(i) Operating purposes as outlined in § 1980.175(c)(1) of subpart B of part 1980 of this chapter except for those stipulated in paragraphs (c)(1) (iv) and (vii) of that section.

(ii) Real estate purposes as outlined in § 1980.180(c) of subpart B of part 1980 of this chapter except for those stipulated in paragraphs (c) (1) and (4) of that section.

(iii) Refinancing in accordance with paragraphs (c)(1) and (c)(2) of this section and §§ 1980.411(a)(11), 1980.451(i)(19) and 1980.452 ADMINISTRATIVE C [except 1980.452 ADMINISTRATIVE C 1(d)] of this subpart.

(9) *Sodbuster and swampbuster requirements*. The provisions of exhibit M of subpart G of part 1940 of this chapter will apply to loans made to enterprises engaged in agricultural production.

[57 FR 45969, Oct. 5, 1992, as amended at 58 FR 34342, June 24, 1993; 58 FR 38952, July 21, 1993; 58 FR 41172, Aug. 3, 1993; 58 FR 48300, Sept. 15, 1993]

**§ 1980.499 [Reserved]**

**§ 1980.500 OMB control number.**

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0575–0029. Public reporting burden for this collection of information is estimated to vary from 5 minutes to 58 hours per response, with an average of 4 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB# 0575–XXXX), Washington, DC 20503.

[55 FR 19245, May 8, 1990]

APPENDIX A TO SUBPART E OF PART 1980—FORM FMHA 49-1, APPLICATION FOR LOAN AND GUARANTEE

Appendix A

Form FmHA 449-1
(Rev. 5-16-83)

UNITED STATES DEPARTMENT OF AGRICULTURE
FARMERS HOME ADMINISTRATION

FORM APPROVED
OMB NO. 0575-0021
EXPIRES 10-31-85

## APPLICATION FOR LOAN AND GUARANTEE
(Business and Industry)

*FmHA Case Number*

**General Information:** The "Application for Loan and Guarantee" is to provide information needed for the analysis and loan determination process. Tear at perforations for ease in use. Specific references are made in this application to sections of the Business and Industrial Loan Instruction. For complete guidance, see FmHA Instruction 1980-A and 1980-E and related FmHA forms.

**Part A –** is to be completed by the proposed borrower. The original and two copies with attachments will be submitted to the proposed lender.

**Part B –** is to be completed by the lender. Upon completion, the original and one copy and attachments of Part A and B will be filed with the FmHA State Office.

### PART A

Instructions to Proposed Borrower: Complete items one through 20. Submit original and two copies of this application and all supporting documents to the lender. If additional space is required, provide for by an attachment. Additional information may be obtained from any FmHA Office.

1. NAME: *(Show official name without abbreviations unless the abbreviation is a part of the official name. For proprietor or partnership, show name(s) followed by d/b/a and trade name used, if any, and attach a copy of the partnership agreement).*

| Street | City | County |
|---|---|---|
| | | |

| State | ZIP Code | Telephone Number | Amount of Loan Requested |
|---|---|---|---|
| | | | $ |

| Project Location: City | Population *(Last Census)* | County | State |
|---|---|---|---|
| | | | |

Franchise ☐ Yes ☐ No If Yes, submit copy

2. TYPE OF BUSINESS: | Applicant's Tax Identification Number | SIC Number

3. THIS PROJECT IS:
☐ A new business venture ☐ Other *(Explain)*
☐ A new branch of facility ☐ An expansion of an existing facility
☐ Refinancing debts ☐ Transfer of Ownership

Date Enterprise Established:

4. VETERAN - For individual or partner indicate if veteran ☐ Yes ☐ No
If yes, indicate service from to Branch

5. CITIZENSHIP - Do you meet the citizenship requirements in FmHA Instruction 1980.403? ☐ Yes ☐ No

6. HISTORY OF BUSINESS - Provide a brief description and history of the business *(attach additional sheets if necessary).*

7. COMMUNITY BENEFITS - Comment on the benefits the community will receive if the loan is made *(i.e., taxes, jobs and any other benefits).*

Information requested by this form is collected for determining program eligibility and project analysis. Completion of this form is required to obtain the benefit of an FmHA Business and Industry loan guarantee. This statement is furnished pursuant to P. L. 96-511.

8. PREVIOUS FEDERAL, STATE, OR LOCAL FINANCING - List assistance received, requested, or any pending applications. *(Include direct, participation, insured, or guarantee loans and grants from any Federal, State, or local sources).*

9. LITIGATIONS - List details of any pending or final disciplinary or legal *(civil or criminal)* action against the proposed borrower, guarantors, partners, principal stockholders and directors.

10. NAMES OF ATTORNEYS, ACCOUNTANTS, AND OTHER PARTIES - List the names of all attorneys, accountants, appraisers, packagers, agents, and all other parties *(whether individuals, partnerships, associations)* engaged by or on behalf of the proposed borrower *(whether on a salary, retainer or fee basis and regardless of the amount of compensation)* for the purpose of rendering professional or other services of any nature whatever to proposed borrower, in connection with the preparation or presentation of this application to a lender. List all fees or other charges or compensations paid or to be paid for any purpose in connection with this application or disbursement of the loan whether in money or other property of any kind whatever, by or for the account of the proposed borrower together with a description of such services rendered or to be rendered with complete justification for such purposes. **NOTE: all fees and charges are subject to FmHA review and approval and may, in some cases, be paid out of loan proceeds. (See FmHA Instruction 1980.411 and 1980.414).**

| Name and Address *(Include ZIP Code)* | Description of Service Rendered or to be Rendered with complete Justification | Total Compensation Agreed to be Paid* | Compensation Already Paid |
|---|---|---|---|
| | | | |

**Enter specific dollar amounts or hourly rates. "Unknown," "Undetermined," or other imprecise terms are not sufficient.*

11. SUBSIDIARIES AND AFFILIATES - (1) List the name and addresses of all concerns that are subsidiaries, parent organizations, or affiliates of the proposed borrower, including concerns in which the proposed borrower holds a controlling *(but not necessarily a majority)* interest:

(2) List all other concerns that are in any way affiliated, by stock ownership, management contracts, or otherwise, with the proposed borrower. The proposed borrower should comment briefly regarding the trade relationship between the proposed borrower and such subsidiaries or affiliates and if the proposed borrower has no subsidiary or affiliate, a statement to this effect should be made. Signed and dated balance sheets, operating statements and reconcilement of net worth *(all not more than 60 days old)* must be submitted for all subsidiaries, parent organizations, and affiliates in the same manner as required of the proposed borrower.

12. PURCHASE AND SALES RELATIONS WITH OTHERS - Does proposed borrower buy from, sell to or use the services of, any concern in which an officer, director, major stockholder, or partner, or proprietor of the proposed borrower has a substantial interest? ☐ Yes ☐ No If "Yes" give names of such officer, director, stockholder, and partners, names of such concerns and explain the nature of the transaction(s).

13. RECEIVERSHIP - BANKRUPTCY - Has the proposed borrower or any officer or, partner or director of the proposed borrower, affiliates or any other concern with which such person has been connected ever been in receivership or adjudicated bankrupt? ☐ Yes ☐ No If "Yes" give names, dates and details.

14. DISCLOSURE OF SPECIAL INFORMATION REGARDING PRINCIPALS - (a) List below the names of any FmHA employees who are related by blood, marriage, or adoption, or who have any present or have had any past, direct or indirect, financial interest in or association with, the proposed borrower, or any of its partners, officers, directors, principal stockholders including such interest in other enterprise; (b) When the proprietor, or any partner, officer, director, or their spouse, is an employee of the U.S. Government including members of the armed forces, detailed information shall be submitted with the application. Check box(s) if (a) or (b) is not applicable. ☐ (a) ☐ (b)

| NAMES AND ADDRESS *(Include ZIP Code)* | Details of Relationship or Interest |
|---|---|
| | |

15. MANAGEMENT - Enter names of (a) all owners, partners, key officers, directors or stockholders and their annual compensation, including salaries, fees, withdrawals, etc., (b) hired manager, and (c) all other stockholders having 20 percent or more interest in the proposed borrower. Elected officials and managers on applications for loans from public bodies are excluded. Personal guarantees from major stockholders or owners having a major interest in a corporation, and all partners of partnerships usually will be required. If guarantor cannot provide such guarantee due to existing contractual or legal restrictions, explain in an attachment. Final determinations will be made by the FmHA. Attach, in the case of personal guarantee, current financial statements not over 60 days old at time of filing, and for any corporate guarantee, current financial statements not over 90 days old at time of filing and certified by an officer of the corporation. Additional updated financial statements may be required depending on processing time.

| (a) Name | (b) Position or Title | (c) Annual Compensation $ | (d) % Ownership | (e) Outside Net Worth $ | (f) Personal Guarantee Offered* (Yes or No) | (g) Insurance Carried For Benefit of Applicant |
|---|---|---|---|---|---|---|
| | | | | | | |

*If none offered, provide full explanation why guarantee cannot be offered. *(See FmHA Instruction 1980.443 (b)).*

16. REGULATORY AGENCIES - List all regulatory agencies *(National, State, or Local)* which affect this business or project and explain if there are any pending matters with such regulatory agencies. Indicate if permits, licenses or clearance are necessary and their status. *(See FmHA Instruction 1980.45 and 1980.451)*

17. INSTRUCTION TO PROPOSED BORROWER - Attach to this application the following supporting documents. Reference for 1980-A include section 1980.1 thru 1980.100 and reference for 1980-E include sections 1980.401 thru 1980.500:

(a) Comments from state and local governments, if not already submitted. *(See FmHA Instruction 1980.451 (f) (8)).*

(b) Form FmHA 449-4, "Statement of Personal History," if not already submitted. *(See FmHA Instruction 1980.451 (f) (3)).*

(c) Form FmHA 449-22, "Certification of Non-Relocation and Market and Capacity Information," if applicable. *(See FmHA Instruction 1980.412 (c) and (d).*

(d) Financial data for new or existing businesses are required in accordance with FmHA Instruction 1980.451 (i) (7) and (8).

(e) Aging of accounts receivable and payable. *(Use 30, 60, 90 days with individual account explanation of items over 90 days old). (See FmHA Instruction 1980.451 (i) (15)).*

(f) For companies listed on major stock exchanges and subject to the Securities and Exchange Commission regulations, a copy of the latest SEC 10K report. *(See FmHA Instruction 1980.451 (i) (16)).*

(g) Provide supporting documentation for your projections, including economic factors, markets, management, etc. For loans in excess of $1 million see FmHA Instruction 1980.442 .

(h) If construction is involved, *(See FmHA Instruction 1980.451 (i) (11)).* Final plans and specifications must be submitted to the lender for approval prior to the commencement of construction. Architectural or engineering plans, if applicable, need be attached. *(See FmHA Instruction 1980.451 (i) (4) and 1980.454 (d)).*

(i) If construction is involved, provide applicable equal opportunity and nondiscrimination forms. *(See FmHA Instruction 1980.41).*

(j) Form FmHA 449-10, "Applicant's Environmental Impact Evaluation." *(See FmHA Instruction 1980.40 and 1980.451 (i) (3)).*

(k) Evidence whether the project is located in a flood or mudslide hazard area. *(See FmHA Instruction 1980.42 and 1980.451 (i) (17)).*

(l) Provide a written statement of effect project would have on Historic Places, if any. *(See FmHA Instruction 1980.44 and 1980.451 (i) (15)).*

(m) If application is for health care facility, attach a "Certificate of Need," from appropriate regulatory agency having jurisdiction over the project. *(See FmHA Instruction 1980.451 (k)).*

(n) If loan is in excess of $100,000, provide certification and notices as required for the Clean Air Act and Water Pollution Control Act. *(See FmHA Instruction 1980.43).*

(o) Document utilities availability with letter of commitment from utilities, energy, water, sewer, fire and police protection.

(p) For all persons listed under MANAGEMENT, item 15, provide a brief description of education, technical training, employment and business experience *(resumes may be used).*

(q) Provide a detailed debt schedule correlated to the latest balance sheet reflecting the name of the creditors, loan purpose, original loan amount and loan balance, date of loan, interest rate, maturity date, monthly or annual payments, payment status and collateral that secures such loans. You may use Form FmHA 449-29 Attachment I.

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18. POLICY AND REGULATIONS CONCERNING REPRESENTATIVES AND THEIR FEES:

(a) A proposed borrower may obtain the assistance of any attorney, engineer, appraiser, or other representative to aid it in the preparation of its application, however, such representation is not mandatory. In the event a loan is approved, the services of an attorney may be necessary to assist in the preparation of closing documents, title examination, etc.

(b) There are no "authorized representatives" of FmHA, other than our regular salaried employees. Payment of any fee or gratuity to FmHA employees is illegal and will subject the parties to such a transaction to prosecution.

(c) FmHA will not approve placement or finder's fees for the use or attempted use of influence in obtaining or trying to obtain a loan.

(d) Fees which will be approved will be limited to reasonable sums for services actually rendered in connection with the application or the closing, based upon the time and effort required, and the nature and extent of the services rendered by such representative.

(e) It is the responsibility of the proposed borrower to set forth in Section 10 of this application the names of all persons or firms engaged by or on behalf of the proposed borrower. Proposed borrowers are also required to advise FmHA in writing of the names and fees of any representatives engaged by the proposed borrower subsequent to the filing of the application. Failure to so notify FmHA constitutes "misrepresentation" and will cause FmHA to contest the guarantee if lender had knowledge of this omission.

(f) Any proposed borrower having any question concerning the payment of fees, or the reasonableness of fees, should communicate with FmHA before the application is filed for a loan guarantee.

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19. AGREEMENT OF NONEMPLOYMENT OF FmHA PERSONNEL. In consideration of FmHA guaranteeing any part of the loan applied for in this application, the proposed borrower hereby agrees with FmHA that proposed borrower will not, for a period of two years after date of guarantee of any part of the loan, employ or tender any office or employment to, or retain for professional services, any person who, on the date of such disbursement, or within one year prior to said date, (a) shall have served as an officer, attorney, agent, or employee of FmHA and (b) as such, shall have occupied a position or engaged in activities which FmHA shall have determined, or may determine, involved discretion with respect to the granting of assistance under the Consolidated Farm and Rural Development Act and other acts administered by FmHA from time to time.

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20. CERTIFICATION - The proposed borrower hereby certifies that:

(a) The Proposed borrower has read FmHA policy and regulations concerning representatives and their fees *(18 above)* and has not paid or incurred any obligation to pay, directly or indirectly, any fee or other compensation for obtaining the loan hereby applied for other than for services and expenses authorized pursuant to paragraph 18 above.

(b) The proposed borrower has not paid or incurred any obligation to pay any Government employee or special Government employee any fee, gratuity or anything of value for obtaining the assistance hereby applied for. If such fee, gratuity, etc. has been solicited by any such employee, the proposed borrower agrees to report such information to the Office of Inspector General, USDA, Washington, D.C. 20250.

(c) Information contained above and in exhibits attached hereto are true and complete to the best knowledge and belief of the proposed borrower and are submitted for the purpose of requesting FmHA to guarantee a loan by a lender to the proposed borrower. Whether or not the loan herein applied for is approved, the proposed borrower agrees to pay or reimburse the lender for the cost of any surveys, title or mortgage examinations, appraisals, etc., performed by nonlender personnel with consent of the proposed borrower.

(d) The proposed borrower hereby covenants, promises, agrees and gives herein the ASSURANCE that in connection with any loan to the proposed borrower which FmHA may guarantee as a result of this application, it will COMPLY with the requirements of Executive Order 11245 regarding Equal Credit Opportunity. Proposed borrower further agrees that in the event it fails to comply with said applicable provision, FmHA may cancel, terminate, accelerate repayment of or suspend in whole or in part the financial assistance provided or to be provided by FmHA, and that FmHA or the United States Government may take any other action that may be deemed necessary or appropriate of this ASSURANCE OF COMPLIANCE. These requirements prohibit discrimination on the grounds of race, religion, color, sex, marital status or national origin recipients of Federal financial assistance, including but not limited to employment practices, and require the submission of appropriate reports and access to books and records. These requirements are applicable to all transferees and successors in interest.

**NOTICE: In accordance with 5 U.S.C. 552a, the Privacy Act of 1974, any individual should be provided a copy of Form FmHA 410-9, "Statement Required by the Privacy Act," at the time this application is completed.**

The proposed borrower hereby agrees to provide the lender and FmHA timely periodic financial statements including the annual financial statement required by FmHA Instruction 1980.451 (i)(13). Failure to provide such reports will be considered a default of the loan in accordance with Form FmHA 449-35, "Lender's Agreement," which is a part of Subpart E of Part 1980, Title 7 CFR.

**WARNING:** **Section 1001 of Title 18, United States Code provides: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than 5 years, or both."**

Misrepresentation of material facts may also be the basis for denial of credit by the Farmers Home Administration.

*Proposed Borrower Name:

_____

_____

CORPORATE SEAL

By _____

Title _____

Attest: _____

Date Signed: _____, 19__

_____
*(Title)* *(Title)*

Proposed Borrower's Contact Person

_____
*Name*

_____
*Address*

_____
*Telephone*

**(Individual, general partner, trade name, or corporation name).*

PART B

**INSTRUCTIONS:** Lender completes item 21 through 33 and submits the original and one copy of this application and all supporting documents to FmHA.

21. REQUEST FOR GUARANTEE: *(For use only by lender)* LENDER TAX IDENTIFICATION NO. _____

We propose to make and service a loan to the proposed borrower named on page 1 of this application. We request an FmHA loan guarantee subject to the provisions of the applicable FmHA Instructions.

22. TERMS AND CONDITIONS OF LOAN: Percent of Guarantee Requested _____%

| (1) Type | Amount | Terms (yrs.) | Interest* | Monthly Payments |
|---|---|---|---|---|
| Real Estate | $ _____ | ____ yrs. | ____ % | $ _____ |
| Machinery and Equipment | $ _____ | ____ yrs. | ____ % | $ _____ |
| Working Capital | $ _____ | ____ yrs. | ____ % | $ _____ |
| Other _____ | $ _____ | ____ yrs. | ____ % | $ _____ |
| TOTAL | $ _____ | | | $ _____ |

***If the variable rate, follow by a "v" and identify base rate used and what interest differential is added to base rate. If multi-rates are used provide overall effective interest rate for the entire loan: _____%. NOTE: Guaranteed borrower must have the right to prepay their loans. Prepayment penalties are permitted if reasonable and approved by FmHA. Attach amortization schedule for loan.**

23. (a) SOURCE AND USE OF FUNDS: Loan funds will be disbursed and used for the following purposes, in the following amounts.

| | | | |
|---|---|---|---|
| Building and Improvements | $ _____ | Machinery and Equipment | $ _____ |
| Land and Rights | _____ | Contingencies | _____ |
| Fees *(List below)* | _____ | Debt Refinancing* | _____ |
| Legal and Engineering Fees | _____ | Working Capital | _____ |
| Interim Interest | _____ | Other *(Specify)* _____ | _____ |
| | | | $ _____ |

***Attach complete justification for the request** *(include long and short term debt)*

(b) Describe in detail the source and use of funds from (a) above and any other source of funds for the project and its amount and indicate whether the amounts and sources are proposed or definite.

24. COLLATERAL AND LIEN POSITION: (Describe collateral in detail, show whether now owned or to be acquired). (Use Form FmHA 449-2 with appropriate appraisal reports and indicate any prior liens that may exist on the collateral).

25. PLANNED DISBURSEMENTS: Record plans for distributing the loan. *(See FmHA Instruction 1980.60 and 1980.454).*

26. (a) PERSONAL AND/OR CORPORATE GUARANTEES RECOMMENDED: *(See FmHA Instruction 1980.443).*
(b) COLLATERAL OFFERED FOR PERSONAL AND/OR CORPORATE GUARANTEES:

27. INSURANCE: (List requirements for Life, Hazard, Federal Flood, and Liability).

28. COMMENTS OF LENDER: *(Attach additional sheets, if necessary).*

(a) Evaluate proposed borrower's management, past record, repayment ability and other financial analysis.

(b) State whether any officer, director, stockholder, or employee of the lender has a financial interest in the proposed borrower or vice versa. If so, give details:

(c) Is proposed borrower indebted to lender? ☐ Yes ☐ No If yes, provide history of debt repayment and other details:

(d) List all fees and charges for the loan, including those for preparation of application, servicing, etc. Indicate whether the guarantee fee will be passed on to proposed borrower. *(See FmHA Instruction 1980.411 and 1980.414).*

(e) Provide loan servicing plans, including field inspections, frequency of obtaining periodic and annual financial statements and their analysis, use of correspondents or other outside consultants, location of office servicing the loan, and complying with servicing responsibilities set forth in the "Lender's Agreement," Form FmHA 449-35.

29. LOAN AGREEMENT: Attach proposed lender and borrower loan agreement *(See FmHA Instruction 1980.451 (i) (13))*.

30. LENDER'S EXPERIENCE WITH FmHA:
(a) Have you made any loans guaranteed by FmHA? ☐ Yes ☐ No
If yes, check program area: ☐ Farmer Programs ☐ Rural Housing ☐ Business and Industry.
(b) If proposed borrower has or had a loan(s) with you, has such loan(s) appeared in regulatory examination report?
☐ Yes ☐ No If yes, explain.

_____

_____

(c) Have you ever been debarred from participation in FmHA programs? If yes, explain.

_____

31. Verify and comment on proposed borrower's debt schedule: _____

_____

_____

_____

32. PLANS FOR CONSTITUTING THE LOAN: *(See Form FmHA 449-35, "Lender's Agreement," paragraph III A)*.

(a) Will retain entire loan ☐ Yes ☐ No
(b) Will utilize secondary market for guaranteed portion *(indicated by check)*.
Assignment _____ Participation _____ Multi-note _____
(c) Participation of unguaranteed portion ☐ Yes ☐ No
*(Lender must retain 5% of the unguaranteed portion of loan in its portfolio)*.

33. OPINION: In our opinion, the loan has repayment ability, appears feasible and all FmHA requirements in FmHA Instruction 1980-A and 1980-E will be met.

WARNING: **Section 1001 of Title 18, United States Code provides: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than 5 years, or both."**

Misrepresentation of material facts may also be the basis for FmHA not issuing a Loan Note Guarantee.

