

FHA Case No.

HOME EQUITY CONVERSION MORTGAGE LOAN AGREEMENT

FIXED INTEREST RATE

THIS AGREEMENT is made this day of _____, 20____, among ("Borrower"), _____ ("Lender") and the Secretary of Housing and Urban Development ("Secretary").

Article 1 - Definitions

- 1.1. Borrower's Advance means the funds advanced to Borrower at closing as set forth in this Loan Agreement.
- 1.2. Deferral Period means the period of time following the death of the last surviving borrower during which the due and payable status of a HECM is further deferred based on the continued satisfaction of the requirements for a Non-Borrowing Spouse determined by the Secretary and all other FHA requirements.
- 1.3. Loan Advances means the Borrower's Advance and all funds advanced from or charged to Borrower's account under conditions set forth in this Loan Agreement, whether or not actually paid to Borrower.
- 1.4. Loan Documents means the Note and Security Instrument.
- 1.5. Mandatory Obligations means only those charges, fees, amounts and expenses as authorized by the Secretary.
- 1.6. Maximum Claim Amount means the lesser of the appraised value of the property, as determined by the appraisal used in underwriting the loan, or the sales price of the property being purchased for the sole purpose of being the principal residence, or the national mortgage limit under section 255(g) or (m) of the National Housing Act applicable to this loan agreement. Closing costs must not be taken into account in determining the appraised value.
- 1.7. Non-Borrowing Spouse means the spouse [Name], as determined by the law of the state in which the spouse [Name] and borrower [Name] reside or the state of celebration, of the HECM borrower [Name] at the time of closing and who is not a borrower.¹
- 1.8. Note means the promissory note signed by Borrower together with this Loan Agreement and given to Lender to evidence Borrower's promise to repay, with interest, Loan Advances by Lender or Lender's assignees.

¹ If there is more than one borrower and both and or all borrowers have a spouse, add as needed, [the spouse [Name]], as determined by the law of the state in which the spouse [Name] and borrower [Name] reside or the state of celebration, of the HECM borrower [Name] at the time of closing and who is not a borrower.]

1.9. Principal or Principal Balance means the sum of all Loan Advances made as of a particular date, including interest and mortgage insurance premiums.

1.10. Principal Limit means the amount indicated on the attached payment plan (Exhibit 1) when this Loan Agreement is executed, and increases each month for the life of the loan at a rate equal to one-twelfth of the mortgage interest rate plus one-twelfth of the annual MIP. The Principal Limit is calculated by multiplying the Maximum Claim Amount by a factor supplied by the Secretary.

1.11. Principal Residence means the dwelling where a borrower and, if applicable, a Non-Borrowing Spouse maintains his or her permanent place of abode, and typically spends the majority of the calendar year. A person may have only one Principal Residence at any one time. The Property shall be considered to be the Principal Residence of any borrower who is temporarily in a health care institution provided the borrower's residency in a health care institution does not exceed twelve consecutive months. The Property shall be considered to be the Principal Residence of any Non-Borrowing Spouse, who is temporarily in a health care institution, as long as the Property is the Principal Residence of his or her borrower spouse, who physically resides in the property. During a Deferral Period, the Property shall continue to be considered to be the Principal Residence of any Non-Borrowing Spouse, who is temporarily in a health care institution, provided the Non-Borrowing Spouse physically occupied the property immediately prior to entering the health care institution and the Non-Borrowing Spouse's residency in a health care institution does not exceed twelve consecutive months.

1.12. Property means Borrower's property identified in the Security Instrument.

1.13. Property Charges means taxes, hazard insurance premiums, flood insurance premiums, ground rents, condominium fees, planned unit development fees, homeowner's association fees, and any other assessments that may be required by local or state law.

1.14. Security Instrument means the mortgage, deed of trust, security deed or other security instrument which is signed by Borrower together with this Loan Agreement and which secures the Note.

Article 2 - Loan Advances

2.1. General. Lender agrees to make Loan Advances under the conditions set forth in this Loan Agreement in consideration of the Note and Security Instrument given by Borrower on the same date as this Loan Agreement.

2.2. Borrower's Advance.

2.2.1. Borrower's Advance will be limited to the greater of 60% of the Principal Limit or the sum of Mandatory Obligations plus an additional 10% of the Principal Limit, so long as such amount does not exceed the maximum Principal Limit.

2.2.2. Borrower's Advance shall be used by Lender to pay, or reimburse Borrower for, closing costs listed in the Schedule of Closing Costs (Exhibit 2) attached to and made a part

of this Loan Agreement, except that such Loan Advance will only be used to pay origination fees in an amount not to exceed the greater of \$2,500 or 2% of the maximum claim amount of the mortgage, up to a maximum claim amount of \$200,000, *plus* one percent of any portion of the maximum claim amount this is greater than \$200,000, *nor* shall the Lender charge the Borrower an origination fee in excess of \$6,000.

