

FHA Case No.

HOME EQUITY CONVERSION MORTGAGE ADJUSTABLE 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 "Deferral Period" means the period of time following the death of the last surviving Borrower during which the due and payable status of a loan 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.

1.3. "Eligible Non-Borrowing Spouse" means a Non-Borrowing Spouse who meets the Qualifying Attributes requirements established for a Deferral Period.

1.4. "Expected Average Mortgage Interest Rate" means the amount indicated on the Payment Plan. It is a constant interest rate used to calculate monthly payments to the Borrower throughout the life of the loan.

1.5. "First 12-Month Disbursement Period" means the period that begins on the day of loan closing and ends on the day before the anniversary date of loan closing. When the day before the anniversary date of loan closing falls on a Federally-observed holiday, Saturday or Sunday, the period end date will be on the next business day.

1.6. "Ineligible Non-Borrowing Spouse" means a Non-Borrowing Spouse who does not meet the Qualifying Attributes requirements established for a Deferral Period.

1.7. "Initial Disbursement Limit" means the maximum disbursement to the Borrower allowed at loan closing and during the First 12-Month Disbursement Period which is the greater of sixty percent (60%) of the Principal Limit; or the sum of Mandatory Obligations, plus an additional ten percent (10%) percent of the Principal Limit. The Initial Disbursement Limit shall not exceed the Principal Limit amount established at loan closing.

[1.8. "LA Property Charges" means certain Property Charges consisting of taxes, hazard insurance premiums, flood insurance premiums, ground rents, and any other assessments that may be required by local or state law if indicated on the Payment Plan.]ⁱ

[1.8. "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

1.9. "Loan Advances" means 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.

1.10. "Loan Documents" means the Note, Second Note, Security Instrument and Second Security Instrument.

1.11. "Mandatory Obligations" means only those charges, fees, amounts and expenses as authorized by the Secretary.

1.12. "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.

1.13. "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 Borrower [Name] at the time of closing and who is not a Borrower.¹

1.14. "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.

1.15. "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 Payment Plan when this Loan Agreement is executed, and increases each month for the life of the loan 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 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 (12) 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 Eligible Non-Borrowing Spouse, who is temporarily in a health care institution, provided the Eligible

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 Borrower [Name] at the time of closing and who is not a Borrower.]

Non-Borrowing Spouse physically occupied the Property immediately prior to entering the health care institution and the Eligible Non-Borrowing Spouse's residency in a health care institution does not exceed twelve (12) consecutive months.

1.19. "Property" means 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, homeowner's 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 Department of Housing and Urban Development, his or her successors and assigns.

1.23. "Second Note" means the promissory note signed by Borrower together with this Loan Agreement and given to the Secretary to evidence Borrower's promise to repay, with interest, Loan Advances by the Secretary secured by the Second Security Instrument.

1.24. "Second 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 Second Note.

1.25. "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. Initial Advances.

2.2.1. Loan Advances 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 Loan Advances 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 may not charge the Borrower an origination fee in excess of six thousand dollars (\$6,000).

2.2.2. Loan Advances shall be used by 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.

2.2.3. Lender shall pay an initial Loan Advance to Borrower in the amount indicated on the Payment Plan.

2.2.4. Initial 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.

2.2.5. Borrower's aggregate initial advances and any subsequent advances made, except for any disbursements or accruals under 2.3.3, during the First 12-Month Disbursement Period may not exceed the Initial Disbursement Limit established at closing and in the amount indicated on the Payment Plan. In the event Borrower makes a payment towards the outstanding loan balance on the line of credit during the First 12-Month Disbursement Period, the Lender may make subsequent Loan Advances during the remainder of the First 12-Month Disbursement Period only to the extent Borrower's payment was applied to the outstanding Principal Balance.

2.2.6. If any requested Loan Advance would exceed the Initial Disbursement Limit established at closing, Lender must make a partial payment to the Borrower for the amount that would not exceed the limit. Prior to Lender paying a partial Loan Advance to avoid causing the aggregate initial advances to exceed the Initial Disbursement Limit within the First 12-Month Disbursement Period, Lender must provide Borrower with written notice about inability to exceed the threshold.

