

U.S. Department of Housing and Urban Development (HUD)

Home Equity Conversion Mortgage (HECM)

Model Fixed Interest Rate Loan Agreement

FHA Case No.: _____

HECM FIXED INTEREST RATE LOAN AGREEMENT

THIS AGREEMENT is made this day of ____, 20__ among _____ (“Borrower”) and _____ (“Lender”).

Article 1 - Definitions

1.1. “Borrower” is defined above. The term does not include the Borrower’s successors or assigns.

1.2. “Borrower’s Advance” means the funds advanced to Borrower at closing as set forth in this Loan Agreement.

1.3. “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 an Eligible Non-Borrowing Spouse determined by the Secretary and all other FHA requirements.

1.4. “Eligible Non-Borrowing Spouse” means a Non-Borrowing Spouse who meets the Qualifying Attributes for a Deferral Period.

[1.5. “Fully Funded Life Expectancy Set-Aside (LESA)” means a portion of the Borrower’s Principal Limit that is designated for payment of property taxes, hazard insurance premiums and, if applicable, flood insurance premiums for the estimated remainder of the Borrower’s life expectancy.]ⁱ

1.6. “Ineligible Non-Borrowing Spouse” means a Non-Borrowing Spouse who does not meet the Qualifying Attributes.

[1.7. “LESA Property Charges” means certain Property Charges consisting of property taxes including special assessments levied by Municipalities or State Law, hazard insurance premiums, and applicable flood insurance premiums.]ⁱⁱ

1.8. “Loan Advances” means the Borrower’s Advance and all funds advanced from or charged to the Borrower’s account under conditions set forth in this Loan Agreement, whether or not actually paid to Borrower.

1.9. “Loan Documents” means the Note and Security Instrument.

1.10. “Mandatory Obligations” means only those charges, fees, amounts and expenses as authorized by the Secretary.

1.11. “Maximum Claim Amount” means the lesser of the appraised value of the Property, as determined by the appraisal used in underwriting the HECM, 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.

1.12. “Mortgage Insurance Premium (MIP)” means the mortgage insurance premium paid by the Lender to the Secretary in consideration of the contract of insurance.

1.13. “Non-Borrowing Spouse” means the spouse [Name], as determined by the law of the state in which the spouse [Name] and the Borrower [Name] reside or the state of celebration, of the Borrower [Name] at the time of closing and who is not a Borrower.¹

1.14. “Note” means the promissory note signed by the Borrower together with this Loan Agreement and given to the Lender to evidence the Borrower’s promise to repay, with interest, Loan Advances by the Lender or Lender’s assignees.

1.15. “Payment Plan” means the payment plan set forth in Exhibit 1, which is attached to and made a part of this Loan Agreement.

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

1.17. “Principal Limit” means the amount indicated on the attached Payment Plan when this Loan Agreement is executed, and increases each month for the life of the HECM at a rate supplied by the Secretary that is listed on the Payment Plan. The Principal Limit is calculated by multiplying the Maximum Claim Amount by a factor supplied by the Secretary.

1.18. “Principal Residence” means the dwelling where the Borrower and, if applicable, a Non-Borrowing Spouse maintain their permanent place of abode, and typically spend the majority of the calendar year. A person may have only one Principal Residence at any one time and the Property is considered to be the Principal Residence of any Borrower who is temporarily in a health care institution provided the Borrower’s confinement to a health care institution does not exceed 12 consecutive months. The Property is 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 their Borrower spouse, who physically resides in the Property. The Property is considered to be the Principal Residence of any Non-Borrowing Spouse who occupies the Property as their Principal Residence, when the Borrower resides in a health care institution for a length of time. The Property is considered to be the Principal Residence during a Deferral Period of the Non-Borrowing Spouse, who is temporarily in a health care institution, provided the Eligible Non-Borrowing Spouse physically occupied the Property immediately

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

prior to entering the health care institution and such confinement does not exceed 12 consecutive months.

1.19. “Property” means the Borrower’s property identified in the Security Instrument.

1.20. “Property Charges” means property taxes, hazard insurance premiums, flood insurance premiums, ground rents, condominium fees, planned unit development fees, Homeowners’ Association fees, and any other special assessments that may be required by local or State Law.

1.21. “Qualifying Attributes” means those requirements established by the Secretary that the Non-Borrowing Spouse must satisfy in order to be eligible for the Deferral Period.

1.22. “Secretary” means the Secretary of the U.S. Department of Housing and Urban Development (HUD), or the Secretary’s authorized representatives.

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

Article 2 - Loan Advances

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

2.2. Borrower’s Advance.

2.2.1. The Borrower’s Advance will be limited to the lesser of (i) the greater of sixty percent (60%) of the Principal Limit or the sum of Mandatory Obligations plus an additional ten percent (10%) of the Principal Limit or (ii) the Principal Limit less the sum of the funds in the LESA for payment beyond the first 12-month disbursement period and the servicing fee set-aside, so long as such amount does not exceed the maximum Principal Limit.

