

LIFT Homebuyers & the Oregon Fannie Mae Single Loan Waiver

Program Update, 12/2023

Historically, LIFT homebuyers have been limited to portfolio loan products or the Oregon Residential Bond Loan due to the affordability restrictions placed on the land in the case of foreclosure. In efforts to expand access to mortgage options for LIFT homebuyers, OHCS partnered with Fannie Mae to find a path for LIFT homebuyers to qualify for Fannie Mae mortgages.

During development, we learned that homebuyers purchasing a LIFT home under a leasehold structure, for instance, those buying a leasehold condo property, are already eligible for standard conventional loans without needing the Single Loan Waiver. Fannie Mae and Freddie Mac guidelines allow for use restrictions that survive a foreclosure when using a leasehold financing structure.

Specific to OHCS, Fannie Mae granted a Single Loan Waiver for LIFT Homebuyers purchasing a CLT home. Using the SLW, LIFT CLT homebuyers will be eligible for Flex Lending loans if the loan meets the following criteria:

1. The appraised value must be based on the leasehold value, not the fee simple value, with affordability restrictions remaining after foreclosure.
2. Loan to Value is determined using the appraised value, not lesser of sales price or appraised value (“Affordable LTV”).
3. Liens on the fee (the land) may only be by a governmental entity.
4. Under the express terms of that indebtedness, the use restrictions must apply throughout the affordability period.
5. A recognition agreement between the borrower/lessee and any government entity with deed restrictions must be signed and recorded noting the survival of the use restrictions (see Attachment A).
6. Rider Form 2100 Oregon (see Attachment B) is required to allow the use restrictions in the ground lease will continue to apply after foreclosure or deed-in-lieu.

To use the SLW, lenders must include the Rider Form 2100 Oregon (Attachment B), make note of this in the Flex loan file, and notify Idaho Housing Finance Agency upon delivery of the loan. Idaho Housing Finance Agency will apply for and execute the waiver with Fannie Mae.

Attachment A: RECOGNITION AND ATTORNMENT AGREEMENT

[The sample document below has been drafted with the intention of addressing the situation under a Community Land Trust Ground Lease where a government entity holds a lien on the fee interest as a result of providing assistance to the Community Land Trust in the purchase of the land or in the formation of the land trust. In this circumstance, the government entity may require that the affordability/resale restrictions in the ground lease survive foreclosure of a leasehold mortgage granted by the lessee. It is the intent of the parties, including the expectation of the ground lease mortgagee, that should the government entity succeed to the interests of the Community Land Trust under the ground lease as a result of the default under the terms of the agreement or covenant secured by the government entity's lien, the government entity will recognize the continued existence of the ground lease according to its terms, and similarly that the lessee will attorn to the government entity as lessor. It is assumed that this sample document will be modified and customized to address the particular relationship between the government entity and the Community Land Trust as well as to conform to applicable law and practice in the state where the property is located.]

This Agreement is made this _____ day of _____, _____, between [Name of Lessee] (the "Lessee") and [Name of Government Entity] (the "Government Entity") and pertains to a certain ground lease agreement, including any applicable riders or amendments, dated as of the _____ day of _____, _____ (the "Lease"), between the Lessee and [Name of CLT] (the "Lessor" or the "CLT"), whereby the Lessor grants the Lessee a leasehold interest in the premises located at _____ (the "Premises"), as further described in Exhibit A hereto.

WHEREAS, the Lessee is purchasing a leasehold interest in the Premises with financing in the form of a leasehold mortgage or deed of trust (the "Specified Mortgage"), given to _____ [Name of Specified Mortgagee] (the "Specified Mortgagee").

WHEREAS, the Government Entity has assisted the CLT in reducing the cost of the Premises for the Lessee to an affordable level, and the Government Entity intends that the Premises shall continue to be leased on affordable terms to households whose incomes do not exceed the restrictions contained in the Lease, including following a foreclosure of the Specified Mortgage or a deed in lieu thereof.

WHEREAS, the Government Entity has entered into an Affordability Agreement [or otherwise named agreement] with the CLT whereby the CLT agrees, in return for the Government Entity's assistance, to continue to lease the Premises to such households on affordable terms; and to assure compliance with the Affordability Agreement, a lien [or covenant] has been recorded against the CLT's fee interest in the property.

WHEREAS, should the Government Entity succeed to the interest of the Lessor under the Lease, the Government Entity wishes to confirm that it would recognize and agree to honor the terms of the Lease as they exist, and the Lessee agrees to attorn to the Government Entity as lessor under the Lease.

NOW THEREFORE, in consideration of the mutual promises, covenants and agreements herein contained, the parties hereto, intending to be legally bound hereby, promise, covenant and agree as follows:

In the event the Government Entity 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 or other recorded interest, the Government Entity agrees to recognize the terms of the Lease and not to affect, terminate or disturb the rights or benefits of the Lessee or the Permitted Mortgagee under the Lease. Such rights and benefits include, but are not limited to, (a) the Lessee's right to quiet enjoyment and possession of the Premises, and (b) the Specified Mortgagee's rights to: (i) notice and non-termination of the Lease, (ii) cure a default under the Lease, (iii) elimination of the limitation on assignment of, or sublease under, the Lease, (iv) elimination of the price at which the leasehold estate may be transferred, and (v) elimination of the limitation on the income of successive transferees, assignees or successors in the event of foreclosure or assignment in lieu of foreclosure of the Specified Mortgage. For so long as the Specified Mortgagee has an interest in the Premises, the Government Entity agrees that any subsequent transfer of the Government Entity's interest shall be subject to the Lease and all provisions thereof, and the parties agree that in such event, this Agreement shall remain binding on the parties.