2.2.7. No Loan Advances are permitted during a Deferral Period, except for amounts disbursed or accrued from under 2.3.2, 2.3.3, 2.12.3, 2.13.3, and 2.15.3.

2.3. Set-Asides.

2.3.1. Amounts set aside from the Principal Limit shall be considered Loan Advances to the extent actually disbursed or earned by Lender.

2.3.2. Lender shall initially set aside from the Principal Limit 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 and the Lender may add such disbursements to the Principal Balance 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.

2.3.3. Lender shall initially set aside from the Principal Limit the amount indicated on the Payment Plan 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.

2.3.4. Lender shall set aside from the Principal Limit any amounts required by Section 2.10 as indicated on the Payment Plan.

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. Monthly Payments.

2.5.1. Loan Advances paid directly to Borrower shall be made in equal monthly payments if requested by Borrower.

2.5.2. Monthly payments, if requested under 2.5.1, shall be calculated based on the payment option requested by Borrower.

2.5.3. Monthly payments under the term payment option are made only during a term chosen by Borrower and shall be calculated so that the sum of (i) or (ii) as applicable added to (iii), (iv), (v) and (vi) shall be equal to or less than the Principal Limit at the end of the term; except that during the First 12-Month Disbursement Period, the amount calculated shall not be greater than the Initial Disbursement Limit:

(i) Initial advances under Section 2.2 plus any initial servicing fee set-aside under Subsection 2.3.3, or

(ii) The Principal Balance at the time of a change in payments under Sections 2.8 and 2.9 plus any remaining servicing fee set-aside under Subsection 2.3.3, and

(iii) The portion of the Principal Limit set aside as a line of credit under Section 2.7, including any set-asides for repairs (Subsection 2.3.2) [and first-year LESA Property Charges/LA Property Charges (Subsection 2.3.4 and Section 2.10)], and

(iv) All monthly payments due through the payment term, including funds withheld for payment of Property Charges under Section 2.10, and

(v) All mortgage insurance premiums, or monthly charges due to the Secretary in lieu of mortgage insurance premiums, which are due through the payment term (Subsection 2.13), and

(vi) All interest through the payment term. The Expected Average Mortgage Interest Rate shall be used for this purpose.

2.5.4. Monthly payments under the tenure payment option shall be calculated as in Subsection 2.5.3 as if there were a payment term with the number of months in the term equal to the sum of one hundred (100) minus the age of the youngest Borrower multiplied by twelve (12), but payments shall continue until the loan becomes due and payable as provided in the Loan Documents.

2.5.5. Monthly payments shall be paid to Borrower on the first business day of a month.

2.5.6. If Borrower has requested monthly payments, payments shall be indicated on the Payment Plan. The payment option may be changed by Borrower as provided in Sections 2.8 and 2.9.

2.6. Line of Credit without Monthly Payments.

2.6.1. Borrower can request Loan Advances under a line of credit payment option in amounts and at times determined by Borrower, if the Principal Balance of the loan after the Loan Advance is made is less than or equal to the applicable Principal Limit, except that during the First 12-Month Disbursement Period the amount available shall not be greater than the maximum amount permitted under 2.2.5, excluding any portion of the Principal Limit set aside under Sections 2.3.2, 2.3.3, 2.3.4 and 2.10. The line of credit amount increases at the same rate as the total Principal Limit under Section 1.17.

2.6.2. Line of credit payments shall be paid to Borrower within five business days after Lender has received a written request for payment by Borrower.

2.6.3. Lender may specify a form for line of credit payment requests.

2.6.4. Lender shall provide Borrower with a statement of the account every time a line of credit payment is made. The statement shall include the current interest rate, the previous Principal Balance, the amount of the current Loan Advance, the current Principal Balance after the Loan Advance, and the current Principal Limit.

2.7. Line of Credit with Monthly Payments.

2.7.1. Borrower may receive monthly payments under either a term or tenure payment option combined with a line of credit, as indicated on the Payment Plan.