LENDER:

_____

Contact Person _____ _____

Telephone Number _____ _____

Date _____, 19____ _____

By: _____
*Authorized Officer*

_____
*Title*

## APPENDIX B TO SUBPART E OF PART 1980—CERTIFICATE OF INCUMBENCY AND SIGNATURE

*U.S. Department of Agriculture—Farmers Home Administration or its successor agency under Public Law 103–354*

I, (Name)_____, (Title)_____ of the Farmers Home Administration or its successor agency under Public Law 103–354, (FmHA or its successor agency under Public Law 103–354), an Agency of the United States Department of Agriculture, DO HEREBY CERTIFY that the following person holds the office of (State Director, State Program Loan Chief, District Director, or County Supervisor)_____ of _____, for FmHA or its successor agency under Public Law 103–354 and that the signature appearing below and that the signatures appearing above that person's name on the following described document is the genuine signature of such person:

1. Form(s) FmHA or its successor agency under Public Law 103–354 449–34, ''Loan Note Guarantee,'' dated_____ relating to loan made by (Lender's Name)_____ to (Borrower's Name)_____, FmHA or its successor agency under Public Law 103–354 Loan Identification No._____.

2. Form(s) FmHA or its successor agency under Public Law 103–354 449–35, ''Lender's Agreement,'' dated_____ relating to loan made by (Lender's Name)_____ to (Borrower's Name)_____, FmHA or its successor agency under Public Law 103–354 Loan Identification No.__.

3. Form(s) FmHA or its successor agency under Public Law 103–354 449–36, ''Assignment Guarantee Agreement,'' dated_____ relating to loan made by (Lender's Name)_____ to (Borrower's Name)_____, FmHA or its successor agency under Public Law 103–354 Loan Identification No.__.

Signature_____ (Name Type)_____.

In witness whereof, I have hereunto signed my name this _____ day of _____, 19____.

Farmers Home Administration or its successor agency under Public Law 103–354.

By _____

(Title) _____

## APPENDIX C TO SUBPART E OF PART 1980—GUIDELINES FOR LOAN GUARANTEES FOR ALCOHOL FUEL PRODUCTION FACILITIES

(1) *Alcohol production facility*. An alcohol production facility is a facility in which alcohol, suitable for use by itself or in combination with other substances as a substitute for petroleum or petrochemical feedstocks and not suitable for beverage purposes, is manufactured from biomass.

(2) The alcohol production facility includes all facilities necessary for the production and storage of alcohol and the processing of the by-products of alcohol production. The intent is to limit the alcohol and by-products processing facilities to those facilities which are necessary to yield marketable products and necessary for the financial success of the project. Further refinements, such as gasoline blending or the construction of facilities which use the alcohol or by-products in another manufacturing process, are not considered part of the alcohol production facility.

(3) Application will be reviewed by both B&I personnel and the State Office engineer and forwarded to the National Office if approval is recommended.

(4) The applicant should have a startup *tangible* book equity of 20–25 percent. (Appraisal surplus and subordinated debt are not eligible equity items.)

(5) Loan maturity maximums will be as follows:

Real Estate=15–20 years

Machinery & Equipment=10 years or less depending on the estimated life of the equipment involved

Working Capital=3 years (It is assumed that the additional equity required for these projects will provide much of the working capital needs.)

(6) Farmers Home Administration or its successor agency under Public Law 103–354 will ordinarily only finance new facilities and will not get involved in the refinancing of existing ones.

(7) Priority consideration will be given to the use of primary fuel other than petroleum or natural gas.

(8) A positive energy balance must be indicated and supported by appropriate data; i.e., the energy content of the alcohol produced at the alcohol production facility must be greater than the energy used to produce the alcohol and by-products.

(9) Plant location, in relation to feedstocks, primary fuel and markets for product and by-products, will be an important consideration.

(10) Debt refinancing will only be considered in modest amounts and only when necessary to provide a satisfactory lien position.

(11) Feasibility studies are very important and required and will be prepared by competent and knowledgeable independent parties.

(12) Participating lenders must either have expertise or the availability of expertise in this field.

(13) The proposed operating managers must have experience in this or a related field.

(14) Alcohol Fuel Production Facilities are eligible for assistance under the Drought and

Disaster (D&D) Guaranteed Loan and Disaster Assistance for Rural Business Enterprises (DARBE) programs described in this subpart, and especially in appendix I and appendix K. Any such loan must meet the requirements for D&D and DARBE loans.

[52 FR 6522, Mar. 4, 1987, as amended at 53 FR 40403, Oct. 17, 1988; 54 FR 5, Jan. 3, 1989, and 54 FR 26946, June 27, 1989; 54 FR 42483, Oct. 17, 1989]

## APPENDIX D TO SUBPART E OF PART 1980—ALCOHOL PRODUCTION FACILITIES PLANNING, PERFORMING, DEVELOPMENT AND PROJECT CONTROL

(I) *Design Policy*. The borrower shall ensure or cause to be ensured that:

(A) All project facilities are designed utilizing accepted engineering practices and are conformed to applicable Federal, State and local codes and requirements.

(B) Proven equipment and processes are employed in all project facilities unless an exception is granted by the Administrator or designee of the Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) (''Administrator'') in accordance with paragraph (B)(2) hereof and pilot equipment or processes are used instead.

(1) Equipment and processes shall be considered ''proven'' if they have been successfully employed in other commercial facilities.

(2) Equipment and processes shall be considered pilot if they have not been used in a commercial operation but have been operated on a scale such that all design and material problems have been identified and resolved and operations maintained to demonstrate that the equipment and process may be successfully applied to the proposed commercial operation. Pilot equipment and processes may be considered for use in the project subject to the following:

(a) The plans, specifications, and operational data for the applicable facilities are reviewed by the Administrator or designee and lender. If, in the opinion of FmHA or its successor agency under Public Law 103–354, the proposed processes or equipment are insufficiently developed to assure reliable and successful operation of the project, proven processes and equipment will be utilized.

(b) If pilot processes or equipment are used, the Administrator or designee will also require that:

(i) Reasonable provision is made in the project for conversion to proven equipment or processes; and

(ii) The borrower agrees to convert to proven equipment or processes if conversion is necessary to protect the interest of the Government in the project. A reserve account for this conversion may be required. This account will not be an eligible loan purpose.

(C) Facility and equipment design incorporates cost-effective primary fuel systems, energy recovery systems and conservation measures to the maximum extent that this is feasible and consistent with paragraphs (I), (A), and (B) of this appendix.

(II) *Technical Services*.

(A) The borrower is responsible for selecting engineering consultants with suitable experience, training and professional competence in the design and construction of the project to assure that the completed project will operate at the prescribed levels of performance. In discharging its responsibility the borrower will obtain or cause to be obtained:

(1) Full engineering services for design and construction inspection for all project facilities. Resident inspection by qualified persons will be required.

(2) Agreements for engineering or design/build services which describe the project facilities in terms of the parameters critical to the successful operation of the project. The parameters shall include input quantities, conversion efficiency, rate of production and fuel consumption and product quality under normal operating conditions. The design parameters will be mutually agreed upon by the borrower, lender, the State Director and the project engineer, and may not be modified without the written concurrence of each of these parties. These agreements for engineering or design/build services will require, or the borrower will otherwise obtain, assurance satisfactory to the State Director that:

(a) The project engineer will maintain adequate insurance to protect the borrower, lender and the Government from incurring expenses resulting from errors and omissions of the engineer in performance of engineering services.

(b) The project engineer will certify that only proven equipment and processes will be utilized in the proposed development. The State Director may request evidence of successful operations of such proven equipment and process. If proven equipment or processes are not used in the project, the project engineer will identify these items and provide the information necessary for acceptance by the Administrator, borrower and lender in accordance with paragraph (I)(B)(2) of this appendix.

(c) If used equipment or existing facilities are incorporated into the project, they must be inspected by the project engineer or by another qualified engineer of the borrower. This engineer will prepare a report describing the proposed facilities or equipment and will comment on their suitability for use in the project. The report will also identify the modifications necessary for successful integration into the project. A cost estimate will also be included comparing new equipment

and facilities to the proposed existing facilities or used equipment. Consideration must be given to the relative energy requirements of used and new facilities and their relative operation and maintenance costs.

(d) The project engineer or qualified individuals representing the manufacturer of principal equipment (or the designer/builder if the contractor has designed the plant) will visit the plant site at reasonable intervals for a period of one year after substantial completion of the project. Such personnel will be experienced in the proper operation and maintenance of applicable plant components. A report will be presented to the borrower within two weeks of each site visit advising the borrower of operation and maintenance deficiencies. A copy of each report will be forwarded to the State Director and lender by the borrower.

(e) The project engineer will prepare or supervise the preparation of a record drawing of all facilities. One copy will be submitted to the lender and the borrower.

(f) The project engineer or another group acceptable to the State Director and lender will prepare an operation and maintenance manual and assist the borrower in the start-up of the project. The operation and maintenance manual will describe the specific operation and maintenance procedures which must be performed for the project to operate at its rated capacity and efficiency and outline product testing, quality control, plant safety and emergency shut-down procedures.

(g) The project engineer will assist the borrower in determining acceptability of materials, equipment and construction during the construction period, review shop drawings, payment estimates and change orders, and assist in determining substantial completion of the project and final completion of individual contracts.

(1) The project is substantially complete when:

(i) Construction is sufficiently completed in accordance with plans and specifications so that the project may be used for its intended purpose, and;

(ii) The project is producing products of the quantity and quality and at the conversion and energy efficiencies proposed in the completed application submitted by the lender and borrower and approved by the FmHA or its successor agency under Public Law 103–354.

(2) The State Director must concur that the project is substantially complete. The following evidence, in form and substance satisfactory to the State Director and lender, must be submitted prior to such concurrence:

(i) A certificate from the project engineer stating that all facilities are substantially complete. Engineers who design specialized equipment or processes must also certify that construction/fabrication is acceptable in accordance with plans and specifications previously approved by them. The certification of the project engineer must be based upon a project start-up procedure where the complete project operates continuously to reach steady-state operating conditions. During this period contractors and engineers will identify and correct problems in operations, malfunctions in equipment, failure in materials and defects in workmanship. After this pre-startup, the certifying engineers will monitor project operations for a continuous period of at least 72 hours or 3 consecutive batch runs as appropriate to assure that all equipment is operating satisfactorily at rated capacity and efficiency.

(ii) Copies of system operation and performance data obtained during project start-up.

(iii) Exceptions to substantial completion and a list of nonsubstantial items which must be completed prior to release of any contractor's retainage.

(3) If the project is not producing products of the required quantity or quality at the prescribed conversion efficiencies, even though the project is otherwise physically complete in accordance with paragraph (1)(i) of this subparagraph, the project engineer will prepare a report identifying the corrective actions including an estimate of costs and additional time necessary to meet established performance criteria.

(4) The project must be certified to be substantially complete by an independent engineer if any portion of the project has been designed or constructed by the borrower or the project engineer has participated in any portion of the construction.

(B) Modification of plans and specifications will not be made without the written authorization of the project engineer.

(C) The Administrator, State Director or their representative's acceptance or concurrence in feasibility studies, preliminary engineering reports, plans, specifications, contract documents and payment estimates will not be construed as a representation of the adequacy of same, reliability of cost estimates or quality of construction, nor will such acceptance or concurrence be deemed a waiver of any of the Government's rights or remedies against any person or party. Reviews and construction inspections by the Administrator, State Director or their representatives are solely for the benefit of the Government and do not relieve the lender or borrower of their obligation to conduct project reviews and inspections.

(III) *Project Construction.*

(A) Borrower will not award contracts for the construction of any project facilities unless and until:

(1) The borrower obtains applicable construction permits, right-of-ways, licenses

and approvals of Federal, State and local authorities for the construction of such facilities.

(2) The State Director concurs in applicable plans, specifications and contract documents. Standard contract documents prescribed for use in Federally assisted projects may be used as a guide for determining the minimum standards for contract acceptability. These standard documents are contained in Guides 18 and 19 of subpart A of part 1942 of this chapter (available in any FmHA or its successor agency under Public Law 103–354 office).

(B) The borrower has the responsibility, without recourse to the Government, for the settlement and satisfaction of all contractual and administrative issues arising out of procurements. This includes, but is not limited to, disputes, claims, protests of awards, or other matters of a contractual nature. Matters concerning violation of laws are to be referred to such local, State, or Federal authority as may have proper jurisdiction.

(C) The borrower's attorney will review executed contract documents including applicable performance and payment bonds and provide a certificate to the borrower and lender that they have been properly executed and that the persons executing these documents have been properly authorized to do so.

(D) In all contracts for construction or facility improvement awarded in excess of $100,000, the borrower will require bonds and a bank letter of credit or cash deposit in escrow, assuring performance and payment of 100 percent of the contract cost. The surety will normally be in the form of performance and payment bonds. Such assurance shall remain in full force and effect through any warranty period. Companies providing performance and payment bonds must hold a certificate of authority as an acceptable security on Federal bonds and eligible for listing in Treasury circular 510 as amended and be legally doing business in the State the project is located.

(E) Project Changes. Any change in the project which may affect collateral, its ultimate financial viability or compliance with the conditional commitment must have prior approval of the lender and FmHA or its successor agency under Public Law 103–354.

(1) Construction contracts will require that change orders receive prior approval from the lender when such changes:

(a) Increase or decrease contract price,

(b) Materially modify contract provisions,

(c) Increase or decrease time of completion,

(d) Affect project performance.

(2) All change orders will be recorded on a chronologically numbered contract change order as they occur. Change orders will not be included in payment estimates until approved by the borrower, project engineer, the lender and concurred in by FmHA or its successor agency under Public Law 103–354.

(F) Warranty.

(1) All major equipment must be guaranteed by the manufacturer to be free from defects in workmanship and materials for a period of one year after start-up of equipment.

(2) Equipment purchased by a construction contractor or design builder and all other work shall be further warranted to be free from defect in material and workmanship by the contractor or the design builder for a period of one year after substantial completion of the contract.

(3) Applicable provisions to this effect shall be included in equipment purchase orders or construction contracts.

(G) Lease agreements. Where the right of use or control of any property or equipment not owned by the borrower is essential to the successful operation of the project during the life of the loan, such right will be evidenced by written agreements or contracts between the owner(s) of the property or equipment and the borrower. Lease agreements shall not contain provisions for restricted use of the site or facility, forfeiture or similiar cancellation clauses and shall provide for the right to transfer and lease without restriction. Such lease contracts or agreements shall be approved by the lender and FmHA or its successor agency under Public Law 103–354.

(IV) *Project Control.*

(A) Lender will adopt project control procedures to assure that loan funds are applied for costs or expenses properly attributable to the project (''Eligible Project Costs'') as proposed in the completed application submitted by the lender and borrower and approved by the FmHA or its successor agency under Public Law 103–354. A project monitoring account (''Project Monitoring Account'') will be developed by lender for this purpose and concurred in by the State Director. This account will be divided into sufficient budget categories to permit adequate control of expenditures and identification of potential budget overruns.

(B) The first advance (''First Advance'') of loan funds to the borrower will not commence from the Project Monitoring Account prior to lender's receipt of evidence that:

(1) The borrower has made adequate provisions for compliance with measures established by FmHA or its successor agency under Public Law 103–354 to mitigate adverse historical and environmental impacts.

(2) Applicable engineering, design/build, construction management, inspection and plant start-up service agreements have been obtained and accepted by the State Director and lender.

(3) The project engineer has prepared a detailed cost estimate and construction schedule for all facilities related to the project. This estimate must indicate that the project

can be completed with the funds available as shown on the Form FmHA or its successor agency under Public Law 103–354 449–1, ''Application for Loan and Guarantee.'' A reasonable contingency amount will be included in the estimate. This contingency shall be at least 20 percent of the estimated project costs for which firm bids have not been received plus 5 percent of project costs for which firm bids have been received. Construction interest and inspection costs will be based upon a reasonable contingency for unforeseen delays in project completion. The estimate shall include a listing with associated costs of any proposed leasing arrangements for property or equipment that is essential to the successful operation of the project.

(4) All funds necessary for construction of project facilities will be available when needed.

(5) The borrower has retained a project manager with sufficient experience and training to supervise project construction and engineering services on behalf of the borrower.

(C) After the first advance, future advances may be made from the Project Monitoring Account, in accordance with prudent lender practice, for all Eligible Project Costs established in the Project Monitoring Account, provided these payments are made in accordance with the terms of applicable contracts and are approved by the borrower and, when applicable, recommended by the project engineer.

(D) Payments for Eligible Project Costs incurred by the borrower prior to satisfaction of the conditions precedent to the first advance shall be made with borrower's funds or other nonguaranteed loan funds only. These payments however, may be reimbursed through the Project Monitoring Account as authorized by the State Director after compliance with Paragraph (IV)(B) hereof. The lender will not advance and the borrower will not be entitled to loan funds for reimbursement if such costs or expenses incurred by the borrower prior to the first advance, or at anytime thereafter, were for costs or expenses other than Eligible Project Costs. Costs and expenses accruing from but not limited to, interest charges imposed by construction, equipment, material or service contracts, penalty payments, damage claims, awards or settlements are not Eligible Project Costs unless specifically approved by the State Director.

(E) The lender will monitor the progress of construction and undertake the reviews and project inspections necessary to reasonably assure that funds are paid for Eligible Project Costs and that problems in project development are expeditiously reported to the State Director.

(F) The lender will prepare a monthly report showing the expenditures made from each budget category of the Project Monitoring Account. This report will include a review of construction progress including proposed and approved contract change orders and, to the extend possible, identify problems or delays in construction or other matters which might affect successful startup of project. This report may be based upon information received from the project engineer and borrower and/or independent observations of the lender. The report will be initialed by the borrower and project engineeer and submitted to the State Director.

(G) Transfer of loan funds between established or new categories of the Project Monitoring Account or any change in the total amount of funds committed to the project will be reported by the lender to the State Director as these changes occur.

## APPENDIX E TO SUBPART E OF PART 1980—ENVIRONMENTAL ASSESSMENT GUIDELINES

In completing an assessment, it is important to understand the comprehensive nature of the impacts which must be analyzed. Consideration must be given to all potential impacts associated with the construction of the project and its operation and maintenance. The attainment of the project's major objectives often induces or supports changes in population densities, land uses, community services, transportation systems and resource consumption. The impacts of these activities must also be assessed.

The environmental reviewer should consult with appropriate experts from Federal, State and local agencies, universities and other organizations or groups whose views could be helpful in the assessment of potential impacts. In so doing, each discussion which is utilized in reaching a conclusion with respect to the degree of an impact should be summarized in the assessment as accurately as possible and include name, title, phone number, and organization of the individual contacted, plus the date of contact. Related correspondence should be attached to the assessment.

The Farmers Home Administration or its successor agency under Public Law 103–354 assessment should be prepared in the following format; it should address the listed items and questions and contain as attachments the indicated descriptive materials, as well as the environmental information submitted by the applicant.

These assessment guidelines have been designed to cover the wide variety of impacts which may be encountered. Consequently, not every issue or potential impact raised in these guildlines may be relevant to each project. The purpose of the format is to give the preparer an understanding of a standard range of impacts, environmental factors and

issues which may be encountered. In preparing an assessment, each topic heading identified by a roman numeral and each environmental factor listed under topic heading IV, such as air quality for example, must be addressed.

The amount of analysis and material that must be provided will depend upon the type and size of the project, the environment in which it is located and the range and complexity of the potential impacts. The amount of analysis and detail provided, therefore, must be commensurate with the magnitude of the expected impact. The analysis of each environmental factor (i.e., water quality) must be taken to the point that a conclusion can be reached and supported concerning the degree of the expected impact with respect to that factor.

(I) *Project description and need.* Identify the name, project number, location, and specific elements of the project along with their sizes, and, when applicable, their design capacities. Indicate the purpose of the project, FmHA or its successor agency under Public Law 103–354's position regarding the need for it, and the extent or area of land to be considered as the project site.

(II) Primary beneficiaries and related activities.

Identify any existing businesses or major developments that will benefit from the project and those which will expand or locate in the area because of the project. Specify by name, product, service, and operations involved.

Identify any related activities which are defined as interdependent parts of an FmHA or its successor agency under Public Law 103–354 action. Such undertakings are considered interdependent parts whenever they either make possible or support the FmHA or its successor agency under Public Law 103–354 action or are themselves induced or supported by the FmHA or its successor agency under Public Law 103–354 action or another related activity. These activities may have been completed in the very recent past and are now operational or they may reasonably be expected to be accomplished in the near future. Related activities may or may not be Federally permitted or assisted. When they are, identify the involved Federal agency(s).

In completing the remainder of the assessment, it must be remembered that the impacts to be addressed are those which stem from the project, the primary beneficiaries, and the related activities.

(III) *Description of project area.* Describe the project site and its present use. Describe the surrounding land uses; indicate the directions and distances involved. The extent of the surrounding land to be considered depends on the extent of the impacts of the project, its related activities, and the primary beneficiaries. Unique or sensitive areas must be pointed out. These include residential, schools, hospitals, recreational, historical sites, beaches, lakes, rivers, parks, floodplains, wetlands, dunes, estuaries, barrier islands, natural landmarks, unstable soils, steep slopes, aquifer recharge areas, important farmlands and forestlands, prime rangelands, endangered species habitats, or other delicate or rare ecosystems.

Attach adequate location maps of the project area, as well as (1) a U.S. Geological Survey ''15 minute'' (''7½ minute'' if available) topographic map which clearly delineates the area and the location of the project elements, (2) the Department of Housing and Urban Development's floodplain map(s) for the project area, (3) site photos, (4) if completed, a standard soil survey for the project and, (5) if available, an aerial photograph of the site. When necessary for descriptive purposes or environmental analysis, include land use maps or other graphic information. All graphic materials shall be of high quality resolution.

(IV) *Environmental impact.*

(1) Air Quality—Discuss, in terms of the amounts and types of emissions to be produced, all aspects of the project including beneficiaries' operations and known indirect effects (such as increased motor vehicle traffic) which will affect air quality. Indicate the existing air quality in the area. Indicate if topographical or meteorological conditions hinder or affect the dispersals of air emissions. Evaluate the impact on air quality given the types and amounts of projected emissions, the existing air quality and topographical and meteorological conditions. Discuss the project's consistency with the State's air quality implementation plan for the area, the classification of the air quality control region within which the project is located, and the status of compliance with air quality standards within that region. Cite any contacts with appropriate experts and agencies which must issue necessary permits.

(2) Water Quality—Discuss, in terms of amounts and types of effluents all aspects of the project, including primary beneficiaries' operations and known indirect effects which will affect water quality. Indicate the existing water quality of surface and/or underground water to be affected. Evaluate the impacts of the project on this existing water quality. Indicate if an aquifer recharge area is to be adversely affected. If the project lies within or will affect a sole source aquifer recharge area as designated by the Environmental Protection Agency (EPA), contact the appropriate EPA regional office to determine if its review is necessary. If it is, attach the results of its review.

Indicate the source and available supply of raw water and the extent to which the additional demand will affect the raw water supply. Describe the wastewater treatment system(s) to be used and indicate their capacity

and their adequacy in terms of the degree of treatment provided. Discuss the characteristics and uses of the receiving waters for any sources of discharge. If the treatment systems are or will be inadequate or overloaded, describe the steps being taken for necessary improvements and their completion dates. Compare such dates to the completion date of the FmHA or its successor agency under Public Law 103–354 project. Analyze the impacts on the receiving water during any estimated period of inadequate treatment.

