

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, between **Fannie Mae** and the [Insert Tribe] (the “Tribe”).

### RECITALS

1. Fannie Mae’s Native American Conventional Lending Initiative (“NACLI”) is an initiative in which Fannie Mae purchases first-lien mortgage loans (the “Mortgages”) made by lenders to borrowers for the purchase of one- to four-family residences and the refinance of existing mortgage loans located on either Trust Land or Restricted Land.

2. Fannie Mae’s willingness to purchase such Mortgages is subject to the following: (i) the Designated Lender and the Mortgages comply with Fannie Mae’s guidelines as set forth in Fannie Mae’s Selling and Servicing Guide, as amended from time to time, and with the contract terms negotiated between Fannie Mae and the Designated Lender; (ii) the Tribe enters into this MOU with Fannie Mae; and (iii) Fannie Mae finds acceptable for NACLI (a) the Tribal ordinances or statutes establishing the Legal Standards (defined below), (b) the organizational documents of the Tribe through which NACLI will be implemented, (c) the note and mortgage instruments evidencing the Mortgages and (d) the borrower’s real property interest in the Trust Land or Restricted Land, as applicable.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree to the following:

### 1. DEFINITIONS

- (A) Legal Standards shall mean the minimum requirements for legal standards and procedures established by the Tribe and acceptable in all respects to Fannie Mae relating to:
- (i) Conveyances of beneficial interests in Trust Land or Restricted Land to lenders as security for Mortgages to borrowers,
  - (ii) Creation and regulation of Assignment Rights and Assignment Mortgages, if the Tribe has a land assignment law,
  - (iii) Manufactured Housing, if applicable, to provide for foreclosure as real property and not a repossession of personal property,
  - (iv) Recording of Mortgages,
  - (v) Mortgage foreclosure proceedings,
  - (vi) Evictions, and
  - (vii) Transfer/resale restrictions.
- (B) Tribe shall mean the [Insert Tribe], an Indian tribe, band, nation, village or other organization or community of Indians federally recognized as eligible for the services provided to Indian Tribes by the Secretary of the Interior because of its status as an Indian Tribe, according to standards published annually in the FEDERAL REGISTER pursuant to 108 Stat. 4791.
- (C) Native American shall mean a person who is a member of the Tribe.
- (D) Designated Lender shall mean one or more Fannie Mae-approved lenders that are approved as NACLI lenders and are selected by the Tribe to make loans to qualifying borrowers for the purchase of one- to four-family residences located on Trust Land or Restricted Land subject to such terms and conditions as may be established by the Designated Lender (in consultation with Fannie Mae) under NACLI. “Designated Lender” shall also include a successor to, or assign of, such entity.

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- (E) Restricted Land or land in restricted status shall mean land the title to which is owned by a tribe or an individual Native American and is subject to restrictions against alienation imposed by a federal statute. Generally, the restrictions are set forth in the patent or deed to the lands, except restricted lands held by the heirs of the allottees of the five Civilized Tribes in Oklahoma where such federal restrictions arise by virtue of limitations contained in the conveyance instrument pursuant to federal law or because of federal law directly imposing such limitations.
- (F) Trust Land or land in trust shall mean land the title to which is held in trust by the United States for an individual Native American or the Tribe.
- (G) Eligible Borrower shall be any one of the following:
- (i) An individual Native American,
  - (ii) The Indian Housing Authority affiliated with the Tribe (“IHA”),
  - (iii) The “Tribally Designated Housing Entity” (“TDHE”) affiliated with the Tribe, or
  - (iv) The Tribe, provided, however, the Tribe may not act as Borrower where the subject of a Mortgage is a leasehold estate and there are no parties to the subject ground lease other than the Tribe and/or an IHA or Tribally designated entity.
- (H) Residential Ground Lease is any lease of Restricted Land or Trust Land to an Eligible Borrower which is acceptable to Fannie Mae after review by its counsel. The Tribe’s Residential Ground Lease (attached hereto as Exhibit 1), as amended by the “Fannie Mae Rider to Residential Lease of Tribal Owned Land” (attached hereto as Exhibit 2) is acceptable to Fannie Mae. The “Residential Lease of Tribal Owned Land,” which is attached to the “One-Stop Mortgage Center Initiative in Indian Country” issued in October 2000 by the U.S. Department of Housing and Urban Development and the U.S. Department of the Treasury, is a form of residential ground lease which is satisfactory to Fannie Mae under this agreement without the need for further review.
- (I) Assignment is any transfer of rights to occupy, control, build on, or otherwise exercise dominion over Restricted Land or Trust Land pursuant to a tribal Assignment law which has received the approval of the BIA.

## 2. SUPPORT FOR MORTGAGE LENDING

- (A) The Tribe shall consult with Fannie Mae to identify one or more Fannie Mae-approved lenders to act as “Designated Lenders.”
- (B) The Tribe agrees to the establishment and maintenance of Legal Standards as long as Fannie Mae is the holder of any Mortgage originated pursuant to this MOU.
- (C) The Tribe may satisfy the Legal Standards by adopting by ordinance, either
- (i) The laws of the state where the mortgaged properties are located relating to such standards and procedures;
  - (ii) The “Model Tribal Lending Code” which is attached to the “One-Stop Mortgage Center Initiative in Indian Country” (issued in October 2000 by the U.S. Department of Housing and Urban Development and the U.S. Department of the Treasury); or
  - (iii) Enacting conveyance, recordation, foreclosure and eviction laws which are specifically reviewed and approved by Fannie Mae’s counsel, and by adopting appropriate ordinances governing Manufactured Housing and Land Assignments, as necessary.

