-Approved Lender or Fannie Mae of notice that a default has occurred under the Guaranteed Mortgage. Prior to the Secretary's receipt of such notice, any notice with respect to a Guaranteed Mortgage that is given by the Secretary to the applicable RHS-Approved Lender shall be deemed to have been given to Fannie Mae. Notwithstanding the foregoing, the Secretary shall give actual notice to both Fannie Mae and the RHS-Approved Lender on all issues pertaining to the adequacy of servicing performance and notice to the RHS-Approved Lender alone will not be deemed to be notice to Fannie Mae on such issues. Without limiting the generality of the foregoing, with respect to each Guaranteed Mortgage and the Lender's Agreement:
- (1) Fannie Mae will pay the annual RHS fee to RHS.
 - (2) The RHS-Approved Lender will prepare and file with the Secretary all required reports.
 - (3) The RHS-Approved Lender will perform all required physical inspections of the property securing the Guaranteed Mortgage and provide the Secretary and Fannie Mae with all required reports of such inspections.
 - (4) The RHS-Approved Lender will collect and process all monthly payments of principal and interest and all deposits to escrows for taxes, insurance, and other expenses for which Fannie Mae requires such escrows.
 - (5) The RHS-Approved Lender will pay all taxes, insurance premiums, and other expenses for which escrows are maintained.
 - (6) The RHS-Approved Lender will approve borrower requests for release of funds from reserve and escrow accounts, as referred to in section V(C)(2)(e) of the Lender's Agreement. Fannie Mae servicing guidelines will determine the extent to which the RHS-Approved Lender must obtain Fannie Mae's consent before taking action or, where authority to make such decisions is delegated by Fannie Mae to the RHS-Approved Lender, the standards the RHS-Approved Lender must apply in making such decisions. In no case will Fannie Mae preclude the RHS-Approved Lender's compliance with Program requirements.

- (7) The RHS-Approved Lender will obtain from the borrower and forward to the Secretary the financial statements of the borrower and any guarantor that are required by section V(C) (5) and (9) of the Lender's Agreement using Fannie Mae Form 4254 Multifamily Financial Analysis of Operations Report (or such successor form as Fannie Mae will require for general use).
 - (8) The RHS-Approved Lender will file the quarterly loan status reports with the Secretary as required by section VI(C) (10) of the Lender's Agreement and section 7.10 of the Handbook.
 - (9) If a default occurs, either the RHS-Approved Lender or Fannie Mae may file a default notice with the Secretary as described in section VI(A) of the Lender's Agreement, as determined by Fannie Mae.
- c) The inspection requirements contained in the Fannie Mae Guides, including any changes that Fannie Mae may make in those requirements in the future, are accepted by the Secretary as the standards for physical inspections required by Chapter 7 of the Handbook.
- d) Fannie Mae and its RHS-Approved Lenders share responsibility for negotiating workout arrangements and carrying out Foreclosures. As a result, upon receipt of notice from Fannie Mae or the RHS-Approved Lender that a default has occurred under a Guaranteed Mortgage, the Secretary shall deal with the entity that provided the notice of default with respect to that Guaranteed Mortgage. For notices provided by Fannie Mae, until Fannie Mae identifies for the Secretary the individual employee of Fannie Mae who will be responsible for special servicing of the Guaranteed Mortgage, the Secretary may direct any communications to the Fannie Mae notice address under section 13 hereof. The special servicing and liquidation requirements of the governing Fannie Mae Guide shall be deemed to constitute the special servicing plan required by section VI(C) of the Lender's Agreement and any liquidation plan required by section VII(A) of the Lender's Agreement and section 10.3 of the Handbook.
- e) Upon curing of any default, unless Fannie Mae notifies the Secretary to the contrary, the RHS-Approved Lender will resume servicing of the affected Guaranteed Mortgage.