Discuss the project's consistency with the water quality planning for the area, such as EPA's Section 208 areawide waste treatment management plan. Describe how surface runoff is to be handled and the effect of erosion on streams.

Evaluate the extent to which the project may create shortages for or otherwise adversely affect the withdrawal capabilities of other present users of the raw water supply, particularly in terms of possible human health, safety, or welfare problems.

For projects utilizing a groundwater supply, evaluate the potential for the project to exceed the safe pumping rate for the aquifer to the extent that it would (1) adversely affect the pumping capability of present users, (2) increase the likelihood of brackish or saltwater intrusion, thereby decreasing water quality, or (3) substantially increase surface subsidence risks.

For projects utilizing a surface water supply, evaluate the potential for the project to (1) reduce flows below the minimum required for the protection of fish and wildlife or (2) reduce water quality standards below those established for the stream classification at the point of withdrawal or the adjacent downstream section.

Cite contacts with appropriate experts and agencies that must issue necessary permits.

(3) Solid Waste Management—Indicate all aspects of the project, including primary beneficiaries' operations, and known indirect effects which will necessitate the disposal of solid wastes. Indicate the kinds and expected quantities of solid wastes involved and the disposal techniques to be used. Evaluate the adequacy to these techniques especially in relationship to air and water quality. Indicate if recycling or resource recovery programs are or will be used. Cite any contacts with appropriate experts and agencies that must issue necessary permits.

(4) Land Use—Given the description of land uses as previously indicated, evaluate (a) the effect of changing the land use of the project site and (b) how this change in land use will affect the surrounding land uses and those within the project's area of environmental impact. Particularly address the potential impacts to the unique or sensitive areas discussed under Section III, Description of Project Area. Also address any changes in land use which may result from demand for feedstock for the plant's operation. Describe the existing land use plan and zoning restrictions for the project area. Evaluate the consistency of the project and its impacts with these plans.

(5) Transportation—Describe available facilities such as highways and rail. Discuss whether the project will result in an increase in motor vehicle traffic and the existing roads' ability to safely accommodate this increase. Indicate if additional traffic control devices are to be installed. Describe new traffic patterns which will arise because of the project. Discuss how these new traffic patterns will affect the land uses described above, especially residential, hospitals, schools, and recreational. Describe the consistency of the project's transportation impacts with the transportation plans for the area and any air quality control plans. Cite any contact with appropriate experts.

(6) Natural Environment—Indicate all aspects of the project, including construction, beneficiaries' operations, and known indirect effects which will affect the natural environment including wildlife, their habitats, and unique natural features. Cite contacts with appropriate experts. If an area listed on the National Registry of Natural Landmarks may be affected, consult with the Department of Interior and document these consultations and any agreements reached regarding avoidance or mitigation of potential adverse impacts.

(7) Human Population—Indicate the number of people to be relocated and arrangements being made for this relocation. Discuss how impacts resulting from the project such as changes in land use, transportation changes, air emissions, noise, odor, etc., will effect nearby residents and their lifestyles or users of the project area and surrounding areas. Cite contacts with appropriate experts.

(8) Construction—Indicate the potential effects of construction of the project on air quality, water quality noise levels, solid waste disposal, soil erosion and siltation. Describe the measures that will be employed to limit adverse effects. Give particular consideration to erosion, stream siltation, and clearing operations.

(9) Energy Impacts—Indicate the project's and its primary beneficiaries' effects on the area's existing energy supplies. This discussion should address not only the direct energy utilization, but any major indirect utilization resulting from the siting of the project. Describe the availability of these supplies to the project site. Discuss whether the project will utilize a large share of the remaining capacity of an energy supply or will create a shortage of such supply. Discuss any steps to be taken to conserve energy.

(10) Discuss any of the following areas which may be relevant: noise, vibrations,

safety, seismic conditions, fire prone locations, radiation, and aesthetic considerations. Cite any discussions with appropriate experts.

(V) *Coastal Zone Management Act.*

Indicate if the project is within or will impact a coastal area defined as such by the state's approved Coastal Zone Management Program. If so, consult with the State agency responsible for the Program to determine the project's consistency with it. The results of this coordination shall be included in the assessment and considered in completing the environmental impact determination and environmental findings,

(VI) Compliance with Advisory Council on Historic Preservation's regulations.

In this section, the environmental reviewer shall detail the steps taken to comply with the above regulations as specified in Subpart F of Part 1901 of this Chapter. First, indicate that the National Register of Historic Places, including its monthly supplements, has been reviewed and whether there are any listed properties located within the area to be affected by the project. Second, indicate the steps taken such as historical/archeological surveys to determine if there are any properties eligible for listing located within the affected area. Summarize the results of the consultation with the State Historic Preservation Officer (SHPO) and attach appropriate documentation of the SHPO's views. Discuss the views of any other experts contacted. Based upon the above review process and the views of the SHPO, state whether or not an eligible or listed property will be affected.

If there will be an effect, discuss all of the steps and protective measures taken to complete the Advisory Council's regulations. Describe the affected property and the nature of the effect. Attach to the asessment the results of the coordination process with the Advisory Council on Historic Preservation.

(VII) Compliance with the Wild and Scenic Rivers Act.

Indicate whether the project will affect a river or portion of it which is either included in the National Wild and Scenic Rivers System or designated for potential addition to the System. This analysis shall be conducted through discussions with the appropriate regional office of the National Park Service or the Forest Service when its lands are involved, as well as the appropriate State agencies having implementation authorities. A summary of discussions held or any required formal coordination shall be included in the assessment.

(VIII) Compliance with the Endangered Species Act.

Indicate whether the project will either (1) affect a listed endangered or threatened species or critical habitat or (2) adversely affect a proposed critical habitat for an endangered or threatened species or jeopardize the continued existence of a proposed endangered or threatened species. This analysis shall be conducted in consultation with the Fish and Wildlife Service and the National Marine Fisheries Service, when appropriate.

The results of any required coordination shall be included in the assessment along with any completed biological opinion and mitigation measures to be required for the project. These factors shall be considered in completing the environmental impact determination.

(IX) Compliance with Executive Order 11988, Floodplain Management, and Executive Order 11990, Protection of Wetlands.

Indicate whether the project is either located within a 100-year floodplain (500-year floodplain for a critical action) or a wetland or will impact a floodplain or wetland. If so, determine if there is a practicable alternative project or location. If there is no such alternative, determine whether all practicable mitigation measures are included in the project and document as an attachment these determinations and the steps taken to inform the public, locate alternatives, and mitigate potential adverse impacts. See the U.S. Water Resource Council's *Floodplain Management Guidelines* for more specific guidance.

(X) State Environmental Policy Act.

Indicate if the proposed project is subject to a State environmental policy act or similar regulation. Summarize the results of compliance with these requirements and attach available documentation.

(XI) Consultation requirements.

Attach the comments of any State or local agency received through the implementation of Executive Order 12372, Intergovernmental Review of Federal Programs.

(XII) Environmental analysis of participating Federal agency.

Indicate if another federal agency is participating in the project either through the provision of additional funds, a companion project, or a permit review authority. Summarize the results of the involved agency's environmental impact analysis and attach available documentation.

(XIII) Reaction to project.

Discuss any negative comments or public views raised about the project and the consideration given to these comments. Indicate whether a public hearing or public information meeting has been held either by the applicant or FmHA or its successor agency under Public Law 103–354 to include a summary of the results and any objections raised. Indicate any other examples of the community's awareness of the project, such as newspaper articles or public notifications.

(XIV) Cumulative impacts.

Summarize the cumulative impacts of this project and the related activities. Give particular attention to land use changes and air and water quality impacts. Summarize the

results of the environmental impact analysis done for any of these related activities and/or your discussion with the sponsoring agencies. Attach available documentation of the analysis.

(XV) Adverse impact.

Summarize the potential adverse impacts of the proposal as pointed out in the above analysis.

(XVI) Alternatives.

Discuss the feasibility of alternatives to the project and their environmental impacts. These alternatives should include (a) alternative location, (b) alternative designs, (c) alternative projects having similar benefits, and (d) no project.

(XVII) Mitigation measures.

Describe any measures which will be taken or required by FmHA or its successor agency under Public Law 103–354 to avoid or mitigate the identified adverse impacts. Such measures shall be included as special requirements or provisions to the offer of financial assistance.

## APPENDIX F TO SUBPART E OF PART 1980—CONDITIONAL COMMITMENT FOR GUARANTEE

USDA-FMHA OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354

Form FmHA or its successor agency under Public Law 103–354 449–14
(Rev. 12–89)
FORM APPROVED
OMB NO. 0575–0024
TO: Lender _____
Case No. _____
Lender's Address _____
State _____
Borrower _____
County _____
Type of Loan _____
Principal Amount of Loan _____
$ _____

From an examination of information supplied by the Lender on the above proposed loan, the county committee certification or recommendation, if required, and other relevant information deemed necessary, it appears that the transaction can properly be completed.

Therefore, the United States of America acting through the Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) hereby agrees that, in accordance with applicable provisions of the FmHA or its successor agency under Public Law 103–354 regulations published in the Federal Register and related forms, it will execute Form(s) FmHA or its successor agency under Public Law 103–354 449–34, ''Loan Note Guarantee,'' subject to the conditions and requirements specified in said regulations and below.

The Loan Note Guarantee fee payable by the Lender to FmHA or its successor agency under Public Law 103–354 will be the amount as specified in the regulations on the date of this Conditional Commitment for Guarantee. The interest rate for the loan is[1] _____% and, if applicable, the loan subsidy rate IS _____%[1]. If a variable rate is used, it must be tied to a base rate which cannot change more often than _____[2] and must be published periodically in a financial publication specifically agreed to by the Lender and Borrower.

A Loan Note Guarantee will not be issued until the Lender certifies as required in 7 CFR 1980.60 that there has been no adverse change(s) in the Borrower's financial condition, nor any other adverse change in the Borrower's condition during the period of time from FmHA or its successor agency under Public Law 103–354's issuance of the Conditional Commitment for Guarantee to issuance of the Loan Note Guarantee. The Lender's certification must address all adverse changes and be supported by financial statements of the Borrower and its guarantors not more than 60 days old at the time of certification. As used in this paragraph only, the term ''Borrower'' includes any parent, affiliate, or subsidiary of the Borrower.

This agreement becomes null and void unless the conditions are accepted by the Lender and Borrower within 60 days from date of issuance by FmHA or its successor agency under Public Law 103–354. Any negotiations concerning these conditions must be completed by that time.

Except as set out below, the purposes for which the loan funds will be used and the amounts to be used for such purposes are set out on the Request for Loan Note Guarantee, the Request for Guarantee Operating Loan Line of Credit, Emergency Livestock Loan, or Economic Emergency Loan, or the Application for Loan and Guarantee. Once this instrument is executed and returned to FmHA or its successor agency under Public Law 103–354, no major change of conditions or approved loan purpose as listed on the forms will be considered. Additional Conditions and Requirements including Source and Use of Funds:[3]

This conditional commitment will expire on _____[4] unless the time is extended in writing by FmHA or its successor agency under Public Law 103–354, or upon the Lender's earlier notification to FmHA or its successor agency under Public Law 103–354 that it does not desire to obtain an FmHA or its successor agency under Public Law 103–354 guarantee.

UNITED STATES OF AMERICA
BY: _____
Date: _____

[1] Footnotes appear at the end of Form.

FmHA or its successor agency under Public Law 103–354 (*Title*) _____

ACCEPTANCE OF CONDITIONS

To: Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354)[5]

The conditions of this Conditional Commitment for Guarantee including attachments are acceptable and the undersigned intends to proceed with the loan transaction and request issuance of a Loan Note Guarantee within _____ days.

_____
(Name of Lender)
By: _____
(Signature of Lender)
[6] _____
(Signature for Borrower)

[1] Insert fixed interest rate or, if authorized by regulations, variable interest rate followed by a ''V'' and the appropriate loan subsidy rate, if applicable.

[2] Insert the period prescribed in the applicable FmHA or its successor agency under Public Law 103–354 regulation. For B&I loans ''quarterly'' and for CP loans ''annually'' will be inserted in this space.

[3] Insert any additional conditions or requirements in this space or on an attachment referred to in this space; otherwise, insert ''NONE''.

[4] FmHA or its successor agency under Public Law 103–354 will determine the expiration date of this contract. Consideration will be given to the date indicated by the lender in the acceptance of conditions. If construction is involved the expiration date will correspond with the projected completion of the project.

[5] Return completed and signed copy of this form to FmHA or its successor agency under Public Law 103–354 issuing office.

[6] Required in B&I, CP, and RH-MF cases, not in other cases.

[55 FR 11139, Mar. 27, 1990]

## APPENDIX G TO SUBPART E [RESERVED]

## APPENDIX H TO SUBPART E OF PART 1980—SUGGESTED FORMAT FOR THE OPINION OF THE LENDER'S LEGAL COUNSEL

(Legal Opinion to be Retyped on Lender's Counsel's Letterhead)

To: (Name of Lender).

I/We have acted as counsel to (Lender) _____ in connection with a $ (amount) _____ (type) _____ loan by the (Lender) _____ (hereinafter ''the Lender'' to (Borrower) _____ (hereinafter ''Borrower''), the terms of which loans are set forth in a certain Loan Agreement (hereinafter ''the Loan Agreement'') executed by the Lender and Borrower on (date) _____.

In connection with this loan, I/we have examined:

1. The corporate records of Borrower, including its Articles of Incorporation, By-Laws and Resolutions of its Board of Directors.

2. The Loan Agreement between the Lender and Borrower.

3. The Security Agreement executed by Borrower on (date) _____.

4. The Guaranty (where applicable) executed on (date) _____ by (personal guarantors) _____.

5. Financing Statements executed by Borrower and the Lender.

6. Real Estate Mortgages dated _____ and executed by Borrower in favor of the Lender.

7. Real Estate Mortgages dated _____ and/or other security documents dated_____ executed by (personal guarantors) _____ in favor of the Bank.

8. The appropriate title and/or lien searches relating to Borrower's property.

9. The pledge of stock and instruments related thereto.

10. Such other materials, including relevant provisions of the laws of this state as I/we have deemed pertinent as a basis for rendering the opinion hereafter set forth.

*In Some Circumstances*

11. Lease(s) between Borrower and (lessor's name) _____ for the rental of (property being rented) _____, (if real property, give the address of the premises; if machinery equipment, etc., give brief, precise description of property for a (length of lease) _____ term commencing on (date) _____.

Based on the foregoing examinations, I am/we are of the opinion and advise you that:

1. Borrower is a duly organized corporation in good standing under the laws of the Commonwealth/State of (State) _____.

2. Borrower has the necessary corporate power to authorize and has taken the necessary corporate action to authorize the Loan Agreement and to execute and deliver the Note, Security Agreement, Financing Statement, and Mortgage. Said instruments hereinafter collectively referred to as the ''Loan Instruments.''

3. The Loan Instruments were all duly authorized, executed, and delivered and constitute the valid and legally binding obligation of the Borrower and collectively create and valid (first) lien upon or valid security interest in favor of the Lender, in the security covered thereby, and are enforceable in accordance with their terms except to the extent that the enforceability (but not the validity) thereof may be limited by laws of bankruptcy, insolvency, or other laws generally affecting creditors' rights.

4. The execution and delivery of the Loan Instruments and compliance with the provisions thereof under the circumstances contemplated thereby did not, do not and will not in any material respect conflict with, constitute default under, or contravene any contract or agreement or other instrument to which the Borrower is a party or any existing law, regulation, court order, or consent decree or device to which the Borrower is subject.

5. All applicable Federal, State and local tax returns and reports as required have been duly filed by Borrower and all Federal, State and local taxes, assessments and other governmental charges imposed upon Borrower or its respective assets, which are due and payable, have been paid.

6. The guaranty has been duly executed by the Guarantors and is a legal, valid and binding joint and several obligations of the Guarantors, enforceable in accordance with its terms, except to the extent that the enforceability (but not the validity) thereof may be limited by laws of bankruptcy, insolvency, or other laws generally affecting creditors' rights.

7. All necessary consents, approvals, or authorizations of any governmental agency or regulatory authority or of stockholders which are necessary have been obtained. The improvements and the use of the property comply in all respects with all Federal, State, and local laws applicable thereto.

8. (In cases involving subordinate or other than first lien position) That the mortgage/deed of trust on Borrower's real estate and (fixtures, e.g., machinery and equipment) and the security interest on (type of collateral, e.g., machinery and equipment, accounts, receivables and inventory) both given as security to the Lender for the Loan, will be subordinate to (first mortgagee) _____ given as security for a loan in the amount of $_____ and the security interest in Borrower's (type of collateral, e.g., accounts inventory) _____ given to (secured creditor) _____ as security for a loan (state type of loan, i.e., revolving line of credit, _____ if known) in the amount of $_____.

9. That there are no liens, as of the date hereof, on record with respect to the property of Borrower other than those set forth above.

10. There are no actions, suits or proceedings pending or, to the best of our knowledge, threatened before any court or administrative agency against Borrower which could materially adversely affect the financial condition and operations of Borrower.

11. Borrower has good and marketable title to the real estate security free and clear of all liens and encumbrances other than those set forth above. I/we have no knowledge of any defect in the title of the Borrower to the property described in the Loan Instruments.

12. Borrower is the absolute owner of all property given to secure the repayment of the loan, free and clear of all liens, encumbrances, and security interests.

13. Duly executed and valid functioning statements have been filed in all offices in which it is necessary to file financing statements to fully perfect the security interests granted in the Loan Instruments.

14. Duly executed real estate mortgages/deeds of trust have been recorded in all offices in which it is necessary to record to fully perfect the security interests granted in the Loan Instruments.

15. (IN SOME OTHER CIRCUMSTANCES) The Indemnification Agreemnt has been duly executed by the Indemnitors and is a legal, valid and binding joint and several obligation of the Indemnitors, enforceable in accordance with its terms, except to the extent that the enforceability (but not the validity) thereof may be limited by laws of bankruptcy, insolvency, or other laws generally affecting creditors' rights.

16. That the lease contains a valid and enforceable right of assignment and right of reassignment, enforceable in accordance with its terms, except to the extent the enforceability (but not the validity) thereof may be limited by laws of bankruptcy, insolvency, or other laws generally affecting creditors' rights.

17. The Lender's lien has been duly noted on all motor vehicle titles, stock certificates or other instruments where such notations are required for proper perfection of security interests therein.

18. That a valid pledge of the outstanding and unissued stock and/or shares of Borrower has been obtained and the Lender has a validly perfected and enforceable security interest in the shares/stock of Borrower, except to the extent the enforceability thereof may be limited by laws of bankruptcy, insolvency, or other laws generally affecting creditors rights.

[52 FR 6522, Mar. 4, 1987]

## APPENDIX I TO SUBPART E OF PART 1980—INSTRUCTIONS FOR LOAN GUARANTEES FOR DROUGHT AND DISASTER RELIEF

A. *In general.* Drought and Disaster (D&D) guaranteed loans are authorized by section 331 (''Disaster Assistance for Rural Business Enterprises'') of the Disaster Assistance Act of 1988, which provides for guarantees of up to 90 percent of the unpaid principal amount of qualifying loans. Interest and protective advances are not covered by the guarantee. Drought and Disaster Guaranteed Loans may be either to assist in alleviating financial

distress caused to rural business entities, directly or indirectly, by drought, hail, excessive moisture, or related conditions occurring in 1988, or to assist such entities that refinance or restructure debt as a result of losses incurred, directly or indirectly, because of such natural disasters. Where used in this appendix, the term ''natural disaster(s)'' refers only to drought, hail, excessive moisture, and related conditions occurring in 1988. All provisions of Subparts A and E of Part 1980 of this chapter apply to D&D loans, except as provided in this appendix. All forms used in connection with a D&D loan will be those used in connection with a B&I guaranteed loan, except for the following three forms that are incorporated in this Appendix I of this Subpart E, made a part hereof, and appear in the FEDERAL REGISTER following the body of this appendix as Exhibits A, B, and C in the following order:

(1) Form FmHA or its successor agency under Public Law 103–354 1980–68, ''Lender's Agreement—Drought and Disaster Guaranteed Loans,'' will be used instead of Form FmHA or its successor agency under Public Law 103–354 449–35, ''Lender's Agreement.''

(2) Form FmHA or its successor agency under Public Law 103–354 1980–69, ''Loan Note Guarantee—Drought and Disaster Guaranteed Loans,'' will be used instead of Form FmHA or its successor agency under Public Law 103–354 449–34, ''Loan Note Guarantee.''

(3) Form FmHA or its successor agency under Public Law 103–354 1980–70, ''Assignment Guarantee Agreement—Drought and Disaster Guaranteed Loans,'' will be used instead of Form FmHA or its successor agency under Public Law 103–354 449–36, ''Assignment Guarantee Agreement.''

B. *Loan purpose.* Except for §§1980.411(a)(11), 1980.412, and section C., below, loan procees may be used for purposes described in §1980.411(a) if such use of loan proceeds will assist in alleviating financial distress caused, directly or indirectly, by drought, hail, excessive moisture, or related conditions which occurred in 1988. In lieu of the debt refinancing requirements in §1980.411(a)(11), the following refinancing requirements apply to D&D loans. Loan proceeds to be used for refinancing must be used solely for refinancing or restructuring of debts as a result of losses incurred, directly or indirectly, as a result of drought, hail, excessive moisture, or related condition occurring in 1988, and such refinancing or restructuring of debt(s) must be essential for the borrower to meet its financial obligations in a timely fashion. In addition, D&D loan proceeds may be used for hotels, motels, tourist or recreation facilities which meet the eligibility requirements for D&D guaranteed loans.

C. *Ineligible loan purposes.* See §1980.412. Except for hotels, motels, tourist and recreation facilities mentioned in section B of this appendix, purposes listed as ineligible B&I loan purposes are ineligible D&D loan purposes. In addition, D&D guaranteed loans may not be used for:

(1) Business expansion, acquisition of real estate, machinery, equipment, inventory, other goods or services, or for any other purpose unless related directly to the financial distress or loss that is the basis for the D&D guaranteed loan.

(2) Any eligible agricultural production purpose if annual tillage of the soil is involved.

(3) Refinancing or restructuring debt(s) which are or were in payment default more than 60 consecutive days during the 12 months preceding the date of the adverse financial effect of the natural disaster of 1988 upon the borrower.

D. *Transactions which will not be guaranteed.* In addition to transactions listed in §1980.413, FmHA or its successor agency under Public Law 103–354 will not guarantee:

(1) D&D guaranteed loan(s) to any borrower if the total cumulative principal amount of D&D guaranteed loan(s) to that borrower would exceed $500,000, or

(2) Any D&D guaranteed loan if the completed application is not received by FmHA or its successor agency under Public Law 103–354 on or before September 30, 1991.

