

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

HOME EQUITY CONVERSION MORTGAGE (HECM)

MODEL ADJUSTABLE RATE MORTGAGE (ARM) SECOND NOTE FORM

FHA Case No. _____

ADJUSTABLE RATE SECOND NOTE

Date: _____

Property Address: _____

1. DEFINITIONS

“Allonge” means any Shared Appreciation Allonge executed by the Borrower as more fully described in Paragraph 12 below.

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

“Change Date” means each date on which the interest rate could change.

“Current Index” means the most recent Index figure available 30 days (28 days for February, as applicable) before the Change Date.

“Eligible Non-Borrowing Spouse” means a Non-Borrowing Spouse who meets, and continues to meet, the Qualifying Attributes for a Deferral Period.

“First Note” means the promissory note signed by the Borrower together with the Loan Agreement and given to the holder of the First Note to evidence the Borrower’s promise to repay, with interest, loan advances made by the holder of the First Note and secured by the First Security Instrument.

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

To be used for U.S. Constant Maturity Treasury (CMT) Index:

“Index” means a benchmark, known as the [insert: one-year or one-month] weekly average yield on United States Treasury securities adjusted to a constant maturity of [one year or one month], as made available by the Board of Governors of the Federal Reserve System.

To be used for Secured Overnight Financing Rate (SOFR) Index:

“Index” means a benchmark, known as the 30-day average rate Secured Overnight Financing Rate (SOFR) index. The Index is currently published in, or on the website of the Federal Reserve Bank of New York.

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

“Loan Agreement” means the Home Equity Conversion Mortgage (HECM) Adjustable Rate Loan Agreement dated _____, 20__ by and between the Borrower and holder of the First Note.

“Margin” means the amount added to the index value to compute the Expected Average Mortgage Interest Rate and periodic adjustments to the mortgage interest (Note) rate.

“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.ⁱ

“Note” means this Adjustable Rate Second Note executed by the Borrower.

“Notice of Dishonor” means the right to require the Lender to give notice to other persons that amounts due have not been paid.

“Presentment” means the right to require the Lender to demand payment of amounts due.

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

“Security Instrument” or “Second Security Instrument” means the mortgage, deed of trust, security deed, or other security instrument which is signed by the 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 the Lender to or for the benefit of the Borrower under the terms of the Loan Agreement, the Borrower promises to pay to the order of the Lender a principal amount equal to the sum of all loan advances made under the Loan Agreement with interest. Interest will be charged on the unpaid principal until the full amount of the principal has been paid. The Borrower will initially pay interest at a [yearly/monthly] rate of _____

percent (%). The interest rate may change in accordance with Paragraph 5 of this Note. The interest rate required by Paragraph 5 of this Note is the rate the Borrower will pay both before and after any default described in Paragraph 7 of this Note. Accrued interest shall be added to the Principal Balance as a loan advance at the end of each month.

3. PROMISE TO PAY SECURED

The Borrower's promise to pay is secured by the Security Instrument. The Security Instrument protects the Lender from losses which might result if the Borrower defaults under this Note. The Borrower also executed a First Security Instrument and First Note when the Second Security Instrument and this Note were executed.

4. MANNER OF PAYMENT

- (A) Time. The Borrower shall pay all outstanding principal and accrued interest to the Lender upon receipt of a notice by the Lender requiring immediate payment in full, as provided in Paragraph 7 of this Note.
- (B) Place. Payment shall be made at the Office of the Housing-FHA Comptroller, Director of Mortgage Insurance Accounting and Servicing, 451 7th Street, S.W., Washington, DC 20410, or any such other place as the Lender may designate in writing by notice to the Borrower.
- (C) Limitation of Liability. The Borrower shall have no personal liability for payment of the debt. The Lender shall enforce the debt only through sale of the Property.