7) **Servicing Requirements.**

- a) The Handbook requires the RHS-Approved Lender to prepare an annual risk assessment. The RHS-Approved Lender of each Guaranteed Mortgage will prepare the annual risk assessments using Fannie Mae Form 4254 Multifamily Financial Analysis of Operations Report (or such successor form as Fannie Mae will require for general use). Submission of such report will be deemed to satisfy the requirements for the annual risk assessment.
- b) The Secretary acknowledges that the rate at which a Guaranteed Mortgage bears interest may include the annual fee payable to RHS.
- c) A Guaranteed Mortgage with respect to which RHS has agreed to pay interest credit subsidies may provide for the benefit of those subsidies to be passed through to the borrower by means of the following mechanism:
 - (1) At origination of the Guaranteed Mortgage, the borrower will deposit in escrow an amount equal to the first 13 months' interest credit subsidy.
 - (2) Each month's installment of principal and interest payable by the borrower will be reduced by the interest credit subsidy projected to be payable by RHS with respect to that installment. The RHS-Approved Lender will withdraw the amount of the reduction from the escrow and remit it to Fannie Mae with the payment received from the borrower, so that the amount received by Fannie Mae is the same as if the borrower had paid the full scheduled installment due under the Note.
 - (3) When the annual interest credit subsidy payment is received from RHS each January, the RHS-Approved Lender will use it to replenish the escrow.
 - (4) Upon retirement of the Guaranteed Mortgage, any remaining balance in the escrow will be paid to the borrower.
- d) Compliance with Fannie Mae's insurance requirements, as set forth in the applicable Fannie Mae Guide, will be deemed compliance with the Secretary's requirements for insurance of properties securing Guaranteed Mortgages, including but not limited to Chapter 9 of the Handbook and section V(C) (3) of the Lender's Agreement.

e) In connection with the following requirements:

- Section 3565.351 of the Regulations requires that the servicer of a Guaranteed Mortgage "certify annually to the Agency that the borrower is in compliance with program requirements with respect to all aspects of project management."
- Condition 4 of the Loan Note Guarantee requires that the "Lender" RHS-Approved Lender of a Guaranteed Mortgage "assure that the Borrower is in compliance with Government Standards regarding property management..."
- Section 3565.351(d)(5) of the Regulations requires that the servicer of a Guaranteed Mortgage "certify that the property is in good financial and physical condition" prior to any distribution of surplus cash to the owner of the property.
- Section 3565.402(h) of the Regulations and section V(C)(2)(c) of the Lender's Agreement require that the servicer of a Guaranteed Mortgage "ensure that the property securing the guaranteed loan remains in good physical and financial condition."

In making these assurances and certifications, the RHS Approved Lender or Servicer, as applicable, must at least have performed the following tasks and, so long as the RHS Approved Lender or Servicer has made the above certifications, the RHS-Approved Lender will be deemed to have complied with all of the foregoing requirements, and shall be deemed to have been diligent in investigating the physical and financial condition of a property:

- (1) Completed an annual property inspection that includes, but is not limited to, inspection of:
 - i) a sample of the occupied units;
 - ii) a sample of the vacant units;
 - iii) a representative sample of unit types; and
 - iv) if the property has commercial space, each commercial space.

- (2) Analyzed the rent roll and income and expense data, estimated the property's net operating income (NOI), and computed the property's debt coverage ratio (DCR).
 - (3) Analyzed the physical condition and management of the property.
 - (4) Performed an assessment of the property's rental market, including but not limited to speaking to the property management staff about competing or comparable properties; a drive-through inspection of the property's market area; and calling or visiting comparable properties.
 - (5) Examined the Borrower's payment record.
 - (6) Reviewed the adequacy of insurance coverage.
- f) In connection with the following requirements:
- Section 3565.351 of the Regulations requires that the servicer of a Guaranteed Mortgage "certify annually to the Agency that the Borrower is in compliance with the Regulatory Agreement..."
 - Section 3565.351(d)(5) of the Regulations requires that the servicer of a Guaranteed Mortgage "certify that the property is...in compliance with the Regulatory Agreement" prior to any distribution of surplus cash to the owner of the property.