2.2.2. The Borrower’s Advance shall be used by the Lender to pay, or reimburse the 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 two thousand five hundred dollars (\$2,500) or two percent (2%) of the Maximum Claim Amount, up to a Maximum Claim Amount of two hundred thousand dollars (\$200,000), *plus* one percent (1%) of any portion of the Maximum Claim Amount that is greater than two hundred thousand dollars (\$200,000). The Lender shall not charge the Borrower an origination fee in excess of six thousand dollars (\$6,000).

2.2.3. The Borrower’s Advance shall be used by the Lender to discharge those 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 Sections 2.2.2 and 2.2.3 and after any amounts are initially set aside under Sections 2.3.2 and 2.6, the Lender shall pay any remaining funds from the Borrower's Advance to the Borrower in the amount indicated on the Payment Plan (Exhibit 1). The Borrower shall receive any such remaining funds in a single lump sum disbursement at closing. In no event may payments made under Sections 2.2.2, 2.2.3, 2.2.4, and any amounts set aside under Sections 2.3.2 [or under 2.3.4 for the first year LESA Property Charges, if applicable]ⁱⁱⁱ, exceed the lesser of (i) the greater of sixty percent (60%) of the Principal Limit or Mandatory Obligations plus ten percent (10%) of the Principal Limit; or (ii) the Principal Limit less the sum of the funds in the LESA for payment beyond the first 12-month disbursement period and the servicing fee set-aside.

2.2.5. The Borrower's Advance required by this Section 2.2 shall be made as soon as such advance is permitted by the applicable provisions of 12 CFR Part 226 (Truth in Lending) governing the 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 the Lender.

2.3.2. The Lender shall initially set aside from the Borrower's Advance the amount indicated on the Payment Plan 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 for the sole purpose of paying the cost of the repairs specifically identified in the Repair Rider. Additionally, such repairs may only be disbursed if the repairs are satisfactorily completed during the time period established in the Repair Rider. The Lender may add such disbursements to the Principal Balance. No unused funds may be disbursed.

2.3.3. The Lender shall initially set aside from the Principal Limit the amount indicated on the Payment Plan to be applied to the payment due for a fixed monthly charge for servicing activities of the Lender or its servicer. Such servicing activities are necessary to protect the 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 fee set-aside under this Section remains available for disbursement during any Deferral Period and the Lender may add such disbursements to the Principal Balance.

2.3.4. The Lender shall set aside from the Principal Limit any amounts required by Section 2.6 as indicated on the Payment Plan.

2.4. Charges and Fees. The Borrower shall pay to the 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 the 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. In the event the Borrower fails to timely provide additional funds needed to complete repairs, an unscheduled Loan Advance 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^{iv}.

To be used for Fully Funded Life Expectancy Set-Aside:

2.6.1. Except as provided herein, the Borrower shall pay all Property Charges and shall provide evidence of payment to the Lender when required by the Lender.

2.6.2. The Borrower [is required/has elected] to have a Fully Funded Life Expectancy Set-Aside, which the Lender shall use as Loan Advances to pay certain Property Charges consisting of property taxes including special assessments levied by Municipalities or State Law, hazard insurance premiums, and applicable flood insurance premiums (collectively, the “LESA Property Charges”). The Borrower shall remain responsible to pay all other Property Charges.

2.6.3. The Lender shall set aside from the Principal Limit the amount indicated on the Payment Plan. The Lender shall use the amounts set aside to make timely payments of LESA Property Charges listed in Section 2.6.2. The amounts set aside shall not exceed the projected LESA Property Charges that will be required over the life expectancy of the youngest Borrower and shall be calculated in accordance with the formula established by the Secretary. Amounts set aside shall not be treated as Loan Advances and shall not bear interest except to the extent actually disbursed by the Lender. During a Deferral Period, no amounts from the set-aside will be available for an Eligible Non-Borrowing Spouse.

2.6.4. The Lender is required to perform an annual analysis of the Fully Funded Life Expectancy Set-Aside to determine whether the funds are sufficient to make required distributions for the next year. If at any time the amounts remaining in the set-aside are insufficient to pay the items in 2.6.2 when due or when there are no funds remaining in the set-aside, within 15 calendar days of the analysis, the Lender shall notify the Borrower that there are insufficient funds or no funds remaining and that the Borrower is responsible for the timely payment of all Property Charges, including the LESA Property Charges, throughout the remaining life of the HECM.

2.6.5. If the Borrower fails to pay the Property Charges in a timely manner, including any LESA Property Charges in accordance with Section 2.6.4, the Lender may pay the Property Charges as a Loan Advance as required under Section 2.12; however, such election shall not preclude the Lender from taking action due to the Borrower’s failure to pay Property Charges under this Section.

