

*Announcement 06-03*

*March 22, 2006*

*Amends these Guides: Selling and Servicing*

*Properties Subject to Resale Restrictions or Located on Land Owned by Community Land Trusts*

Fannie Mae is committed to supporting programs that will help our lending partners create and preserve affordable housing. The high cost of housing has become a challenge for people who want to purchase homes in many markets around the country. To help address this issue, many governmental and nonprofit entities support the development of properties subject to resale restrictions or they establish community land trusts. Those strategies help to create and preserve affordable housing stock in communities over the long-term.

Fannie Mae has purchased mortgages secured by properties subject to resale restrictions or held by community land trusts for many years. With this Announcement, we are expanding our eligibility requirements for these types of mortgages. These changes will be effective for all whole loans delivered for cash or MBS pool issuance on and after May 1, 2006. The most significant changes include the following:

- purchasing mortgages secured by properties subject to resale restrictions when the resale restrictions survive foreclosure or acceptance of a deed-in-lieu of foreclosure;
- permitting the loan-to-value (LTV) ratio to be based upon the appraised value without resale restrictions, instead of the lesser of the sales price or market value, for mortgages when the resale restrictions terminate automatically upon foreclosure or upon the acceptance of a deed-in-lieu of foreclosure;
- permitting required third-party notifications for mortgages secured by properties subject to resale restrictions;
- including nonprofit organizations, universities, and employers as eligible subsidy providers that can sponsor resale restrictions; and
- allowing lenders to deliver mortgages secured by community land trust properties to Fannie Mae without special approval.

## Selling Guide

### **Part VII: Mortgage Eligibility**

Chapter 1, Conventional Mortgages; Section 102.09, Inclusionary Zoning Restrictions. As a result of our expanded eligibility criteria, we are changing the name of this section to Resale Restrictions and replacing the current Guide text as follows:

Resale restrictions are a right in perpetuity or for a certain number of years, stated in the form of a restriction, easement, covenant, or condition in any deed, mortgage, ground lease (other than a community land trust ground lease which is addressed in the next section), agreement or other instrument executed by or on behalf of the owner of the land. Resale restrictions may limit the use of all or part of the land to occupancy by persons or families of low-income or moderate-income or on the basis of age (senior communities must comply with applicable law), or may restrict the resale price of the property to ensure its availability to future low-income and moderate-income borrowers. The restricted resale price provides a subsidy to the homeowner, in an amount equal to the difference between the sales price and the market value of the property without resale restrictions. The resale restrictions are binding on current and subsequent property owners, and remain in effect until they are formally removed or modified, or terminate in accordance with their terms (such as at a foreclosure sale or upon acceptance of a deed-in-lieu of foreclosure).

This section does not pertain to community land trust ground leases, which are covered in the next section of this Announcement. However, if a community land trust uses a restriction, easement, covenant, or condition in any deed, mortgage, agreement or other instrument executed by or on behalf of the owner of the land instead of a ground lease to create the resale restriction, this section will apply.

#### **A. General Eligibility Criteria**

- **Eligible Subsidy Providers:** Eligible subsidy providers, or sponsors, of resale restrictions must be nonprofit organizations, churches, employers, universities, municipalities (including state, county, or local housing agencies), or entities that are otherwise administering government sponsored, federal, state, or local subsidy programs. The subsidy provider must have established procedures for screening and processing applicants.
- **Eligible Borrowers:** Eligible borrowers must satisfy the specific eligibility criteria and resale restrictions established by the subsidy provider. If the borrower income limits for the resale restrictions differ from Fannie Mae's income limits for its community lending products, the income limits established by the resale restrictions apply.
- **Eligible Properties:** We will purchase mortgages subject to resale restrictions secured by one-unit properties, including eligible condominium projects and planned unit developments (PUDs), or two-unit properties. The property must be an owner-

occupied principal residence. Mortgages secured by manufactured homes, cooperative projects, and three-unit or four-unit properties are not eligible.

- **Eligible Transaction Types:** Eligible transaction types include purchase money and refinance first mortgages.
- **Eligible Products:** Eligible products include Fannie Mae products described in either the Selling Guide or the Guide to Underwriting with Desktop Underwriter®, as well as our community lending products (including MyCommunityMortgage™). Fixed-rate mortgages and adjustable-rate mortgages with an initial fixed period of five years or more are eligible. InterestFirst™ products and Home Keeper® products are not eligible.
- **Title Search:** The source and terms of the resale restrictions must be included in the public land records so that they are readily identifiable in a routine title search.
- **Default Remedies:** The presence of resale restrictions must not impair Fannie Mae’s legal rights to cure a default under the mortgage terms, to foreclose on the mortgage, or to otherwise protect its interests under the mortgage. The subsidy provider also may have rights to remedy a borrower default.
- **Rights to Insurance Settlements and Condemnation Proceeds:** Fannie Mae must have first claim to insurance settlements or condemnation proceeds.
- **Review of Program Terms and Conditions:** The lender must review the terms and conditions of the affordable housing program, including any documents that describe the resale restrictions.
- **Identification and Tracking:** The lender selling and servicing mortgages subject to resale restrictions must be able to identify and track those mortgages on its systems and must have sufficiently trained staff to originate and service those mortgages.

