

# SAMPLE

\_\_\_\_\_**[Space Above This Line For Recording Data]**\_\_\_\_\_

MIN: \_\_\_\_\_

## CONSOLIDATION, EXTENSION, AND MODIFICATION AGREEMENT

### WORDS USED OFTEN IN THIS DOCUMENT

(A) **“Agreement.”** This document, which is dated \_\_\_\_\_, \_\_\_\_\_ and exhibits and riders attached to this document will be called the “Agreement.”

(B) **“Borrower.”** \_\_\_\_\_ will be called “Borrower” and sometimes “I” or “me.” Borrower’s address is \_\_\_\_\_.

(C) **“Lender.”** \_\_\_\_\_ will be called “Lender” and sometimes “Note Holder.” Lender is a corporation or association which exists under the laws of \_\_\_\_\_. Lender’s address is \_\_\_\_\_.

(D) **“Mortgages.”** The mortgages, deeds of trust, or other security instruments and any additional security instruments and related agreements (such as assignments, extensions, modifications, or consolidations of mortgages) identified in Exhibit A to this Agreement will be called the “Mortgages.”

(E) **“MERS.”** Is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender’s successors and assigns. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of PO Box 2026, Flint, MI 48501–2026, tel. (888) 679–MERS. FOR PURPOSES OF RECORDING THIS MORTGAGE, MERS IS THE MORTGAGEE OF RECORD.

(F) **“Note Holder.”** Lender or anyone who succeeds to Lender’s rights under this Agreement and who is entitled to receive the payments I agree to make under this Agreement may be called the “Note Holder.”

(G) **“Notes.”** The Notes which are identified in Exhibit A to this Agreement, and which are secured by the Mortgages, will be called the “Notes.”

(H) **“Property.”** The property which is described in the Mortgage(s) and in Exhibit B (Property Description) to this Agreement, will be called the “Property.” The Property is located at:

\_\_\_\_\_  
[Street]

\_\_\_\_\_  
[City]

\_\_\_\_\_  
[County]

\_\_\_\_\_  
[State and Zip Code]

I promise and I agree with Lender as follows:

### I. BORROWER’S AGREEMENT ABOUT OBLIGATION UNDER THE NOTES AND MORTGAGES

I agree to take over all of the obligations under the Notes and Mortgages as consolidated and modified by this Agreement as Borrower. This means that I will keep all of the promises and agreements made in the Notes and Mortgages even if some other person made those promises and agreements before me. The total unpaid principal balance of the Notes is U.S. \$ \_\_\_\_\_; of this amount, U.S. \$ \_\_\_\_\_ was advanced to me (or for my account) immediately prior to this consolidation.

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## **II. AGREEMENT TO COMBINE NOTES AND MORTGAGES**

(A) By signing this Agreement, Lender and I are combining into one set of rights and obligations all of the promises and agreements stated in the Notes and Mortgages including any earlier agreements which combined, modified, or extended rights and obligations under any of the Notes and Mortgages. This means that all of Lender's rights in the Property are combined so that under the law Lender has one mortgage and I have one loan obligation which I will pay as provided in this Agreement. This combining of notes and mortgages is known as a "Consolidation."

(B) In the event that Exhibit A indicates that all of the Notes and Mortgages have already been combined by a previous agreement, then Lender and I agree to change the terms of Section II, paragraph (A) of this Agreement to the following:

Lender and I agree that all of the promises and agreements stated in the Notes and Mortgages -- including any earlier agreements which combined, modified, or extended rights and obligations under any of the Notes and Mortgages -- have been combined into one set of rights and obligations by an earlier agreement which is referred to in Exhibit A. This means that all of the Lender's rights in the Property have already been combined so that under the law Lender already has one mortgage and I have one loan obligation which I will pay as provided in this Agreement. The combining of notes and mortgages is known as a "Consolidation."

## **III. AGREEMENT TO CHANGE TERMS OF THE CONSOLIDATED NOTE**

Lender and I agree that the terms of the Notes are changed and restated to be the terms of the "Consolidated Note" which is attached to this Agreement as Exhibit C. The Consolidated Note contains the terms of payment for the amounts that I owe to Note Holder. I agree to pay the amounts due under the Notes in accordance with the terms of the Consolidated Note. The Consolidated Note will supersede all terms, covenants, and provisions of the Notes.

## **IV. AGREEMENT TO CHANGE TERMS OF THE CONSOLIDATED MORTGAGE**

Lender and I agree that the terms of the Mortgages are changed and restated to be the terms of the "Consolidated Mortgage" which is attached to this Agreement as Exhibit D. The Consolidated Mortgage secures the Consolidated Note and will constitute in law a single lien upon the Property. I agree to be bound by the terms set forth in the Consolidated Mortgage which will supersede all terms, covenants, and provisions of the Mortgages.