In making these certifications, the RHS Approved Lender or Servicer, as applicable, must at least annually evaluate Regulatory Agreement compliance, and assuming such annual evaluation has not revealed any instances of noncompliance that have not been cured as of the date of the certification, any instance of noncompliance that was not revealed by the following steps but is subsequently discovered to have existed shall not be deemed to render inaccurate or incomplete any certification given by the RHS-Approved Lender:

- (1) Fannie Mae will require that the RHS-Approved Lender or Servicer, as applicable, to obtain a certification from the borrower that, in accordance with section 3565.203 of the Regulations:

- i) The rent for each unit, including tenant-paid utilities, does not exceed 30% of 115% of area median income, adjusted for family size, and
 - ii) The average per-unit rent for the property does not exceed 30% of 100% of area median income, adjusted for family size.
 - (2) If the borrower fails to provide such a borrower certification, the RHS-Approved Lender or Servicer, as applicable, will give the borrower notice that if it fails to provide such certification within 30 days it will be deemed to be in default. If the borrower still fails to provide such a certification, the RHS-Approved Lender or Servicer, as applicable, will inform the Secretary, recommend a course of enforcement action, and request instructions.
 - (3) Fannie Mae will require the RHS-Approved Lender or Servicer, as applicable, to certify annually to Fannie Mae that it has obtained the certification described in subparagraph (i) above, that the certification has revealed no breaches of the Regulatory Agreement that remain uncured, and that the RHS-Approved Lender has no knowledge of any uncured breach of the Regulatory Agreement.
- g) Section 3565.353 of the Regulations requires that the servicer of a Guaranteed Mortgage "ensure that the lender and the borrower are in compliance with the Affirmative Fair Housing Marketing Plan." RHS-Approved Lender will be deemed to have complied with section 3565.353 with respect to a borrower's compliance if RHS-Approved Lender of the Guaranteed Mortgage:
- (1) Annually obtains a certification of compliance executed by the borrower indicating that the project meets any and all requirements as described in the Affirmative Fair Housing Marketing Plan;
 - (2) If the borrower fails to provide such a borrower certification, gives the borrower notice that if it fails to provide such certifications within 30 days it will be deemed to be in default; and

- (3) If the borrower still fails to provide such a certification, the RHS-Approved Lender informs the Secretary, recommends a course of enforcement action, and requests instructions.

- h) Section 3565.354 of the Regulations requires that the servicer of a Guaranteed Mortgage "ensure that the borrower is in compliance with the applicable fair housing laws in the selection of applicants for housing and ongoing management." RHS-Approved Lender will be deemed to have complied with section 3565.354 if the RHS-Approved Lender of the Guaranteed Mortgage:
 - (1) Annually obtains a certification of compliance executed by the borrower indicating that the property and the management of the property have been and are in compliance with any and all applicable state, federal and local housing laws;
 - (2) If the borrower fails to provide such a certification, gives the borrower notice that if it fails to provide such a certification within 30 days it will be deemed to be in default; and
 - (3) If the borrower still fails to provide such a certification, informs the Secretary, the RHS-Approved Lender recommends a course of enforcement action and requests instructions.

- i) Section 3565.403 of the Regulations requires that during any period of "special servicing" the servicer of a Guaranteed Mortgage "make a special effort to ensure that maintenance of the property meets Agency requirements and the tenants' rights are protected." The Secretary agrees that if the RHS-Approved Lender of the Guaranteed Mortgage has completed an annual physical inspection of the property and an analysis of the property's physical condition and management in accordance with the requirements for property assessments and financial analyses of operations set forth in Chapter 7 of the Handbook governing servicing of the loan and, if a default is known to have occurred and be continuing, RHS-Approved Lender has taken or is taking the steps listed in section 8(b) below, that the RHS-Approved Lender will be deemed to have met this requirement.