## **B. Allowable Resale Restrictions**

We will purchase mortgages that are subject to one or more of the following types of resale restrictions (although some restrictions are likely to occur only in combination with others):

- income limits,
- age limits (senior communities must comply with applicable laws),
- purchasers must be employed by the subsidy provider,
- principal residence requirements,
- first-time homebuyer requirements as designated by the subsidy provider,
- properties that are “group homes” or that are principally used to serve disabled residents in compliance with local law, and
- resale price limits.

## **C. Duration of Resale Restrictions**

For many years, Fannie Mae has purchased mortgages secured by properties subject to resale restrictions provided such restrictions terminate automatically upon foreclosure (or the expiration of any applicable redemption period) or the recordation of a deed-in-lieu of foreclosure. With this Announcement, we will also purchase mortgages secured

by properties subject to resale restrictions when the resale restrictions survive foreclosure. Fannie Mae has no restriction on the length of the period in which resale restrictions remain in place on the property. If the resale restrictions survive foreclosure, the lender represents and warrants that the resale restrictions do not impair the servicer's ability to foreclose on the restricted property.

If the resale restrictions terminate at foreclosure, the subsidy provider is not entitled to obtain any proceeds from future sale(s) or transfer(s) of the property after foreclosure or acceptance of a deed-in-lieu of foreclosure. If the resale restrictions survive foreclosure, the subsidy provider is not entitled to obtain any proceeds from the initial sale or transfer of the property after foreclosure, from the foreclosing mortgage holder who obtained the property at foreclosure or pursuant to a deed-in-lieu of foreclosure.

#### **D. Calculation of Loan-To-Value Ratios**

When resale restrictions terminate automatically upon foreclosure (or the expiration of any applicable redemption period), or the recordation of a deed-in-lieu of foreclosure, the sales price is typically not a reliable indicator of market value for the property. Accordingly, for these types of mortgages, we will permit lenders the option to use the appraised value of the property without resale restrictions, rather than the lesser of sales price or appraised value with the restrictions in place, when calculating the LTV ratio. We are permitting this calculation based on the market value without resale restrictions because it is indicative of the actual value of the property in the event of a foreclosure or acceptance of a deed-in-lieu of foreclosure (disregarding factors that may affect value after origination and prior to foreclosure). When using this alternative method of calculating the LTV ratio, the mortgage must be manually underwritten and is not eligible to be submitted through Desktop Underwriter.

When resale restrictions survive foreclosure or a deed-in-lieu of foreclosure, and the resale restrictions limit the sales price of the property, the sales price is typically lower than the market value of the property without resale restrictions. Accordingly, the lender must use the lesser of the sales price or appraised value of the property with resale restrictions when calculating the LTV ratio, which is the standard method of calculation. We are requiring the standard calculation on the lower value due to the presence of resale restrictions, which would limit the property's sales price in the event of foreclosure or acceptance of a deed-in-lieu of foreclosure. Because the standard method for calculating the LTV ratio is applied, these mortgages may be underwritten by Desktop Underwriter.

#### **E. Notification to Third Parties**

We will purchase mortgages when the resale restrictions require the servicer to notify a third party when the borrower is in default or the property is in foreclosure. The servicer must ensure that proper notification is provided, as required in the provisions of the resale restrictions. If notification requirements exist, the servicer is still responsible for adhering to Fannie Mae's established time frames within which routine foreclosures must be completed. Third party notifications required in addition to the required

statutory notifications will not be considered an impairment of the servicer's ability to foreclose.

#### **F. Right of First Refusal or Option to Purchase**

The subsidy provider may retain the right of first refusal or option to purchase a resale restricted property when the borrower is in default or the property is in foreclosure. The terms of the right of first refusal or option to purchase must be specified in the terms of the resale restrictions. The subsidy provider must exercise its right of first refusal or option to purchase the property within 90 days of receiving notification of the borrower default or the property foreclosure.

#### **G. Mortgage Insurance**

If a mortgage is subject to resale restrictions that survive foreclosure or deed-in-lieu of foreclosure and mortgage insurance is required, the lender must first contact its mortgage insurance provider and obtain confirmation that the mortgage insurance provider is willing, on a program basis, to insure these mortgages under the lender's master primary policy.

#### **H. Loan Refinances**

The subsidy provider may permit borrowers to refinance their mortgage and to take cash out of the transaction. However, the resale restrictions may limit the cash out amount in order to protect the subsidy invested in the property. Lenders must document that the subsidy provider has approved the refinance transaction and should ensure that the cash out amount complies with the provisions of the specific resale restrictions.

#### **I. Appraising Properties Subject to Resale Restrictions**

In cases where the resale restrictions terminate automatically upon foreclosure (or the expiration of any applicable redemption period), or upon recordation of a deed-in-lieu of foreclosure, the appraisal should reflect the market value of the property without resale restrictions. The lender must ensure that the borrower is aware of the resale restrictions and should advise the appraiser that he or she must include the following statement in the appraisal report: "This appraisal is made on the basis of a hypothetical condition that the property rights being appraised are without resale and other restrictions that are terminated automatically upon the latter of foreclosure or the expiration of any applicable redemption period, or upon recordation of a deed-in-lieu of foreclosure."