Further, in the event the Government Entity succeeds to the interest of the Lessor, the Government Entity and the Lessee agree to recognize one another as lessor and lessee, respectively, under the Lease, and to be bound to one another under all of the terms, covenants and conditions of the Lease, and the Government Entity shall assume all of the obligations of the Lessor under the Lease; provided, however, the Government Entity shall not be: (a) liable for any act or omission of the Lessor, (b) subject to any offsets or defenses that Lessee may have against the Lessor, (c) bound by any amendment or modification of the Lease made after the date of this Agreement without the Government Entity's prior written consent, or (d) liable for the return of any deposits (except to the extent actually transferred to the Government Entity).

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

[NAME OF GOVERNMENT ENTITY]

By _____
Title _____

[NAME OF LESSEE]

[Notarial Acknowledgement for each Party]

Exhibit A

Legal description of leased premises sufficient for recording purposes

Attachment B: Community Land Trust Ground Lease Rider

[For use with CLT ground leases substantially based on either the Institute for Community Economics or the National Community Land Trust Network model ground lease as identified in Fannie Mae's *Selling Guide*, and only to be used in connection with Oregon single loan waivers]

THIS COMMUNITY LAND TRUST GROUND LEASE RIDER (the "Rider") is made this _____ day of _____, _____, and amends and supplements a certain ground lease (referred to herein as "the CLT Ground Lease") dated _____ that is by and between _____ as lessor (herein referred to as "the "Lessor" but may otherwise be referred to in the CLT Ground Lease as the "CLT") and _____, as lessee (herein referred to as "the "Lessee" but may otherwise be referred to in the CLT Ground Lease as "Homeowner"). This Rider shall be deemed incorporated into the CLT Ground Lease, and the CLT Ground Lease as amended by this Rider, shall hereafter be referred to as the "Lease," unless otherwise indicated.

The CLT Ground Lease is a long-term lease of the Lessor's fee interest in the land located at _____, referred to herein as the "Leased Land," as improved by a residential structure or unit, referred to herein as the "Improvements." The Leased Land and the Improvements are collectively referred to herein as the "Leased Premises."

This Rider amends the CLT Ground Lease for the purpose of enabling the Lessee to obtain Fannie Mae financing in the form of a mortgage or deed of trust given this ___ day of _____, _____, by Lessee to _____ (the "Specified Mortgage"), and the interest of the Specified Mortgagee in the Leased Premises as secured by such mortgage or deed of trust may be referred to herein as the "Leasehold Estate." 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, other lien) on the fee estate **if** the Government Entity has agreed that in the event it (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 shall recognize all the terms of the Lease and this Rider as though the Government Entity were acting as the Lessor. Such recognition must include, but is

not limited to, the provisions of this Rider. Further, in such event of the Government Entity succeeding to the interests of the Lessor, the Lessee hereby agrees to recognize the Government Entity as exercising all rights and privileges of the Government Entity as lessor under the Lease and this Rider.

Such agreement by the Government Entity may be evidenced by the agreement between the Government Entity and the Lessor under which the Government Entity's prior Recorded interest is derived, or by use of a recognition agreement derived from a sample the Specified Mortgagee may obtain from Fannie Mae. Irrespective of any interest by a Government Entity, 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 Leased Land 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. New Lease. In the event the Lessee's interest in the Lease has been terminated, forfeited, or surrendered as provided in the Lease, and the Specified Mortgage remains outstanding, a new Lease shall automatically be created 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 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 have no obligation to give formal legal notice of the Event of Default to the Lessor.
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 from the Specified Mortgagee its interest in the Leasehold Estate on the Leased Premises 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 its interest in the Leasehold Estate on the Leased Premises.

The Lessor shall complete the purchase of the Specified Mortgagee's interest in 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 its interest 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 its interest in the Leasehold Estate from the date of the Lessor Option Notice until the expiration of such 60-day period. If the Lessor does not purchase the Specified Mortgagee's interest in 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 on the Leased Premises 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.

Any transfer or assignment of the Leasehold Estate 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 is not diminished. The Lessor, as owner of the fee interest in the Leased Land, shall join in all easements, permits and applications necessary for such development of the Leased Premises 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 attorn to such 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. **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 effective the day and year first written above.

LESSOR:

By: _____

Title: _____

LESSEE:

(Add notaries)

Instructions

Community Land Trust Ground Lease Rider

The Community Land Trust (CLT) Ground Lease Rider ensures the ground lease conforms to Fannie Mae's guidelines for mortgages secured by properties held under a community land trust ground lease.

Lenders should ensure their CLT partners approve the use of the revised version of Form 2100 (3/06 rev. 12/10). Loans are not eligible for purchase if delivered with prior versions of this form.

Copies

Original.

Printing Instructions

The PDF version of the form must be printed on letter size paper, using portrait format.

Instructions

The Community Land Trust Ground Lease Rider must be executed by both the lessor and lessee and must be recorded along with the ground lease.