- j) Chapter 5 of the Handbook requires that the servicer of a Guaranteed Mortgage "ensure" compliance with section 306 of the Clean Air Act and 40 CFR Part 15. RHS-Approved Lender will be deemed to have complied with Chapter 5 if the RHS-Approved Lender of the Guaranteed Mortgage:
- (1) Obtains a certification of compliance executed by the borrower that the property is in compliance with section 306 of the Clean Air Act and 40 CFR Part15;
 - (2) If the borrower fails to provide such a certification, gives the borrower notice that if it fails to provide such a certification within 30 days it will be deemed to be in default; and
 - (3) If the borrower still fails to provide such a certification, informs the Secretary, recommends a course of enforcement action and requests instructions.
- k) Fannie Mae and the RHS-Approved Lender will obtain the Secretary's approval before consenting to any transfer of ownership of the property that involves a transfer of title to the property or a transfer of all ownership interests in the borrower entity, which is the intended meaning of the reference in Chapter 7 of the Handbook to "transfers that involve the entire ownership entity." Fannie Mae may consent to other transfers, including but not limited to any transfer of less than all ownership interests in the borrower entity and any grant by the borrower of a subordinate lien on the property, without seeking the approval of or consulting with the Secretary.

8) Servicing of Defaults.

- a) Section 3565.451 of the Regulations provides that after a borrower default and before filing a guarantee claim, the "Lender" RHS-Approved Lender of a Guaranteed Mortgage must "make every reasonable and prudent effort to resolve the default." RHS-Approved Lender will be deemed to have made such efforts if the RHS-Approved Lender of the Guaranteed Mortgage has done each of the following:
- (1) Evaluated the payment history of the Mortgage.
 - (2) Evaluated the reasons for the default.

- (3) Discussed with the borrower or an authorized borrower representative the reasons for the default and steps necessary to cure the default.
- (4) If practicable, performed or had the RHS-Approved Lender perform an on-site inspection to determine the condition of the property.
- (5) Sent the borrower a letter demanding that the default be cured.
- (6) Pursued legal remedies while attempting to negotiate with the borrower an acceptable default resolution strategy.
- (7) Used its best efforts to develop a payment plan that will enable the borrower to cure the default over a specified term;
- (8) Analyzed the economics of the property to determine if a temporary modification of loan terms would enable the borrower to both cure the default and meet its future financial obligations;
- (9) Identified any improvements in management, any capital improvements to the property, and any other business strategies which would aid the borrower in operating the property at a level adequate to meet its financial obligations;
- (10) If efforts to cause the borrower to resolve the default have been unsuccessful or are deemed by Fannie Mae to be unlikely to succeed, petitioned a court for a receiver to operate the real property, if such a step is consistent with foreclosure practice in the jurisdiction where the property is located;
- (11) Pursue Foreclosure if other resolution strategies proved unsuccessful or were deemed by Fannie Mae to be unlikely to succeed.

- b) Section 3565.403 of the Regulations authorizes the Secretary, as a condition to approval of a workout arrangement with respect to a Guaranteed Mortgage; to require "additional resources from the Lender" that holds the Guaranteed Mortgage. The parties agree that "resources" in section 3565.403 is not intended to mean any financial contribution by Fannie Mae or the RHS-Approved Lender to the payment of the Guaranteed Mortgage or to the improvement, maintenance or operations of the property.

- c) If Fannie Mae acquires title to a property by Foreclosure, Fannie Mae shall liquidate the property in a commercially reasonable manner, maximizing the proceeds to the extent possible, in accordance with the procedures set forth in the governing Fannie Mae Guide for the loan.