In cases where the resale restrictions survive foreclosure or deed-in-lieu of foreclosure, the appraisal must reflect the impact the restrictions have on value and be supported by comparables with similar restrictions. The lender must ensure that the appraiser and the borrower are aware of the existence of the resale restrictions. The appraisal report must note the existence of the resale restrictions and comment on any impact the resale restrictions have on the property's value and marketability.

## **J. Compliance with Community Seconds® Policy**

Resale restrictions may be found in the terms and conditions of a second mortgage or deed of trust (referred to as a Community Seconds mortgage), which Fannie Mae does not purchase. In other cases, the resale restrictions are found in a covenant or provision of an agreement that is recorded against the land, and no Community Seconds mortgage exists.

When the resale restrictions are documented by a second mortgage or deed of trust, the lender must ensure that the second mortgage or deed of trust complies with Fannie Mae's Community Seconds guidelines in the Selling Guide in Part VIII, Chapter 2, as recently amended by Announcement 06-02. The second mortgage or deed of trust must be subordinate to the first mortgage that Fannie Mae purchases.

If the resale restrictions are included in a separate covenant or agreement instead of a second mortgage or deed of trust, the resale restrictions must comply, if applicable, with Fannie Mae's requirements in Selling Guide, Part VIII, Chapter 2, Section 203.01 related to shared appreciation in property value. The right of the subsidy provider to shared appreciation must be clearly subordinate to the lien of the first mortgage that Fannie Mae purchases. Any provisions addressing balloon payments, the interest rate, and negative amortization must be documented in a Community Seconds mortgage, and not in a covenant or agreement.

## **K. Delivery**

Lenders must include Special Feature Code 630 as part of the delivery data on the *Loan Schedule* (Form 1068 and 1069) or *Schedule of Mortgages* (Form 2005) when delivering mortgages secured by properties with resale restrictions that terminate automatically upon foreclosure (or the expiration of any applicable redemption period) or the recordation of a deed-in-lieu of foreclosure, and if the lender uses the optional calculation to compute the LTV ratio based on the appraised value of the property without resale restrictions. This LTV ratio, calculated using the appraised value of the property without resale restrictions, must also be reported to Fannie Mae as part of the delivery data.

Lenders must include Special Feature Code 631 as part of the delivery data on the *Loan Schedule* (Form 1068 and 1069) or *Schedule of Mortgages* (Form 2005) when delivering mortgages secured by properties with resale restrictions that survive foreclosure or deed-in-lieu of foreclosure.

No special feature code is required when delivering mortgages secured by properties with resale restrictions that terminate automatically upon foreclosure (or the expiration of any applicable redemption period) or the recordation of a deed-in-lieu of foreclosure, if the lender used the standard calculation to compute the LTV ratio based on the lower of the sales price or the current appraised value with resale restrictions.

## Part VIII: Community Lending Mortgages

Chapter 3, Community Land Trust Option. The Selling Guide in Part VIII, Chapter 1, General Mortgage Eligibility Criteria, states that the lender must generally have a Master Agreement with Fannie Mae to cover deliveries of community lending mortgages. In the past, mortgages secured by properties held in a community land trust have always been subject to this requirement. With this Announcement, lenders will be able to deliver non-community lending mortgages to Fannie Mae that are secured by properties held in a community land trust. As a result, lenders are no longer required to obtain Fannie Mae's approval, or execute a Master Agreement, to deliver mortgages secured by community land trust properties. However, if the lender does deliver one of the community lending products to Fannie Mae, the lender would still need to comply with all relevant community lending guidelines. Accordingly, we are moving these guidelines to Selling Guide, Part VII, Chapter 1, Conventional Mortgages, and replacing the current Guide text with the following:

Community land trusts are private nonprofit organizations developed by communities to create and preserve long-term affordable housing for low-income and moderate-income residents in their area. Community land trusts purchase homes in their communities, then lease the land using a long-term ground lease to low-income and moderate-income families at affordable monthly ground rents. The lender then provides a loan in the form of a first lien mortgage on the improvements, not the land. The ground lease includes provisions that require the continued use of the property for low-income and moderate-income families in the future.

We will purchase a first mortgage secured by a leasehold estate on property owned by a community land trust and the improvements on the property as long as the property is acceptable as security for the mortgage as discussed in Selling Guide, Part XI, Section 312, Leaseholds Held by Community Land Trusts.

### A. General Eligibility Criteria

- **Eligible Community Land Trusts:** Eligible community land trusts must be nonprofit organizations or public entities, such as state or local governments, counties, school districts, universities, or colleges.
- **Eligible Borrowers:** Eligible borrowers must satisfy the specific eligibility criteria set up by the community land trust. If the lender is using a Fannie Mae community lending product and the borrower income limits for the community land trust differ from Fannie Mae's income limits for the community lending product, the income limits established by the community land trust apply.
- **Eligible Properties:** We will purchase a mortgage secured by a community land trust property as long as it is secured by a one-unit property, including eligible condominium projects and PUDs, or a two-unit property. The property must be an owner-occupied principal residence. Mortgages secured by manufactured homes, cooperative projects, and three-unit or four-unit properties are not eligible.

