

Record and Return to:

**SONYMA Neighborhood Revitalization Fund and Down Payment Assistance Loan
ENFORCEMENT NOTE AND MORTGAGE**

Dated as of: _____, 20__

This instrument affects realty situated in the State of New York, in the County of _____.

THIS ENFORCEMENT NOTE AND MORTGAGE ("**Note and Mortgage**") made as of the ___ day of _____, 20__, between _____, an individual residing at _____ ("**Borrower**") and _____, a _____ having its principal place of business at _____ ("**Mortgagee**").

Borrower hereby acknowledges that, pursuant to certain agreements between the State of New York Mortgage Agency ("**SONYMA**"), a public benefit corporation with offices at 641 Lexington Avenue, New York, New York 10022, and the Mortgagee, Mortgagee has furnished Borrower with (check all that apply):

a Neighborhood Revitalization Program Loan ("**NRP**") in the amount of _____ Dollars (\$_____) pursuant to Section 3 of the Miscellaneous New York State Agency Fund Mortgage Settlement Proceeds Trust Fund Account - 60690

a Down Payment Assistance Loan ("**DPAL**") in the amount of _____ Dollars (\$_____)

The Recapture Obligation (as defined in Paragraph 1 of this Note and Mortgage) is equal to the sum of any NRP and/or DPAL funds to be held in trust and to be used solely in connection with the acquisition and if applicable, the renovation of the Property (as defined in Paragraph 2 of this Note and Mortgage) and that this Note and Mortgage shall be subject to the trust fund provisions of Section 13 of the New York Lien Law. Borrower understands that the amount of the Recapture Obligation represents as applicable, down payment, closing costs, and/or renovation of the Property and agrees to the recapture of such amount of the Recapture Obligation as required herein as the purchaser of the Property.

1. For value received, Borrower promises to pay to Mortgagee the sum of _____ Dollars (\$ _____) (the "**Recapture Obligation**"), payable according to and in the manner provided in Paragraphs 5, 11, 12 and 13.

2. The Borrower hereby mortgages to the Mortgagee all right, title and interest of the Borrower in and to the Property described in Schedule A annexed hereto and hereby made a part hereof, located at _____,
[Street]
_____, New York _____
[City, Town or Village] [Zip Code]

("Property"); together with:

- (a) the buildings and improvements on the Property.
- (b) all of the Borrower's right, title and interest in and to any land lying in the bed of the streets in front of and adjoining the Property to the center lines of such streets.
- (c) all fixtures which now are or which later may be attached to or used or useful in connection with the Property. This does not include any personal property.
- (d) all condemnation awards for any taking by a government or agency of the whole or part of the real Property or any easement in connection with the Property. This includes awards for changes of grades of streets.
- (e) all right, title and interest but not obligation, of the Borrower in and to all leases and other agreements affecting the use or occupancy of the Property or any common area appurtenant thereto.
- (f) any right, title and interest of the Borrower in and to any common areas appurtenant thereto.

3. Borrower will fulfill the Recapture Obligation at the time and in the manner provided herein. If the Borrower fails to make any payment required pursuant to this Note and Mortgage, the lien created by this Note and Mortgage will remain a lien on the Property to secure payment of the unpaid portion of the Recapture Obligation.

4. The Borrower and Mortgagee hereby acknowledge that the Property is subject to the lien of a first loan (the "**First Mortgage Loan**") made by _____ (the "**Lender**"). The parties hereto agree that all terms and provisions of this Note and Mortgage are subject and subordinate to the first priority lien of the Lender, pursuant to the terms of the first mortgage note and first mortgage pertaining to such First Mortgage Loan ("**First Mortgage Loan Documents**"). If any action or proceeding of foreclosure is instituted by the Lender, the Borrower will immediately upon service thereof, deliver to the Mortgagee a true copy of each notice, petition, summons or papers howsoever designated, served in such action or proceeding or in any such action or proceeding.