- d) Section 3565.453(c) of the Regulations provides that the holder of a Guaranteed Mortgage that is in default must "make every effort to liquidate the property in a manner that will yield the highest market value consistent with the protections afforded to tenants contained in 7 CFR part 1944..." Fannie Mae will be deemed to have made such efforts if it has done all of the following:
 - (1) Established through its internal valuation process a market value for the property prior to the foreclosure sale.
 - (2) Obtained one or more broker price opinions from area real estate brokers who have had physical access to the property and have had access to current copies of rent rolls and property operating statements.
 - (3) Selected a qualified real estate broker to market and sell the property.
 - (4) Entered into a listing agreement with the selected broker.
 - (5) Evaluated each prospective purchaser to confirm that the purchaser has a satisfactory track record as an owner and manager of multifamily properties and has sufficient financial resources to close a purchase.

9) **Guarantee Claims.**

- a) The Secretary understands that, in order for Fannie Mae to purchase Guaranteed Mortgages, the Secretary's guarantee must be incontestable to an extent comparable to the incontestability of contracts of full multifamily mortgage insurance entered into by the Secretary of Housing and Urban Development under the National Housing Act.
- b) Condition 2 of RHS Form RD-3565-4, Loan Note Guarantee, reads as follows:

This agreement constitutes an obligation supported by full faith and credit of the United States and incontestable except for fraud or misrepresentation of which the Lender has actual knowledge at the time it becomes such Lender or which the Lender participates in or condones...In addition, this Agreement will be unenforceable by the Lender to the extent any loss is occasioned by violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which the Government acquires knowledge of the foregoing. Any losses occasioned will be unenforceable by the Lender to the extent that loan funds are used for purposes other than those approved by the Government. See Form RD 3565-2, Conditional Commitment: Negligent servicing is defined as the failure to perform those services which a reasonably prudent lender would perform in servicing its own loan portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act, but also not acting in a timely manner or acting contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity or until a final loss is paid.

The parties agree that the foregoing is an exhaustive and exclusive list of the standards the violation of which may be cited by the Secretary as grounds for the Secretary's refusal to make payment under the guarantee with respect to a Loss that has in fact occurred and has been calculated in accordance with the Regulations, the Handbook, and the Lender's Agreement. The

grounds in the foregoing list are referred to in this Memorandum of Understanding as the "Claim Denial Standards." A breach by the RHS-Approved Lender of the Regulations, the Handbook, or the Lender's Agreement may be a basis upon which the Secretary may bar the RHS-Approved Lender from receiving further Loan Note Guarantees, but will not constitute grounds upon which the Secretary may cancel a guarantee or refuse to make a payment unless the breach also constitutes a breach of the Claim Denial Standards. Fannie Mae shall not be liable for the actions of the RHS-Approved Lender, including negligence, fraud, abuse, misrepresentation or misuse of funds.

- c) Without limiting the generality of Subsection b), various sections of the Loan Note Guarantee, the Lender's Agreement, the Handbook and the Regulations call for the RHS-Approved Lender to "ensure" or "assure" certain events or conditions. The Secretary agrees that the words "ensure" or "assure" are not intended to constitute an absolute guarantee by Fannie Mae or the RHS-Approved Lender that those events or conditions will occur, and that the failure of such an event or condition to occur with respect to a Guaranteed Mortgage will not be grounds upon which the Secretary may refuse to make payment under the related guarantee, unless the failure of the event or condition to occur also constitutes or results from the occurrence of one or more of the Claim Denial Standards.

- d) The rights of the Secretary to cancel, modify or reduce a Loan Note Guarantee based on the occurrence of one or more of the Claim Denial Standards above may be exercised only if (A) the Secretary has given Fannie Mae and the RHS-Approved Lender notice of the acts or omissions that it considers to constitute such grounds, specifying the applicable provisions of the Statute, Handbook, Regulations, Loan Note Guarantee, or Lender's Agreement (B) the RHS-Approved Lender has not cured the acts or omissions within 90 days after such notice, and (C) 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 any such acts or omissions cannot be cured within a 90-day period, the 90-day cure period automatically shall be extended for as long as is necessary to cure the act or omissions, but not to exceed an additional 270 days, so long as the RHS-Approved Lender commences curative activities during the 90-day period and diligently pursues such activities thereafter.