- (D) The Tribe shall ensure that each Eligible Borrower to whom a loan is made in connection with this MOU holds or possesses, at the time of such financing, either (i) a leasehold estate on Trust Land or Restricted Land pursuant to a Residential Ground Lease satisfactory to Fannie Mae that is entered into between the Tribe (or TDHE or IHA) and the Eligible Borrower (provided, however, the lessor and the lessee may not be the same entity; for example, if a TDHE or IHA is the lessor, that same TDHE or IHA may not be the lessee); (ii) a valid Assignment of Trust Land or Restricted Land pursuant to the Tribe's Land Assignment Law; or (iii) a sole beneficial interest in individual Trust Land or Restricted Land (as evidenced by a deed of allotment), and that such Borrower will acquire, construct or rehabilitate a dwelling on such property with the proceeds of the Mortgage or refinance an existing mortgage loan on such property.
- (E) The Tribe shall ensure that each Eligible Borrower to whom a loan is made in connection with this MOU shall convey to the Designated Lender a security interest in the applicable real property interest described in Section 2(D) above, by an appropriate instrument satisfactory to the Designated Lender, Fannie Mae and the Tribe, as security for a Mortgage made pursuant to NACLI.
- (F) The Tribe, and the Eligible Borrower who applies for a Mortgage, will permit the Designated Lender or Fannie Mae, and their respective successors or assigns, to enter upon the Trust Land or Restricted Land, as applicable, for the purpose of carrying out such actions as the Designated Lender and Fannie Mae determine are necessary to evaluate the advisability of providing the Mortgage, to service the Mortgage after origination, and to otherwise carry out or enforce the terms of the Mortgage.
- (G) The Tribe will, to the maximum extent possible, assist the Designated Lender and Fannie Mae, and their successors and assigns, in their efforts to facilitate the continued availability of conventional mortgage financing on the Trust Land or Restricted Land. Such assistance shall include:
- (i) Assisting the Designated Lender and Fannie Mae in finding a qualified substitute purchaser of the mortgaged property if the initial borrower is unable to fulfill the obligations under the Mortgage;
  - (ii) Assisting the Designated Lender and Fannie Mae with the proper recordation of Mortgages and other legal instruments; and
  - (iii) Supporting enforcement of foreclosures and evictions in connection with any default under a Mortgage in accordance with the Legal Standards.
- (H) The Tribe and Fannie Mae acknowledge and agree that Mortgages made pursuant to NACLI shall be recorded in (i) the appropriate Bureau of Indian Affairs Area Land Titles and Records Office, (ii) the county recorder's office in the state in which the mortgaged properties are located, and (iii) the following recording office established under Tribal law that are designated by the Tribe for the recording of Mortgages: [Realty Office] of the Tribe.
- (I) With respect to any leasehold estate or Assignment financed by a Mortgage, the Tribe, as lessor, agrees that it shall not attempt to cancel, modify, amend, terminate, surrender or forfeit any Residential Ground Lease, leasehold estate, or Assignment without the prior written consent of the Designated Lender and Fannie Mae, or their successors or assigns, as long as such Mortgage remains outstanding and the Designated Lender or Fannie Mae, or their successors or assigns, otherwise has an interest in such leasehold estate or Assignment.

3. FANNIE MAE PURCHASE OF MORTGAGES

In consideration of the foregoing, Fannie Mae stands ready to purchase from the Designated Lender qualifying loans made to Eligible Borrowers secured by a Mortgage or Deed of Trust on Trust Land or Restricted Land, a leasehold interest thereon, or an Assignment thereof, to the extent permitted by applicable law.

4. CONSENT TO JURISDICTION

The Tribe and Fannie Mae hereby expressly consents to the jurisdiction of the [Insert Tribe] Tribal Court with respect to any action brought to enforce the obligations owed by it to another party under this MOU.

5. TERMINATION

In the event that either party wishes to terminate the relationship established hereunder, this MOU shall terminate 30 days following receipt of written notice of such termination from either party. Provided, however, such termination shall not affect the Tribe’s commitments under Sections 2(B), (F), (G), and (I) above, as long as Fannie Mae is the holder of any Mortgage originated pursuant to this MOU.

6. COUNTERPARTS

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

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

**Fannie Mae**

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

Name: \_\_\_\_\_

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

Date: \_\_\_\_\_

**[Insert Tribe]**

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

Name: \_\_\_\_\_

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

Date: \_\_\_\_\_

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**CERTIFICATION OF THE [INSERT TRIBE]**

I, the undersigned, as [Chairman/Governor] of the [Insert Tribe] (the “**Tribe**”) do 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, as [Chairman/Governor], was authorized to sign the Memorandum of Understanding on behalf of the Tribe.

**Attest:**

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Title: [Chairman/Governor]

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

[Attach as [Exhibit 1](#) the Tribe's Residential Ground Lease that is acceptable to Fannie Mae after review by its counsel, as amended by the "Fannie Mae Rider to Residential Lease of Tribal Owned Land" (attached hereto as [Exhibit 2](#)).

Note: The "Residential Lease of Tribal Owned Land," which is attached to the "One-Stop Mortgage Center Initiative in Indian Country" issued in October 2000 by the U.S. Department of Housing and Urban Development and the U.S. Department of the Treasury, is a form of residential ground lease satisfactory to Fannie Mae under the Memorandum of Understanding between Fannie Mae and the Tribe without the need for further review.]

## **Exhibit 1**