- **Eligible Transaction Types:** Eligible transaction types include purchase money and refinance first mortgages secured by community land trust properties.
- **Eligible Products:** Eligible products include Fannie Mae products described in either the Selling Guide or the Guide to Underwriting with Desktop Underwriter, as well as our community lending products (including MyCommunityMortgage). Fixed-rate mortgages and adjustable-rate mortgages with an initial fixed period of five years or more are eligible. InterestFirst products and Home Keeper products are not eligible.
- **Identification and Tracking:** The lender selling and servicing mortgages secured by properties held by a community land trust must be able to identify and track those mortgages in its systems and must have sufficiently trained staff to originate and service those mortgages.

## B. Lender Requirements

To deliver a mortgage secured by a property held by a community land trust, the lender must:

- determine that the community land trust organization has the capacity to administer leasehold mortgages;
- confirm that the community land trust or its affiliated organization has at least two years of experience in successfully managing affordable housing, which can be evidenced by an organizational resume or history that summarizes the organization's experience in providing affordable housing;
- review a list of the staff responsible for the community land trust's homeownership program, their titles, and their resumes to see if they have sufficient experience and skills to manage affordable housing;
- review the most current annual report or other report documenting the history and successful performance of the community land trust for the most current year;
- review the community land trust's ground lease to confirm that it is based on a model ground lease developed by the Institute for Community Economics ("ICE") and effective as of the date of this Announcement. The lender should request both a copy of the ICE model ground lease and a copy of the community land trust's ground lease from the community land trust for comparison purposes; and
- ensure that any mortgage secured by a community land trust property and delivered to Fannie Mae is supported by the appropriate leasehold interest documents, including the Community Land Trust Ground Lease and the *Community Land Trust Ground Lease Rider* (Form 2100) ("Rider"). The Rider is included with this Announcement as an attachment and is available on our Web site at [www.efanniemae.com](http://www.efanniemae.com).

If the community land trust organization does not meet the requirements noted above, the lender may discuss the community land trust's qualifications with its Customer Account Team.



### **C. Calculating LTV Ratios**

Given the unique nature of the community land trust structure, the community land trust sales price may not be a reliable indicator of market value for the leasehold estate. Accordingly, the LTV ratio will be determined by dividing the unpaid principal balance of the community land trust mortgage by the value of the leasehold interest and improvements reported on the property appraisal (as described in the Selling Guide in Part XI, Section 312). Thus, the LTV ratio for community land trust mortgage transactions will not be based on the lesser of the sales price or appraised value, but will be based on the leasehold value. These mortgages must be manually underwritten and are not eligible for Fannie Mae's Desktop Underwriter.

### **D. Notification to Third Parties**

Fannie Mae will purchase mortgages secured by community land trust properties that require the lender to notify a third party, such as a housing authority or government agency, upon the borrower's default or property foreclosure, as required by the community land trust ground lease. The lender must ensure that proper notification is provided, as required by the community land trust ground lease. If notification requirements exist, the servicer is still responsible for adhering to Fannie Mae's established time frames within which routine foreclosures must be completed. Third party notifications required in addition to the required statutory notifications will not be considered an impairment of the servicer's ability to foreclose.

### **E. Title Insurance**

The lender's title insurance policy (or an endorsement to the policy) must expressly confirm: (1) the recording of the complete community land trust ground lease or ground lease memorandum; (2) the recording of the Community Land Trust Ground Lease Rider; (3) that the community land trust mortgage is a first lien on the leasehold estate and the improvements; (4) that there are no existing mortgages or other liens on the fee estate, except as may be permitted under the Community Land Trust Ground Lease Rider; (5) that the ground lessor's reversionary interest is subordinate to the community land trust mortgage; and (6) that there are no related community land trust ground lease occupancy and resale restrictions, covenants, or agreements that "run with the land," and have been recorded apart from the ground lease.

### **F. Community Land Trust Ground Lease and Rider**

The leasehold estate created by the community land trust ground lease must constitute real property under applicable local law. The term of the estate created by the ground lease must extend for at least five years beyond the maturity date of the mortgage that is delivered to us.

The community land trust ground lease may include certain restrictions limiting future property purchasers to low-income and moderate-income families and to limit the maximum sales price of the property. The resale restrictions in the ground lease must

terminate automatically on foreclosure (or the expiration of any applicable redemption period) of, or acceptance of a deed-in-lieu of foreclosure for, the leasehold mortgage. Once any resale restrictions have been terminated by foreclosure (or the expiration of any applicable redemption period) or acceptance of a deed-in-lieu of foreclosure, they may not be automatically reinstated for subsequent purchasers of the property.

If the community land trust ground lease is based on the model ground lease developed by the ICE, we do not need to review or approve the ground lease. Our prior approval is required if the ground lease is not in accordance with the ICE model ground lease.

