MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“**MOU**”) is entered into as of [Month Day, Year] (“**Effective Date**”) between **Fannie Mae**, and the [*insert* **Tribe\_Name**] (the **“Participating Tribe”**) (the “Parties”).

# RECITALS

Fannie Mae’s Native American Conventional Lending Initiative (“**NACLI**”) is an initiative in which Fannie Mae purchases first-lien mortgage loans made by Participating Lenders to qualified Eligible Borrowers for the purchase of a one- to four-family principal residence or the refinance of any existing mortgage loan which is secured by a mortgage, deed of trust, or security deed (the “**Security Instrument**”) on a one-to four-family principal residence located on Trust Land or Restricted Land (“**NACLI Loans**”),

Fannie Mae is willing to purchase such NACLI Loans if the Participating Tribe executes this MOU, subject to the following:

(A) the Participating Lender and the NACLI Loans comply with the requirements in Fannie Mae’s *Selling Guide* and *Servicing Guide*, as amended from time to time, and the contract terms negotiated between the Participating Lender and Fannie Mae;

(B) Fannie Mae finds acceptable the Participating Tribe’s: (1) status as a Federally Recognized Tribe, (2) Legal Standards related to mortgage loans, (3) resolution through which NACLI and this MOU will be approved and implemented, (4) form of Residential Lease and NACLI Loan Documents.

[Optional: Insert Additional Recitals requested by the Participating Tribe and agreed to by Fannie Mae.]

**NOW, THEREFORE**, in consideration of these Recitals and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Fannie Mae and the Participating Tribe agree to the following:

# DEFINITIONS

“**Assignment**” means any transfer of rights to occupy, control, build on, or otherwise exercise dominion over Trust Land or Restricted Land pursuant to the Participating Tribe’s Land Assignment law approved by the BIA.

“**BIA**” means the Bureau of Indian Affairs within the U.S. Department of the Interior.

“**Eligible Borrower**” means any of the following:

1. An individual Native American Member of a Federally Recognized Tribe,
2. The Participating Tribe’s Tribally Designated Housing Entity (“**TDHE**”) or its affiliated Indian Housing Authority (“**IHA**”), or
3. The Participating Tribe, unless the Subject Property is a leasehold estate and there are no parties to the Residential Lease other than the Participating Tribe, its TDHE, or its IHA.

“**Fannie Mae**” means Fannie Mae and its successors and assigns.

“**Federally Recognized Tribe”** means a tribe, band, nation, village or other organization or community of Indians federally recognized as eligible for services provided to Indian Tribes by the U.S. Department of the Interior because of its status as an Indian Tribe, as published in the Federal Register pursuant to 108 Stat. 4791.

“**NACLI Loan Documents**” means the form of legal instruments that a Participating Lender must use when making NACLI Loans, including the applicable Single Family Fannie Mae/Freddie Mac Uniform Instruments (i.e., the Fixed-Rate Note and Security Instrument) as published on fanniemae.com from time to time, including: (1) Lease Rider attached as **Exhibit 2** to this MOU, (2) Note Addendum attached as **Exhibit 3** to this MOU, and(3) Security Instrument Rider for Leaseholds attached as **Exhibit 4** to this MOU, each found acceptable by the Participating Tribe and Fannie Mae after review by their respective legal counsel.

“**Native American Member**” means an individual member of either the Participating Tribe or any Federally Recognized Tribe that is eligible to occupy Trust Land or Restricted Land under the jurisdiction of the Participating Tribe.

“**Participating Lender**” means one or more Fannie Mae-approved lenders specially approved by Fannie Mae as a Participating Lender under NACLI to make loans to qualifying Eligible Borrowers subject to such terms and conditions established by the Participating Lender and the contract terms negotiated with Fannie Mae. “Participating Lender” in this MOU also includes (1) Participating Lender’s third-party originators (including correspondent lenders, mortgage brokers, or Native Community Development Financial Institutions (CDFIs)) and (2) Participating Lender’s successors and assigns.

“**Participating Tribe**” means the party executing this MOU.

“**Restricted Land”** or land in restricted status means land the title to which is owned by a federally recognized tribe or an individual Native American Member, and which is subject to restrictions against alienation imposed by a federal statute, as generally set forth in the patent or deed to the land. [Optional Language: Restrictions against alienation for Restricted Land held by the heirs of the allottees of the Five Civilized Tribes of Oklahoma arise by virtue of limitations in the conveyance instrument pursuant to federal law or federal laws directly imposing such limitations.]