5. Subject to the provisions of the First Mortgage Loan Documents, the Recapture Obligation secured by this Note and Mortgage will become immediately due and payable if any one or more of the following occurs (each, a “**Default**”):

- (a) Borrower: (i) does not occupy the Property as his home and principal place of residence within sixty (60) days of the date of this Note and Mortgage; or (ii) (A) does not, except as provided herein, maintain ownership and occupancy of the Property as Borrower's principal residence throughout the Required Owner Occupancy Period (as defined herein), or (B) rents, sells, conveys any interest in or otherwise vacates the Property during the Required Owner Occupancy Period; or (C) pays the full amount of the sums secured by the First Mortgage Loan Documents (“**Sums Secured**”);
- (b) Borrower fails to: (i) make any payment due on any of the Sums Secured within thirty (30) days after the date that such payment was due pursuant to the terms of the First Mortgage Loan Documents; or (ii) keep and adhere to any representation, warranty, covenant, promise, or agreement made by Borrower under the First Mortgage Loan Documents or this Note and Mortgage (collectively, the “**Loan Documents**”); or
- (c) Any misrepresentation, fraud, or other default exists or occurs under the DPAL Eligibility Documentation (as defined herein), in connection with any of the Sums Secured, or otherwise under the Loan Documents.

Any Default existing or occurring under the First Mortgage Loan Documents will constitute a default under this Note and Mortgage.

6. Borrower will keep the improvements on the Property insured against loss by fire and other risks as required by Lender and the Mortgagee.

7. Borrower will keep the Property in reasonably good repair.

8. The Recapture Obligation secured hereby will not require the payment of installments and will be a standing obligation which will be without interest.

9. Borrower represents and warrants that:

- (a) Borrower has, as necessary, read, completed, signed, executed and submitted to Mortgagee the following documents: this Note and Mortgage, Neighborhood Revitalization Fund and Down Payment Assistance Loan Recapture Notification, and any additional documentation required by the Mortgagee in connection with the NRP and/or DPAL (“**NRP and/or DPAL Eligibility Documentation**”);

- (b) Such NRP and/or DPAL Eligibility Documentation contains no misrepresentation or misinformation;
- (c) Borrower lawfully owns the Property and that the Borrower has the right to and does mortgage all right, title, and interest of the Borrower in and to the Property to the Mortgagee. In addition, the Borrower gives Mortgagee a general warranty of title. Borrower agrees to comply with all the requirements of the Loan Documents. Borrower further represents and warrants that Borrower is eligible to receive the NRP and/or DPAL Funds, and keep and observe all of the terms, covenants and conditions hereof;
- (d) Borrower understands that the amount of the NRP and/or DPAL Funds represents a reduction in the Borrower's cash outlay for as applicable, down payment, closing costs, and/or renovation associated with the acquisition of the Property and that the NRP and/or DPAL Funds are repayable, subject to the terms of this Note and Mortgage, in the amount of the Recapture Obligation as determined by SONYMA; and
- (e) In return for the benefit of the NRP and/or DPAL Funds, Borrower understands that he or she is required to own and occupy the Property as his or her principal place of residence for the Required Owner Occupancy Period (as defined herein), and the failure to comply with this subparagraph (e) shall cause the Recapture Obligation to become due and payable.

10. In addition to the covenants and agreements made hereinabove, Borrower further agrees, covenants and promises as follows:

- (a) Borrower will own and occupy the Property as his principal place of residence for a period of ten (10) years commencing on the date hereof (the “**Required Owner Occupancy Period**”); and
- (b) As the purchaser, owner, and occupant of the Property and the beneficiary of the NRP and/or DPAL Funds provided with respect to the Property, Borrower agrees to pay the amount of the Recapture Obligation as required herein. Borrower agrees to provide to the Mortgagee any documents required by SONYMA with respect to SONYMA’s determination of the amount of the Recapture Obligation.

For First Mortgage Loans insured by the Federal Housing Administration (“FHA Plus Loans”) only, in the event of foreclosure or deed in lieu of foreclosure of the First Mortgage Loan or assignment of the First Mortgage Loan to the Secretary of Housing and Urban Development, any provisions herein or any provisions in any other collateral agreement restricting the use of the Property or otherwise restricting the Borrower's ability to sell the Property shall have no further force or effect. Any person (including his successors or assigns) receiving title to the Property through a foreclosure or deed in lieu of foreclosure of the First Mortgage Loan shall receive title to the Property free and clear from such restrictions.