2.6.6. The Borrower may not cancel the Fully Funded Life Expectancy Set-Aside.

To be used for all other Borrowers:

2.6.1. The Borrower shall pay all Property Charges and shall provide evidence of payment to the Lender when required by the Lender.

2.6.2. If the Borrower fails to pay the Property Charges in a timely manner, the Lender may pay the Property Charges as a Loan Advance under Section 2.12; 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 the 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) or Monthly Charge.

2.9.1. Monthly MIP shall be calculated as provided by the Secretary. If this 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 the Borrower on the later of the first day of the month or the day the 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, the 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 any 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 the Borrower vacates or abandons the Property, or if the Borrower is in default under the Security Instrument, then the 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 the 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 the Lender's rights in the Property (such as a proceeding in bankruptcy, for condemnation or to enforce laws or regulations), then the 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 there are 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 the Lender's rights in the Property (such as a proceeding in bankruptcy, for condemnation or to enforce laws or regulations), then the 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 Security Instrument are not satisfied during the Deferral Period, the Deferral Period will immediately cease and the HECM 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.** The Lender shall have no obligation to make Loan Advances to the Borrower after initial Loan Advance if the Lender has notified the Borrower that immediate payment in full to the Lender is required under one or more of the Loan Documents unless and until the notice is rescinded by the 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 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 Principal Residence of an Eligible Non-Borrowing Spouse, an Eligible Non-Borrowing Spouse fails to ensure all other requirements established by the Secretary are met, or an Eligible 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 Sections 2.3.2, 2.3.3, 2.8.3, and 2.9.3. The Lender shall notify an Eligible Non-Borrowing Spouse that the due and payable status of the HECM is in a Deferral Period only for the amount of time that an Eligible Non-Borrowing Spouse continues to meet all requirements established by the Secretary and the Property continues to be the Principal Residence of such Eligible Non-Borrowing Spouse. Once the Deferral Period ends, the HECM is immediately due and payable. The Deferral Period is not available to any Ineligible Non-Borrowing Spouse. The Deferral Period

will terminate or become unavailable to an Eligible Non-Borrowing Spouse at the time he or she becomes ineligible.

3.3. Loan Advances by Secretary. If the Security Instrument has been assigned to the Secretary, the 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. The 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 14(A) of the Security Instrument and the lien status is not extended in accordance with Paragraph 14(A).

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

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

Article 4 - HUD Obligation

The Secretary has no obligations under this Loan Agreement unless and until a certificate of insurance is issued by the Secretary. Where a certificate of insurance has been issued, if the Lender has no further obligation to make payments to the Borrower because of Section 3.3, the Secretary shall assume the rights and obligations of the 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 the 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 the Lender. An assignment made in accordance with the regulations of the Secretary shall fully relieve the Lender of its obligations under this Loan Agreement. The Borrower may not assign any rights or obligations under this Loan Agreement. The Borrower's covenants and agreements shall be joint and several.

Notwithstanding anything to the contrary herein, upon the death of the last surviving Borrower, the Borrower's successors and assigns will be bound to perform the Borrower's

obligations under this Loan Agreement, and the Lender shall be entitled to add to the outstanding Principal Balance the amounts that accrue in accordance with Sections 2.3.2, 2.3.3, 2.8.3, and 2.9.3.

5.3. Borrower Certifications. The 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 the Borrower's Eligible Non-Borrowing Spouse. Where a Borrower has identified an Eligible Non-Borrowing Spouse, the Borrower shall also complete and provide to the Lender on an annual basis an Eligible 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 Principal Residency annual certifications, required by this Section, must continue to be completed and provided to the Lender by the Eligible Non-Borrowing Spouse.

5.4. Notices. Any notice to the 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 an Eligible Non-Borrowing Spouse 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 and Eligible Non-Borrowing Spouse, if applicable, jointly designate. Any notice to the Lender shall be given by first class mail to the Lender's address stated herein or any address the Lender designates by notice to the Borrower. Any notice provided for in this Loan Agreement shall be deemed to have been given to the 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 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. The 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 the Lender and Borrower when both the Lender and Borrower have signed.

5.8. Third-Party Beneficiary. Except as set forth in Article 4 and Section 3.3 for the Secretary and except for Section 3.2 only for an Eligible Non-Borrowing Spouse in this Loan Agreement, this Loan Agreement does not and is not intended to confer any rights or remedies upon any person other than the parties. The Borrower agrees that it is not a third-party beneficiary to the Contract of Insurance between the Secretary and Lender.

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

Borrower Signature (SEAL): _____

Date: _____

Borrower (SEAL): _____

Date: _____

Name of Lender: _____

ⁱ Lender will need to include this definition if there will be a Fully Funded Life Expectancy Set-Aside.

ⁱⁱ Lender will need to include this definition if there will be a Life Expectancy Set-Aside.

ⁱⁱⁱ Lender will need to include this language if there will be a Life Expectancy Set-Aside.

^{iv} Lender must select the applicable set of Payment of Property Charge provisions from the two options available for Section 2.6.