“**Residential Lease**” means the Participating Tribe’s form of lease or sublease of Restricted Land or Trust Land attached as **Exhibit 1** to this MOU, containing substantially similar provisions as contained in the “Residential Lease of Tribal Owned Land,” as issued by HUD and amended from time to time, and found acceptable to Fannie Mae after review by legal counsel, as amended by the Fannie Mae Rider to Residential Lease of Tribal Owned Land (Form 4803-2) attached as **Exhibit 2** to this MOU.

**“Subject Property**” means the Eligible Borrower’s interest in Trust Land or Restricted Land pursuant to a Residential Lease, Assignment, or deed of allotment given to secure a NACLI Loan.

“**Tribal Law**” means the Legal Standards minimum legal requirements and procedures established by the Participating Tribe and found acceptable to Fannie Mae to support mortgage lending under NACLI, including each of the following:

1. Assignment rights and assignment mortgage loans (if applicable), as provided in the Participating Tribe’s Assignment law approved by the BIA,
2. Conveyances of beneficial interests in Trust Land or Restricted Land by qualified borrowers to lenders as security for a mortgage loan,
3. Eviction,
4. Foreclosure,
5. Leases and Leasehold Interests,
6. Manufactured Housing (if applicable), providing for foreclosure as real property and not as repossession of personal property,
7. Recording of leases and mortgage loan-related documents, and
8. Transfer/resale restrictions.

The Participating Tribe may satisfy the Legal Standards by enacting laws related to mortgage lending and the topics listed above or adopting laws of the state in which any Subject Property is located (collectively “**Tribal Law”**), and generally covering the same topics in the “Model Tribal Mortgage Lending Code” issued by the U.S. Department of Housing and Urban Development (HUD) and the U.S. Department of the Treasury, and attached to the “One-Stop Mortgage Center Initiative in Indian Country”.

“**Trust Land**” or land in trust means land for which the title is held in trust by the United States for the benefit of a Native American Member or the Participating Tribe.

# SUPPORT FOR MORTGAGE LENDING

The Parties desire to work cooperatively to support the continued availability of conventional mortgage loan financing on Trust Land or Restricted Land and agree to the following:

1. *Consultation.* The Participating Tribe will consult with Fannie Mae from time to time to identify one or more Fannie Mae-approved lenders to act as Participating Lenders under NACLI.
2. *Real Property Interest.* Eligible Borrowers receiving a NALCI Loan must, at the time of such financing hold or possess a real property interest in the Subject Property which is one of the following:

(1) a leasehold estate on Trust Land or Restricted Land pursuant to a Residential Lease between the Participating Tribe (or its designated TDHE or IHA) as “lessor” and the Eligible Borrower as “lessee”, provided that lessor and lessee are not the same entity (i.e., if a TDHE or IHA is lessor, that same TDHE or IHA may not be lessee);

(2) a valid Assignment of Trust Land or Restricted Land per the Participating Tribe’s Assignment law; or

(3) a sole beneficial interest in individual Trust Land or Restricted Land (evidenced by a deed of allotment).

1. *Conveyance*. Each Eligible Borrower must convey to the Participating Lender a security interest in the Subject Property, by an appropriate form of Security Instrument satisfactory to the Participating Lender, Fannie Mae, and the Participating Tribe, as security for NACLI Loans.
2. *Loan Proceeds*. The proceeds of NACLI Loans must be used to purchase, construct, or rehabilitate a principal residence or refinance an existing mortgage loan secured by a principal residence on Trust Land or Restricted Land.
3. *Recording.* The Residential Lease and the NACLI Loan Documents must be recorded in the BIA’s appropriate Land Titles and Records Office and may also be recorded in both the Participating Tribe’s designated recording office (if applicable) and the county recorder’s office in the state in which the Subject Property is located.
4. *Maintain Legal Standards.* TheParticipating Tribe must maintain Legal Standards that meet the minimum requirements of NACLI as long as Fannie Mae is the owner of any NACLI Loan and must provide copies of such Legal Standards to Fannie Mae and Participating Lenders upon request.
5. *No Termination, Modification, Forfeiture of Lease or Assignment.* The Participating Tribe must not attempt to modify, amend, terminate, surrender, or forfeit any Residential Lease or Assignment for any outstanding NACLI Loan without the prior written consent of Participating Lender and Fannie Mae.
6. *Access to Trust Land or Restricted Land.* The Participating Tribe, and any Eligible Borrower who applies for or receives a NACLI Loan, must permit the Participating Lender and Fannie Mae to enter upon the Trust Land or Restricted Land for the purpose of carrying out such actions as the Participating Lender and Fannie Mae determine are necessary to evaluate the advisability of making the NACLI Loan, to service the NACLI Loan after origination, and to otherwise carry out or enforce the terms of the NACLI Loan.
7. *Assistance and Support.* The Participating Tribe must, to the maximum extent possible, assist the Participating Lender and Fannie Mae in their efforts to facilitate the continued availability of conventional mortgage financing on the Trust Land or Restricted Land, including:

(1) Assisting with the proper recording of the Lease and applicable NACLI Loan Documents,

(2) Assisting in finding a qualified substitute purchaser, sublessee, or assignee if the initial Borrower is unable to fulfill the Borrower’s obligations under the NACLI Loan,

(3) Supporting the enforcement of foreclosure and eviction actions in connection with any Default under a NACLI Loan in accordance with the Legal Standards.