We require that the borrower execute our *Community Land Trust Ground Lease Rider* (Fannie Mae Form 2100) that we have developed for use with the model ICE ground lease. The Rider must be recorded along with the ground lease. The purpose of the Rider is to ensure the ground lease is in conformance with Fannie Mae's guidelines for community land trust mortgages without the delay that would result from Fannie Mae's prior review and approval of each ground lease. Fannie Mae approval is required if our Rider is modified or is not executed.

When a mortgage is secured by property held by a community land trust, the lender must confirm that all ground lease rents and other payments or assessments that have come due have been paid before it delivers the mortgage to us. In addition, the borrower must not be in default under any other provisions of the ground lease, nor may the ground lessor have claimed such a default. In all respects, the ground lease must be valid, enforceable, and in full force and effect.

## **G. Delivery**

Lenders must include Special Feature Code 054 as part of the delivery data on the *Loan Schedule* (Form 1068 and 1069) or *Schedule of Mortgages* (Form 2005) when delivering mortgages secured by community land trust properties. Lenders must enter the value of the leasehold (inclusive of the improvements) as the appraisal amount in the MORNET® Cash Delivery System™ or the MORNET MBS Pool Submission System™. Lenders also must calculate the LTV ratio using the leasehold value and include this ratio as part of the delivery data.

## **Servicing Guide**

### **Part I: Lender Relationships**

Chapter 2, Contractual Relationship; Section 205.03, Assumption of Warranties and Other Obligations. We are adding the following paragraph to this section of the Guide:

We require the servicer to provide special notification to the new servicer when mortgages subject to resale restrictions (whether or not the restrictions survive foreclosure or acceptance of a deed-in-lieu of foreclosure) are included in the

portfolio being transferred. The servicer must identify each mortgage subject to resale restrictions on the *Request for Approval of Servicing Transfer* (Fannie Mae Form 629). The revised Fannie Mae Form 629 is available on [www.efanniemae.com](http://www.efanniemae.com). The transferee servicer must be aware of its duties and obligations related to the servicing of mortgages subject to resale restrictions.

## **Part VII: Delinquent Mortgages**

Chapter 2, Delinquency Prevention; Section 211, Third Party Notification for Mortgages Subject to Resale Restrictions or Community Land Trust Ground Lease. We are adding the following paragraph as a new section to this chapter of the Guide:

For mortgages subject to resale restrictions or secured by properties subject to a community land trust ground lease, the servicer must notify the appropriate third party, such as a housing authority, government agency, or community land trust ground lessor, when the borrower defaults or the property is foreclosed, as required by the resale restrictions or the community land trust ground lease.

## **Part VIII: Foreclosures, Conveyances, and Claims**

Chapter 1, Foreclosures; Section 114.01, Submitting the REOgram®. We are adding the following paragraph to this section of the Guide:

In the event a property subject to resale restrictions is acquired by Fannie Mae through foreclosure or the acceptance of a deed-in-lieu of foreclosure, and the resale restrictions survive foreclosure, the servicer must indicate that the property is subject to resale restrictions that survive foreclosure on the Fannie Mae REOgram. In the section of the REOgram titled “Comments about the Property,” the servicer must include a notation that the property is subject to resale restrictions and provide contact information for the governmental housing agency or other applicable organization. With respect to all resale restrictions, the servicer also represents and warrants that upon transfer of the property to Fannie Mae, all required notices have been given in an appropriate manner, and that the foreclosure or deed-in-lieu of foreclosure complies with the requirements of the applicable resale restrictions. With respect to resale restrictions that do not survive foreclosure (or the expiration of any applicable redemption period) or acceptance of a deed-in-lieu of foreclosure, the servicer represents and warrants that all action necessary for the resale restrictions to terminate has been taken.

Chapter 3, Acquired Properties; Section 306, Excess Proceeds from a Foreclosure Sale for Resale Restricted Properties. We are also adding the following paragraph as a new section of Part VIII of the Servicing Guide:

Excess proceeds obtained during a foreclosure sale must be distributed in accordance with applicable law. Resale restrictions may require the borrower to affirmatively assign proceeds due him or her to the subsidy provider.

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Lenders should contact their Customer Account Team if they have questions about this Announcement or the attachment.

Pamela S. Johnson  
Senior Vice President

Attachment

## Attachment 1

### Community Land Trust Ground Lease Rider

(For Use with ground leases based on the Institute for Community Economics Model Ground Lease Only)

THIS COMMUNITY LAND TRUST GROUND LEASE RIDER (the "Rider") is made this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and is incorporated into, and shall be deemed to amend and supplement the community land trust ground lease dated \_\_\_\_\_ by and between \_\_\_\_\_ as lessor (the "Lessor") and \_\_\_\_\_, as lessee (the "Lessee") ("the CLT Ground Lease"). The CLT Ground Lease covers the leased premises located at \_\_\_\_\_ (the "Leased Premises"), as further described therein. The CLT Ground Lease, as amended by this Rider, shall hereafter be referred to as the "Lease," unless otherwise indicated.