E. *Borrower equity requirements.* See §1980.441. In lieu of the borrower equity requirements in §1980.441, paragraphs (a) and (b), the following applies to D&D loans. Tangibles balance sheet equity must be positive when the Loan Note Guarantee is issued. Equity must be such that, when considered with other credit factors, repayment of the loan and the continued success of the business operation are reasonably assured. Requirements of §1980.441(c) apply to D&D guaranteed loans.

F. *Filing and processing preapplications and applications.* See §1980.451. All requirements of §1980.451 remain in effect. But, in addition to the information required as part of a preapplication under §1980.451(f), and unless previously submitted, as a part of an application under §1980.451(i) evidence is required which demonstrates:

(1) The causal relationship between a 1988 natural disaster and the financial distress or loss upon which the preapplication or application is based; and,

(2) That the amount of the loan requested is not greater than the amount necessary for curing the problems caused by the natural disaster. Financial distress or loss shall be determined on the basis of a comparison of financial data for comparable periods of time and need not necessarily be based on data at the year's end. Evidence submitted may include, but is not limited to, the following:

(a) Evidence of financial loss or distress (including loss or distress caused by business

interruption) resulting from physical damage caused by natural disaster, or

(b) Evidence that the financial loss and/or distress of the business is the direct or indirect result of loss of sales, business interruption, loss of markets, shortage of raw materials, or decline in patronage or customers caused by a natural disaster. It must be shown that business operations were damaged as a result of such natural disaster.

G. *Loan guarantee limit.* See §1980.20 of Subpart A. The maximum loss covered by the Loan Note Guarantee, Form FmHA or its successor agency under Public Law 103–354 1980–69, can never exceed the percentage of guarantee multiplied by the unpaid principal amount of the loan as evidenced by the note(s) or by assumption agreement(s). Interest, capitalized interest, and protective advances are not covered by the guarantee of a D&D loan.

H. *Percentage of guarantee.* See §1980.420. The maximum percentage of guarantee on a D&D loan is 90 percent of the unpaid principal.

I. *Lender's existing unguaranteed exposure.* The provisions of §1980.452 Administrative C. 1(d) do not apply.

J. *No direct or ''insured'' loans.* Sections 1980.423(b), 1980.488(b), 1980.481, 1980.411(b), and other provisions of this subpart dealing with ''insured'' or direct loans do not apply to D&D loans. All D&D loans are FmHA or its successor agency under Public Law 103–354 guaranteed loans. FmHA or its successor agency under Public Law 103–354 has no authority to make D&D loans directly to borrowers.

EXHIBIT A TO APPENDIX I—LENDER'S AGREEMENT; DROUGHT AND DISASTER GUARANTEED LOANS (INTEREST NOT GUARANTEED)[1]

*Form FmHA or its successor agency under Public Law 103–354 1980–68 (11–88)*

FmHA or its successor agency under Public Law 103–354 Loan Ident. No. _____

_____

(Lender) of

_____

has made a loan(s) to

_____

(Borrower)

_____

in the principal amount of $ _____ as evidenced by _____ note(s) (include Bond as appropriate) described as follows:

_____

The United States of America, acting through Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) has entered into a Loan Note Guarantee—Drought and Disaster Guaranteed Loans (Loan Note Guarantee)'' (Form FmHA or its successor agency under Public Law 103–354 1980–69) or has issued a ''Conditional Commitment for Guarantee'' (Form FmHA or its successor agency under Public Law 103–354 449–14) to enter into a Loan Note Guarantee with the Lender applicable to such loan to participate in a percentage of any loss on the loan not to exceed _____% of the amount of the principal advance and any interest (including any loan subsidy) thereon. The terms of the Loan Note Guarantee are controlling. In order to facilitate the marketability of the guaranteed portion of the loan and as a condition for obtaining a guarantee of the loan(s), the Lender enters into this agreement. The maximum loss guaranteed is governed by 7 CFR Part 1980 Subpart E Appendix I and the Loan Note Guarantee (Drought and Disaster Guaranteed Loans)

The Parties Agree:

I. The maximum loss covered under the Loan Note Guarantee will not exceed _____ percent of the principal (Maximum $_____).

II. Full Faith and Credit. The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the Lender has actual knowledge at the time it became such Lender or which Lender participates in or condones. Any note which provides for the payment of interest on interest shall not be guaranteed. Any Loan Note Guarantee or Assignment Guarantee Agreement Drought and Disaster Guaranteed Loan (Assignment Guarantee Agreement) attached to or relating to a note which provides for payment of interest on interest is void.

The Loan Note Guarantee 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 FmHA or its successor agency under Public Law 103–354 acquires knowledge of the foregoing. Any losses will be unenforceable by the Lender to the extent that loan funds are used for purposes other than those specifically approved by FmHA or its successor

[1] Public reporting burden for this collection of information is estimated to average 1.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to, Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0575–0029), Washington, DC 20503.

agency under Public Law 103–354 in its Conditional Commitment for Guarantee. Negligent servicing is defined as the failure to perform those services which a reasonably prudent Lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of failure to act but also not acting in a timely manner or acting in a manner 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.

III. Lender's Sale or Assignment of Guaranteed Loan. A. The Lender may retain all of the guaranteed loan. The Lender is not permitted to sell or participate any amount of the guaranteed or unguaranteed portion(s) of the loan(s) to the applicant or Borrower or members of their immediate families, their officers, directors, stockholders, other owners, or any parent, subsidiary or affiliate. If the Lender desires to market all or part of the guaranteed portion of the loan at or subsequent to loan closing, such loan must not be in default as set forth in the terms of the notes. The Lender may proceed under the following options:

1. *Assignment*. Assign all or part of the guaranteed portion of the loan to one or more Holders by using Form FmHA or its successor agency under Public Law 103–354 1980–70, ''Assignment Guarantee Agreement—Drought and Disaster Guaranteed Loan.'' Holder(s), upon written notice to Lender and FmHA or its successor agency under Public Law 103–354, may reassign the unpaid guaranteed portion of the loan sold thereunder. Upon such notification the assignee shall succeed to all rights and obligations of the Holder(s) therunder. If this portion is selected, the Lender may not at a later date cause to be issued any additional notes.

2. *Multi-Note System*. When this option is selected by the Lender, upon disposition the Holder will receive one of the Borrower's executed notes and Form FmHA or its successor agency under Public Law 103–354 1980–69, ''Loan Note Guarantee—Drought and Disaster Guaranteed Loan'' attached to the Borrower's note. However, all rights under the security instruments (including personal and/or corporate guarantees) will remain with the Lender and in all cases inure to its and the Government's benefit notwithstanding any contrary provisions of state law.

a. *At Loan Closing:* Provide for no more than 10 notes, unless the Borrower and FmHA or its successor agency under Public Law 103–354 agree otherwise, for the guaranteed portion and one note for the unguaranteed portion. When this option is selected, FmHA or its successor agency under Public Law 103–354 will provide the Lender with a Form FmHA or its successor agency under Public Law 103–354 1980–69, for each of the notes.

b. *After Loan Closing:* (1) Upon written approval by FmHA or its successor agency under Public Law 103–354, the Lender may cause to be issued a series of new notes, not to exceed the total provided in 2.a. above, as replacement for previously issued guaranteed note(s) provided:

(a) The Borrower agrees and executes the new notes.

(b) The interest rate does not exceed the interest rate in effect when the loan was closed.

(c) The maturity of the loan is not changed.

(d) FmHA or its successor agency under Public Law 103–354 will not bear any expenses that may be incurred in reference to such reissue of notes.

(e) There is adequate collateral securing the note(s).

(f) No intervening liens have arisen or have been perfected and the secured lien priority remains the same.

(2) FmHA or its successor agency under Public Law 103–354 will issue the appropriate Loan Note Guarantees—Drought and Disaster Guaranteed Loan to be attached to each of the notes then extant in exchange for the original Loan Note Guarantee—Drought and Disaster Guaranteed Loan which will be cancelled by FmHA or its successor agency under Public Law 103–354.

3. *Participations*. a. The Lender may obtain participation in its loan under its normal operating 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 loan servicing and liquidation.

b. The Lender is required to hold in its portfolio or retain a minimum of 5 percent of the total guaranteed loan(s) amount. The amount required to be retained must be of the unguaranteed portion of the loan and cannot be participated to another. The Lender may sell the remaining amount of the unguaranteed portion of the loan only through participation. However, the Lender will always retain the responsibility for loan servicing and liquidation.

B. When a guaranteed portion of a loan is sold by the Lender to a Holder(s), the Holder(s) shall thereupon succeed to all rights of Lender under the Loan Note Guarantee—Drought and Disaster Guaranteed Loan to the extent of the portion of loan purchased. Lender will remain bound to all the obligations under the Loan Note Guarantee—Drought and Disaster Guaranteed Loan, and this agreement, and the FmHA or its successor agency under Public Law 103–354 program regulations found in the applicable Subpart of Title 7 CFR Part 1980, and to future FmHA or its successor agency under Public Law 103–354 program regulations not

inconsistent with the express provisions hereof.

C. The Holder(s) upon written notice to the Lender may resell the unpaid guaranteed portion of the loan sold under provision III A.

IV. The Lender agrees loan funds will be used for the purposes authorized in the applicable Subpart of Title 7 CFR Part 1980 and in accordance with the terms of Form FmHA or its successor agency under Public Law 103–354 449–14.

V. The Lender certifies that none of its officers or directors, stockholders or other owners has a substantial financial interest in the borrower. The Lender certifies that neither the Borrower nor its officers or directors, stockholders, or other owners has a substantial financial interest in the Lender.

VI. The Lender certifies that it has no knowledge of any material adverse change, financial or otherwise, in the Borrower. Borrower's business, or any parent, subsidiaries, or affiliates since it requested a Loan Note Guarantee.

VII. Lender certifies that a loan agreement and/or loan instruments concurred in by FmHA or its successor agency under Public Law 103–354 has been or will be signed with the Borrower.

VIII. Lender certifies it has paid the required guarantee fee.

IX. Servicing. A. The Lender will service the entire loan and will remain mortgagee and/or secured party of record, not withstanding the fact that another may hold a portion of the loan. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. Lender may charge Holder a servicing fee. The unguaranteed portion of a loan will not be paid first nor given any preference or priority over the guaranteed portion of the loan.

B. Disposition of the guaranteed portion of a loan may be made prior to full disbursement, completion of construction and acquisitions only with the prior written approval of FmHA or its successor agency under Public Law 103–354. Subsequent to full disbursement completion of construction, and acquisition, the guaranteed portion of the loan may be disposed of as provided herein.

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 the Borrower has obtained contracts through acceptable procurement procedures; that periodic inspections during construction are made and that FmHA or its successor agency under Public Law 103–354's concurrence on the overall development schedule is obtained.

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 FmHA or its successor agency under Public Law 103–354 and the Borrower of any violations. None of the aforesaid instruments will be altered without FmHA or its successor agency under Public Law 103–354's prior written concurrence. The Lender must service the loan in a reasonable and prudent manner.

2. Receiving all payments on principal and interest (including any loan subsidy) on the loan as they fall due and promptly remitting and accounting to any Holder(s) of their pro rata share thereof determined according to their respective interests in the loan, less only Lender's servicing fee. The loan may be reamortized or renewed only with agreement of the Lender and Holder(s) of the guaranteed portion of the loan and only with FmHA or its successor agency under Public Law 103–354's written concurrence. It is the Lender's responsibility to maximize the collection of interest due on the loan. The Holder(s) remain entitled to all interest due up to the point of repurchase by the Lender or purchase from the Holder(s) by FmHA or its successor agency under Public Law 103–354 if such interest can be collected. If FmHA or its successor agency under Public Law 103–354 has repurchased, FmHA or its successor agency under Public Law 103–354 is equally so entitled.

3. Inspecting the collateral as often as necessary to properly service the loan.

4. 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.

5. 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, or to rebuilding or otherwise acquiring needed replacement collateral with the written approval of FmHA or its successor agency under Public Law 103–354; 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 in value up to $_____ without written concurrence of FmHA or its successor agency under Public Law 103–354; the

Borrower complies with all laws and ordinances applicable to the loan, the collateral and or operating of the farm, business or industry.

6. 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 FmHA or its successor agency under Public Law 103–354 at such time and frequency as required by the loan agreement or Conditional Commitment for Guarantee. In the case of guarantees secured by collateral, assuring the security is properly maintained.

7. Obtaining the lien coverage and lien priorities specified by the Lender and agreed to by FmHA or its successor agency under Public Law 103–354, properly recording or filing lien or notice instruments to obtain or maintain such lien priorities during the existence of the guarantee by FmHA or its successor agency under Public Law 103–354.

8. Assuring that the Borrower obtains marketable title to the collateral.

9. Assuring that the Borrower (any party liable) is not released from liability for all or any part of the loan, except in accordance with FmHA or its successor agency under Public Law 103–354 regulations.

10. Providing FmHA or its successor agency under Public Law 103–354 Finance Office with loan status reports semiannually as of June 30 and December 31 on Form FmHA or its successor agency under Public Law 103–354 1980–41, ''Guaranteed Loan Status Report.''

11. Obtaining from the Borrower periodic financial statements under the following schedule:

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Lender is responsible for analyzing the financial statements, taking any servicing actions and providing copies of statements and record of actions to the FmHA or its successor agency under Public Law 103–354 office immediately responsible for the loan.

12. Monitoring 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, as further explained in 7 CFR Part 1940, Subpart G, Exhibit M.

X. Default. A. The Lender will notify FmHA or its successor agency under Public Law 103–354 when a Borrower is thirty (30) days past due on a payment or if the Borrower has not met its responsibilities of providing the required financial statements to the Lender or is otherwise in default. The Lender will notify FmHA or its successor agency under Public Law 103–354 of the status of a Borrower's default on Form FmHA or its successor agency under Public Law 103–354 1980–44. ''Guaranteed Loan Borrower Default Status.'' A meeting will be arranged by the Lender with the Borrower and FmHA or its successor agency under Public Law 103–354 to resolve the problem. Actions taken by the Lender with written concurrence of FmHA or its successor agency under Public Law 103–354 will include but are not limited to the following or any combination thereof:

1. Deferment of principal payments (subject to rights of any Holder(s)).

2. An additional temporary loan by the Lender to bring the account current.

3. Reamortization of or rescheduling the payments on the loan (subject to rights of any Holder(s)).

4. Transfer and assumption of the loan in accordance with the applicable Subpart of Title 7 CFR Part 1980.

5. Reorganization.

6. Liquidation.

7. Subsequent loan guarantees.

8. Changes in interest rates with FmHA or its successor agency under Public Law 103–354's, Lender's, and the Holders(s) approval; provided, such interest rate is adjusted proportionally between the guaranteed and unguaranteed portion of the loan and the type of rate remains the same.

B. The Lender will negotiate in good faith in an attempt to resolve any problem to permit the Borrower to cure a default, where reasonable.

C. The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder(s) within 30 days of written demand by the Holder(s) when: (a) the Borrower is in default not less than 60 days in payment of principal or interest due on the loan or (b) the Lender has failed to remit to the Holder(s) its pro rata share of any payment made by the Borrower or any loan subsidy within 30 days of its receipt thereof. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of the principal and accrued interest less the Lender's servicing fee. The loan note guarantee will not cover the note interest to the Holder on the guaranteed loan(s). Holder(s) will concurrently send a copy of demand to FmHA or its successor agency under Public Law 103–354. The lender will accept an assignment without recourse from the Holder(s) upon repurchase. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The Lender will notify the Holder(s) and FmHA or its successor agency under Public Law 103–354 of its decision.

D. If Lender does not repurchase as provided by paragraph C, FmHA or its successor agency under Public Law 103–354 will purchase from Holder(s) the unpaid principal balance of the guaranteed portion within 30 days after written demand to FmHA or its successor agency under Public Law 103–354 from the Holder(s). The loan note guarantee will not cover the note interest to the Holder

on the guaranteed loan(s). Such demand will include a copy of the written demand made upon the Lender.

The Holder(s) or its duly authorized agent will also include evidence of its right to require payment from FmHA or its successor agency under Public Law 103–354. Such evidence will consist of either the originals of the Loan Note Guarantee and note properly endorsed to FmHA or its successor agency under Public Law 103–354 or the original of the Assignment Guarantee Agreement properly assigned to FmHA or its successor agency under Public Law 103–354 without recourse including all rights, title, and interest in the loan. FmHA or its successor agency under Public Law 103–354 will be subrogated to all rights of Holder(s). The Holder(s) will include in its demand the amount of unpaid principal, due (no capitalized interest).

The Holder will also inform FmHA or its successor agency under Public Law 103–354 of the amount of past interest and capitalized interest it is owed. Such interest is not guaranteed. The Holder(s) remain entitled to all interest due up to the point of repurchase by the Lender or purchase by FmHA or its successor agency under Public Law 103–354 from the Holder(s) if such interest is or can be collected. If FmHA or its successor agency under Public Law 103–354 has purchased, FmHA or its successor agency under Public Law 103–354 is equally entitled.

The FmHA or its successor agency under Public Law 103–354 office serving the Borrower will promptly notify the Lender of the Holder(s) demand for payment. The Lender will promptly provide the FmHA or its successor agency under Public Law 103–354 office servicing the Borrower with the information necessary for FmHA or its successor agency under Public Law 103–354's determination of the appropriate amount due the Holder(s). Any discrepancy between the amount claimed by the Holder(s) and the information submitted by the Lender must be resolved before payment will be approved. FmHA or its successor agency under Public Law 103–354 will notify both parties who must resolve the conflict before payment by FmHA or its successor agency under Public Law 103–354 will be approved. Such a conflict will suspend the running of the 30 day payment requirement. Upon receipt of the appropriate information, the FmHA or its successor agency under Public Law 103–354 office servicing the Borrower will review the demand and submit it to the State Director for verification. After reviewing the demand, the State Director will transmit the request to the FmHA or its successor agency under Public Law 103–354 Finance Office for issuance of the appropriate check. Upon issuance, the Finance Office will notify the office serving the Borrower and State Director and remit the check(s) to the Holder(s).

E. Lender consents to the purchase by FmHA or its successor agency under Public Law 103–354 and agrees to furnish on request by FmHA or its successor agency under Public Law 103–354 a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owed by the Borrower on the loan and the amount due to the Holder(s). Lender agrees that any purchase by FmHA or its successor agency under Public Law 103–354 does not change, alter or modify any of the Lender's obligations to FmHA or its successor agency under Public Law 103–354 arising from said loan or guarantee, nor does such purchase waive any of FmHA or its successor agency under Public Law 103–354's rights against Lender, and FmHA or its successor agency under Public Law 103–354 will have the right to set-off against Lender all rights inuring to FmHA or its successor agency under Public Law 103–354 from the Holder against FmHA or its successor agency under Public Law 103–354's obligation to Lender under the Loan Note Guarantee. To the extent FmHA or its successor agency under Public Law 103–354 holds a portion of a loan, loan subsidy will not be paid the Lender.

F. Servicing fees assessed by the Lender to a Holder are collectible only from payment installments received by the Lender from the Borrower. When FmHA or its successor agency under Public Law 103–354 repurchases from a Holder, FmHA or its successor agency under Public Law 103–354 will pay the Holder only the amounts due the Holder. FmHA or its successor agency under Public Law 103–354 will not reimburse the Lender for servicing fees assessed to a Holder and not collected from payments received from the Borrower. No servicing fee shall be charged FmHA or its successor agency under Public Law 103–354 and no such fee is collectible from FmHA or its successor agency under Public Law 103–354.

G. Lender may also repurchase the guaranteed portion of the loan consistent with paragraph 10 of the Loan Note Guarantee.

XI. Liquidation. If the Lender concludes that liquidation of a guaranteed loan account is necessary because of one or more defaults or third party actions that the Borrower cannot or will not cure or eliminate within a reasonable period of time, a meeting will be arranged by the Lender with FmHA or its successor agency under Public Law 103–354. When FmHA or its successor agency under Public Law 103–354 concurs with the Lender's conclusion or at any time concludes independently that liquidation is necessary, it will notify the Lender and the matter will be handled as follows:

The Lender will liquidate the loan unless FmHA or its successor agency under Public Law 103–354, at its option, decides to carry out liquidation.

When the decision to liquidate is made, the Lender may proceed to purchase from Holder(s) the guaranteed portion of the loan. The Holder(s) will be paid according to the provision in the Loan Note Guarantee or the Assignment Guarantee Agreement.

If the Lender does not purchase the guaranteed portion of the loan, FmHA or its successor agency under Public Law 103–354 will be notified immediately in writing. FmHA or its successor agency under Public Law 103–354 will then purchase the guaranteed portion of the loan from the Holder(s). If FmHA or its successor agency under Public Law 103–354 holds any of the guaranteed portion, FmHA or its successor agency under Public Law 103–354 will be paid first its pro rata share of the proceeds from liquidation of the collateral.

A. *Lender's proposed method of liquidation.* Within 30 days after the decision to liquidate, the Lender will advise FmHA or its successor agency under Public Law 103–354 in writing of its proposed detailed method of liquidation called a liquidation plan and will provide FmHA or its successor agency under Public Law 103–354 with:

1. Such proof as FmHA or its successor agency under Public Law 103–354 requires to establish the Lender's ownership of the guaranteed loan promissory note(s) and related security instruments.

2. Information lists concerning the Borrower's assets including real and personal property, fixtures, claims, contracts, inventory (including perishables), accounts receivable, personal and corporate guarantees, and other existing and contingent assets, 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.

4. If the outstanding loan balance including accrued interest is less than $200,000, the Lender will obtain an estimate of the market and potential liquidated value of the collateral. On loan balances in excess of $200,000, the Lender will obtain an independent appraisal report on all collateral securing the loan, which will reflect the current market value and potential liquidation value. The appraisal report is for the purpose of permitting the Lender and FmHA or its successor agency under Public Law 103–354 to determine the appropriate liquidation actions. Any independent appraiser's fee will be shared equally by FmHA or its successor agency under Public Law 103–354 and the Lender.

B. *FmHA or its successor agency under Public Law 103–354's response to Lender's liquidation plan.* FmHA or its successor agency under Public Law 103–354 will inform the Lender in writing whether it concurs in the Lender's liquidation plan within 30 days after receipt of such notification from the Lender. If FmHA or its successor agency under Public Law 103–354 needs additional time to respond to the liquidation plan, it will advise the Lender of a definite time for such response. Should FmHA or its successor agency under Public Law 103–354 and the Lender not agree on the Lender's liquidation plan, negotiations will take place between FmHA or its successor agency under Public Law 103–354 and the Lender to resolve the disagreement. The Lender will ordinarily conduct the liquidation; however, should FmHA or its successor agency under Public Law 103–354 opt to conduct the liquidation, FmHA or its successor agency under Public Law 103–354 will proceed as follows:

1. The Lender will transfer to FmHA or its successor agency under Public Law 103–354 all rights and interests necessary to allow FmHA or its successor agency under Public Law 103–354 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 FmHA or its successor agency under Public Law 103–354.