## **V. NO SET-OFF, DEFENSES**

I agree that I have no right of set-off or counterclaim, or any defense to the obligations of the Consolidated Note or the Consolidated Mortgage.

## **VI. BORROWER'S INTEREST IN THE PROPERTY**

I promise that I am the lawful owner occupying the Property and that I have the right to consolidate, modify, and extend the Notes and Mortgages.

## **VII. WRITTEN TERMINATION OR CHANGE OF THIS AGREEMENT**

This Agreement may not be terminated, changed, or amended except by a written agreement signed by the party whose rights or obligations are being changed by that agreement.

## **VIII. OBLIGATIONS OF BORROWERS AND OF PERSONS TAKING OVER BORROWER'S OR LENDER'S RIGHTS OR OBLIGATIONS**

If more than one person signs this Agreement as Borrower, each of us is fully and personally obligated to keep all of Borrower's promises and obligations contained in this Agreement. The Note Holder may enforce its rights under this Agreement against each of us individually or against all of us together.

The terms of the Consolidated Note and the Consolidated Mortgage may not allow any person to take over my rights or obligations under this Agreement. Lender and I agree that if any person is permitted to take over my rights and obligations under this Agreement, that person will have all of my rights and will be obligated to keep all of my promises and agreements made in this Agreement. Similarly, any person who takes over Lender's rights or obligations under this Agreement will have all of Lender's rights and will be obligated to keep all of Lender's agreements made in this Agreement.

## **IX. LIEN LAW**

I will receive all amounts lent to me by Lender subject to the trust fund provisions of Section 13 of the New York Lien Law. This means that I will: (A) hold all amounts which I receive and which I have a right to receive from Lender under the Consolidated Note as a "trust fund;" and (B) use those amounts to pay for "cost of improvement" (as defined in the New York Lien Law) before I use them for any other purpose. The fact that I am holding those amounts as a "trust fund" means that for any building or other improvement located on the Property I have a special responsibility under the law to use the amount in the manner described in this Section IX.

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**X. TYPE OF PROPERTY**

Check box(es) as applicable.

This Agreement covers real property principally improved, or to be improved, by one or more structures containing, in the aggregate, not more than six (6) residential dwelling units with each dwelling unit having its own separate cooking facilities.

This Agreement covers real property improved, or to be improved, by a one (1) or two (2) family dwelling.

This Agreement does not cover real property improved as described above.

By signing this Agreement, Lender and I agree to all of the above.

\_\_\_\_\_  
Lender \_\_\_\_\_ - Borrower

By: \_\_\_\_\_  
\_\_\_\_\_ - Borrower

\_\_\_\_\_  
Mortgage Electronic Registration Systems, Inc - Mortgagee

\_\_\_\_\_ **[Space Below This Line For Acknowledgment]** \_\_\_\_\_

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## INSTRUCTIONS

The following instructions apply if this Agreement is used in a consolidation, extension, or modification of a single family loan intended for possible sale to Fannie Mae or Freddie Mac.

- (1) All notes, security instruments, assignments, the most recent consolidation agreement and related agreements that modify, consolidate, or extend prior underlying obligations and which predate this Agreement must be listed in Exhibit A to this Agreement. The language in Exhibit A to this Agreement is only a sample and may be revised as appropriate.

If any new money is advanced, number (1) on Exhibit A should refer to both (a) the "Gap" Mortgage (i.e., the new money mortgage discussed in (6) below), and (b) the "Gap" Note (i.e., new money note discussed in (6) below).

- (2) The metes and bounds description of the Property must be set forth in Exhibit B to this Agreement.
- (3) The Consolidated Note must be the current version of the applicable Single Family Fannie Mae/Freddie Mac Uniform Note (e.g., Forms 3233, 3501, 3502, 3504, or 3514) with the following language inserted at the top of the document:

For Fixed Rate Notes:

### CONSOLIDATED NOTE

**This Note amends and restates in their entirety, and is given in substitution for, the Notes described in Exhibit A of the New York Consolidation, Extension, and Modification Agreement dated the same date as this Note.**

For Adjustable Rate Notes:

### CONSOLIDATED ADJUSTABLE RATE NOTE

**This Note amends and restates in their entirety, and is given in substitution for, the Notes described in Exhibit A of the New York Consolidation, Extension, and Modification Agreement dated the same date as this Note.**

The Consolidated Note, with all blanks completed, and any applicable addendum or addenda, must be executed by the Borrower(s) and a copy of the executed Consolidated Note must be attached hereto as Exhibit C. The repayment terms of the Consolidated Note (e.g., the consolidated principal amount, the monthly principal and interest payment, the interest rate and provisions for any interest rate and monthly payment changes applicable to the consolidated obligations) must be set forth in the Consolidated Note. The dollar amount entered in the first blank in Section I of this Agreement and the consolidated principal amount of the Consolidated Note must be the same.

