

**MODEL FIXED RATE NOTE FORM
(HOME EQUITY CONVERSION)**

FHA Case No.

NOTE

Date

[Property Address]

1. DEFINITIONS

“Allonge” means any Shared Appreciation Allonge executed by the Borrower as more fully described in Paragraph 11 below.

“Borrower” means each person signing at the end of this Note. The term does not include his or her successors or assigns.

“Eligible Non-Borrowing Spouse” means a Non-Borrowing Spouse who meets, and continues to meet, the Qualifying Attributes requirements established by the Secretary that the Non-Borrowing Spouse must satisfy in order to be eligible for deferral of the due and payable status.

“Ineligible Non-Borrowing Spouse” means a Non-Borrowing Spouse who does not meet the Qualifying Attributes requirements established by the Secretary that the Non-Borrowing Spouse must satisfy in order to be eligible for deferral of the due and payable status.

“Lender” means _____ and its successors and assigns.

“Loan Agreement” means the Home Equity Conversion Mortgage Fixed Rate Loan Agreement dated _____, 20__ by and between the Borrower and Lender.

“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

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

“Property Address” means the address provided above.

“Qualifying Attributes” means those requirements established by the Secretary that the Non-Borrowing Spouse must satisfy in order to be eligible for deferral of the due and payable status.

“Secretary” means the Secretary of Housing and Urban Development or his or her authorized representatives.”

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

2. BORROWER'S PROMISE TO PAY; INTEREST

In return for amounts to be advanced by Lender to or for the benefit of Borrower under the terms of the Loan Agreement, Borrower promises to pay to the order of Lender a principal amount equal to the sum of \$_____ and all Loan Advances made under the Loan Agreement with interest. Interest will be charged on unpaid principal at the rate of _____ percent (____%) per year until the full amount of principal has been paid. Accrued interest shall be added to the Principal Balance as a Loan Advance at the end of each month.

3. PROMISE TO PAY SECURED

Borrower's promise to pay is secured by the Security Instrument. That Security Instrument protects the Lender from losses which might result if Borrower defaults under this Note.

4. MANNER OF PAYMENT

- (A) Time. Borrower shall pay all outstanding principal and accrued interest to Lender upon receipt of a notice by Lender requiring immediate payment in full, as provided in Paragraph 6 of this Note.
- (B) Place. Payment shall be made at _____ or at such other place as Lender may designate in writing by notice to Borrower.
- (C) Limitation of Liability. Borrower shall have no personal liability for payment of this Note. Lender shall enforce the debt only through sale of the Property. If the Note is assigned to the Secretary, the Borrower shall not be liable for any difference between the mortgage insurance benefits paid to Lender and the outstanding indebtedness, including accrued interest, owed by Borrower at the time of the assignment.

5. BORROWER'S RIGHT TO PREPAY

A Borrower has the right to pay the debt evidenced by this Note, in whole or in part, without charge or penalty. Any amount of debt prepaid will be applied to reduce the Principal Balance of this Note.

All prepayments of the Principal Balance shall be applied by Lender as follows:

First, to that portion of the Principal Balance representing aggregate payments for mortgage insurance premiums;

Second, to that portion of the Principal Balance representing aggregate payments for servicing fees;

Third, to that portion of the Principal Balance representing accrued interest due under the Note; and

Fourth, to the remaining portion of the Principal Balance.

6. IMMEDIATE PAYMENT IN FULL

(A) Death.

- (i) Except as provided in Paragraph 6(A)(ii), Lender may require immediate payment in full of all outstanding principal and accrued interest if a Borrower dies and the Property is not the Principal Residence of at least one surviving Borrower.
- (ii) Deferral of Due and Payable Status. Lender may not require immediate payment in full of all outstanding principal and accrued interest if a Non-Borrowing Spouse identified in this Note qualifies as an Eligible Non-Borrowing Spouse and provided the following conditions are, and continue to be, met:
 - a. Such Eligible Non-Borrowing Spouse remained the spouse of the Borrower, identified in this Note, for the duration of the Borrower's lifetime;
 - b. Such Eligible Non-Borrowing Spouse has occupied, and continues to occupy, the Property as [his/her] Principal Residence;
 - c. Such Eligible Non-Borrowing Spouse has established legal ownership or other ongoing legal right to remain in the Property;
 - d. All other obligations of the Borrower under this Note, the Loan Agreement and the Security Instrument continue to be satisfied; and
 - e. This Note is not eligible to be called due and payable for any other reason.

This sub-paragraph (ii) is inapplicable or null and void if an Eligible Non-Borrowing Spouse is or becomes an Ineligible Non-Borrowing Spouse at any time. Further, during a deferral of the due and payable status, should any of the conditions for deferral cease to be met such a deferral shall immediately cease and the Note will become immediately due and payable in accordance with the provisions of Paragraph 6(A)(i) of this Note.