2. FmHA or its successor agency under Public Law 103–354 will attempt to obtain the maximum amount of proceeds from liquidation.

3. Options available to FmHA or its successor agency under Public Law 103–354 include any one or combination of the usual commercial methods of liquidation.

C. *Acceleration.* The Lender or FmHA or its successor agency under Public Law 103–354, 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 FmHA or its successor agency under Public Law 103–354 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 FmHA or its successor agency under Public Law 103–354 with periodic reports on the progress of liquidation, disposition of collateral, resulting costs and additional procedures necessary for successful completion of liquidation. The Lender will transmit to FmHA or its successor agency under Public Law 103–354 any payments received from the Borrower and/or pro rata share of liquidation or other proceeds, etc. when FmHA or its successor agency under Public Law 103–354 is the holder of a portion of the guaranteed loan using Form FmHA or its successor agency under Public Law 103–354 1980–43, ''Lender's Guaranteed Loan Payment to FmHA or its successor agency under Public Law 103–354.'' When FmHA or its successor agency under Public

Law 103–354 liquidates, the Lender will be provided with similar reports on request.

E. *Determination of Loss and Payment.* In all liquidation cases, final settlement will be made with the Lender after the collateral is liquidated. FmHA or its successor agency under Public Law 103–354 will have the right to recover losses paid under the guarantee from any party liable.

1. Form FmHA or its successor agency under Public Law 103–354 449–30, ''Loan Note Guarantee Report of Loss,'' will be used for calculations of all estimated and final loss determinations. Estimated loss payments may be approved by FmHA or its successor agency under Public Law 103–354 after the Lender has submitted a liquidation plan approved by FmHA or its successor agency under Public Law 103–354. Payment will be made in accordance with applicable FmHA or its successor agency under Public Law 103–354 regulations.

2. When the Lender is conducting the liquidation, and owns any of the guaranteed portion of the loan, it may request a tentative loss estimate by submitting to FmHA or its successor agency under Public Law 103–354 an estimate of the loss that will occur in connection with liquidation of the loan. FmHA or its successor agency under Public Law 103–354 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 FmHA or its successor agency under Public Law 103–354 449–30, 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 FmHA or its successor agency under Public Law 103–354, and within 30 days thereafter, FmHA or its successor agency under Public Law 103–354 will send the original Report of Loss estimate to FmHA or its successor agency under Public Law 103–354 Finance Office for issuance of a Treasury check in payment of the estimated amount due the Lender.

After liquidation has been completed, a final loss report will be submitted on Form FmHA or its successor agency under Public Law 103–354 449–30 by the Lender to FmHA or its successor agency under Public Law 103–354.

3. After the Lender has completed liquidation, FmHA or its successor agency under Public Law 103–354 upon receipt of the final accounting and report of loss, may audit and will determine the actual loss. If FmHA or its successor agency under Public Law 103–354 has any questions regarding the amounts set forth in the final Report of Loss, it will investigate the matter. The Lender will make its records available to and otherwise assist FmHA or its successor agency under Public Law 103–354 in making the investigation. If FmHA or its successor agency under Public Law 103–354 finds any discrepancies, it will contact the Lender and arrange for the necessary corrections to be made as soon as possible. When FmHA or its successor agency under Public Law 103–354 finds the final Report of Loss to be proper in all respects, it will be tentatively approved in the space provided on the form for that purpose.

4. 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, FmHA or its successor agency under Public Law 103–354 will send the original of the final Report of Loss to the Finance Office for issuance of a Treasury check in payment of the additional amount owed by FmHA or its successor agency under Public Law 103–354 to the Lender.

b. If the loss is less than the estimated loss, the Lender will reimburse FmHA or its successor agency under Public Law 103–354 for the overpayment plus interest at the note rate from date of payment.

5. If FmHA or its successor agency under Public Law 103–354 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.

F. *Maximum amount of interest loss payment.* Interest is not covered by the guarantee.

G. *Application of FmHA or its successor agency under Public Law 103–354 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 FmHA or its successor agency under Public Law 103–354 will be applied by the Lender on the guaranteed portion of the loan debt. However, such application does not release the Borrower from liability. At time of final loss settlement the Lender will notify the Borrower that the loss payment has been so applied. In all cases a final Form FmHA or its successor agency under Public Law 103–354 449–30 prepared and submitted by the Lender must be processed by FmHA or its successor agency under Public Law 103–354 in order to close out the files at the FmHA or its successor agency under Public Law 103–354 Finance Office.

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. These 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 FmHA or its successor agency under Public Law 103–354 written concurrence) to be protective advances. If changed circumstances after submission of the liquidation plan require a revision of liquidation costs, the Lender will procure FmHA or its successor agency under Public Law 103–354's written concurrence prior to proceeding with the proposed changes. No in-house expenses of the Lender will be allowed. In-house expenses include, but are not limited to, employees' salaries, staff lawyers, travel and overhead.

J. *Foreclosure*. The parties owning the guaranteed portion and unguaranteed portions of the loan will join to institute foreclosure action or, in lieu of foreclosure, to take a deed of conveyance to such parties. When the conveyance is received and liquidated, net proceeds will be applied to the guaranteed loan debt.

K. *Payment*. Such loss will be paid by FmHA or its successor agency under Public Law 103–354 within 60 days after the review of the accounting of the collateral.

XII. Protective Advances. Protective advances will not be covered by the guarantee.

XIII. Additional Loans or Advances. The Lender will not make additional expenditures or new loans without first obtaining the written approval of FmHA or its successor agency under Public Law 103–354 even though such expenditures or loans will not be guaranteed.

XIV. Future Recovery. After a loan has been liquidated and a final loss has been paid by FmHA or its successor agency under Public Law 103–354, any future funds which may be recovered by the Lender, will be pro-rated between FmHA or its successor agency under Public Law 103–354 and the Lender. FmHA or its successor agency under Public Law 103–354 will be paid such amount recovered in proportion to the percentage it guaranteed for the loan and the Lender will retain such amounts in proportion to the percentage of the unguaranteed portion of the loan.

XV. Transfer and Assumption Cases. Refer to the applicable Subpart of Title 7 of CFR Part 1980.

If a loss should occur upon consummation of a complete transfer and assumption for less than the full amount of the debt and the transferor-debtor (including personal guarantees) is released from personal liability, the Lender, if it holds the guarantee portion, may file an estimated Report of Loss on Form FmHA or its successor agency under Public Law 103–354 449–30, ''Loan Note Guarantee Report of Loss,'' to recover its pro rata share of the actual loss at that time. In completing Form FmHA or its successor agency under Public Law 103–354 449–30, the amount of the debt assumed will be entered on line 24 as Net Collateral (Recovery).

XVI. Other Requirements. This agreement is subject to all the requirements of the applicable Subpart of Title 7 CFR Part 1980, and any future amendments of these regulations not inconsistent with this agreement. Interested parties may agree to abide by future FmHA or its successor agency under Public Law 103–354 regulations not inconsistent with this agreement.

XVII. Execution of Agreements. If this agreement is executed prior to the execution of the Loan Note Guarantee, this agreement does not impose any obligation upon FmHA or its successor agency under Public Law 103–354 with respect to execution of such contract. FmHA or its successor agency under Public Law 103–354 in no way warrants that such a contract has been or will be executed.

XVIII. Notices. All notices and actions will be initiated through FmHA or its successor agency under Public Law 103–354 for— _____

_____

(State) with mailing address at the

Date of this instrument _____

_____

Dated this _____ day of _____, 19____.

Lender:

By _____

Title _____

United States of America

Farmers Home Administration or its successor agency under Public Law 103–354

By _____

Title _____

Attest: _____ (SEAL)

EXHIBIT B TO APPENDIX I—LOAN NOTE GUARANTEE; DROUGHT AND DISASTER GUARANTEED LOANS (INTEREST NOT GUARANTEED)

*Form FmHA or its successor agency under Public Law 103–354 1980–69 (11–88)*

Borrower _____

Lender _____

Lender's Address _____

State _____

County _____

Date of Note _____

FmHA or its successor agency under Public Law 103–354 Loan Identification Number __

Lender's IRS ID Tax Number _____

Principal Amount of Loan $ _____

The guaranteed portion of the loan is $_____ which is _____ (_____ %) percent of loan principal. The principal amount of loan is evidenced by _____ note(s) (includes bonds as appropriate) described below. The guaranteed portion of each note is indicated below. This instrument is attached to note _____ in the face amount of $_____ and is number _____ of _____.

Lender's Identifying Number _____

Face Amount _____

Percent of Total Face Amount _____

Amount Guaranteed _____

Maximum Loss Guaranteed Governed by 7 CFR Part 1980, Subpart E, Appendix I

Total $_____ 100% $_____

In consideration of the making of the subject loan by the above named Lender, the United States of America, acting through the Farmers Home Administration or its successor agency under Public Law 103–354 of the United States Department of Agriculture (herein called ''FmHA or its successor agency under Public Law 103–354''), pursuant to the Disaster Assistance Act (P.L. 100–387, 7 USC ) does hereby agree that in accordance with and subject to the conditions and requirements herein, it will pay to:

The Lender the lesser of 1. or 2. below:

1. Any loss sustained by such Lender on the guaranteed portion including principal indebtedness as evidenced by said note(s) or by assumption agreement(s), or

2. The guaranteed principal advanced to or assumed by the Borrower under said note(s) or assumption agreement(s) (Maximum $ ). No capitalized interest is guaranteed.

*Definition of Holder*. The Holder is the person or organization other than the Lender who holds all or part of the guaranteed portion of the loan with no servicing responsibilities. Holders are prohibited from obtaining any part(s) of the guaranteed portion of the loan with proceeds from any obligation, the interest on which is excludable from income, under Section 103 of the Internal Revenue Code of 1954, as amended (IRC). When the Lender assigns a part(s) of the guaranteed loan to an assignee, the assignee becomes a Holder only when Form FmHA or its successor agency under Public Law 103–354 1980–70, ''Assignment Guarantee Agreement—Drought and Disaster Guaranteed Loans,'' is used.

*Definition of Lender*. The Lender is the person or organization making and servicing the loan which is guaranteed under the provisions of the applicable subpart of 7 CFR Part 1980. The Lender is also the party requesting a loan guarantee.

Conditions of Guarantee

1. Loan Servicing. Lender will be responsible for servicing the entire loan, and Lender will remain mortgagee and/or secured party of record not withstanding the fact that another party may hold a portion of the loan. When multiple notes are used to evidence a loan, Lender will structure repayments as provided in the loan agreement.

2. Priorities. 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.

3. Full Faith and Credit. The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which Lender or any Holder has actual knowledge at the time it became such Lender or Holder or which Lender or any Holder participates in or condones. If the note to which this is attached or relates provides for payment of interest on interest, then this Loan Note Guarantee is void. In addition, the Loan Note Guarantee will be unenforceable by Lender to the extent any loss is occasioned by the violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA or its successor agency under Public Law 103–354 acquires knowledge of the foregoing. Any losses occasioned will be unenforceable to the extent that loan funds are used for purposes other than those specifically approved by FmHA or its successor agency under Public Law 103–354 in its Conditional Commitment for Guarantee. Negligent servicing is defined as the failure to perform those services which a reasonably prudent lender would perform in servicing its own 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 in a manner 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.

4. Rights and Liabilities. The guarantee and right to require purchase will be directly enforceable by Holder notwithstanding any fraud or misrepresentation by Lender or any unenforceability of this Loan Note Guarantee by Lender. Nothing contained herein will constitute any waiver by FmHA or its successor agency under Public Law 103–354 of any rights it possesses aganinst the Lender. Lender will be liable for and will promptly pay to FmHA or its successor agency under Public Law 103–354 any payment made by FmHA or its successor agency under Public Law 103–354 to Holder which if such Lender had held the guaranteed portion of the loan, FmHA or its successor agency under Public Law 103–354 would not be required to make.

5. Payments. Lender will receive all payments of principal, or interest, on account of the entire loan and will promptly remit to Holder(s) its pro rata share thereof determined according to its respective interest in the loan, less only Lender's servicing fee.

6. Protective Advances. Protective advances made by Lender will not be guaranteed.

7. Repurchase by Lender. The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder(s) within 30 days of written demand by the Holder(s) when: (a) the borrower is in default not less than 60 days on principal or interest

due on the loan or (b) the Lender has failed to remit to the Holder(s) its pro rata share of any payment made by the borrower or any loan subsidy within 30 days of its receipt thereof. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of principal and accrued interest less the Lender's servicing fee. The Loan Note Guarantee will not cover the note interest on the guaranteed loan(s). Holder(s) will concurrently send a copy of demand to FmHA or its successor agency under Public Law 103–354. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The Lender will notify the Holder(s) and FmHA or its successor agency under Public Law 103–354 of its decision.

8. FmHA or its successor agency under Public Law 103–354 Purchase. If Lender does not repurchase as provided by paragraph 7 hereof, FmHA or its successor agency under Public Law 103–354 will purchase from Holder the unpaid principal balance of the guaranteed portion less Lender's servicing fee, within thirty (30) days after written demand to FmHA or its successor agency under Public Law 103–354 from Holder. The Loan Note Guarantee will not cover the note interest to the Holder on the guaranteed loan(s). Such demand will include a copy of the written demand made upon the Lender. The Holder(s) or its duly authorized agent will also include evidence of its right to require payment from FmHA or its successor agency under Public Law 103–354. Such evidence will consist of either the original of the Loan Note Guarantee properly endorsed to FmHA or its successor agency under Public Law 103–354 or the original of the Assignment Guarantee Agreement properly assigned to FmHA or its successor agency under Public Law 103–354 without recourse including all rights, title, and interest in the loan. FmHA or its successor agency under Public Law 103–354 will be subrogated to all rights of Holder(s). The Holder(s) will include in its demand the amount of unpaid principal due (no capitalized interest).

The Holder will also inform FmHA or its successor agency under Public Law 103–354 of the amount of past interest and capitalized interest it is owed. Such interest is not guaranteed. The Holder(s) remain entitled to all interest due to the point of repurchase by the Lender or purchase by FmHA or its successor agency under Public Law 103–354 from the Holder(s) if such interest is or can be collected. If FmHA or its successor agency under Public Law 103–354 has purchased, FmHA or its successor agency under Public Law 103–354 is equally entitled.

The FmHA or its successor agency under Public Law 103–354 will promptly notify the Lender of its receipt of the Holder(s)'s demand for payment. The Lender will promptly provide the FmHA or its successor agency under Public Law 103–354 with the information necessary for FmHA or its successor agency under Public Law 103–354 determination of the appropriate amount due the Holder(s). Any discrepancy between the amount claimed by the Holder(s) and the information submitted by the Lender must be resolved before payment will be approved. FmHA or its successor agency under Public Law 103–354 will notify both parties who must resolve the conflict before payment of FmHA or its successor agency under Public Law 103–354 will be approved. Such conflict will suspend the running of the 30 day payment requirement. Upon receipt of the appropriate information, FmHA or its successor agency under Public Law 103–354 will review the demand and submit it to the State Director for verification. After reviewing the demand the State Director will transmit the request to the FmHA or its successor agency under Public Law 103–354 Finance Office for issuance of the appropriate check. Upon issuance, the Finance Office will notify the office servicing the borrower and State Director and remit the check(s) to the Holder(s).

9. *Lender's Obligations*. Lender consents to the purchase by FmHA or its successor agency under Public Law 103–354 and agrees to furnish on request by FmHA or its successor agency under Public Law 103–354 a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owed by Borrowers on the loan and the amount including any loan subsidy then owed by any Holder(s). Lender agrees that any purchase by FmHA or its successor agency under Public Law 103–354 does not change, alter or modify any of the Lender's obligations to FmHA or its successor agency under Public Law 103–354 arising from said loan or guarantee nor does it waive any of FmHA or its successor agency under Public Law 103–354's rights against Lender, and that FmHA or its successor agency under Public Law 103–354 will have the right to set-off against Lender all rights inuring to FmHA or its successor agency under Public Law 103–354 as the Holder of this instrument against FmHA or its successor agency under Public Law 103–354's obligation to Lender under the Loan Note Guarantee.

10. *Repurchase by Lender for Servicing*. If, in the opinion of the Lender, repurchase of the guaranteed portion of the loan is necessary to adequately service the loan, the Holder will sell the portion of the loan to the Lender for an amount equal to the unpaid principal and interest (including any loan subsidy) on such portion less Lender's servicing fee. The Loan Note Guarantee will not cover the note interest to the Holder on the guaranteed loans.

a. The lender will not repurchase from the Holder(s) for arbitrage purposes or other purposes to further its own financial gain.

b. Any repurchase will only be made after the Lender obtains FmHA or its successor agency under Public Law 103–354 written approval.

c. If the Lender does not repurchase the portion from the Holder(s), FmHA or its successor agency under Public Law 103–354 at its option may purchase such guaranteed portions for servicing purposes.

11. *Custody of Unguaranteed Portion*. The Lender may retain, or sell the unguaranteed portion of the loan only through participation. Participation, as used in this instrument, means the sale of an interest in the loan wherein the Lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.

12. *When Guarantee Terminates*. This Loan Note Guarantee will terminate automatically (a) upon full payment of the guaranteed loan; or (b) upon full payment of any loss obligation hereunder; or (c) upon written notice from the Lender to FmHA or its successor agency under Public Law 103–354 that the guarantee will terminate 30 days after the date of notice, provided the Lender holds all of the guaranteed portion and the Loan Note Guarantee(s) are returned to be cancelled by FmHA or its successor agency under Public Law 103–354.

13. *Settlement*. The amount due under this instrument will be determined and paid as provided in the applicable Subpart of Part 1980 of Title 7 CFR in effect on the date of this instrument.

14. *Notices*. All notices and actions will be initiated through the FmHA or its successor agency under Public Law 103–354 _____ for _____ (State) with mailing address at the date of this instrument:

_____

United States of America
Farmers Home Administration or its successor agency under Public Law 103–354
By: _____
Title: _____
(*Date*) _____
Assumption Agreement by _____
dated _____, 19___
Assumption Agreement by _____
dated _____, 19___

EXHIBIT C TO APPENDIX I—ASSIGNMENT GUARANTEE AGREEMENT—DROUGHT AND DISASTER GUARANTEED LOANS (INTEREST NOT GUARANTEED)[1]

FmHA or its successor agency under Public Law 103–354 Loan Ident. No. _____

*Form FmHA or its successor agency under Public Law 103–354 1980–70 (11–88)*

_____
of _____
(Lender) has made a loan to _____
in the principal amount of $ _____
as evidenced by a note(s) dated _____
The United States of America, acting through Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) entered into a Loan Note Guarantee—Drought and Disaster Guaranteed Loans (Loan Note Guarantee) (Form FmHA or its successor agency under Public Law 103–354 1980–69) with the Lender applicable to such loan to guarantee the loan not to exceed _____ % of the amount of the principal advanced.

_____
of _____
(Holder) desires to purchase from Lender _____ % of the guaranteed portion of such loan. Copies of Borrower's note(s) and the Loan Note Guarantee are attached hereto as a part hereof. _____

*Now, Therefore, the Parties Agree:*

1. The principal amount of the loan now outstanding is $_____ . Lender hereby assigns to Holder _____ % of the guaranteed portion of the loan representing $_____ of such loan now outstainding in accordance with all of the terms and conditions hereinafter set forth. The Lender and FmHA or its successor agency under Public Law 103–354 certify to the Holder that the Lender has paid and FmHA or its successor agency under Public Law 103–354 has received the Guarantee Fee in exchange for the issuance of the Loan Note Guarantee.

2. *Loan Servicing*. The Lender will be responsible for servicing the entire loan and will remain mortgagee and/or secured party of record. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan.

The Lender will receive all payments on account of principal of, or interest (including any loan subsidy) on, the entire loan and shall promptly remit to the Holder its pro rata share thereof determined according to

[1] Public reporting burden for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to, Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0575–0029), Washington, DC 20503.

their respective interests in the loan, less only Lender's servicing fee.

3. *Servicing Fee*. Holder agrees that Lender will retain a servicing fee of _____ percent per annum of the unpaid balance of the guaranteed portion of the loan assigned hereunder.

4. *Purchase by Holder*. The guaranteed protion purchased by the Holder will always be a portion of the loan which is guaranteed. The Holder will hereby succeed to all rights of the Lender under the Loan Note Guarantee to the extent of the assigned portion of the loan. The Lender, however, will remain bound by all the obligations under the Loan Note Guarantee and the program regulations found in the applicable Subpart of 7 CFR Part 1980 now in effect and future FmHA or its successor agency under Public Law 103–354 program regulations not inconsistent with the provisions hereof.

5. *Full Faith and Credit*. The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is inconstestable except for fraud or misrepresentation of which the Holder has actual knowledge at the time of this assignment, or which it participates in or condones. A note which provides for the payment of interest on interest shall not be guaranteed. Any Assignment Guarantee Agreement—Drought and Disaster Guaranteed Loan attached to or relating to a note which provides for payment of interest on interest is void.

6. *Rights and Liabilities*. The guarantee and right to require purchase will be directly enforceable by Holder notwithstanding any fraud or misrepresentations by Lender or any unenforceability of the Loan Note Guarantee by Lender. Nothing contained herein shall constitute any waiver by FmHA or its successor agency under Public Law 103–354 of any rights it possesses against the Lender, and the Lender agrees that Lender will be liable and will promptly reimburse FmHA or its successor agency under Public Law 103–354 for any payment made by FmHA or its successor agency under Public Law 103–354 to Holder which, if such Lender had held the guaranteed portion of the loan, FmHA or its successor agency under Public Law 103–354 would not be required to make. The Holder(s) upon written notice to the Lender may resell the unpaid balance of the guaranteed portion of the loan assigned hereunder. An endorsement may be added to the Form FmHA or its successor agency under Public Law 103–354 1980–70 to effectuate the transfer.