This Rider amends the CLT Ground Lease for the purpose of enabling the Lessee to secure Fannie Mae financing in the form of a mortgage or deed of trust dated \_\_\_\_\_, \_\_\_\_\_, by Lessee to \_\_\_\_\_ (the "Specified Mortgage"). The Specified Mortgage is recognized by Lessor as a "Permitted Mortgage" (or as such concept is otherwise defined) under the CLT Ground Lease, and the holder of the Specified Mortgage (the "Specified Mortgagee") is recognized as a "Permitted Mortgagee" (or as such concept is otherwise defined) under the CLT Ground Lease.

**ADDITIONAL COVENANTS.** Notwithstanding anything to the contrary contained in the CLT Ground Lease, and in addition to the covenants and agreements made in the CLT Ground Lease, the Lessor and the Lessee further covenant and agree, so long (but only so long) as the Specified Mortgagee, its successors and assigns shall have an interest in the Leased Premises, as a holder of the Specified Mortgage or as an owner of the Lessee's interest pursuant to any sale after or in lieu of foreclosure, the following provisions shall apply to the CLT Ground Lease as modifications thereof:

- A. No Assignment or Transfer.** The making of the Specified Mortgage shall not be deemed to constitute an assignment or transfer of the Lease or leasehold estate so as to require the Specified Mortgagee to assume the performance of any of the Lessee's obligations under the Lease.
- B. Status of the Fee Estate.** The Lessor represents and warrants that there is no existing mortgage on the fee estate, and so long as the Specified Mortgage shall remain on the Leased Premises, the Lessor and the Lessee shall not subordinate the Lease to any mortgage or lien that may hereafter be placed on the fee estate. Notwithstanding the foregoing, a state or local government entity ("Government Entity") may hold a prior recorded interest (represented by recorded covenants, a mortgage or deed of trust, or other lien) on the fee estate **if** the Government Entity has entered into an agreement (which agreement has been approved in writing by the Specified Mortgagee) that provides, among other conditions, in the event the Government Entity (including its successors and assigns) succeeds to the interest of the Lessor under the Lease by any remedy available to the Government Entity by law or pursuant to its lien, the Government Entity and the Lessee agree to recognize one another under all the terms of the Lease and this Rider. Such recognition must include, but

is not limited to, the provisions of this Rider whereby all provisions of the Lease regarding (a) occupancy of the Leased Premises as a primary residence by the Lessee, (b) limitation on assignment of, or sublease under, the Lease, (c) the price at which the leasehold estate may be transferred, and (d) the income of successive transferees, assignees or successors, shall, in the event of foreclosure or assignment in lieu of foreclosure of the Specified Mortgage, be of no further force or effect with respect to such Specified Mortgagee or its successive transferees, assignees or successors. The Specified Mortgage shall constitute a first leasehold lien on the Leased Premises, and shall have priority over the Lessor's reversionary interest. If the Lessor conveys title to the fee estate while the Specified Mortgage remains on the Leased Premises, the Lease shall remain in effect with the same priority thereto.

- C. Termination, Forfeiture and Modification of Lease.** There shall be no termination, forfeiture, or modification of the Lease, except as provided in this Rider, without the prior written consent of the Specified Mortgagee. The Lessor and Lessee shall amend the Lease from time to time as reasonably requested by the Specified Mortgagee, as long as the requested changes do not change the periodic fee, charge or payment due the Lessor for the rights accorded the Lessee under the Lease (the "Ground Lease Fee"), and do not materially or adversely affect the rights of Lessor or Lessee or their respective interests in the Leased Premises. An adjustment of the Ground Lease Fee may be made by the Lessor as provided in the Lease, without prior approval of the Specified Mortgagee, so long as written notice has been delivered to the Specified Mortgagee at least 60 days prior to the effective date of such adjustment with respect to adjustments other than those (i) that were scheduled at the time the Specified Mortgage was given, and (ii) reflecting routine, periodic updates to variable expenses such as property taxes and liability insurance premiums; provided, however, that the Specified Mortgagee shall have the right to arbitrate (as provided herein) any dispute as to an adjustment of the Ground Lease Fee.
- D. No Termination of CLT Ground Lease.** Upon the occurrence of an event of default under the CLT Ground Lease, as long as the Specified Mortgagee cures monetary defaults under the CLT Ground Lease and institutes and diligently pursues foreclosure of the leasehold estate created by the CLT Ground Lease, or acquires title to the leasehold estate through foreclosure or assignment in lieu of foreclosure of the Specified Mortgage, Lessor agrees not to terminate the CLT Ground Lease, initiate summary proceedings against the Lessee, or repossess the Leased Premises. After the Specified Mortgagee's acquisition of title to the leasehold estate through foreclosure or assignment in lieu of foreclosure, the Lessor agrees that the Specified Mortgagee may, by written notice to the Lessor, automatically create a new Lease between the Lessor and the Specified Mortgagee, which Lease shall be for the remainder of the term of the Lease, with the same priority thereto, and shall be subject to the same terms of the CLT Ground Lease as would be applicable pursuant to Section E.1 below where the Specified Mortgagee had accelerated its note, foreclosed on the Specified Mortgage, taken an assignment in lieu of foreclosure, or exercised its other remedies for default.
- E. Mortgage Default or Foreclosure.** Subject to the following, upon the occurrence of an event of default under the Specified Mortgage (as determined by the Specified Mortgagee - an "Event of Default"), and without the consent of the Lessor, the Specified Mortgagee shall be permitted to accelerate its note, foreclose on the Specified Mortgage, take an assignment in lieu of foreclosure, or exercise its other remedies for default. Further:

