Position 5

USDA-FmHA
Form FmHA 1980-73
(Rev. 11-89)

FORM APPROVED
OMB NO. 0575-0029

ASSIGNMENT GUARANTEE AGREEMENT
DI: STER ASSISTANCE FOR RURAL BUSINESS ENTERPRISE (DARBE) GUARANTEED LOAN MAXIMUM LOSS PAYABLE BY FmHA TO A HOLDER OR LENDER IS $2,500,000

Type of Loan: _____
Applicable 7 CFR Part 1980 Subpart _____

FmHA Loan Identification Number
_____

_____ of _____

(Lender) has made a loan to _____

in the principal amount of $ _____ as evidenced by a note(s) dated _____
The United States of America, acting through Farmers Home Administration (FmHA) entered into a Loan Note Guarantee--Disaster Assistance for Rural Business Enterprise Guaranteed Loans (Form FmHA 1980-72) with the Lender applicable to

such loan to guarantee the loan not to exceed _____ % of the amount of the principal advanced and any interest (including any loan subsidy) due thereon as provided therein. Under the Disaster Assistance and Rural Business Enterprise Guaranteed Loan program, the maximum cumulative payment to the holder(s) of the guaranteed portion of the loan is limited to $2,500,000 or the percentage of guarantee multiplied by the principal and interest, whichever is less.

_____ of _____

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

NOW, THEREFORE, THE PARTIES AGREE:

1. The principal amount of the loan now outstanding is $ _____. Lender hereby assigns to Holder

_____ % of the guaranteed portion of the loan representing $ _____ of such loan now outstanding in accordance with all of the terms and conditions hereinafter set forth. The Lender and FmHA certify to the Holder that the Lender has paid and FmHA has received the Guarantee Fee in exchange for the issuance of the Loan Note Guarantee--Disaster Assistance for Rural Business Enterprises.

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

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

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

4. **Purchase by Holder.** The guaranteed portion purchased by the Holder will always be a portion of the loan which is guaranteed. The Holder will hereby succeed to all rights of the Lender under the Loan Note Guarantee--Disaster Assistance for Rural Business Enterprises to the extent of the assigned portion of the loan. The Lender, however, will remain bound by all the obligations under the Loan Note Guarantee--Disaster Assistance for Rural Business Enterprises and the program regulations found in the applicable Subpart of 7 C.F.R. Part 1980 now in effect and future FmHA program regulations not inconsistent with the provisions hereof.

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

5. **Full Faith and Credit.** The Loan Note Guarantee--DARBE constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the Lender or any Holder has actual knowledge at the time of this assignment, or which the Holder participates in or condones. If the note to which this is attached or relates provides for payment of interest on interest, then this Loan Note Guarantee--DARBE is void. In addition, the Loan Note Guarantee--DARBE will be unenforceable by Lender to the extent any loss is occasioned by the violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA acquires knowledge of the foregoing. Any losses occasioned will be unenforceable to the extent that loan funds are used for purposes other than those specifically approved by FmHA in its Conditional Commitment for Guarantee. Negligent servicing is defined as the failure to perform those services which a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity or until a final loss is paid.

6. **Rights and Liabilities.** The guarantee and right to require purchase will be directly enforceable by Holder notwithstanding any fraud or misrepresentations by Lender or any unenforceability of the Loan Note Guarantee--Disaster Assistance for Rural Business Enterprises by Lender. Nothing contained herein shall constitute any waiver by FmHA of any rights it possesses against the Lender, and the Lender agrees that Lender will be liable and will promptly reimburse FmHA for any payment made by FmHA to Holder which, if such Lender had held the guaranteed portion of the loan, FmHA would not be required to make. The Holder(s) upon written notice to the Lender may resell the unpaid balance of the guaranteed portion of the loan assigned hereunder. An endorsement may be added to the Form FmHA 1980-73 to effectuate the transfer.

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

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

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

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

9. **Lender's Obligations.** Lender consents to the purchase by FmHA and agrees to furnish on request by FmHA a current statment certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owed by Borrowers on the loan and the amount then owed to any Holder(s). Lender agrees that any purchase by FmHA does not change, alter or modify any of the Lender's obligations to FmHA arising from said loan or guarantee nor does it waive any of FmHA's right against Lender, and that FmHA shall have the right to set-off against Lender all rights inuring to FmHA as the Holder of this instrument against FmHA's obligation to Lender under the Loan Note Guarantee--Disaster Assistance for Rural Business Enterprises.

10. Repurchase by Lender for Servicing. If, in the opinion of the Lender, repurchase of the assigned portion of the loan is necessary to adequately service the loan, the Holder will sell the assigned portion of the loan to the Lender for an amount equal to the unpaid principal and interest on such portion. The Lender's servicing fee will be subtracted from these amounts. The loan note guarantee will not cover the note interest to the Holder on the guaranteed loans accruing after 90 days from the date of the demand letter of the lender or FmHA to the Holder(s) requesting the Holder(s) to tender their guaranteed portion(s).

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

b. Any repurchase will only be made after the Lender obtains FmHA written approval.

c. If the Lender does not repurchase the portion from the Holder(s), FmHA at its option may purchase such guaranteed portions for servicing purposes.

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

12. Reassignment. Holder upon written notice to Lender and FmHA may reassign the unpaid guaranteed portion of the loan sold hereunder. Upon such notification, the assignee will succeed to all rights and obligations of the Holder hereunder.

13. Notices. All notices and actions will be initiated through the FmHA _____

for _____ (state) with mailing address

at the date of this assignment: _____

_____

Dated this _____ day of _____, 19 ___.

LENDER:

ADDRESS:

ATTEST:

By _____

_____ *(SEAL)*

Title _____

HOLDER:

ADDRESS:

ATTEST:

By _____

_____ *(SEAL)*

Title _____

UNITED STATES OF AMERICA
Farmers Home Administration

ADDRESS: _____

By _____

_____

Title _____