Lender:
Address:
By _____
Title _____
Attest: _____
(*SEAL*)
Holder:
Address:
By _____
Title _____
Attest: _____
(*SEAL*)
United States of America
Farmers Home Administration or its successor agency under Public Law 103–354
Address: _____
By _____
Title _____

[54 FR 5, Jan. 3, 1989, as amended at 54 FR 14792, Apr. 13, 1989; 54 FR 26946, June 27, 1989]

## APPENDIX J TO SUBPART E OF PART 1980 [RESERVED]

## APPENDIX K TO SUBPART E OF PART 1980—REGULATIONS FOR LOAN GUARANTEES FOR DISASTER ASSISTANCE FOR RURAL BUSINESS ENTERPRISES

### *A. In general*

Disaster Assistance for Rural Business Enterprises (DARBE) guaranteed loans are authorized by Section 401 of the Disaster Assistance Act of 1989, which provides for guarantees of up to 90 percent of the unpaid principal and interest amount of qualifying loans, or $2,500,000 whichever is less, to any one borrower. DARBE guaranteed loans may be either to assist in alleviating financial distress caused to rural business entities, directly or indirectly, by drought, freeze, storm, excessive moisture, earthquake, or related conditions occurring in 1988 or 1989, or to assist such entities that refinance or restructure debt as a result of losses incurred, directly or indirectly, because of such natural disasters. Where used in this appendix, the term ''natural disaster(s)'' refers only to drought, freeze, storm, excessive moisture, earthquake, and related conditions occurring in 1988 or 1989. All provisions of subparts A and E of part 1980 of this chapter apply to DARBE loans, except as provided in this appendix. All forms used in connection with a DARBE loan will be those used in connection with a Business and Industrial (B&I) guaranteed loan, except for the following three forms that are incorporated in this appendix K of this subpart E, made a part hereof, and appear in the FEDERAL REGISTER following the body of this appendix as exhibits A, B, and C in the following order:

(1) Form FmHA or its successor agency under Public Law 103–354 1980–71, ''Lender's Agreement—Disaster Assistance for Rural Business Enterprise Guaranteed Loans,'' will be used instead of Form FmHA or its successor agency under Public Law 103–354 449–35, ''Lender's Agreement.''

(2) Form FmHA or its successor agency under Public Law 103–354 1980–72, ''Loan Note Guarantee—Disaster Assistance for Rural Business Enterprise Guaranteed Loans,'' will

be used instead of Form FmHA or its successor agency under Public Law 103–354 449–34, ''Loan Note Guarantee.''

(3) Form FmHA or its successor agency under Public Law 103–354 1980–73, ''Assignment Guarantee Agreement—Disaster Assistance for Rural Business Enterprise Guaranteed Loans,'' will be used instead of Form FmHA or its successor agency under Public Law 103–354 449–36, ''Assignment Guarantee Agreement.''

*B. Loan purposes*

Loan proceeds may be used for purposes described in §1980.411(a), except in lieu of the debt refinancing requirements in §1980.411(a)(11), the following refinancing requirements apply to DARBE loans. Loan proceeds to be used for refinancing must be used solely for refinancing or restructuring of debts as a result of losses incurred, directly or indirectly, as a result of drought, freeze, storm, excessive moisture, earthquake, or related conditions occurring in 1988 or 1989, and such refinancing or restructuring of debt(s) must be essential for the borrower to meet its financial obligations in a timely fashion. DARBE loan proceeds may be used for hotels, motels, tourist, or recreation facilities which meet the eligibility requirements of DARBE guaranteed loans in addition to the eligible loan purposes as stated in FmHA or its successor agency under Public Law 103–354 Instruction 1980–E. In addition, DARBE loan proceeds may be used for business enterprises engaged in agricultural production (production agriculture) which means the cultivation, production (growing), and harvesting, either directly or through integrated operations, of agricultural products (crops, animals, birds, and marine life, either for fibers or food for human consumption), and disposal or marketing thereof, the raising, housing, feeding (including commercial custom feedlots), breeding, hatching, control and/or management of farm and domestic animals. Other eligible uses of loan proceeds under agricultural production include:

(1) Commercial nurseries primarily engaged in the production of ornamental plants and trees and other nursery products such as bulbs, florists' greens, flowers, shrubbery, flower and vegetable seeds, sod, and the growing of vegetables from seed to the transplant stage.

(2) Forestry which includes establishments primarily engaged in the operation of timber tracts, tree farms, forest nurseries, and related activities such as reforestation.

(3) Loans for livestock and poultry processing as identified under eligible purposes.

(4) The growing of mushrooms or hydroponics.

In addition, those business enterprises which qualify for assistance as agricultural production must be ineligible entities for FmHA or its successor agency under Public Law 103–354 farmer program loans because the entity exceeds the definition of a family-size farm as defined by FmHA or its successor agency under Public Law 103–354 Instruction 1941–A, §1941.4(d).

*C. Ineligible loan purposes*

FmHA or its successor agency under Public Law 103–354 Instruction 1980–E, §1980.412 are ineligible purposes for DARBE guaranteed loans except for hotels, motels, tourist, recreation facilities and agricultural production (production agriculture) as defined in §1980.412(e), DARBE guaranteed loans may not be used for:

(1) Business expansion, acquisition of real estate, machinery, equipment, inventory, other goods or services, or for any other purpose unless related directly to the financial distress or loss that is the basis for the DARBE guaranteed loan.

(2) Alleviating financial distress of entities engaged in agricultural production that are eligible for other FmHA or its successor agency under Public Law 103–354-type farm loan programs.

*D. Transactions which will not be guaranteed*

In addition to transactions listed in FmHA or its successor agency under Public Law 103–354 Instruction 1980–E, §1980.413, except for §1980.413(a)(3), FmHA or its successor agency under Public Law 103–354 will not make DARBE guaranteed loans if the completed application is not received by FmHA or its successor agency under Public Law 103–354 on or before September 30, 1991, nor will FmHA or its successor agency under Public Law 103–354 make subsequent DARBE guarantee loans.

*E. Borrower equity requirements*

See FmHA or its successor agency under Public Law 103–354 Instruction 1980–E, §1980.441. In lieu of the borrower equity requirements in §1980.441, paragraphs (a) and (b), the following applies to DARBE loans. Tangible balance sheet equity must be positive when the Loan Note Guarantee is issued. Equity must be such that, when considered with other credit factors, repayment of the loan and the continued success of the business operation are reasonably assured. Requirements of §1980.441(c) apply to DARBE guaranteed loans.

*F. Filing and processing preapplications and applications*

See FmHA or its successor agency under Public Law 103–354 Instruction 1980–E, §1980.451. All requirements of §1980.451 remain in effect. In addition to the information required as part of a preapplication under §1980.451(f), and unless previously submitted as a part of an application under

§1980.451(i) evidence is required which demonstrates to FmHA or its successor agency under Public Law 103–354's satisfaction:

(1) The causal relationship between a 1988 or 1989 natural disaster and the financial distress or loss upon which the preapplication or application is based; and,

(2) That the amount of the loan requested is not greater than the amount necessary for curing the problems caused by the natural disaster. Financial distress or loss shall be determined on the basis of a comparison of financial data for comparable periods of time and need not necessarily be based on data at the year's end. Evidence submitted may include, but is not limited to, the following:

(a) Evidence of financial loss or distress (including loss or distress caused by business interruption) resulting from physical damage caused by natural disaster, or

(b) Evidence that the financial loss and/or distress of the business is the direct or indirect result of loss of sales, business interruption, loss of markets, shortage of raw materials, or decline in patronage or customers caused by a nautral disaster. It must be shown that business operations were damaged as a result of such natural disaster.

(3) Evidence of compliance with Sodbuster and Swampbuster requirements as referenced in paragraph K below.

*G. Loan guarantee limit.* The total principal amount of DARBE guaranteed loans to any one borrower cannot exceed $10,000,000. The maximum loss covered by Form FmHA or its successor agency under Public Law 103–354 1980–72, ''Loan Note Guarantee DARBE,'' issued on any one borrower can never exceed the percentage of guarantee multiplied by the unpaid principal and accrued interest on the loan as evidenced by the note(s) or by assumption agreement(s), and protective advances, or $2,500,000, whichever is the lesser amount.

*H. Percentage of guarantee.* The provisions of FmHA or its successor agency under Public Law 103–354 instruction 1980–E, §1980.420 will not apply to DARBE. For loans in excess of $2,000,000, the percentage of guarantee will be calculated so that the guaranteed portion of the principal amount of the loan cannot exceed $2,000,000. For loans of $2,000,000 or less the maximum percentage of guarantee will be 90 percent. For example, a loan of $10,000,000 would not exceed a 20 percent guarantee; a $5,000,000 loan would not exceed a 40 percent guarantee.

*I. Lender's existing unguaranteed exposure*

The provisions of §1980.452 ADMINISTRATIVE C. 1(d) do not apply.

*J. No direct or insured loans*

FmHA or its successor agency under Public Law 103–354 Instruction 1980–E, §§1980.423(b), 1980.488(b), 1980.481, 1980.411(b), and other provisions of this subpart dealing with insured or direct loans do not apply to DARBE loans. All DARBE loans are FmHA or its successor agency under Public Law 103–354 guaranteed loans. FmHA or its successor agency under Public Law 103–354 has no authority to make DARBE loans directly to borrowers.

*K. Sodbuster and Swampbuster requirements*

The provisions of FmHA or its successor agency under Public Law 103–354 Instruction 1940–G, exhibit M, will apply to loans made to rural business enterprises engaged in agricultural production.

EXHIBIT A TO APPENDIX K

USDA-FmHA or its successor agency under Public Law 103–354

Form FmHA or its successor agency under Public Law 103–354 1980–71
(Rev. 11–89)
FORM APPROVED
OMB NO. 0575–0029

LENDER'S AGREEMENT

DISASTER ASSISTANCE FOR RURAL BUSINESS ENTERPRISE (DARBE)

GUARANTEED LOANS

MAXIMUM LOSS PAYABLE BY FMHA OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354 TO A HOLDER OR LENDER IS $2,500,000.

Type of Loan.

_____

Applicable 7 CFR part 1980 subpart

_____

FmHA or its successor agency under Public Law 103–354 Loan Ident. No.

_____

(Lender) of

_____

has made a loan(s) to

_____

(Borrower)

_____

in the principal amount of $_____ as evidenced by

_____

note(s) (include Bond as appropriate) described as follows:

_____
_____
_____
_____

The United States of America, acting through Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) has entered into a ''Loan Note Guarantee—DARBE'' (Form FmHA or its successor agency under Public Law 103–354 1980–72) or has issued a ''Conditional

Commitment for Guarantee'' (Form FmHA or its successor agency under Public Law 103–354 449–14) to enter into a Loan Note Guarantee with the Lender applicable to such loan to participate in a percentage of any loss on the loan not to exceed _____% of the amount of the principal advance and any interest (including any loan subsidy) thereon. The terms of the Loan Note Guarantee are controlling. In order to facilitate the marketability of the guaranteed portion of the loan and as a condition for obtaining a guarantee of the loan(s), the Lender enters into this agreement.

THE PARTIES AGREE:

I. The maximum loss covered under the Loan Guarantee—DARBE will not exceed _____ percent of the principal and accrued interest including any loan subsidy on the above indebtedness.

THE MAXIMUM LOSS PAYMENT UNDER A LOAN GUARANTEE UNDER THE DISASTER ASSISTANCE FOR RURAL BUSINESS ENTERPRISE GUARANTEED LOAN PROGRAM IS LIMITED TO $2,500,000, OR THE PERCENTAGE OF GUARANTEE TIMES THE PRINCIPAL, ACCRUED INTEREST, AND APPROVED PROTECTIVE ADVANCES, WHICHEVER IS LESS.

II. FULL FAITH AND CREDIT.

The Loan Note Guarantee—DARBE constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the Lender has actual knowledge at the time it became such Lender or which Lender participates in or condones. Any note which provides for the payment of interest on interest shall not be guaranteed. Any Loan Note Guarantee—DARBE or Assignment Guarantee Agreement—DARBE attached to or relating to a note which provides for payment of interest on interest is void.

The Loan Note Guarantee—DARBE 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 FmHA or its successor agency under Public Law 103–354 acquires knowledge of the foregoing. Any losses will be unenforceable by the Lender to the extent that loan funds are used for purposes other than those specifically approved by FmHA or its successor agency under Public Law 103–354 in its Conditional Commitment for Guarantee. Negligent servicing is defined as the failure to perform those services which a reasonably prudent Lender would perform in servicing its own 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 in a manner 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.

*Public reporting burden for this collection of information is estimated to average 1½ hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0575–0029), Washington, D.C. 20503.*

III. LENDER'S SALE OR ASSIGNMENT OF GUARANTEE LOAN—DARBE.

A. The Lender may retain all of the guaranteed loan. The Lender is not permitted to sell or participate in any amount of the guaranteed or unguaranteed portion(s) of the loan(s) to the applicant or Borrower or members of their immediate families, their officers, directors, stockholders, other owners, or any parent, subsidiary or affiliate. If the Lender desires to market all or part of the guaranteed portion of the loan at or subsequent to loan closing, such loan must not be in default as set forth in the terms of the notes. The Lender may proceed under the following options:

1. Assignment. Assign all or part of the guaranteed portion of the loan to one or more Holders by using Form FmHA or its successor agency under Public Law 103–354 1980–73, ''Assignment Guarantee Agreement—DARBE.'' Holder(s), upon written notice to Lender and FmHA or its successor agency under Public Law 103–354, may reassign the unpaid guaranteed portion of the loan sold thereunder. Upon such notification the assignee shall succeed to all rights and obligations of the Holder(s) thereunder. If this option is selected, the Lender may not at a later date cause to be issued any additional notes.

2. Multi-Note System. When this option is selected by the Lender, upon disposition the Holder will receive one of the Borrower's executed notes and Form FmHA or its successor agency under Public Law 103–354 1980–72, ''Loan Note Guarantee—DARBE,'' attached to the Borrower's note. However, all rights under the security instruments (including personal and/or corporate guarantees) will remain with the Lender and in all cases inure to its and the Government's benefit notwithstanding any contrary provisions of state law.

a. At Loan Closing: Provide for no more than 10 notes, unless the Borrower and FmHA or its successor agency under Public

Law 103–354 agree otherwise, for the guaranteed portion and one note for the unguaranteed portion. When this option is selected, FmHA or its successor agency under Public Law 103–354 will provide the Lender with a Form FmHA or its successor agency under Public Law 103–354 1980–72, for each of the notes.

b. After Loan Closing:

(1) Upon written approval by FmHA or its successor agency under Public Law 103–354, the Lender may cause to be issued a series of new notes, not to exceed the total provided in 2.a. above, as replacement for previously issued guaranteed note(s) provided:

(a) The Borrower agrees and executes the new notes.

(b) The interest rate does not exceed the interest rate in effect when the loan was closed.

(c) The maturity of the loan is not changed.

(d) FmHA or its successor agency under Public Law 103–354 will not bear any expenses that may be incurred in reference to such reissue of notes.

(e) There is adequate collateral securing the note(s).

(f) No intervening liens have arisen or have been perfected and the secured lien priority remains the same.

(2) FmHA or its successor agency under Public Law 103–354 will issue the appropriate Loan Note Guarantees—DARBE to be attached to each of the notes then extant in exchange for the original loan Note Guarantee—DARBE which will be cancelled by FmHA or its successor agency under Public Law 103–354.

3. Participations.

a. The Lender may obtain participation in its loan under its normal operating 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 loan servicing and liquidation.

b. The Lender is required to hold in its own portfolio or retain a minimum of 5% for Disaster Assistance for Rural Business Enterprises loans of the total guaranteed loan(s) amount. The amount required to be retained must be of the unguaranteed portion of the loan and cannot be participated to another. The Lender may sell the remaining amount of the unguaranteed portion of the loan only through participation. However, the Lender will always retain the responsibility for loan servicing and liquidation.

B. When a guaranteed portion of a loan is sold by the Lender to a (Holder(s), the Holder(s) shall thereupon succeed to all rights of Lender under the Loan Note Guarantee—DARBE to the extent of the portion of the loan purchased. Lender will remain bound to all the obligations under the Loan Note Guarantee—DARBE, and this agreement, and the FmHA or its successor agency under Public Law 103–354 program regulations found in the applicable subpart of title 7 CFR part 1980, and to future FmHA or its successor agency under Public Law 103–354 program regulations not inconsistent with the express provisions hereof.

C. The Holder(s) upon written notice to the lender may resell the unpaid guaranteed portion of the loan sold under provision III A.

IV. The Lender agrees loan funds will be used for the purposes authorized in the applicable subpart of title 7 CFR part 1980 and in accordance with the terms of Form FmHA or its successor agency under Public Law 103–354 449–14.

V. The Lender certifies that none of its officers or directors, stockholders or other owners (except stockholders in a Farm Credit Bank or other Farm Credit System Institution with direct lending authority that have normal stockshare requirements for participation) has a substantial financial interest in the Borrower. The Lender certifies that neither the Borrower nor its officers or directors, stockholders or other owners has a substantial financial interest in the Lender. If the Borrower is a member of the board of directors or an officer of a Farm Credit Bank or other Farm Credit System 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.

VI. The Lender certifies that it has no knowledge of any material adverse change, financial or otherwise, in the Borrower, Borrower's business, or any parent, subsidiaries, or affiliates since it requested a Loan Note Guarantee—DARBE.

VII. Lender certifies that a loan agreement and/or loan instruments concurred in by FmHA or its successor agency under Public Law 103–354 has been or will be signed with the Borrower.

VIII. Lender certifies that it has paid the required guarantee fee.

IX. SERVICING.

A. The Lender will service the entire loan and will remain mortgagee and/or secured party of record, notwithstanding the fact that another may hold a portion of the loan. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. Lender may charge Holder a servicing fee. The unguaranteed portion of a loan will not be paid first nor given any preference or priority over the guaranteed portion of the loan.

B. Disposition of the guaranteed portion of a loan may be made prior to full disbursement, completion of construction and acquisitions only with the prior written approval

of FmHA or its successor agency under Public Law 103–354. Subsequent to full disbursement, completion of construction, and acquisition, the guaranteed portion of the loan may be disposed of as provided herein.

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 the Borrower has obtained contracts through acceptable procurement procedures; that periodic inspections during construction are made and that FmHA or its successor agency under Public Law 103–354's concurrence on the overall development schedule is obtained.

C. Lender's servicing responsibilities include, but are not limited to:

1. Obtaining compliance with the convenants and provisions in the note, loan agreement, security instruments, and any supplemental agreements and notifying in writing FmHA or its successor agency under Public Law 103–354 and the Borrower of any violations. None of the aforesaid instruments will be altered without FmHA or its successor agency under Public Law 103–354's prior written concurrence. The Lender must service the loan in a reasonable and prudent manner.

2. Receiving all payments on principal and interest (including any loan subsidy) on the loan as they fall due and promptly remitting and accounting to any Holder(s) of their pro rata share thereof determined according to their respective interests in the loan, less only Lender's servicing fee. The loan may be reamortized, renewed, rescheduled or (for Farm Ownership, Soil and Water, and Operating loans only) written down only with agreement of the Lender and Holder(s) of the guaranteed portion of the loan and only with FmHA or its successor agency under Public Law 103–354's written concurrence. For loans covered by 7 CFR part 1980, subpart H, the Holder may designate the payee when an Individual Certificate is issued.

3. Inspecting the collateral as often as necessary to properly service the loan.

4. 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.

5. 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, or to rebuilding or otherwise acquiring needed replacement collateral with the written approval of FmHA or its successor agency under Public Law 103–354; 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 in value up to $_____ without written concurrence of FmHA or its successor agency under Public Law 103–354; the Borrower complies with all laws and ordinances applicable to the loan, the collateral and/or operating of the farm, business or industry.

6. 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 FmHA or its successor agency under Public Law 103–354 at such time and frequency as required by the loan agreement or Conditional Commitment for Guarantee. In the case of guarantees secured by collateral, assuring the security is properly maintained.

7. Obtaining the lien coverage and lien priorities specified by the Lender and agreed to by FmHA or its successor agency under Public Law 103–354, properly recording or filing lien or notice instruments to obtain or maintain such lien priorities during the existence of the guarantee by FmHA or its successor agency under Public Law 103–354.

8. Assuring that the Borrower obtains marketable title to the collateral.

9. Assuring that the Borrower (any party liable) is not released from liability for all or any part of the loan, except in accordance with FmHA or its successor agency under Public Law 103–354 regulations.

10. Providing FmHA or its successor agency under Public Law 103–354 Finance Office with loan status reports semiannually as of June 30 and December 31 on Form FmHA or its successor agency under Public Law 103–354 1980–41, ''Guaranteed Loan Status Report.''

11. Obtaining from the Borrower periodic financial statements under the following schedule:

---

Lender is responsible for analyzing the financial statements, taking any servicing actions and providing copies of statements and record of actions to the FmHA or its successor agency under Public Law 103–354 office immediately responsible for the loan.

12. Monitoring 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, as further explained in 7 CFR part 1940, subpart G, exhibit M.

X. DEFAULT.

A. The Lender will notify FmHA or its successor agency under Public Law 103–354 when

a Borrower is thirty (30) days (90 days for guaranteed rural housing loan) past due on a payment or if the Borrower has not met its responsibilities of providing the required financial statements to the Lender or is otherwise in default. The Lender will notify FmHA or its successor agency under Public Law 103–354 of the status of a Borrower's default on Form FmHA or its successor agency under Public Law 103–354 1980–44, ''Guaranteed Loan Borrower Default Status.'' A meeting will be arranged by the Lender with the Borrower and FmHA or its successor agency under Public Law 103–354 to resolve the problem. Actions taken by the Lender with written concurrence of FmHA or its successor agency under Public Law 103–354 will include but are not limited to the following or any combination thereof:

1. Deferment of principal payments (subject to rights of any Holder(s)).
2. An additional temporary loan by the Lender to bring the account current.
3. Reamortization of or rescheduling the payments on the loan (subject to rights of any Holder(s)).
4. Transfer and assumption of the loan in accordance with the applicable subpart of title 7 CFR part 1980.
5. Reorganization.
6. Liquidation.
7. Subsequent loan guarantees.
8. Changes in interest rates with FmHA or its successor agency under Public Law 103–354's Lender's, and the Holder'(s) approval; provided, such interest rate is adjusted proportionally between the guaranteed and unguaranteed portion of the loan and the type of rate remains the same.
9. Principal and interest write down in accordance with 7 CFR part 1980, subpart B, § 1980.125.

B. The Lender will negotiate in good faith in an attempt to resolve any problem to permit the Borrower to cure a default, where reasonable.

C. The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder(s) within 30 days of written demand by the Holder(s) when: (a) the Borrower is in default not less than 60 days in payment of principal or interest due on the loan or (b) the Lender has failed to remit to the Holder(s) its pro rata share of any payment made by the Borrower or any loan subsidy within 30 days of its receipt thereof. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of the principal and accrued interest less the Lender's servicing fee. The loan note guarantee will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of the demand letter to the Lender requesting the repurchase. Holder(s) will concurrently send a copy of demand to FmHA or its successor agency under Public Law 103–354. The Lender will accept an assignment without recourse from the Holder(s) upon repurchase. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The Lender will notify the Holder(s) and FmHA or its successor agency under Public Law 103–354 of its decision. As per the terms of the Loan Note Guarantee—DARBE the maximum loss payment will not exceed $2,500,000 for principal, interest and approved protective advances.