- e) The Secretary has the authority under Regulations section 3565.57 to modify, extend or reinstate a Loan Note Guarantee in order to protect its interest or further the objectives of the Program. The Secretary interprets section 3565.57 as intended to permit a unilateral modification by the Secretary that has the effect of reducing the amount of interest or the expenses that are covered by a Loan Note Guarantee only if the affected RHS-Approved Lender has committed an act or omission that would permit the Secretary to cancel the Loan Note Guarantee or refuse to make full payment under the Loan Note Guarantee. In the case of Fannie Mae, in accordance with this Memorandum of Understanding, only a violation of the Claim Denial Standards would permit such cancellation or refusal and, therefore, only a violation of the Claim Denial Standards will permit a unilateral modification having such an effect on a Loan Note Guarantee held by Fannie Mae.
- f) The Secretary shall remit all claim payments to Fannie Mae rather than to the RHS-Approved Lender.

10) Interest Credit.

If Fannie Mae holds a Guaranteed Mortgage with respect to which interest credits are payable by the Secretary and the Secretary cancels such credits due to a borrower default, as provided in Chapter 4 of the Handbook, only interest credits related to interest accruing after the date of the Secretary's notice to Fannie Mae or the RHS-Approved Lender of such cancellation will be deemed unearned. Such a cancellation will not deprive Fannie Mae of the right to receive interest credits with respect to interest accrued prior to the cancellation, even if, because interest credits are paid less often than monthly, the credits with respect to such accrued interest are not payable to Fannie Mae until after the cancellation.

11) No Obligation to Purchase.

Nothing in this Memorandum of Understanding shall obligate Fannie Mae to purchase any Guaranteed Mortgage. The sole purpose of this Memorandum of Understanding is to establish and clarify the terms and conditions of the Secretary's guarantee of, and the Secretary's requirements with regard to servicing of, any Guaranteed Mortgage that Fannie Mae in its sole discretion elects to purchase.

12) Conflicts.

In the event of any conflict between this Memorandum of Understanding and the terms of the Lender's Agreement, the Handbook or the Loan Note Guarantee applicable to any Guaranteed Mortgage, this Memorandum of Understanding shall govern. This Memorandum of Understanding contains various RHS interpretations of the Regulations. If Fannie Mae complies with the interpretation of Regulation that is set forth in this Memorandum of Understanding, Fannie Mae shall be deemed in compliance with that Regulation.

13) Notices.

a) All notices under or concerning this Memorandum of Understanding shall be in writing. Each such notice shall be deemed given when received by the addressee or delivered to Federal Express, Airborne, or a comparable overnight courier service, addressed as provided in this section and with charges for next business day delivery paid.

b) Notices intended for the Secretary shall be addressed to:

United States Department of Agriculture
Administrator, Rural Housing Service, Room 5014, STOP 0701
1400 Independence Avenue, SW
Washington, DC 20250

c) Notices intended for Fannie Mae shall be addressed to:

Fannie Mae
3900 Wisconsin Avenue, N.W.
Washington, DC 20016

Attention: Vice President of Multifamily Debt Asset Management

d) Either party may change the address to which notices intended for that party are to be directed by means of notice given to the other party in accordance with this section.

14) Termination.

Either party may terminate this Memorandum of Understanding by giving at least 90 days' advance written notice to the other party, specifying the effective date of the termination. Despite any such termination this Memorandum of Understanding shall apply to Guaranteed Mortgages purchased by Fannie Mae after the effective date of the termination pursuant to commitments issued or purchase agreements entered into by Fannie Mae before the effective date of the termination, and this Memorandum of Understanding shall continue to apply to Guaranteed Mortgages purchased by Fannie Mae before the effective date of the termination.

15) Prospective Changes in Standards.

