

FHA Case No.

HOME EQUITY CONVERSION MORTGAGE LOAN AGREEMENT

FIXED INTEREST RATE

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 advances 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 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.

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

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

[1.6. "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.]ⁱ

1.7. "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.

1.8. "Loan Documents" means the Note and Security Instrument.

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

1.10. "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.

1.11. "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

1.12. "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.

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

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

1.15. "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 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.

1.16. "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 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.

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

1.18. "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.

1.19. "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.

1.20. "Secretary" means the Secretary of the Department of Housing and Urban Development, his or her authorized representatives.

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.]

1.21. "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 Loan Documents 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 sixty percent (60%) of the Principal Limit or the sum of Mandatory Obligations plus an additional ten percent (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 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. Borrower's Advance 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.

2.2.4. After making payments under Subsections 2.2.2 and 2.2.3 and after any amounts are initially set aside under Subsections 2.3.2 and 2.6, Lender shall pay any remaining funds from the Borrower's Advance to Borrower in the amount indicated on the 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 Subsections 2.2.2, 2.2.3, 2.2.4, and any amounts set aside under Subsections 2.3.2 [or under 2.3.4 for the first year LESA Property Charges, if applicable]ⁱⁱ, exceed the greater of sixty percent (60%) of the Principal Limit or Mandatory Obligations plus ten percent (10%) of the Principal Limit.

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 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 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. 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 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. 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. 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. In 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 Chargesⁱⁱⁱ.

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

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

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

2.6.3. 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 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 Lender. During a Deferral Period, no amounts from the set-aside will be available for an Eligible Non-Borrowing Spouse.

2.6.4. 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 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 Borrower that there are insufficient funds or no funds remaining and that Borrower is responsible for the timely payment of all Property Charges, including the LESA Property Charges, throughout the remaining life of the loan.

2.6.5. If Borrower fails to pay the Property Charges in a timely manner, including any LESA Property Charges in accordance with Section 2.6.4, 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. Borrower may not cancel the Fully-Funded Life Expectancy Set-Aside.

To be used for all other Borrowers:

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

2.6.2. If Borrower fails to pay the Property Charges in a timely manner, 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 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 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 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 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 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 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 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 Security Instrument are not satisfied during the Deferral Period, the Deferral Period will immediately cease and the Loan will be immediately due in full.

2.12. 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 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 Subsections 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 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 such 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.

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 14(A) of the Security Instrument and the lien status is not extended in accordance with Paragraph 14(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

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 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.

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, 2.8.3, and 2.9.3.

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 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 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 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 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.

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. Borrower agrees that it is not a third-party beneficiary to the Contract of Insurance between 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 there will be a Life-Expectancy Set-Aside.

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

ⁱⁱⁱ Lender must select the applicable set of Payment of Property Charge provisions from the two options available for Section 2.6.