2.7.2. Subsections 2.6.2, 2.6.3, and 2.6.4, apply to a line of credit combined with term or tenure payments.

2.7.3. If Borrower combines a line of credit with a term or tenure payment option, the Principal Limit is divided into: (a) an amount for the line of credit payments, including any repair set-aside as provided for in Subsection 2.3.3 and amounts set-aside or withheld for Property Charges as provided for in Subsection 2.3.4 and Section 2.10, (b) an amount for monthly payments which shall be calculated under Subsection 2.5.3 or 2.5.4 and (c) an amount for a servicing fee set-aside, if required by Lender under Subsection 2.3.3. Amounts designated for line of credit payments and monthly payments increase independently at the same rate as the total Principal Limit increases under Section 1.17. Borrower can request Loan Advances in amounts and at

times determined by Borrower, if the requested amount is less than or equal to the difference between (a) the Principal Limit applicable to the line of credit set aside, except that during the First 12-Month Disbursement Period instead of using the applicable Principal Limit, the maximum amount permitted under 2.2.5 shall be used, and (b) the portion of the outstanding Principal Balance attributable to draws on the line of credit, including accrued interest and mortgage insurance premium or monthly charge due to the Secretary, but excluding any portion of the Principal Limit set aside under Subsections 2.3.2, 2.3.3, 2.3.4 and 2.10.

2.7.4. A Borrower receiving monthly payments in combination with a line of credit may prepay the outstanding mortgage balance in accordance with the terms of the Note.

2.8. Change in Payments Generally.

2.8.1. Whenever the Principal Balance of the loan is less than the Principal Limit, Borrower may change from any payment option allowable under this Loan Agreement to another.

2.8.2. If Borrower requests that monthly payments be made after a change in payment option, Lender shall recalculate future monthly payments in accordance with Subsections 2.5.3 or 2.5.4.

2.8.3. Lender may charge a fee not to exceed twenty dollars, whenever payments are recalculated and in any other circumstances in which Borrower is required to sign a form acknowledging a change in payment option as provided in Subsection 2.8.5.

2.8.4. Loan Advances under a new payment option shall be paid to Borrower in the same manner and within the time period required under Sections 2.5, 2.6, or 2.7.

2.8.5. Changes in the payment option must be acknowledged by Borrower by signing a form containing the same information as the Payment Plan. Lender shall provide a copy of the completed form to Borrower.

2.9. Change in Payments Due to Initial Repairs.

2.9.1. If initial repairs after closing, made in accordance with the Repair Rider, are completed without using all of the repair set-aside, Lender shall inform Borrower of the completion and the amount then available to the Borrower to be drawn under a line of credit.

2.9.2. If initial repairs after closing, made in accordance with the Repair Rider, cannot be fully funded from the repair set aside, any additional Loan Advances needed to complete repairs shall be made in the manner provided under Section 2.16.

2.9.3. If initial repairs are not completed when required by the Repair Rider, Borrower shall not request and Lender shall not make any further payments, except as needed to pay for repairs required by the Repair Rider and mandatory Loan Advances under Section 4.6. In order to complete the required repairs, Loan Advances shall be made first from the repair set aside, and then in the manner provided under Section 2.16.

2.10. Payment of Certain Property Charges.ⁱⁱⁱ

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

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

2.10.2. Borrower [is required/has elected] to have a Fully-Funded Life Expectancy Set-Aside, which the Lender shall use as Loan Advances to pay the LESA Property Charges. Borrower shall remain responsible to pay all other Property Charges.

2.10.3. Lender shall set aside from the Principal Limit the amount indicated on the Payment Plan. Lender shall use the amounts set-aside to make timely payments of the LESA Property Charges listed in Section 2.10.2. 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 Lender. During a Deferral Period, no amounts from the set-aside will be available for an Eligible Non-Borrowing Spouse

2.10.4. 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 LESA Property Charges when due or when there are no funds remaining in the set-aside, within 15 calendar days of the analysis the Lender shall notify Borrower that there are insufficient or no funds remaining and that Borrower is responsible for the timely payment of all the Property Charges, including the LESA Property Charges, throughout the remaining life of the loan. Lender shall convert any remaining funds in the set-aside to a line of credit.