In the event the Secretary intends to modify current standards relating to the standards cited in this Memorandum of Understanding, the Secretary will provide to Fannie Mae in writing the content of the new standards that are intended to modify standards cited herein. In such event, any new standard so adopted will apply, except as noted below in the next sentence, to Guaranteed Mortgages thereafter purchased by Fannie Mae. Notwithstanding the foregoing, the provisions contained in this Memorandum of Understanding will continue to apply, in lieu of the new standard, to Guaranteed Mortgages (i) owned by Fannie Mae on the date Fannie Mae receives the notice or (ii) purchased by Fannie Mae after such date pursuant to commitments issued or purchase agreements entered into by Fannie Mae before such date.

16) Miscellaneous.

- a) The captions assigned to provisions of this Memorandum of Understanding are for convenience only and shall be disregarded in construing this Memorandum of Understanding. Any other reference in this Memorandum of Understanding to a "Section", and any reference to a "Subsection", a "Paragraph" or an "Exhibit" shall, unless otherwise explicitly provided, be construed as referring, respectively, to a section of this Memorandum of Understanding, a subsection of the section of this Memorandum of Understanding in which the reference appears, a paragraph of the subsection within this Memorandum of Understanding in which the reference appears, or an exhibit attached to this Memorandum of Understanding. All exhibits attached to or referred to in this Memorandum of

Understanding are incorporated by reference into this Memorandum of Understanding. Any reference in this Memorandum of Understanding to a provision of a statute, a regulation or the handbook shall be construed as referring to that provision as it has been amended.

- b) Use of the singular in this Memorandum of Understanding includes the plural, use of the plural includes the singular, and use of one gender includes the other gender, as the context may require.
- c) Except for Fannie Mae's employment of the RHS-Approved Lender to perform servicing functions for Guaranteed Mortgages, neither party to this Memorandum of Understanding may assign its rights or delegate its obligations under this Memorandum of Understanding without prior written consent of all other parties. The delegation of such functions to the RHS-Approved Lender shall not relieve Fannie Mae of any of its obligations to the Secretary or prevent the Secretary from pursuing its remedies against Fannie Mae directly. This Memorandum of Understanding shall be binding upon and shall inure to the benefit of the parties and their respective heirs, successors, transferees, and permitted assigns.
- d) The invalidity or unenforceability of any provision of this Memorandum of Understanding shall not affect the validity of any other provision, and all other provisions shall remain in full force and effect.
- e) This instrument contains the entire agreement among the parties as to the rights granted and the obligations assumed in this instrument.
- f) Any forbearance by a party to this Memorandum of Understanding in exercising any right or remedy given under this Memorandum of Understanding or existing at law or in equity shall not constitute a waiver or preclude the exercise of that or any other right or remedy. Unless otherwise explicitly provided, no remedy under this Memorandum of Understanding is intended to be exclusive of any other available remedy, but each remedy shall be cumulative and shall be in addition to other remedies given under this Memorandum of Understanding or existing at Law or in equity.

- g) A "Business Day" is any day other than a Saturday, Sunday, a federal holiday, or a day on which banking institutions in the City of Washington, DC are permitted or required by law to close. In computing the number of days for purposes of this Memorandum of Understanding, all days shall be counted, including days that are not Business days, unless it is explicitly provided that only Business Days shall be counted. However, if the final day of any time period falls on a day that is not a Business Day, then the final day shall be deemed to be the next Business Day.
- h) To the extent permitted by law, the parties shall, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements to this Memorandum of Understanding and such further instruments as may reasonably be required for carrying out the intention of or facilitating the performance of this Memorandum of Understanding.

IN WITNESS WHEREOF, the Secretary and Fannie Mae have executed this Memorandum of Understanding.

UNITED STATES DEPARTMENT OF AGRICULTURE

Acting Through the RURAL HOUSING SERVICE

Date: 11/10/04

By: /S/

Name: Russell T. Davis

Title: Administrator, Rural Housing Service

FANNIE MAE

Date: 11/17/04

By: /S/

Name: Wendell L. Johns

Title: Vice President