- (B) Sale. Lender may require immediate payment in full of all outstanding principal and accrued interest if a Borrower conveys all of his or her title to the Property and no other Borrower retains title to the Property in fee simple or on a leasehold interest as set forth in 24 CFR 206.45(a). A deferral of due and payable status is not permitted when a Lender requires immediate payment under this Paragraph.

- (C) Other Grounds. Lender may require immediate payment in full of all outstanding principal and accrued interest, upon approval of the Secretary, if:

- (i) The Property ceases to be the Principal Residence of a Borrower for reasons other than death and the Property is not the Principal Residence of at least one other Borrower; or

(ii) For a period of longer than twelve (12) consecutive months, a Borrower fails to occupy the Property because of physical or mental illness and the Property is not the Principal Residence of at least one other Borrower; or

(iii) An obligation of the Borrower under the Security Instrument is not performed.

A deferral of due and payable status is not permitted when a Lender requires immediate payment in full under paragraph 6(C).

(D) Payment of Costs and Expenses. If Lender has required immediate payment in full, as described above, the debt enforced through sale of the Property may include costs and expenses including reasonable and customary attorney's fees for enforcing this Note to the extent not prohibited by applicable law. Such fees and costs shall bear interest from the date of disbursement at the same rate as the principal of this Note.

(E) Trusts. Conveyance of a Borrower's interest in the Property to a trust which meets the requirements of the Secretary, or conveyance of a trust's interests in the Property to a Borrower, shall not be considered a conveyance for purposes of this Paragraph. A trust shall not be considered an occupant or be considered as having a Principal Residence for purposes of this Paragraph.

7. WAIVERS

Borrower waives the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require Lender to demand payment of amounts due. "Notice of Dishonor" means the right to require Lender to give notice to other persons that amounts due have not been paid.

8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to Borrower under this Note will be given by delivering it or by mailing it by first class mail to Borrower at the property address above or at a different address if Borrower has given Lender a notice of Borrower's different address.

Any notice to a Non-Borrowing Spouse provided for under this Note will 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.

Any notice that must be given to Lender under this Note will be given by first class mail to Lender at the address stated in Paragraph 4(B) or at a different address if Borrower is given a notice of that different address.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully obligated to keep all of the promises made in this Note. Lender may enforce its rights under this Note only through sale of the Property.

10. THIRD-PARTY BENEFICIARY.

Except as set forth in 6(A)(ii) and only for an Eligible Non-Borrowing Spouse, this Note 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 HUD and Lender.

11. SHARED APPRECIATIONⁱⁱ

If Borrower has executed an Allonge, the covenants of the Allonge shall be incorporated into and supplement the covenants of this Note as if the Allonge were a part of this Note.

12. SUCCESSORS AND ASSIGNS

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 Note.

13. CAPITALIZED TERMS.

Capitalized terms not defined in this Note shall have the meanings ascribed to them in the Loan Agreement.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Note.^{iii iv}

_____(SEAL)
Borrower

_____(SEAL)
Borrower

ⁱ If there is more than one Borrower and both and or all Borrowers have a spouse, add as needed “and 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.

ⁱⁱ The Paragraph may be omitted if Lender does not offer a shared appreciation mortgage.

ⁱⁱⁱ Include any required or customary form of authentication.

^{iv} The model note is a multistate form which requires adaptation for the following jurisdictions:

a. Alaska. Add the Borrower's Post Office address, if different from the Property Address.

b. Kansas. Delete “including reasonable and customary attorney's fees” from Paragraph 6(D).

c. Kentucky. Paragraph 6(D) should be changed to read: If Lender has required immediate payment in full, as described above, the debt enforced through sale of the property may include \$500.00 for costs and expenses for enforcing this Note. Such costs and expenses shall bear interest from the date of disbursement at the same rate as the principal of this Note.

d. Louisiana. Add the following text following the Borrower's signature lines: “NE VARIETUR” for identification with a mortgage with a mortgage given before me on 20____. Notary qualified in _____ Parish, Louisiana

e. Puerto Rico. Mortgages and notes in Puerto Rico, and all riders and allonges, shall be written in English and interlineated with Spanish in the same manner as the FNMA/FHLMC forms for Puerto Rico. Contact the Home Mortgage Insurance Division at HUD Headquarters for guidance.

f. Virginia. The first sentence of Paragraph 7 should be changed to read: “Borrowers under this Note waive the rights of Presentment and Notice of Dishonor and waive the homestead exemption.” After the Borrower's signature lines, add: This is to certify that this is the Note described in and secured by a Deed of Trust dated _____, 20____ on the Property located in _____, Virginia. My Commission expires: _____. Notary Public.