2.10.5. If Borrower fails to pay any Property Charges Borrower is required to pay, including any LESA Property Charges in accordance with Section 2.10.4, Lender shall pay the Property Charges as a Loan Advance as required under Section 2.16; however, such election shall not preclude the Lender from taking action due to the Borrower's failure to pay Property Charges under this Section.

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

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

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

2.10.2. Borrower is required to have a Partially-Funded Life Expectancy Set-Aside, which the Lender shall use to provide semi-annual disbursements, in the amount indicated on the Payment Plan, to the Borrower. These funds must be used to pay the LESA Property Charges.

2.10.3. Lender shall set-aside from the Principal Limit the amount indicated on the Payment Plan. Lender shall use the amounts set-aside to make semi-annual disbursements to the Borrower to be used for timely payments of the LESA Property Charges. The first semi-annual payment date will be disbursed six months from the date of loan closing. 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 Lender. During a Deferral Period, no amounts from the set-aside will be available for an Eligible Non-Borrowing Spouse.

2.10.4. Lender is required to perform an annual analysis of the Partially-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 semi-annual disbursements or when there are no funds remaining in the set-aside, within 15 calendar days of the analysis the Lender shall notify Borrower that there are insufficient or no funds remaining and that Borrower will no longer receive semi-annual disbursements and continues to be responsible for the timely payment of all LESA Property Charges. Lender shall convert any remaining funds in the set-aside to a line of credit, unless such funds are retained under Subsection 2.10.5.

2.10.5. If Borrower fails to timely pay any LESA Property Charges and there are funds remaining in the set-aside, Lender shall immediately suspend future semi-annual payments, if any, and must use any funds remaining in the set-aside to directly pay the full amount owed to the taxing authority or/and insurance provider. Semi-annual disbursements are suspended indefinitely unless and until Borrower repays the full amount of funds advanced from the set-aside. Any remaining funds in the set-aside must be used to pay future LESA Property Charges if Borrower fails to timely pay them.

2.10.6 If Borrower fails to timely pay the LESA Property Charges and there are no remaining funds in the set-aside, Lender shall pay the LESA Property Charges as a Loan Advance as required under Section 2.16; however, such election shall not preclude the Lender from taking action due to the Borrower's failure to pay Property Charges under this Section.

2.10.7. Borrower may not cancel the Partially-Funded Life Expectancy Set-Aside.

To be used for all other Borrowers:

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

2.10.2. Borrower may elect to require Lender to use Loan Advances to pay certain Property Charges consisting of taxes, hazard insurance premiums, flood insurance premiums, ground rents, and any other assessments that may be required by local or state law if indicated on the Payment Plan (collectively, the "LA Property Charges"). Borrower may not cancel this election.

2.10.3. If Borrower has made the election under Subsection 2.10.2 and Borrower is receiving monthly payments, Lender shall withhold amounts from each monthly payment and use the amounts withheld to make timely payments of the LA Property Charges. The amounts withheld shall be calculated as provided in Subsection 2.10.5. Amounts withheld from

monthly payments shall not be treated as Loan Advances and shall not bear interest except to the extent actually disbursed by Lender.

2.10.4. If Borrower has made the election under Subsection 2.10.2, Lender shall withhold from each monthly payment an amount to pay (a) taxes and special assessments levied or to be levied against the Property, (b) leasehold payments or ground rents on the Property, (c) premiums for fire, flood and other hazard insurance required by the Security Instrument, (d) any other assessments that may be required by local or state law. Each monthly withholding for items (a), (b), (c), and (d) shall equal one-twelfth (1/12th) of the annual amounts, as reasonably estimated by Lender. The full annual amount for each item shall be paid by Lender before an item would become delinquent. Lender shall treat amounts for items (a), (b), and (c), and (d) as Loan Advances adding to the Principal Balance when paid. If at any time the withholding for item (a), (b), (c), or (d) exceeds the amount of actual LA Property Charges, Lender shall pay the excess withholding to Borrower and add it to the Principal Balance. If the total of the withholding for item (a), (b), (c), or (d) is insufficient to pay the item when due, the amount necessary to make up the deficiency on or before the date the item becomes due shall be paid as a Loan Advance in the manner provided under Section 2.16.