5. INTEREST RATE CHANGESⁱⁱ

- (A) Change Date. The interest rate may change on the first day of _____, 20 __, and on that day of each succeeding year.
- (B) The Index. Beginning with the first Change Date, the adjustable interest rate will be based on an Index that is calculated and provided to the general public by an administrator (the "Administrator") and approved by HUD. The Lender must use the Current Index value available before each Change Date, provided that if the Current Index is less than zero, then the Current Index will be deemed to be zero for purposes of calculating the Borrower's interest rate.

If the Index is no longer available, it will be replaced in accordance with Paragraph 5(G) below.

- (C) Calculation of Interest Rate Changes. Before each Change Date, the Lender will calculate the Borrower's new interest rate by adding _____ percentage points (__ %) (the "Margin") to the Current Index. The Lender will then round the result of the Margin plus the Current Index to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Paragraph 5(D) of this Note, this rounded amount will be the Borrower's new interest rate until the next Change Date.

The Lender will then determine the amount that would be sufficient to repay the unpaid principal that the Borrower is expected to owe when the mortgage becomes due and payable.

- (D) Limits on Interest Rate Changes. The interest rate the Borrower is required to pay at the first Change Date will never increase or decrease by more than [___ percentage points (___%)] on any single Change Date. Thereafter, the Borrower's adjustable interest rate will never be more than [_____ percentage points (___%)] higher or lower than the initial interest rate stated in Paragraph 2 of this Note.
- (E) Notice of Changes. The Lender will give notice to the Borrower of any change in the interest rate. The notice must be given at least 25 days before the new interest rate takes effect, and must set forth (i) the date of the notice, (ii) the Change Date, (iii) the old interest rate, (iv) the new interest rate, (v) the Current Index and the date it was published, (vi) the method of calculating the adjusted interest rate, and (vii) any other information which may be required by law from time to time.
- (F) Effective Date of Changes. A new interest rate calculated in accordance with paragraphs 5(C) and 5(D) of this Note will become effective on the Change Date, unless the Change Date occurs less than 25 days after the Lender has given the required notice. If the interest rate calculated in accordance with Paragraphs 5(C) and 5(D) of this Note decreased, but the Lender failed to give timely notice of the decrease and applied a higher rate than the rate which should have been stated in a timely notice, then the Lender shall recalculate the Principal Balance owed under this Note so it does not reflect any excessive interest.
- (G) Replacement Index. The Index is deemed to be no longer available and will be replaced if any of the following events (each, a "Replacement Event") occur: (i) the Administrator has permanently or indefinitely stopped providing the Index to the general public; (ii) the Administrator or its regulator issues an official public statement that the Index is no longer reliable or representative; or (iii) HUD removes the Index as an approved index for adjustable rate Home Equity Conversion Mortgages.

If a Replacement Event occurs, the Lender will select a new index (the "Replacement Index"), which must be one of the indices approved by HUD at the time of a Replacement Event.

The Replacement Index, if any, will be operative immediately upon a Replacement Event and will be used to determine the Borrower's interest rate on Change Dates that are more than 25 days after a Replacement Event. The Index could be replaced more than once during the term of the Note, but only if another Replacement Event occurs. After a Replacement Event, all references to the "Index" shall be deemed to be references to the "Replacement Index".

The Lender will also give the Borrower notice of the Replacement Index, if any, and such other information required by applicable law and regulation.

6. BORROWER'S RIGHT TO PREPAY

A Borrower receiving monthly payments under the Loan Agreement 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 first be applied to reduce the Principal Balance of this Note and then to reduce the Principal Balance of the First Note.

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

- (A) First, to that portion of the Principal Balance representing aggregate payments for mortgage insurance premiums;
- (B) Second, to that portion of the Principal Balance representing aggregate payments for servicing fees;
- (C) Third, to that portion of the Principal Balance representing accrued interest due under the Note; and
- (D) Fourth, to the remaining portion of the Principal Balance.

A Borrower may specify whether a prepayment is to be credited to that portion of the Principal Balance representing monthly payments or the line of credit. If the Borrower does not designate which portion of the Principal Balance is to be prepaid, the Lender shall apply any partial prepayments to an existing line of credit or create a new line of credit.