2.2.3. Borrower's Advance shall be used by Lender to discharge the liens on the Property listed in the Schedule of Liens/HECM for Purchase Disbursements to Seller (Exhibit 2) attached to and made a part of this Loan Agreement.

2.2.4. After making payments under 2.2.2 and 2.2.3 and after any amounts are initially set aside under 2.3.2, Lender shall pay any remaining funds from the Borrower's Advance to Borrower in the amount indicated on the attached payment plan (Exhibit 1). Borrower shall receive any such remaining funds in a single lump sum disbursement at closing. In no event may payments made under 2.2.2, 2.2.3, 2.2.4, and any amounts set aside under 2.3.2 exceed the greater of 60% of the Principal Limit or Mandatory Obligations plus 10% of the Principal Limit. 2.2.5. Advances required by this Section 2.2. shall be made as soon as such advances are permitted by the applicable provisions of 12 CFR Part 226 (Truth in Lending) governing Borrower's right of rescission, but not before that time.

2.2.6. After the single lump sum disbursement made under 2.2.4, no future Loan Advances are permitted to the Borrower.

2.3. Set Asides.

2.3.1. Amounts set aside under this section shall be considered Loan Advances to the extent actually disbursed or earned by Lender.

2.3.2. Lender shall initially set aside from the Borrower's Advance the amount indicated on the attached payment plan (Exhibit 1) for repairs to be made in accordance with a Repair Rider attached to and made a part of this Loan Agreement (Exhibit 3). This set aside remains available for disbursement during any Deferral Period and the Lender may add such disbursements to the Principal Balance.

2.3.3. Lender shall initially set aside from the Principal Limit the amount indicated on the attached payment plan (Exhibit 1) to be applied to payment due for a fixed monthly charge for servicing activities of Lender or its servicer. Such servicing activities are necessary to protect Lender's interest in the Property. A servicing fee set aside, if any, is not available to the Borrower for any purpose, except to pay for loan servicing. A servicing set aside under this section remains available for disbursement during any Deferral Period and the Lender may add such disbursements to the Principal Balance.

2.4. Charges and Fees. Borrower shall pay to Lender reasonable and customary charges and fees as permitted under 24 CFR 206.207(a). Such amounts shall be considered Loan Advances when actually disbursed by Lender.

2.5. Payments for Initial Repairs. If initial repairs after closing, made in accordance with the Repair Rider, cannot be fully funded from the repair set aside, the Borrower shall be responsible for the additional funds needed to complete repairs shall be made in the manner provided under Section 2.12. In no event may any unused funds be disbursed to the Borrower.

2.6. Payment of Property Charges. If Borrower fails to pay the property charges in a timely manner, Lender may pay the property charges; however, such election shall not preclude the Lender from taking action due to the Borrower's failure to pay property charges under this section.

2.7. Insurance and Condemnation Proceeds. If insurance or condemnation proceeds are paid to Lender, the Principal Balance shall be reduced by the amount of the proceeds not applied to restoration or repair of the damaged Property. The Principal Limit also shall be reduced by the amount of the proceeds applied to reduce the Principal Balance.

2.8. Interest

2.8.1. Interest shall be calculated as provided in the Loan Documents.

2.8.2. Interest shall accrue daily and be added to the Principal Balance as a Loan Advance at the end of each month.

2.8.3. Interest shall continue to accrue as provided in 2.8.2 during any Deferral Period.

2.9. Mortgage Insurance Premium (MIP); Monthly Charge.

2.9.1. Monthly MIP shall be calculated as provided by the Secretary if the Security Instrument is held by the Secretary or if the Secretary makes Loan Advances secured by the Second Security Instrument, a monthly charge shall be due to the Secretary and shall be calculated in the same manner as MIP.

2.9.2. The full amount of monthly MIP or monthly charge, including any portion of the MIP retained by a Lender as provided by the Secretary, shall be considered to be a Loan Advance to Borrower on the later of the first day of the month or the day Lender pays the MIP to the Secretary, if any MIP is due to the Secretary. In the event that the Note becomes due and payable or the Note is prepaid in full after the first day of the month, Lender may add the accrued MIP to the Principal Balance or the Secretary may add the accrued monthly charge to the Principal Balance.

2.9.3 In the event of a Deferral Period, the monthly MIP will continue to accrue and the Lender may add the accrued MIP to the Principal Balance.

2.10. Manner of Payment. Only a Borrower has a right to receive the Borrower's Advance. Borrowers agree that payment from subsequent Loan Advance should be made directly to the applicable third party for the benefit of the Borrowers.

2.11. Protection of Property.

2.11.1. If Borrower vacates or abandons the Property, or if Borrower is in default under the Security Instrument, then Lender may make reasonable expenditures to protect and preserve the Property and these expenditures will be considered Loan Advances as required under Section 2.12.