2.10.5. If Borrower has made the election under Subsection 2.10.2 and Borrower is not receiving monthly payments, Lender shall make Loan Advances under the line of credit payment option as needed to make timely payments of LA Property Charges, provided that no such Loan Advance shall exceed the amount permitted by Section 2.6.1.

2.10.6. Lender shall immediately notify any Borrower who has made the election under Subsection 2.10.2 whenever Lender determines that amounts available from monthly payments or line of credit payments will be insufficient to pay the LA Property Charges.

2.10.7. If Borrower who has made the election under Subsection 2.10.2 fails to timely pay any other Property Charges, Lender shall pay the Property Charges as a Loan Advance as required under Section 2.16; however, Lender's payment of the Property Charges as a Loan Advance shall not preclude the Lender from taking action due to the Borrower's failure to pay Property Charges under this Section.

2.10.8. If a Borrower who has not made the election under Subsection 2.10.2 establishes a pattern of missed payments for LA Property Charges, Lender may establish procedures to pay the LA Property Charges from Borrower's funds as if Borrower made such an election.

2.10.9. If Borrower who has not made the election under Subsection 2.10.2 fails to pay any Property Charges in a timely manner, and such Property Charges are not paid under Subsection 2.10.8 above, Lender shall pay the Property Charges as a Loan Advance as required under Section 2.16.

2.11. 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 and the available loan funds shall be recalculated. At the same time, the Principal Limit also shall be reduced by the amount of the proceeds applied to reduce the Principal Balance.

2.12. Interest

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

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

2.12.3. Interest shall continue to accrue as provided in 2.12.2 during any Deferral Period.

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

2.13.1. 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.

2.13.2. The full amount of monthly MIP or monthly charge, including any portion of the MIP retained by a Lender under 24 C.F.R. 206.109, 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.

2.13.3 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.

2.14. Manner of Payment. Only a Borrower has a right to receive Loan Advances. Borrowers shall choose to receive by either electronic funds transfer to a bank account designated by all Borrowers or by check mailed to an address designated by all Borrowers, except where all Borrowers agree that payment should be made directly to a third party for the benefit of the Borrowers. Borrowers may change the manner of payment by notifying Lender.

2.15. Protection of Property.

2.15.1. 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 2.16.

2.15.2. If Borrower fails to pay governmental or municipal charges, fines or impositions that are not included in Section 2.10 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 2.16.

2.15.3. During a Deferral Period, if there are governmental or municipal charges, fines or impositions that are not included in Section 2.10 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 2.16. If obligations of the Security Instrument are not satisfied during the Deferral Period, the Deferral Period will immediately cease and the Loan will be immediately due in full.

2.16. **Unscheduled Payments.** Loan Advances made pursuant to Sections 2.3.4, 2.4, 2.9.2, 2.9.3, [2.10.5/2.10.4, 2.10.6]², and 2.15 shall be made from a line of credit under Section 2.6 or 2.7 to the extent possible. If no line of credit sufficient to make the Loan Advances exists, any future monthly payments must be recalculated in accordance with Subsection 2.5.3 or 2.5.4 to create a line of credit sufficient to make the Loan Advances.

Article 3 - Late Charge

3.1. **Amount Due.** Lender shall pay a late charge to Borrower for any late payment. If Lender does not mail or electronically transfer a scheduled monthly payment to Borrower on the first business day of the month or mail or electronically transfer a line of credit payment to Borrower within 5 business days of the date Lender received the request, the late charge shall be 10 percent of the entire amount that should have been paid to the Borrower for that month or as a result of that request. For each additional day that Lender fails to make payment, Lender shall pay interest on the late payment at the interest rate stated in the Loan Documents. If the Loan Documents provide for an adjustable interest rate, the rate in effect when the late charge first accrues shall be used. In no event shall the total late charge and interest exceed five hundred dollars. Any late charge shall be paid from Lender's funds and shall not be added to the unpaid Principal Balance.

3.2. **Waiver.** The Secretary may waive a late charge where the Secretary determines that the late payment resulted from circumstances beyond Lender's control and that no act or omission of Lender contributed to the late payment. At the time Lender requests a waiver, Lender shall inform Borrower that a waiver of late charge has been requested from the Secretary and that the late charge will be sent to Borrower if the waiver is denied. If the Secretary denies the waiver, Lender shall pay to Borrower the late charge and interest that accrued from the date the payment was late until the date the waiver was requested.