# FANNIE MAE PURCHASE OF MORTGAGE LOANS

Fannie Mae stands ready to purchase from Participating Lenders such NACLI Loans made to Eligible Borrowers on Trust Land or Restricted Land, a leasehold interest thereon, or an Assignment thereof, to the extent permitted by governing law.

# GOVERNING LAW; CONSENT TO JURISDICTION; RULES OF CONSTRUCTION

This MOU is governed by federal law and Tribal Law. The Parties consent to the jurisdiction of the Participating Tribe’s Tribal Court for any action to enforce the obligations owed by it to another party under this MOU. Headings and captions in this MOU are for convenience of reference only.

# TERMINATION

If either party wishes to terminate this MOU, the termination date will be 30 days following receipt of written notice of termination from either party. Such termination will not affect the Participating Tribe’s commitments under Sections 2(F), (G), (H), and (I) of this MOU, as long as Fannie Mae is the owner of any NACLI Loan.

# COUNTERPARTS

This MOU may be executed in multiple counterparts, with electronic signatures, each of which is deemed an original and all of which together constitute one and the same document.

IN WITNESS WHEREOF, the Parties have executed this MOU on the dates provided below.

**Fannie Mae**

|  |  |
| --- | --- |
| By: |  |
| Name: |  |
| Title: |  |
| Date: |  |

[**Tribe\_Name**]

|  |  |
| --- | --- |
| By: |  |
| Name: |  |
| Title: |  |
| Date: |  |

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Certification of the [Tribe\_Name]

The undersigned [Chairman/Governor] of the [Tribe\_Name]

(the “**Participating** **Tribe**”) does hereby certify that the foregoing Memorandum of Understanding was considered and approved by the Tribal Council at a duly called meeting on the **\_\_\_\_** day of **\_\_\_\_\_\_\_\_\_\_\_\_**, 20**\_\_\_\_\_**, at which a quorum was present, that the same was adopted by a vote of **\_\_\_** in favor and **\_\_\_** opposed, and that the undersigned, is duly authorized to sign the Memorandum of Understanding on behalf of the Participating Tribe.

|  |  |  |
| --- | --- | --- |
| **Attest:** |  |  |
|  |  |  |
| Tribal Secretary |  | Signature  Name: [Print Name]  Title: [Chairman/Governor] |

Unless the following Certificate of Approval is executed on behalf of the Secretary of the U.S. Department of the Interior, the Participating Tribe represents that it has the constitutional authority to execute this Memorandum of Understanding without such approval. Entry of “Not Applicable” on the signature line below noted “Authorized Representative” below shall evidence the Participating Tribe’s representation that it has such constitutional authority.

**CERTIFICATE OF APPROVAL**

The foregoing Memorandum of Understanding is hereby approved on behalf of the Secretary of the U.S. Department of the Interior. Such approval shall not be construed to be an agreement or assurance that any land covered by the Memorandum of Understanding will remain in a trust or restricted status during the period of the Memorandum of Understanding.

Date: \_\_\_\_\_\_\_\_ Not Applicable

Authorized Representative

[**Instructions:** In addition to the Single Family Fannie Mae/Freddie Mac Uniform Instruments, the form of legal instruments also required for NACLI Loans sold to Fannie Mae is attached to the MOU as found acceptable to Fannie Mae and the Participating Tribe after review by their respective legal counsel. These Instructions may be deleted prior to execution of the MOU.]

List of Exhibits to MOU between Fannie Mae and

[Tribe\_Name]

Exhibit 1 Participating Tribe’s Form of Residential Lease

Exhibit 2 “Lease Rider”

Fannie Mae Rider to Residential Lease of Tribal Owned Land (Form 4803-2)

Exhibit 3 “Note Addendum”

Fannie Mae Addendum to Fixed-Rate Note on Tribal Owned Land (Form 4802)

Exhibit 4 “Security Instrument Rider for Leasehold”

Fannie Mae Native American Housing Security Instrument Rider for Leasehold on Tribal Owned Land (Form 4805)