D. If Lender does not repurchase as provided by paragraph C, FmHA or its successor agency under Public Law 103–354 will purchase from Holder(s) the unpaid principal balance of the guaranteed portion herein together with accrued interest (including any loan subsidy) to date of repurchase, within 30 days after written demand to FmHA or its successor agency under Public Law 103–354 from the Holder(s). The loan note guarantee will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of original demand letter of the Holder(s) to the Lender requesting the repurchase. Such demand will include a copy of the written demand upon the Lender. Under the Disaster Assistance for Rural Business Enterprise Guaranteed Loan program, the maximum cumulative payment to the holder(s) of the guaranteed portion of the loan is limited to $2,500,000 or the percentage of guarantee multiplied by the principal and accrued interest together with protective advances, whichever is less.

The Holder(s) or its duly authorized agent will also include evidence of its right to require payment from FmHA or its successor agency under Public Law 103–354. Such evidence will consist of either the originals of the Loan Note Guarantee—DARBE and note properly endorsed to FmHA or its successor agency under Public Law 103–354 or the original of the Assignment Guarantee Agreement properly assigned to FmHA or its successor agency under Public Law 103–354 without recourse including all rights, title, and interest in the loan. FmHA or its successor agency under Public Law 103–354 will be subrogated to all rights of Holder(s). The Holder(s) will include in its demand the amount due including unpaid principal, unpaid interest (including any loan subsidy) to date of demand and interest subsequently accruing from date of demand to proposed payment date. Unless otherwise agreed to by FmHA or its successor agency under Public Law 103–354, such proposed payment will not be later than 30 days from the date of the demand.

The FmHA or its successor agency under Public Law 103–354 office serving the Borrower will promptly notify the Lender of the Holder(s) demand for payment. The Lender will promptly provide the FmHA or its successor agency under Public Law 103–354 office

servicing the Borrower with the information necessary for FmHA or its successor agency under Public Law 103–354's determination of the appropriate amount due the Holder(s). Any discrepancy between the amount claimed by the Holder(s) and the information submitted by the Lender must be resolved before payment will be approved. FmHA or its successor agency under Public Law 103–354 will notify both parties who must resolve the conflict before payment by FmHA or its successor agency under Public Law 103–354 will be approved. Such a conflict will suspend the running of the 30 day payment requirement. Upon receipt of the appropriate information, the FmHA or its successor agency under Public Law 103–354 office servicing the Borrower will review the demand and submit it to the State Director for verification. After reviewing the demand, the State Director will transmit the request to the FmHA or its successor agency under Public Law 103–354 Finance Office for issuance of the appropriate check. Upon issuance, the Finance Office will notify the office serving the Borrower and State Director and remit the check(s) to the Holder(s).

E. Lender consents to the purchase by FmHA or its successor agency under Public Law 103–354 and agrees to furnish on request by FmHA or its successor agency under Public Law 103–354 a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owed by the Borrower on the loan and the amount due the Holder(s). Lender agrees that any purchase by FmHA or its successor agency under Public Law 103–354 does not change, alter or modify any of the Lender's obligations to FmHA or its successor agency under Public Law 103–354 arising from said loan or guarantee, nor does such purchase waive any of the FmHA or its successor agency under Public Law 103–354's rights against Lender, and FmHA or its successor agency under Public Law 103–354 will have the right to set-off against Lender all rights insuring to FmHA or its successor agency under Public Law 103–354 from the Holder against FmHA or its successor agency under Public Law 103–354's obligation to Lender under the Loan Note Guarantee—DARBE. To the extent FmHA or its successor agency under Public Law 103–354 holds a portion of a loan, loan subsidy will not be paid the Lender.

F. Servicing fees assessed by the Lender to the Holder are collectible only from payment installments received by the Lender from the Borrower. When FmHA or its successor agency under Public Law 103–354 repurchases from a Holder, FmHA or its successor agency under Public Law 103–354 will pay the Holder only the amounts due the Holder, FmHA or its successor agency under Public Law 103–354 will not reimburse the Lender for servicing fees assessed to a Holder and not collected from payments received from the Borrower. No servicing fee shall be charged FmHA or its successor agency under Public Law 103–354 and no such fee is collectible from FmHA or its successor agency under Public Law 103–354.

G. Lender may also repurchase the guaranteed portion of the loan consistent with paragraph 10 of the Loan Note Guarantee—DARBE.

XI. LIQUIDATION.

If the Lender concludes that liquidation of a guaranteed loan account is necessary because of one or more defaults or third party actions that the Borrower cannot or will not cure or eliminate within a reasonable period of time, a meeting will be arranged by the Lender with FmHA or its successor agency under Public Law 103–354. When FmHA or its successor agency under Public Law 103–354 concurs with the Lender's conclusion or at any time concludes independently that liquidation is necessary, it will notify the Lender and the matter will be handled as follows:

The Lender will liquidate the loan unless FmHA or its successor agency under Public Law 103–354, at its option, decides to carry out liquidation.

When the decision to liquidate is made, the Lender may proceed to purchase from Holder(s) the guaranteed portion of the loan. The Holder(s) will be paid according to the provisions in the Loan Note Guarantee—DARBE or the Assignment Guarantee Agreement—DARBE.

When the decision to liquidate is made, the Lender may proceed to purchase from Holder(s) the guaranteed portion of the loan. The Holder(s) will be paid according to the provisions in the Loan Note Guarantee—DARBE or the Assignment Guarantee Agreement—DARBE.

If the Lender does not purchase the guaranteed portion of the loan FmHA or its successor agency under Public Law 103–354 will be notified immediately in writing. FmHA or its successor agency under Public Law 103–354 will then purchase the guaranteed portion of the loan from the Holder(s). If FmHA or its successor agency under Public Law 103–354 holds any of the guaranteed portion, FmHA or its successor agency under Public Law 103–354 will be paid first its pro rata share of the proceeds from liquidation of the collateral.

A. Lender's proposed method of liquidation. Within 30 days after the decision to liquidate, the Lender will advise FmHA or its successor agency under Public Law 103–354 in writing of its proposed detailed method of liquidation called a liquidation plan and will provide FmHA or its successor agency under Public Law 103–354 with:

1. Such proof as FmHA or its successor agency under Public Law 103–354 requires to

establish the Lender's ownership of the guaranteed loan promissory note(s) and related security instruments.

2. Information lists concerning the Borrower's assets including real and personal property, fixtures, claims, contracts, inventory (including perishables), accounts receivable, personal and corporate guarantees, and other existing and contingent assets, 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.

4. If the outstanding principal DARBE loan balance including accrued interest is less than $200,000, the Lender will obtain an estimate of the market and potential liquidated value of the collateral. On DARBE loan balances in excess of $200,000, the Lender will obtain an independent appraisal report on all collateral securing the loan, which will reflect the current market value and potential liquidation value. The appraisal report is for the purpose of permitting the Lender and FmHA or its successor agency under Public Law 103–354 to determine the appropriate liquidation actions. Any independent appraiser's fee will be shared equally by FmHA or its successor agency under Public Law 103–354 and the Lender.

B. FmHA or its successor agency under Public Law 103–354's response to Lender's liquidation plan. FmHA or its successor agency under Public Law 103–354 will inform the Lender in writing whether it concurs in the Lender's liquidation plan within 30 days after receipt of such notification from the Lender. If FmHA or its successor agency under Public Law 103–354 needs additional time to respond to the liquidation plan, it will advise the Lender of a definite time for such response. Should FmHA or its successor agency under Public Law 103–354 and the Lender not agree on the Lender's liquidation plan, negotiations will take place between FmHA or its successor agency under Public Law 103–354 and the Lender to resolve the disagreement. The Lender will ordinarily conduct the liquidation; however, should FmHA or its successor agency under Public Law 103–354 opt to conduct the liquidation, FmHA or its successor agency under Public Law 103–354 will proceed as follows:

1. The Lender will transfer to FmHA or its successor agency under Public Law 103–354 all rights and interest necessary to allow FmHA or its successor agency under Public Law 103–354 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 FmHA or its successor agency under Public Law 103–354.

2. FmHA or its successor agency under Public Law 103–354 will attempt to obtain the maximum amount of proceeds from liquidation.

3. Options available to FmHA or its successor agency under Public Law 103–354 include any one or combination of the usual commercial methods of liquidation.

C. Acceleration. The Lender or FmHA or its successor agency under Public Law 103–354, 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 FmHA or its successor agency under Public Law 103–354 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 FmHA or its successor agency under Public Law 103–354 with periodic reports on the progress of liquidation, disposition of collateral, resulting costs and additional procedures necessary for successful completion of liquidation. The Lender will transmit to FmHA or its successor agency under Public Law 103–354 any payments received from the Borrower and/or pro rata share of liquidation or other proceeds, etc. when FmHA or its successor agency under Public Law 103–354 is the holder of a portion of the guaranteed loan using Form FmHA or its successor agency under Public Law 103–354 1980–43, ''Lender's Guaranteed Loan Payment to FmHA or its successor agency under Public Law 103–354.'' When FmHA or its successor agency under Public Law 103–354 liquidates, the Lender will be provided with similar reports on request.

E. Determination of Loss and Payment. In all liquidation cases, final settlement will be made with the Lender after the collateral is liquidated. FmHA or its successor agency under Public Law 103–354 will have the right to recover losses paid under the guarantee from any party liable.

1. Form FmHA or its successor agency under Public Law 103–354 449–30, ''Loan Note Guarantee Report of Loss,'' will be used for calculations of all estimated and final loss determinations. Estimated loss payments may be approved by FmHA or its successor agency under Public Law 103–354 after the Lender has submitted a liquidation plan approved by FmHA or its successor agency under Public Law 103–354. Payments will be made in accordance with applicable FmHA or its successor agency under Public Law 103–354 regulations.

2. When the Lender is conducting the liquidation, and owns any of the guaranteed portion of the loan, it may request a tentative loss estimate by submitting to FmHA or its successor agency under Public Law 103–354 an estimate of loss that will occur in connection with liquidation of the loan.

FmHA or its successor agency under Public Law 103–354 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 FmHA or its successor agency under Public Law 103–354 449–30, 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. For Farm Ownership, Soil and Water, and Operating loans only, if it appears the liquidation period will exceed 90 days, the Lender will file an estimated loss claim. Once this claim is approved by FmHA or its successor agency under Public Law 103–354, the Lender will discontinue interest accrual on the defaulted loan and the loss claim will be promptly processed in accordance with the applicable FmHA or its successor agency under Public Law 103–354 regulations.

After the Report of Loss estimate has been approved by FmHA or its successor agency under Public Law 103–354, and within 30 days thereafter, FmHA or its successor agency under Public Law 103–354 will send the original Report of Loss estimate to FmHA or its successor agency under Public Law 103–354 Finance Office for issuance of a Treasury check in payment of the estimated amount due the Lender.

After liquidation has been completed, a final loss report will be submitted on Form FmHA or its successor agency under Public Law 103–354 449–30 by the Lender to FmHA or its successor agency under Public Law 103–354.

3. After the Lender has completed liquidation, FmHA or its successor agency under Public Law 103–354 upon receipt of the final accounting and report of loss, may audit and will determine the actual loss. If FmHA or its successor agency under Public Law 103–354 has any questions regarding the amounts set forth in the final Report of Loss, it will investigate the matter. The Lender will make its records available to and otherwise assist FmHA or its successor agency under Public Law 103–354 in making the investigation. If FmHA or its successor agency under Public Law 103–354 finds any discrepancies, it will contact the Lender and arrange for the necessary corrections to be made as soon as possible. When FmHA or its successor agency under Public Law 103–354 finds the final Report of Loss to be proper in all respects, it will be tentatively approved in the space provided on the form for that purpose.

4. 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, FmHA or its successor agency under Public Law 103–354 will send the original to the final Report of Loss to the Finance Office for issuance of a Treasury check in payment of the additional amount owed by FmHA or its successor agency under Public Law 103–354 to the Lender.

b. If the loss is less than the estimated loss, the Lender will reimburse FmHA or its successor agency under Public Law 103–354 for the overpayment plus interest at the note rate from date of payment.

5. If FmHA or its successor agency under Public Law 103–354 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—DARBE.

6. 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 FmHA or its successor agency under Public Law 103–354 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 FmHA or its successor agency under Public Law 103–354 to the Lender cannot exceed the limits set forth in the Loan Note Guarantee—DARBE. If FmHA or its successor agency under Public Law 103–354 conducts the liquidation, loss occasioned by accruing interest will be covered by the guarantee only to the date FmHA or its successor agency under Public Law 103–354 accepts this responsibility. Loss occasioned by accruing interest will be covered to the extent of the Loan Note Guarantee—DARBE to the date of final settlement when the liquidation is conducted by the Lender provided it proceeds expeditiously with the liquidation plan approved by FmHA or its successor agency under Public Law 103–354. The balance of allowable accrued interest payable to the Lender, if any, will be calculated on the final Report of Loss form.

G. Application of FmHA or its successor agency under Public Law 103–354 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 FmHA or its successor agency under Public Law 103–354 will be applied by the Lender on the guaranteed portion of the loan debt. However, such application does not release the Borrower from liability. In all cases a final Form FmHA or its successor agency under Public Law 103–354 449–30 prepared and submitted by the Lender must be processed by FmHA or its successor agency under Public Law 103–354 in order to close out the files at the FmHA or its successor agency under Public Law 103–354 Finance Office.

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. 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 FmHA or its successor agency under Public Law 103–354 written concurrence) to be protective advances. If changed circumstances after submission of the liquidation plan require a revision of liquidation costs, the Lender will procure FmHA or its successor agency under Public Law 103–354's written concurrence prior to proceeding with the proposed changes. No in-house expenses of the Lender will be allowed. In-house expenses include, but are not limited to, employee's salaries, staff lawyers, travel and overhead.

J. Foreclosure. The parties owning the guaranteed portion and unguaranteed portions of the loan will join the institute foreclosure action or, in lieu of foreclosure, to take a deed of conveyance to such parties. When the conveyance is received and liquidated, net proceeds will be applied to the guaranteed loan debt.

K. Payment. Such loss will be paid by FmHA or its successor agency under Public Law 103–354 within 60 days after the review of the accounting of the collateral.

XII. PROTECTIVE ADVANCES.

Protective advances must constitute an indebtedness of the Borrower to the Lender and be secured by the security instrument(s). FmHA or its successor agency under Public Law 103–354 written authorization is required on all protective advances in excess of $500. Protective advances include, but are not limited to, advances made for 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.

XIII. ADDITIONAL LOANS OR ADVANCES.

The Lender will not make additional expenditures or new loans without first obtaining the written approval of FmHA or its successor agency under Public Law 103–354 even though such expenditures or loans will not be guaranteed.

XIV. FUTURE RECOVERY.

After a loan has been liquidated and a final loss has been paid by FmHA or its successor agency under Public Law 103–354, any future funds which may be recovered by the Lender, will be pro-rated between FmHA or its successor agency under Public Law 103–354 and the Lender. FmHA or its successor agency under Public Law 103–354 will be paid such amount recovered in proportion to the percentage it guaranteed for the loan and the Lender will retain such amounts in proportion to the percentage of the unguaranteed portion of the loan.

XV. TRANSFER AND ASSUMPTION CASES.

Refer to the applicable subpart of title 7 of CFR part 1980.

If a loss should occur upon consummation of a complete transfer and assumption for less than the full amount of the debt and the transferor-debtor (including personal guarantees) is released from personal liability, the Lender, if it holds the guaranteed portion, may file an estimated Report of Loss on Form FmHA or its successor agency under Public Law 103–354 449–30, ''Loan Note Guarantee Report of Loss,'' to recover its pro rata share of the actual loss at that time. In completing Form FmHA or its successor agency under Public Law 103–354 449–30, the amount of the debt assumed will be entered on line 24 as Net Collateral (Recovery). Approved protective advances and accrued interest thereon made during the arrangement of a transfer and assumption, if not assumed by the Transfer, will be entered on Form FmHA or its successor agency under Public Law 103–354 449–30, line 13 and 14.

XVI. BANKRUPTCY.

A. The Lender is responsible for protecting the guaranteed loan debt and all collateral securing the loan in bankruptcy proceedings. When the loan is involved in a reorganization bankruptcy proceeding under chapters 11, 12 or 13 of the Bankruptcy Code, payment of loss claims may be made as provided in this paragraph XVI. For a chapter 7 bankruptcy or liquidation plan in a chapter 11 bankruptcy, only paragraphs XVI B3 and B6 are applicable.

B. Loss Payments.

1. Estimated Loss Payments.

a. If a borrower has filed for protection under a reorganization bankruptcy, the Lender will request a tentative estimated loss payment of accrued interest and principal written off. This request can only be made after the bankruptcy plan is confirmed by the court. Only one estimated loss payment is allowed during the reorganization bankruptcy. All subsequent claims during reorganization will be considered revisions to the initial estimated loss. A revised estimated loss payment may be processed by FmHA or its successor agency under Public Law 103–354, 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 FmHA or its successor agency

under Public Law 103–354 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 plan.

b. The Lender will use Form FmHA or its successor agency under Public Law 103–354 449–30, ''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.

c. Upon completion of the reorganization plan, the Lender will complete Form FmHA or its successor agency under Public Law 103–354 1980–44, ''Guaranteed Loan Borrower Default Status,'' and forward this form to the Finance Office.

2. Interest Loss Payments.

a. Interest loss payments sustained during the period of the reorganization plan will be processed in accordance with paragraph XVI B1.

b. Interest loss payments sustained after the reorganization plan is completed will be processed annually when the Lender sustains a loss as a result of a permanent interest rate reduction which extends beyond the period of the reorganization plan.

c. Form FmHA or its successor agency under Public Law 103–354 449–30 will be completed to compensate the Lender for the difference in interest rates specified on the Loan Note Guarantee—DARBE or Interest Rate Buydown Agreement and the rate of interest specified by the bankruptcy court.

3. Final Loss Payments.

a. Final Loss Payments will be processed when the loan is liquidated.

b. If the loan is paid in full without an additional loss, the Finance Office will close out the estimated loss account at the time notification of payment in full is received.

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 bankruptcy court attempts to direct the payments to be applied in a different manner, the Lender will immediately notify the FmHA or its successor agency under Public Law 103–354 servicing office.

5. Overpayments. Upon completion of the reorganization plan, the Lender will provide FmHA or its successor agency under Public Law 103–354 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 FmHA or its successor agency under Public Law 103–354 to the Lender. If the actual loss payment is less than the estimated loss, the Lender will reimburse FmHA or its successor agency under Public Law 103–354 for the overpayment plus interest 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 the borrower having filed bankruptcy, as a result of prior liquidation action, these protective advances and accrued interest will be entered on Form FmHA or its successor agency under Public Law 103–354 449–30.

XVII. OTHER REQUIREMENTS.

This agreement is subject to all the requirements of the applicable subpart of title 7 CFR part 1980, and any future amendments of these regulations not inconsistent with this agreement. Interested parties may agree to abide by future FmHA or its successor agency under Public Law 103–354 regulations not inconsistent with this agreement.

XVIII. EXECUTION OF AGREEMENTS.

If this agreement is executed prior to the execution of the Loan Note Guarantee—DARBE, this agreement does not impose any obligation upon FmHA or its successor agency under Public Law 103–354 with respect to the execution of such contract. FmHA or its successor agency under Public Law 103–354 in no way warrants that such a contract has been or will be executed.

XIX. NOTICES.

All notices and actions will be initiated through FmHA or its successor agency under Public Law 103–354 for

_____

(State) with mailing address at the date of this instrument

Dated this _____ day of _____, 19 ____.

LENDER:

Attest:

_____

(Seal)

By

_____

Title

_____

United States of America

Farmers Home Administration or its successor agency under Public Law 103–354

By

_____

Title

_____

EXHIBIT B TO APPENDIX K

USDA-FmHA or its successor agency under Public Law 103–354
Form FmHA or its successor agency under Public Law 103–354 1980–72
(Rev. 11–89)
Type of Loan: _____
Applicable 7 CFR part 1980
Subpart_____

LOAN NOTE GUARANTEE

DISASTER ASSISTANCE FOR RURAL BUSINESS ENTERPRISE (DARBE)

GUARANTEED LOANS

MAXIMUM LOSS PAYABLE BY FMHA OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354 TO A HOLDER OR LENDER IS $2,500,000

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USDA-FmHA or its successor agency under Public Law 103–354

From FmHA or its successor agency under Public Law 103–354 1980–72
(Rev. 11–89)
Type of Loan:_____
Applicable 7 CFR Part 1980
Subpart_____

LOAN NOTE GUARANTEE

DISASTER ASSISTANCE FOR

RURAL BUSINESS ENTERPRISE (DARBE)

GUARANTEED LOANS

MAXIMUM LOSS PAYABLE BY FMHA OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354

TO A HOLDER OR LENDER IS $2,500,000

_____
Borrower—
_____
Lender—
_____
Lender's Address
_____
State
_____
County
_____
Date of Note
_____
FmHA or its successor agency under Public Law 103–354 Loan Identification No.
_____
Principal Amount of Loan $
—Borrower _____

_____
Lender

—Lender's Address _____

—State _____

County _____

—Date of Note _____

—FmHA or its successor agency under Public Law 103–354 Loan Identification No. ____

—Lender's IRS ID Tax No. _____

—Principal Amount of Loan $ _____

The guaranteed portion of the loan is _____ which is _____ (_____%) percent of loan principal. The principal amount of loan is evidenced by _____ note(s) (includes bonds as appropriate) described below. The guaranteed portion of each note is indicated below. This instrument is attached to note _____ in the face amount of $_____ and is number _____ of _____.

| Lender's identifying Number | Face amount | Percent of total face amount | Amount guaranteed |
|---|---|---|---|
| | $ | % | $ |
| Total | $_____ 100% | 100 | $_____ |

In consideration of the making of the subject loan by the above named Lender, the United States of America, acting through the Farmers Home Administration or its successor agency under Public Law 103–354 of the United States Department of Agriculture (herein called ''FmHA or its successor agency under Public Law 103–354''), pursuant to the Disaster Assistance Act of 1989 does hereby agree that in accordance with and subject to the conditions and requirements herein, it will pay to:

A. Holders:

1. Any loss sustained by the Holder on the guaranteed portion and interest due on such portion up to a maximum aggregate amount of $2,500,000. On loans with multiple Holders and/or a Lender who owns part of the guaranteed portion, if the aggregate losses exceed $2,500,000, each Holder's loss will be prorated by the percentage of the guaranteed portion of the loan the holder owns.