Article 4 - Termination of Lender's Obligation to Make Loan Advances

4.1. **Loan Due and Payable.** Lender shall have no obligation to make Loan Advances, including those under Section 2.10, 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.

4.2. **Deferral Period of Loan Due and Payable Status.** Where the last surviving Borrower dies and an Eligible Non-Borrowing Spouse 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

² Fully-Funded and Partially-Funded Life Expectancy Set-Aside use 2.10.5; All other Borrowers use 2.10.4, 2.10.6

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 Subsections 2.3.2, 2.3.3, 2.12.3, and 2.13.3. The Lender shall notify an Eligible 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 Eligible Non-Borrowing Spouse continues to meet all requirements established by the Secretary and the Property continues to be the Principal Residence of an Eligible Non-Borrowing Spouse. Once the Deferral Period ends, the Loan 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.

4.3. Loan Advances by Secretary. If the Security Instrument has been assigned to the Secretary or the Secretary notifies Lender and Borrower that Loan Advances are secured by the Second Security Instrument, 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. The Secretary may establish procedures for handling requests for payments and changes in payment options during the interval between Lender's notification of intent to assign the Security Instrument to the Secretary and completion of the assignment. Borrower shall be informed of such procedures by Lender and/or the Secretary, and Borrower shall comply with such procedures.

4.4. 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 or the Second Security Instrument is jeopardized under State laws as described in Paragraph 14(A) of the Security Instrument or Second Security Instrument and the lien status is not extended in accordance with Paragraph 14(A).

4.5. 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.

4.6. Mandatory Loan Advances. Notwithstanding anything in Sections 4.1. through 4.4., all Loan Advances under Sections 2.10 (Property Charges), 2.12. (interest), 2.13. (MIP, monthly charge or annual MIP adjustment), 2.15 (protection of Property) or 2.3.3 (servicing fee) shall be considered mandatory Loan Advances by Lender.

4.7. Prepayment in Full. Lender shall not make Loan Advances if Borrower has paid the Note in full (or the Second Note, if the Secretary has assumed the Lender's rights and obligations under Article 5).

Article 5 - 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 Borrower because of Section 4.3, 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. If the Secretary

makes Loan Advances to Borrower under the Second Security Instrument, the portion of the Principal Limit available for Loan Advances shall be the difference between the current Principal Limit and the combined Principal Balances on the Security Instrument less accrued interest and the Second Security Instrument.

Article 6 - Miscellaneous

6.1. 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.

6.2. 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.

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 Borrower's obligations under this Loan Agreement, and Lender shall be entitled to add to the outstanding Principal Balance the amounts that accrue in accordance with Subsections 2.3.2, 2.3.3, 2.12.3, and 2.13.3.

6.3. 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 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 annual certifications, required by this Paragraph, must continue to be completed and provided to the Lender by the Eligible Non-Borrowing Spouse.

6.4. 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 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 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 to the Secretary shall be given by first class mail to the HUD National Servicing Center or any other place designated by the Secretary. Any notice provided for in this Loan Agreement shall be deemed to have been given to Borrower, Lender or the Secretary when given as provided in this Section.

6.5. 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.

6.6. Copies. Lender, Borrower and the Secretary shall each receive one original executed copy of this Loan Agreement when acknowledged by the Secretary.

6.7. When Agreement Becomes Binding. This Loan Agreement shall bind Lender and Borrower when both Lender and Borrower have signed.

6.8. Third-Party Beneficiary. Except as set forth in Article 5 and Section 4.3 for the Secretary and except as set forth in Section 4.2 only for an Eligible Non-Borrowing Spouse in this Loan Agreement, this Agreement does not and is not intended to confer any rights or remedies upon any person other than the parties. 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 (SEAL)

Borrower (SEAL)

(Name of Lender)

ⁱ Lender will need to include this definition if a Life-Expectancy Set-Aside is not required.

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

ⁱⁱⁱ Lender must select the applicable set of Payment of Property Charge provisions from the three options available for Section 2.10.