2.11.2. If Borrower fails to pay governmental or municipal charges, fines or impositions that are not included in Section 2.6 or if there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, for condemnation or to enforce laws or regulations), then Lender may do and pay whatever is necessary to protect the value of the Property and Lender's rights in the Property. These expenditures will be considered Loan Advances as required under Section 2.12.

2.11.3. During a Deferral Period, if governmental or municipal charges, fines or impositions that are not included in Section 2.7 or if there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, for condemnation or to enforce laws or regulations), then Lender may do and pay whatever is necessary to protect the value of the Property and Lender's rights in the Property. These expenditures will be considered Loan Advances as required under Section 2.12. If obligations of the mortgage are not satisfied during the Deferral Period, the Deferral Period will immediately cease and the Loan will be immediately due in full.

2.12. **Unscheduled Payments.** Loan Advances made pursuant to Sections 2.3.3, 2.4, 2.5, 2.6, and 2.11 shall be made to the extent possible.

Article 3 - Termination of Lender's Obligation to Make Loan Advances

3.1. **Loan Due and Payable.** Lender shall have no obligation to make Loan Advances to Borrower after initial Loan Advance if Lender has notified Borrower that immediate payment in full to Lender is required under one or more of the Loan Documents unless and until the notice is rescinded by Lender.

3.2. **Deferral Period of Loan Due and Payable Status.** Only a Due and Payable status as a result of the death of the last surviving borrower is eligible for a Deferral Period and only where the last surviving borrower dies and an eligible Non-Borrowing Spouse, identified by a borrower, met and continues to meet all requirements established by the Secretary. The Due and Payable status will be deferred until the property is no longer the principle residence of an identified Non-Borrowing Spouse, an identified Non-Borrowing Spouse fails to ensure all other requirements established by the Secretary are met, or an identified Non-Borrowing Spouse dies, whichever occurs first. During the Deferral Period, the Lender shall have no obligation to make Loan Advances but the Lender may not require immediate payment in full until the end of the Deferral Period. The Lender may continue to add to the outstanding Principal Balance the amounts that accrue in accordance with Subsections 2.3.2, 2.3.3, 2.8.3, and 2.9.3. The Lender shall notify an identified Non-Borrowing Spouse that the Due and Payable status of the Loan is in a Deferral Period only for the amount of time that an identified Non-Borrowing Spouse continues to meet all requirements established by the Secretary and the property continues to be the principle residence of such a Non-Borrowing Spouse. Once the Deferral Period ends, the Loan is immediately due and payable.

3.3. Loan Advances by Secretary. If the Security Instrument has been assigned to the Secretary, Lender shall have no further obligation to make Loan Advances under this Loan Agreement, unless the Secretary accepts later reimbursement by the Lender for all Loan Advances made, earned or disbursed by the Secretary.

3.4. Lien Status Jeopardized. Lender shall have no obligation to make further Loan Advances if the Lender or the Secretary determines that the lien status of the Security Instrument is jeopardized under State laws as described in Paragraph 13(a) of the Security Instrument and the lien status is not extended in accordance with Paragraph 13(a).

3.5. Bankruptcy. Lender shall have no obligation to make further Loan Advances on or following the date that a petition for bankruptcy of Borrower is filed.

3.6. Mandatory Loan Advances. Notwithstanding anything in Sections 3.1. through 3.4., all Loan Advances under Sections 2.3.3 (servicing fee), 2.8 (interest), 2.9 (MIP, monthly charge or annual MIP adjustment), or 2.6 (property charges) and 2.11 (protection of Property) if elected to be paid under 2.6 and 2.11 by the Lender shall be considered mandatory Loan Advances by Lender.

3.7. Prepayment in Full. Lender shall not make Loan Advances if Borrower has paid the Note in full.

Article 4 - HUD Obligation

If the Lender has no further obligation to make payments to Borrower because of Section 3.3, the Secretary shall assume the rights and obligations of Lender under this Loan Agreement, except the Secretary shall not assume any obligation of paying flood, fire and other hazard insurance from Loan Advances.

Article 5 - Miscellaneous

5.1. Forbearance Not a Waiver. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

5.2. Successors and Assigns Bounds; Joint and Several Liability; Co-Signers. The covenants and agreements of this Loan Agreement shall bind and benefit the successors and assigns of Lender. An assignment made in accordance with the regulations of the Secretary shall fully relieve the Lender of its obligations under this Loan Agreement. Borrower may not assign any rights or obligations under this Loan Agreement. Borrower's covenants and agreements shall be joint and several.

5.3. Borrower Certifications. Borrower shall complete and provide to the Lender on an annual basis a certification, in a form prescribed by the Lender, stating whether the property remains the Borrower's principal residence and, if applicable, the principal residence of his or her Non-Borrowing Spouse. Where a Borrower has identified a Non-Borrowing Spouse, the Borrower shall also complete and provide to the Lender on an annual basis a Non-Borrowing Spouse certification, in a form prescribed by the Lender, certifying that all requirements for the application of a Deferral Period continue to apply and continue to be met. During a Deferral Period, the Borrower's annual