1. Upon the occurrence of an Event of Default under the Specified Mortgage, the Lessee shall immediately notify the Lessor of such Event of Default and shall submit to Lessor copies of all notices the Lessee received from the Specified Mortgagee relating thereto. The Specified Mortgagee and the Lessor shall endeavor to communicate and cooperate in efforts to deal with the circumstances of the Event of Default and the actions the parties may take relating thereto; provided, however, the Specified Mortgagee shall only be obliged to give formal legal notice of the Event of Default to the Lessor as required by the CLT Ground Lease..
2. The Lessee and the Specified Mortgagee agree that the Lessor shall have the right, but not the obligation, to cure an Event of Default in the Lessee's name and on the Lessee's behalf. If such cure is not effective and continuing, nothing herein shall be construed to prevent or delay the Specified Mortgagee from its pursuit of foreclosure and any other available remedies. The Lessee shall be responsible to the Lessor for all payments made, and expenses incurred, by the Lessor in curing such default.
3. Should the Lessor not choose to cure an Event of Default as specified above, the Lessor shall nevertheless have the option to purchase the leasehold estate from the Specified Mortgagee for the full amount owing to the Specified Mortgagee under the Specified Mortgage as of the date of closing of the purchase, upon written notice given by the Specified Mortgagee (the "Mortgagee Option Notice") not later than 60 days following acquisition of title to the leasehold estate by the Specified Mortgagee by foreclosure or by an assignment in lieu of foreclosure; provided, however, the Specified Mortgagee may give such written notice following the occurrence of an Event of Default under the Specified Mortgage and prior to the completion of foreclosure proceedings. If the Lessor elects to exercise such option to purchase, the Lessor shall give written notice to the Specified Mortgagee of the Lessor's intent to purchase the leasehold estate (the "Lessor Option Notice") within 45 days following the Specified Mortgagee's giving of the Mortgagee Option Notice; provided, however, at the option of the Lessor, in the event the Mortgagee Option Notice is given prior to the completion of foreclosure proceedings by the Specified Mortgagee, the Lessor shall, within such 45-day period, be able to give a written notice to the Specified Mortgagee that it will delay giving the Lessor Option Notice until a date that is not later than 30 days following written notice from the Specified Mortgagee of its acquisition of title to the leasehold estate.  
The Lessor shall complete the purchase of the leasehold estate within 60 days of giving the Lessor Option Notice. If the Lessor does not complete the purchase within the allotted 60 days, the Specified Mortgagee shall be free to sell the leasehold estate to another person or entity. Further, if the Lessor does not complete the purchase within the allotted 60 days, the Lessor agrees to pay to the Specified Mortgagee its costs of holding the property from the date of the Lessor Option Notice until the expiration of such 60-day period. If the Lessor does not purchase the leasehold estate as described herein, the leasehold estate may be transferred, mortgaged and sublet an unlimited number of times, and the Lessor shall not require a credit review or impose other qualifying criteria on any such transferee, mortgagee or sublessee.
4. In the event of foreclosure or assignment in lieu of foreclosure, which results in the conveyance of the leasehold estate from the Lessee, any adjustment of the Ground Lease Fee to reflect then current fair market rental value as provided in the Lease,

shall be subject to the approval of the Specified Mortgagee. The Specified Mortgagee and the Lessor shall attempt to resolve any dispute concerning such adjustment of the Ground Lease Fee, through the normal interaction of the parties, or through formal mediation as the case may warrant. If the dispute remains unresolved, the Specified Mortgagee and the Lessor shall submit the dispute as to the fair market rental value to binding arbitration.

5. In the event the Specified Mortgagee acquires title to the leasehold estate through foreclosure or assignment in lieu of foreclosure of the Specified Mortgage, all provisions of the Lease regarding (a) occupancy of the Leased Premises as a primary residence by the Lessee, (b) any limitation on the assignment of, or sublease under, the Lease, (c) any obligation to target certain populations in marketing the leasehold estate to potential transferees, (d) the price at which the leasehold estate may be transferred, and (e) the income of successive transferees, and their successors and assigns, shall be of no further force or effect with respect to such Specified Mortgagee or its successive transferees, assignees or successors. The foregoing sentence shall not be construed to invalidate other Lease provisions regarding permitted use of the Leased Premises. Any transfer or assignment of the property encumbered by the Specified Mortgage as provided for in this paragraph shall be deemed a permitted sale, transfer or assignment of the Lease and the leasehold estate. Further, in such event, the leasehold estate may be transferred, mortgaged and sublet an unlimited number of times, and the Lessor shall not require a credit review or impose other qualifying criteria on any such transferee, mortgagee or sublessee.