- (4) The Consolidated Mortgage must be the current version of the New York Single Family Fannie Mae/Freddie Mac Uniform Instrument (Form 3033). The Consolidated Mortgage, with all blanks completed, and any applicable riders (such as an adjustable rate rider), must be attached hereto as Exhibit D. The Consolidated Mortgage need not be signed by the Borrower(s). The dollar amount entered in the first blank in Section I of this Agreement and the dollar amount entered in the corresponding blank in the Consolidated Mortgage must be the same.
- (5) If new funds are advanced at the time of the consolidation and modification evidenced by this Agreement, the new obligation must be evidenced by an original of the new money note (the "Gap" Note) and an original of the new money mortgage (the "Gap" Mortgage) on the current Fannie Mae/Freddie Mac Single Family Uniform Instrument (Form 3033). The dollar amount entered in the second blank in Section I of this Agreement and the dollar amount entered in the corresponding blank on the Gap Note and Gap Mortgage must be the same. If no new funds are advanced at the time of the consolidation and modification, then the second blank in Section I of this Agreement should be zero. This new loan will then become a part of the Consolidated Note and the Consolidated Mortgage. It is not necessary that the repayment terms of the new loan, as set out in the Gap Note, reflect the terms of the Consolidated Note.

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## EXHIBIT A

(List of Mortgages, Notes, and Agreements)

(1) This Mortgage given by \_\_\_\_\_ and dated \_\_\_\_\_ in favor of \_\_\_\_\_ securing the original principal amount of U.S. \$ \_\_\_\_\_. This Mortgage [is on a *Fannie Mae/Freddie Mac Security Instrument* and will be recorded together with this Agreement.] [was recorded on \_\_\_\_\_, \_\_\_\_\_, in the \_\_\_\_\_ of \_\_\_\_\_, State of New York, at \_\_\_\_\_.] [Strike and complete as appropriate.] At this date, the unpaid principal balance secured by this Mortgage is U.S. \$ \_\_\_\_\_. [Strike if not applicable.] This Mortgage secures a Note dated \_\_\_\_\_, \_\_\_\_\_. This Mortgage was assigned to \_\_\_\_\_ by Assignment of Mortgage dated \_\_\_\_\_, \_\_\_\_\_ and recorded on \_\_\_\_\_, \_\_\_\_\_ in the \_\_\_\_\_ of \_\_\_\_\_, State of New York, at \_\_\_\_\_. [Strike and complete as appropriate.]

(2) This Mortgage given by \_\_\_\_\_ and dated \_\_\_\_\_ in favor of \_\_\_\_\_ securing the original principal amount of U.S. \$ \_\_\_\_\_. This Mortgage was recorded on \_\_\_\_\_, \_\_\_\_\_ in the \_\_\_\_\_ of \_\_\_\_\_, State of New York, at \_\_\_\_\_. At this date, the unpaid principal balance secured by this Mortgage is U.S. \$ \_\_\_\_\_. [Strike if not applicable.] This Mortgage secures a Note dated \_\_\_\_\_, \_\_\_\_\_. This Mortgage was assigned to \_\_\_\_\_ by Assignment of Mortgage dated \_\_\_\_\_, \_\_\_\_\_ and recorded on \_\_\_\_\_, \_\_\_\_\_ in the \_\_\_\_\_ of \_\_\_\_\_, State of New York, at \_\_\_\_\_. [Strike and complete as appropriate.]

(3) This Mortgage given by \_\_\_\_\_ and dated \_\_\_\_\_ in favor of \_\_\_\_\_ securing the original principal amount of U.S. \$ \_\_\_\_\_. This Mortgage was recorded on \_\_\_\_\_, \_\_\_\_\_ in the \_\_\_\_\_ of \_\_\_\_\_, State of New York, at \_\_\_\_\_. At this date, the unpaid principal balance secured by this Mortgage is U.S. \$ \_\_\_\_\_. [Strike if not applicable.] This Mortgage secures a Note dated \_\_\_\_\_, \_\_\_\_\_. This Mortgage was assigned to \_\_\_\_\_ by Assignment of Mortgage dated \_\_\_\_\_, \_\_\_\_\_ and recorded on \_\_\_\_\_, \_\_\_\_\_ in the \_\_\_\_\_ of \_\_\_\_\_, State of New York, at \_\_\_\_\_. [Strike and complete as appropriate.]

# *SAMPLE*

**EXHIBIT B**  
(Property Description)

# *SAMPLE*

## **EXHIBIT C**

(Consolidated Note and Addenda)

# *SAMPLE*

## **EXHIBIT D**

(Consolidated Mortgage and Riders)