B. The Lender the lesser of 1, or 2 below:

1. Any loss sustained by the Lender on the guaranteed portion including:

a. Principal and interest indebtedness as evidenced by said note(s) or by assumption agreement(s), and

b. Principal and interest indebtedness on secured protective advances for protection and preservation of collateral made with FmHA or its successor agency under Public Law 103–354's authorization, including but not limited to advances for taxes, annual assessments, any ground rents, and hazard or

flood insurance premiums affecting the collateral, but only to the extent that inclusion of such protective advances would not cause the total aggregate loss to exceed $2,500,000, or

2. The guaranteed principal advanced to or assumed by the Borrower under said note(s) or assumption agreement(s) and any interest due thereon.

But only up to a maximum aggregate amount of $2,500,000. On loans with single or multiple holders and a Lender who owns part of the guaranteed portion, if the aggregate losses exceed $2,500,000, the Lender's loss will be prorated by the percentage of the guaranteed portion of the loan the Lender owns.

If FmHA or its successor agency under Public Law 103–354 conducts the liquidation of the loan, loss occasioned to a Lender by accruing interest (including any loan subsidy) after the date FmHA or its successor agency under Public Law 103–354 accepts responsibility for liquidation will not be covered by this Loan Note Guarantee—DARBE. If Lender conducts the liquidation of the loan, accruing interest (including any loan subsidy) shall be covered by this Loan Note Guarantee—DARBE to date of final settlement when the Lender conducts the liquidation expeditiously in accordance with the liquidation plan approved by FmHA or its successor agency under Public Law 103–354.

DEFINITION OF HOLDER.

The Holder is the person or organization other than the Lender who holds all or part of the guaranteed portion of the loan with no servicing responsibilities. Holders are prohibited from obtaining any part(s) of the guaranteed portion of the loan with proceeds from any obligation, the interest on which is excludable from income, under section 103 of the Internal Revenue Code of 1954, as amended (IRC). When the Lender assigns a part(s) of the guaranteed loan to an assignee, the assignee becomes a Holder only when Form FmHA or its successor agency under Public Law 103–354 1980–73, ''Assignment Guarantee Agreement—DARBE,'' is used. Loan evidenced by a single note may be assigned only by using Form FmHA or its successor agency under Public Law 103–354 1980–73.

DEFINITION OF LENDER.

The Lender is the person or organization making and servicing the loan which is guaranteed under the provisions of the applicable subpart 7 CFR part 1980. The Lender is also the party requesting a loan guarantee.

1. LOAN SERVICING.

Lender will be responsible for servicing the entire loan, and the Lender will remain mortgagee and/or secured party of record not withstanding the fact that another party may hold a portion of the loan. When multiple notes are used to evidence a loan, Lender will structure repayments as provided in the loan agreement.

2. PRIORITIES.

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.

3. FULL FAITH AND CREDIT.

The Loan Note Guarantee—DARBE constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which Lender or any Holder has actual knowledge at the time it became such Lender or Holder or which Lender or any Holder participates in or condones. If the note to which this is attached or relates provides for payment of interest on interest, then this Loan Note Guarantee—DARBE is void. In addition, the Loan Note Guarantee—DARBE will be unenforceable by Lender to the extent any loss is occasioned by the violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA or its successor agency under Public Law 103–354 acquires knowledge of the foregoing. Any losses occasioned will be unenforceable to the extent that loan funds are used for purposes other than those specifically approved by FmHA or its successor agency under Public Law 103–354 in its Conditional Commitment for Guarantee. Negligent servicing is defined as the failure to perform those services which a reasonably prudent lender would perform in servicing its own 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 in a manner 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.

4. RIGHTS AND LIABILITIES.

The guarantee and right to require purchase will be directly enforceable by Holder notwithstanding any fraud or misrepresentation by Lender or any unenforceability of this Loan Note Guarantee—DARBE by Lender. Nothing contained herein will constitute any waiver by FmHA or its successor agency under Public Law 103–354 of any rights it possesses against the Lender. Lender will be liable for and will promptly pay to FmHA or its successor agency under Public Law 103–354 any payment made by FmHA or its successor agency under Public Law 103–354 to Holder

which if such Lender had held the guaranteed portion of the loan, FmHA or its successor agency under Public Law 103–354 would not be required to make.

5. PAYMENTS.

Lender will receive all payments of principal, or interest, and will promptly remit to Holder(s) its pro rata share thereof determined according to its respective interest in the loan, less only Lender's servicing fee.

6. PROTECTIVE ADVANCES.

Protective advances made by Lender pursuant to the regulations will be guaranteed against a percentage of loss to the extent provided in this Loan Note Guarantee—DARBE notwithstanding the guaranteed portion of the loan that is held by another.

7. REPURCHASE BY LENDER.

The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder(s) within 30 days of written demand by the Holder(s) when: (a) the borrower is in default not less than 60 days on principal or interest due on the loan or (b) the Lender has failed to remit to the Holder(s) its pro rata share of any payment made by the borrower or any loan subsidy within 30 days of its receipt thereof. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of principal and accrued interest less the Lender's servicing fee. The Loan Note Guarantee—DARBE will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of the demand letter to the Lender requesting the repurchase. Holder(s) will concurrently send a copy of demand to FmHA or its successor agency under Public Law 103–354. The Lender will accept an assignment without recourse from the Holder(s) upon repurchase. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The Lender will notify the Holder(s) and FmHA or its successor agency under Public Law 103–354 of its decision. As per the terms of this guarantee the maximum loss payment will not exceed $2,500,000 for principal, interest, and approved protective advances.

8. FMHA OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354 PURCHASE.

If Lender does not repurchase as provided by paragraph 7 hereof, FmHA or its successor agency under Public Law 103–354 will purchase from Holder the unpaid principal balance of the guaranteed portion together with accrued interest to date of repurchase less Lender's servicing fee, within thirty (30) days after written demand to FmHA or its successor agency under Public Law 103–354 from Holder. The Loan Note Guarantee—DARBE will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of the original demand letter of the Holder to the Lender requesting the repurchase. Such demand will include a copy of the written demand made upon the Lender. The Holder(s) or its duly authorized agent will also include evidence of its right to require payment from FmHA or its successor agency under Public Law 103–354. Such evidence will consist of either the original of the Loan Note Guarantee—DARBE properly endorsed to FmHA or its successor agency under Public Law 103–354 or the original of the Assignment Guarantee Agreement—DARBE properly assigned to FmHA or its successor agency under Public Law 103–354 without recourse including all rights, title, and interest in the loan. FmHA or its successor agency under Public Law 103–354 will be subrogated to all rights of Holder(s). The Holder(s) will include in its demand the amount due including unpaid principal, unpaid interest to date of demand and interest subsequently accruing from date of demand to proposed payment date or $2,500,000, whichever is less. Unless otherwise agreed to by FmHA or its successor agency under Public Law 103–354, such proposed payment will not be later than 30 days from the date of demand. On loans with multiple Holders and/or a Lender who owns part of the guaranteed portion, if the aggregate unpaid principal and unpaid interest on the guaranteed portion exceeds $2,500,000, the Holder will be paid on a prorated basis—prorated by the percentage of the guaranteed portion of the loan the Holder owns.

The FmHA or its successor agency under Public Law 103–354 will promptly notify the Lender of its receipt of the Holder(s)'s demand for payment. The Lender will promptly provide the FmHA or its successor agency under Public Law 103–354 with the information necessary for FmHA or its successor agency under Public Law 103–354 determination of the appropriate amount due the Holder(s). Any discrepancy between the amount claimed by the Holder(s) and the information submitted by the Lender must be resolved before payment will be approved. FmHA or its successor agency under Public Law 103–354 will notify both parties who must resolve the conflict before payment by FmHA or its successor agency under Public Law 103–354 will be approved. Such conflict will suspend the running of the 30 day payment requirement. Upon receipt of the appropriate information, FmHA or its successor agency under Public Law 103–354 will review the demand and submit it to the State Director for verification. After reviewing the demand the State Director will transmit the request to the FmHA or its successor agency under Public Law 103–354 Finance Office for issuance of the appropriate check. Upon

issuance, the Finance Office will notify the office servicing the borrower and State Director and remit the check(s) to the Holder(s).

9. LENDER'S OBLIGATIONS.

Lender consents to the purchase by FmHA or its successor agency under Public Law 103–354 and agrees to furnish on request by FmHA or its successor agency under Public Law 103–354 a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owed by Borrowers on the loan and the amount including any loan subsidy then owed to any Holder(s). Lender agrees that any purchase by FmHA or its successor agency under Public Law 103–354 does not change, alter or modify any of the Lender's obligations to FmHA or its successor agency under Public Law 103–354 arising from said loan or guarantee nor does it waive any of FmHA or its successor agency under Public Law 103–354's rights against Lender, and that FmHA or its successor agency under Public Law 103–354 will have the right to set-off against Lender all rights inuring to FmHA or its successor agency under Public Law 103–354 as the Holder of this instrument against FmHA or its successor agency under Public Law 103–354's obligation to Lender under the Loan Note Guarantee—DARBE.

10. REPURCHASE BY LENDER FOR SERVICING.

If, in the opinion of the Lender, repurchase of the guaranteed portion of the loan is necessary to adequately service the loan, the Holder will sell the portion of the loan to the Lender for an amount equal to the unpaid principal and interest on such portion. The Lender's servicing fee will be subtracted from these amounts. The Loan Note Guarantee—DARBE will not cover the note interest to the Holder on the guaranteed loans accruing after 90 days from the date of the demand letter of the Lender or FmHA or its successor agency under Public Law 103–354 to the Holder(s) requesting the Holder(s) to tender their guaranteed portion(s).

a. The Lender will not repurchase from the Holder(s) for arbitrage purposes or other purposes to further its own financial gain.

b. Any repurchase will only be made after the Lender obtains FmHA or its successor agency under Public Law 103–354 written approval.

c. If the Lender does not repurchase the portion from the Holder(s), FmHA or its successor agency under Public Law 103–354 at its option may purchase such guaranteed portions for servicing purposes.

11. CUSTODY OF UNGUARANTEED PORTION.

The Lender may retain, or sell the unguaranteed portion of the loan only through participation. Participation, as used in this instrument, means the sale of an interest in the loan wherein the Lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.

12. WHEN GUARANTEE TERMINATES.

This Loan Note Guarantee—DARBE will terminate automatically (a) upon full payment of the guaranteed loan; or (b) upon full payment of any loss obligation hereunder; or (c) upon written notice from the Lender to FmHA or its successor agency under Public Law 103–354 that the guarantee will terminate 30 days after the date of notice, provided the Lender holds all of the guaranteed portion and the Loan Note Guarantee(s) are returned to be cancelled by FmHA or its successor agency under Public Law 103–354.

13. SETTLEMENT.

The amount due under this instrument will be determined and paid as provided in the applicable Subpart of Part 1980 of Title 7 CFR in effect on the date of this instrument.

14. NOTICES.

All notice and actions will be initiated through the FmHA or its successor agency under Public Law 103–354 _____ for _____ (State) with mailing address at the date of this instrument:

_____

_____

United States of America
Farmers Home Administration or its successor agency under Public Law 103–354
By:

_____

Title:

_____

(Date)

_____

Assumption Agreement by

_____

dated_____,19____,
Assumption Agreement by

_____

dated_____,19____.

EXHIBIT C TO APPENDIX K

USDA-FmHA or its successor agency under Public Law 103–354

Form FmHA or its successor agency under Public Law 103–354 1980–73
(Rev. 11–89)
FORM APPROVED
OMB NO. 0575–0029

ASSIGNMENT GUARANTEE AGREEMENT

DISASTER ASSISTANCE FOR RURAL BUSINESS ENTERPRISE (DARBE)

GUARANTEED LOAN

MAXIMUM LOSS PAYABLE BY FmHA OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354 TO A HOLDER OR LENDER IS $2,500,000

Type of Loan:

_____

Applicable 7 CFR Part 1980 Subpart

_____

FmHA or its successor agency under Public Law 103–354 Loan Identification Number

_____

_____ of _____

(Lender) has made a loan to

_____

in the principal amount of $_____ as evidenced by a note(s) dated _____. The United States of America, acting through Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) entered into a Loan Note Guarantee—Disaster Assistance for Rural Business Enterprise Guaranteed Loans (Form FmHA or its successor agency under Public Law 103–354 1980–72) with the Lender applicable to such loan to guarantee the loan not to exceed _____ % of the amount of the principal advanced and any interest (including any loan subsidy) due thereon as provided therein. Under the Disaster Assistance and Rural Business Enterprise Guaranteed Loan program, the maximum cumulative payment to the holder(s) of the guaranteed portion of the loan is limited to $2,500,000 or the percentage of guarantee multiplied by the principal and interest, whichever is less.

_____ of _____

(Holder) desires to purchase from Lender _____ % of the guaranteed portion of such loan. Copies of Borrower's note(s) and the Loan Note Guarantee—Disaster Assistance for Rural Business Enterprises are attached hereto as a part hereof.

NOW, THEREFORE, THE PARTIES AGREE:

1. The principal amount of the loan now outstanding is $_____. Lender hereby assigns to Holder _____ % of the guaranteed portion of the loan representing $_____ of such loan now outstanding in accordance with all of the terms and conditions hereinafter set forth. The Lender and FmHA or its successor agency under Public Law 103–354 certify to the Holder that the Lender has paid and FmHA or its successor agency under Public Law 103–354 has received the Guarantee Fee in exchange for the issuance of the Loan Note Guarantee—Disaster Assistance for Rural Business Enterprises.

2. LOAN SERVICING. The Lender will be responsible for servicing the entire loan and will remain mortgagee and/or secured party of record. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan.

The Lender will receive all payments on account of principal of, or interest on, the entire loan and shall promptly remit to the Holder its pro rata share thereof determined according to their respective interests in the loan, less only Lender's servicing fee.

3. SERVICING FEE. Holder agrees that Lender will retain a servicing fee of _____ percent per annum of the unpaid balance of the guaranteed portion of the loan assigned hereunder.

4. PURCHASE BY HOLDER. The guaranteed portion purchased by the Holder will always be a portion of the loan which is guaranteed. The Holder will hereby succeed to all rights of the Lender under the Loan Note Guarantee—Disaster Assistance for Rural Business Enterprises to the extent of the assigned portion of the loan. The Lender, however, will remain bound by all the obligations under the Loan Note Guarantee—Disaster Assistance for Rural Business Enterprises and the program regulations found in the applicable subpart of 7 CFR part 1980 now in effect and future FmHA or its successor agency under Public Law 103–354 program regulations not inconsistent with the provisions hereof.

*Public reporting burden for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0575–0029), Washington, DC 20503.*

5. FULL FAITH AND CREDIT. The Loan Note Guarantee—DARBE constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the Lender or any Holder has actual knowledge at the time of this assignment, or which the Holder participates in or condones. If the note to which this is attached or relates provides for payment of interest on interest, then this Loan Note Guarantee—DARBE is void. In addition, the Loan Note Guarantee—DARBE will be unenforceable by Lender to the extent any loss is occasioned by the violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA or its

successor agency under Public Law 103–354 acquires knowledge of the foregoing. Any losses occasioned will be unenforceable to the extent that loan funds are used for purposes other than those specifically approved by FmHA or its successor agency under Public Law 103–354 in its Conditional Commitment for Guarantee. Negligent servicing is defined as the failure to perform those services which a reasonably prudent lender would perform in servicing its own 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 in a manner 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.

6. RIGHTS AND LIABILITIES. The guarantee and right to require purchase will be directly enforceable by Holder notwithstanding any fraud or misrepresentations by Lender or any unenforceability of the Loan Note Guarantee—DARBE by Lender. Nothing contained herein shall constitute any waiver by FmHA or its successor agency under Public Law 103–354 of any rights it possesses against the Lender, and the Lender agrees that Lender will be liable and will promptly reimburse FmHA or its successor agency under Public Law 103–354 for any payment made by FmHA or its successor agency under Public Law 103–354 to Holder which, if such Lender had held the guaranteed portion of the loan, FmHA or its successor agency under Public Law 103–354 would not be required to make. The Holder(s) upon written notice to the Lender may resell the unpaid balance of the guaranteed portion of the loan assigned hereunder. An endorsement may be added to the Form FmHA or its successor agency under Public Law 103–354 1980–73 to effectuate the transfer.

7. REPURCHASE BY THE LENDER (DEFAULTS). The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder(s) within 30 days of written demand by the Holder(s) when: (a) the borrower is in default not less than 60 days on principal or interest due on the loan or (b) the Lender has failed to remit to the Holder(s) its pro rata share of any payment made by the borrower or any loan subsidy within 30 days of its receipt thereof. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of principal and accrued interest (including any loan subsidy), less the Lender's servicing fee. The loan note guarantee will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of the demand letter to the Lender requesting the repurchase. Holder(s) will concurrently send a copy of demand to FmHA or its successor agency under Public Law 103–354. The Lender will accept an assignment without recourse from the Holder(s) upon repurchase. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The Lender will notify the Holder(s) and FmHA or its successor agency under Public Law 103–354 of its decision. As per the terms of the Loan Note Guarantee—DARBE the maximum loss payment will not exceed $2,500,000 for principal, interest and approved protective advances.

8. PURCHASE BY FMHA OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354. If Lender does not repurchase as provided by paragraph 7, FmHA or its successor agency under Public Law 103–354 will purchase from Holder the unpaid principal balance of the guaranteed portion together with accrued interest to date of repurchase, less Lender's servicing fee, within 30 days after written demand to FmHA or its successor agency under Public Law 103–354 from the Holder. The Loan Note Guarantee—DARBE will not cover the note interest to the Holder on the guaranteed loans accruing after 90 days from the date of the original demand letter of the Holder to the Lender requesting the repurchase. Such demand will include a copy of the written demand made upon the Lender. The Holder(s) or its duly authorized agent will also include evidence of its right to require payment from FmHA or its successor agency under Public Law 103–354. Such evidence will consist of either the original of the Loan Note Guarantee—DARBE properly endorsed to FmHA or its successor agency under Public Law 103–354 or the original of the Assignment Guarantee Agreement—DARBE properly assigned to FmHA or its successor agency under Public Law 103–354 without recourse including all rights, title, and interest in the loan. FmHA or its successor agency under Public Law 103–354 will be subrogated to all rights of Holder(s). The Holder will include in its demand the amount due including unpaid principal, unpaid interest to date of demand and interest subsequently accruing from date of demand to proposed payment date or $2,500,000, whichever is less. Unless otherwise agreed to by FmHA or its successor agency under Public Law 103–354, such proposed payment will not be later than 30 days from the date of demand.

On loans with multiple Holders and/or a Lender who owns part of the guaranteed portion, if the aggregate unpaid principal and unpaid interest on the guaranteed portion exceeds $2,500,000, the Holder will be paid on a prorated basis—prorated by the percentage of the guaranteed portion of the loan the Holders owns.

The FmHA or its successor agency under Public Law 103–354 will promptly notify the Lender of its receipt of the Holder's demand for payment. The Lender will promptly provide the FmHA or its successor agency under

Public Law 103–354 with the information necessary for FmHA or its successor agency under Public Law 103–354's determination of the appropriate amount due the Holder(s). Any discrepancy between the amount claimed by the Holder(s) and the information submitted by the Lender must be resolved before payment will be approved. FmHA or its successor agency under Public Law 103–354 will notify both parties who must resolve the conflict before payment will be approved. Such a conflict will suspend the running of the 30 day payment requirement. Upon receipt of the appropriate information, FmHA or its successor agency under Public Law 103–354 will review the demand and submit it to the State Director for verification. After reviewing the demand the State Director will transmit the request to the FmHA or its successor agency under Public Law 103–354 Finance Office for issuance of the appropriate check. Upon issuance, the Finance Office will notify the office servicing the borrower and the State Director and remit the check(s) to the Holder(s).

9. LENDER'S OBLIGATIONS. Lender consents to the purchase by FmHA or its successor agency under Public Law 103–354 and agrees to furnish on request by FmHA or its successor agency under Public Law 103–354 a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owed by Borrowers on the loan and the amount then owed to any Holder(s). Lender agrees that any purchase by FmHA or its successor agency under Public Law 103–354 does not change, alter or modify any of the Lender's obligations to FmHA or its successor agency under Public Law 103–354 arising from said loan or guarantee nor does it waive any of FmHA or its successor agency under Public Law 103–354's rights against Lender, and that FmHA or its successor agency under Public Law 103–354 shall have the right to set-off against Lender all rights inuring to FmHA or its successor agency under Public Law 103–354 as the Holder of this instrument against FmHA or its successor agency under Public Law 103–354's obligation to Lender under the Loan Note Guarantee—DARBE.

10. REPURCHASE BY LENDER FOR SERVICING. If, in the opinion of the Lender, repurchase of the assigned portion of the loan is necessary to adequately service the loan, the Holder will sell the assigned portion of the loan to the Lender for an amount equal to the unpaid principal and interest on such portion. The Lender's servicing fee will be subtracted from these amounts. The loan note guarantee will not cover the note interest to the Holder on the guaranteed loans accruing after 90 days from the date of the demand letter of the Lender or FmHA or its successor agency under Public Law 103–354 to the Holder(s) requesting the Holder(s) to tender their guaranteed portion(s).

a. The Lender will not repurchase from the Holder(s) for arbitrage purpose or other purposes to further its own financial gain.

b. Any repurchase will only be made after the Lender obtains FmHA or its successor agency under Public Law 103–354 written approval.

c. If the Lender does not repurchase the portion from the Holder(s), FmHA or its successor agency under Public Law 103–354 at its option may purchase such guaranteed portions for servicing purposes.

11. FORECLOSURE. The parties owning the guaranteed portions and unguaranteed portion of the loan will join to institute foreclosure action, or in lieu of foreclosure, take a deed of conveyance to such parties.

12. REASSIGNMENT. Holder upon written notice to Lender and FmHA or its successor agency under Public Law 103–354 may reassign the unpaid guaranteed portion of the loan sold hereunder. Upon such notification, the assignee will succeed to all rights and obligations of the Holder hereunder.

13. NOTICES. All notices and actions will be initiated through the FmHA or its successor agency under Public Law 103–354 _____ for _____ (state) with mailing address at the date of this assignment:

_____

Dated this _____ day of _____, 19____.

Lender:

_____

Address:

_____

Attest: _____(Seal)

By

_____

Title

_____

Holder:

_____

Address:

_____

Attest: _____(Seal)

By

_____

Title

_____

United States of America

Farmers Home Administration or its successor agency under Public Law 103–354

Address:

_____

_____

By

_____

Title

_____

[54 FR 42483, Oct. 17, 1989, as amended at 55 FR 137, Jan. 3, 1990; 55 FR 19245, May 8, 1990]

## EXHIBIT G TO SUBPART E OF PART 1980

NOTE: The Exhibit is not published in the Code of Federal Regulations. It is available

in any FmHA or its successor agency under Public Law 103–354 office.

[54 FR 1599, Jan. 13, 1989]

## Subparts F–I [Reserved]

## PARTS 1981–1999 [RESERVED]