

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. 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.
- 1.3. Loan Documents means the Note and Security Instrument.
- 1.4. Mandatory Obligations means only those charges, fees, amounts and expenses as authorized by the Secretary.
- 1.5. 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 appraised value.
- 1.6. 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.
- 1.7. Principal or Principal Balance means the sum of all Loan Advances made as of a particular date, including interest and mortgage insurance premiums.
- 1.8. 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 sum 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.
- 1.9. Principal Residence means the dwelling where the Borrower shall maintain 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

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Borrower who is temporarily or permanently in a health care institution as long as the Property is the Principal Residence of at least one other Borrower who is not in a health care institution.

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

1.11. 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.

1.12. 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).

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.

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 required 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.

2.9. 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, 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.

2.10. Manner of Payment. Only a Borrower has a right to receive the Borrower's Advance. Borrowers agree that payment from subsequent Loan Advances should be made directly to a third party, as approved in this Agreement, 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.

2.12. 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 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. 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.

3.3. 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 or the Second Security

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Instrument is jeopardized under State laws as described in Paragraph 13(a) of the Security Instrument or Second Security Instrument and the lien status is not extended in accordance with Paragraph 13(a).

3.4. 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.

3.5. 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.

3.6. 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 3.2., 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 Certification. 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.

5.4. Notices. Any notice to Borrower provided for in this Loan Agreement shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the property address shown in the Security Instrument or any other address all Borrowers jointly designate. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any address Lender designates by notice to Borrower. Any notice provided for in this Loan Agreement shall be deemed to have been given to Borrower or Lender as provided in this Section.

5.5. Governing Law; Severability. This Loan Agreement shall be governed by Federal law and the law of the jurisdiction in which the Property is located. The Lender in this Loan Agreement must comply with the Fair Housing Act, 42 U.S.C. §§3601 – 3619, which prohibits discrimination on the basis of race, color, religion, sex, handicap familial status, or national origin. In the event that any provision or clause of this Loan Agreement conflicts with applicable law, such conflict shall not affect other provisions of

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this Loan Agreement which can be given effect without the conflicting provision. To this end the provisions of this Loan Agreement are declared to be severable.

5.6. Copies. Lender and Borrower shall each receive one original executed copy of this Loan Agreement.

5.7. When Agreement Becomes Binding. This Loan Agreement shall bind Lender and Borrower when both Lender and Borrower have signed. This Loan Agreement shall bind the Secretary only when the Lender signs on behalf of the Secretary of Housing and Urban Development and a Mortgage Insurance Certificate is issued for the Security Instrument.

5.8. Third-Party Beneficiary. Nothing in this Loan Agreement is intended to confer any rights or remedies upon any person other than the Parties to this Loan Agreement. Borrower agrees that it is not a third-party beneficiary to the Contract of Insurance between HUD and Lender.

BY SIGNING BELOW the parties accept and agree to the terms contained in this Loan Agreement and the exhibits.

Borrower (SEAL)

Borrower (SEAL)

(Name of Lender)

- [HECM Fixed Rate Model Repair Rider](#)
- [HECM Fixed Rate Model Note](#)
- [HECM Fixed Rate Model Mortgage](#)