- F. Lease Default.** There shall be no forfeiture or termination of the Lease except for (i) the nonpayment of amounts due under the Lease, and (ii) violation of one or more provisions of the Lease addressing the following: (a) prohibition or restrictions on the sale or transfer of the Lessee's interest (however, non-sale transfers resulting from marriage, divorce, death of a spouse, or a transfer otherwise permitted by applicable federal law, may not constitute a basis for default under the Lease, though the Lessor may require such transferee to agree to assume the transferor's obligations under the Lease), and (b) requirement that the Lessee occupy the Leased Premises as primary residence. Provided, however, such forfeiture or termination shall be subject to the Specified Mortgagee's right to cure a monetary default, or otherwise foreclose or take an assignment of the Leasehold estate in lieu of foreclosure with respect to the Lessee's monetary or non-monetary default. Notwithstanding the foregoing, nothing herein shall be construed to require the Specified Mortgagee to cure any non-monetary default. Further, the Specified Mortgagee shall become subrogated to any and all rights of the Lessee with respect to such curing of a default. If the Lessee's default shall be cured as provided in the Lease, and the Specified Mortgagee shall discontinue its foreclosure or assignment in lieu of foreclosure proceedings, the Lease shall continue in full force and effect as if the Lessee had not defaulted. A default by the Lessee under the Lease shall constitute a default under the Specified Mortgage.

- G. Lease Default Notice.** Notwithstanding the notice requirements provided in the Lease, no default notice by the Lessor shall be deemed to have been given unless and until a copy thereof shall have been so given to the Specified Mortgagee.



- H. **Insurance.** All insurance policies covering the Improvements shall by endorsement name the Specified Mortgagee as an additional insured and loss payee, and provide the Specified Mortgagee with 30 days' cancellation notice.
- I. **Casualty and Condemnation.** If the Leased Premises are destroyed or taken to such an extent that the Lease is to be terminated, the insurance proceeds or condemnation award, as the case may be, shall be applied first in an amount sufficient to satisfy the Specified Mortgage. Upon the termination of the Lease as a result of a partial destruction or a condemnation of less than the entire Leased Premises, the total insurance proceeds or condemnation award, as the case may be, shall be paid to an appointed trustee, who shall first apply such insurance proceeds or condemnation award in accordance with the Specified Mortgage for restoration of the Improvements (if such trustee determines that the Improvements may reasonably be restored to a residential use consistent with the Lease), with the balance of such insurance proceeds or condemnation award to be allocated between the Lessor and Lessee as otherwise provided in the Lease. The Specified Mortgagee shall be entitled to participate in (i) the adjustment of all casualty losses and (ii) all condemnation proceedings and settlement discussions. Any insurance proceeds or condemnation award shall be applied in accordance with the Specified Mortgage. The Specified Mortgagee shall also be entitled to participate in the adjustment of the Ground Lease Fee as a result of a partial destruction or taking.
- J. **Force Majeure.** The Lessee shall not be in default where performance is delayed or prevented by "Acts of God," war, civil commotion, strikes, labor disputes or the like.
- K. **Easements and Alterations.** Additions to and alternations in the Improvements may be made as provided in the Lease, as long as the value of the Leased Premises and the Improvements is not diminished. The Lessor, as owner of the Leased Premises only, shall join in all easements, permits and applications necessary for such development of the Leased Premises and the Improvements as is permitted under the Lease, provided that the Lessor shall have no liability or obligation under such easement, permit or application.
- L. **Arbitration.** The Specified Mortgagee shall have the right to participate in any arbitration or legal proceedings between the Lessor and the Lessee. Any arbitration proceedings shall be conducted in accordance with arbitration statutes applicable in the state where the Leased Premises are located.
- M. **Merger.** If the estates of the Lessor and Lessee are at any time owned by the same person, so long as the Specified Mortgagee has any interest in the security or in the Specified Mortgage, such person shall take all necessary steps to ensure that the Specified Mortgage constitutes a first lien on the combined estate.
- N. **Sublease.** There shall be no modification, cancellation, or surrender of any subleases, or prepayment of rent thereunder without the consent of the Specified Mortgagee. If the Specified Mortgagee forecloses on the Leased Premises, or takes an assignment in lieu of foreclosure, all subtenants shall agree to continue as a tenant to the Specified Mortgagee or its assignee.

- O. Estoppel Certificate.** The Lessor shall, from time to time, with 10 days written notice from the Specified Mortgagee, certify by written instrument, duly executed and acknowledged, to such Specified Mortgagee that the Lease has not been amended, the Lease is in full force and effect, that neither party is in default thereunder, and shall certify as to the existence of any offsets, counterclaims or defenses on the part of the Lessee.
  
- P. Conflict.** In the event of a conflict between the terms and provisions of this Rider and the terms and provisions of the Lease, the terms and provisions of this Rider shall control.

BY SIGNING BELOW, the Lessor and the Lessee accept and agree to the terms and conditions of this Rider.

IN WITNESS WHEREOF, the parties have executed this Rider at \_\_\_\_\_, on the day and year first written above.

LESSOR:

By: \_\_\_\_\_

Title: \_\_\_\_\_

LESSEE:

\_\_\_\_\_  
\_\_\_\_\_

(Add notaries)