7. IMMEDIATE PAYMENT IN FULL

(A) Death.

- (i) Except as provided in Paragraph 7(A)(ii), the 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. The 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) All other obligations of the Borrower under this Note, the Loan Agreement and the Security Instrument continue to be satisfied; and
 - (d) 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 7(A)(i) of this Note.

(B) Sale. The 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. The 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 7(C).

(D) Payment of Costs and Expenses. If the 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, associated with enforcement of 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.

8. WAIVERS

The Borrower waives the rights of Presentment and Notice of Dishonor.

9. GIVING OF NOTICES

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

Any notice to a Non-Borrowing Spouse 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 the Secretary under this Note will be given by first class mail to the HUD Homeownership Center with jurisdiction over the Property or any other address designated by the Secretary.

10. 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. The Lender may enforce its rights under this Note only through sale of the Property.

11. RELATIONSHIP TO FIRST NOTE

(A) Second Note. Because the Borrower will be required to repay amounts which the Secretary may make to or on behalf of the Borrower pursuant to Section 255(i)(1)(A) of the National Housing Act and the Loan Agreement, the Secretary has required the Borrower to grant this Note to the Secretary.

(B) Relationship of Secretary Payments to First Note. Payments made by the Secretary shall be included in the debt due under this Note unless:

- (i) The First Note is assigned to the Secretary; or
- (ii) The Secretary accepts reimbursements by the Lender for all payments made by the Secretary.

If the circumstances described in (i) or (ii) occur, then all payments by the Secretary, including interest on the payments, shall be included in the debt under the First Note.

(C) Notice of Interest Rate Adjustments. The Borrower agrees that as long as the holder of the First Note continues to make loan advances, any notice of interest rate adjustment given to the Borrower under Paragraph 5(E) of the First Note shall also be considered to be notice to the Borrower under Paragraph 5(E) of this Note, so that the same interest rate shall apply for the First Note and this Note.

12. SHARED APPRECIATIONⁱⁱⁱ

If the 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.

13. THIRD-PARTY BENEFICIARY

Except as set forth in Paragraph 7(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. The Borrower agrees that it is not a third-party beneficiary to the Contract of Insurance between HUD and the Lender.

14. 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 the Borrower's obligations under this Note.

15. CAPITALIZED TERMS

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

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

Borrower Signature (SEAL): _____

Date: _____

Borrower Signature (SEAL): _____

Date: _____

ⁱ 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]".

ⁱⁱ The Model Adjustable Rate Second Note Form is designed for mortgages with interest rates that adjust annually, subject to annual and lifetime caps on increases. If the mortgage has interest rates that adjust monthly subject only to a lifetime cap, the following modifications to the Model Adjustable Rate Second Note Form are mandatory:

(a) Change Paragraph 5(A) to read:

“(A) Change Date

The interest rate may change on the first day of _____, 20 __, and on the first day of each succeeding month.”

(b) Change Paragraph 5(D) to read:

“(D) Limit on Interest Rate

The interest rate will never increase above _____ percent (%), nor decrease below _____ percent (%).”

iii The paragraph may be omitted if the holder of the First Note does not offer a shared appreciation mortgage.

iv Include any required or customary form of authentication.

v The model note is a multistate form which requires adaption 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 7(D).
- (c) Kentucky. Paragraph 7(D) should be changed to read: “If the 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 given before me, _____ on _____, 20 __. Notary qualified in _____ Parish, Louisiana.”
- (e) Puerto Rico. Mortgages and notes in Puerto Rico, together with any associated riders or allonges, shall have alternating English and Spanish lines so that the complete text of each document appears in both languages. Mortgagees should contact the HUD Caribbean Office to obtain model Puerto Rico documents that contain both languages and contain other adaptations of the regular model forms that have been approved by the Caribbean Office.
- (f) Virginia. The first sentence of Paragraph 8 should be changed to read: “The Borrower and any other person who has obligations under this Note waive the right 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: _____