11. The amount to be repaid by and recaptured from Borrower will be the amount of the Recapture Obligation, as determined by SONYMA pursuant to this Note and Mortgage, payable upon the date of the earliest occurrence of the following: (a) Borrower's failure to occupy the Property as Borrower's principal place of residence (subject to the provisions of Section 5(a) of the Note and Mortgage); or (b) any other Default, if any, as defined in Section 5 of this Note and Mortgage; or (c) payment in full of the Sums Secured; or (d) any refinancing of the Sums Secured; or (e) any sale or conveyance of the full ownership interest in the Property, during the applicable Required Owner Occupancy Period.

12. If the Recapture Obligation initially becomes due and payable as provided in Section 11(a), (b) or (c) hereinabove, the amount of the Recapture Obligation due and payable, as determined by SONYMA, will equal the entire amount of the NRP and/or DPAL Funds but reduced by 1/120th thereof for each full and complete month that Borrower has owned and occupied the Property as Borrower's principal residence and the First Mortgage Loan remains outstanding (the "**Remaining NRP and/or DPAL Funds**").

13. If the Recapture Obligation becomes due and payable as provided in Section 11(d) or (e) hereinabove, the amount of the Recapture Obligation due and payable, as determined by SONYMA, shall be the Remaining NRP and/or DPAL Funds, except that, if the Remaining NRP and/or DPAL Funds are greater than Net Profit, as defined in this Section 13, then the amount of the Recapture Obligation to be repaid by the Borrower shall be the Net Profit. The "**Net Profit**" is the amount equal to the total proceeds of any sale or conveyance of the full ownership interest in the Property, or in the event of any refinancing of the Sums Secured, the current appraised value of the Property, less the sum of the following: (a) repayment due on the outstanding balance of the principal and accrued interest payable on the First Mortgage Loan and other components of the Sums Secured (exclusive of the initial amount of the Recapture Obligation); and (b) Borrower's initial down payment made on the Property (the initial cash portion of the purchase price exclusive of the initial amount of the Recapture Obligation); and (c) costs of any capital improvements paid or incurred by Borrower with respect to the Property; and (d) closing costs paid or incurred by Borrower with respect to any refinancing or sale or conveyance of the full ownership interest in the Property of the Sums Secured (but not including any costs: (x) associated with a refinance loan obtained by the Borrower, such as appraisal fees, title insurance fees, etc., or (y) any "seller concessions" which are paid by the Borrower to enhance the sale of the Property). If the Net Profit is zero or less, no Recapture Obligation will be due. Notwithstanding the above, if Borrower owns and occupies the Property as his principal place of residence in compliance with the terms of the Note and Mortgage for the Required Owner Occupancy Period and the First Mortgage Loan remains outstanding after the expiration of such Required Owner Occupancy Period, the Recapture Obligation will be reduced to zero and extinguished and Borrower will not be required to repay any portion of the NRP and/or DPAL Funds.

14. If the Mortgagee incurs any costs in collecting the Recapture Obligation secured by this Note and Mortgage, including but not limited to reasonable attorney's fees, such costs will be added to the Recapture Obligation and will also be secured by this Note and Mortgage.

15. Any notices, demands, certifications, requests, communications or the like ("**Notices**") required or permitted to be given under this Note and Mortgage, unless otherwise specifically provided in this Note and Mortgage, will be in writing and will be delivered personally or given by regular, certified, or registered mail, correct postage prepaid, to the addresses first set forth above, or such other addresses as the parties may for themselves designate in writing for the purpose of receiving Notices hereunder. Notices to the Mortgagee will be marked "Attention: Vice President, Single Family Programs." Notices will be deemed given when actually, personally delivered and receipted or when deposited with the post office registry clerk or an official United States post box. If any action or proceeding of foreclosure is instituted with respect to the Property, Borrower will immediately upon service thereof, deliver to SONYMA, whose address appears on the first page of this Note and Mortgage, a true copy of each notice, petition, summons or papers howsoever designated, served in such action or proceeding or in any such action or proceeding, in addition to any obligation to notify any party set forth in the First Mortgage Loan Documents.

16. The terms, covenants and conditions of this Note and Mortgage will in all respects be governed, construed, applied and enforced in accordance with the laws of the State of New York.

17. This Note and Mortgage may not be modified, amended, changed, discharged or terminated orally, but only by an agreement in writing, in a form suitable for recording, signed by the party against whom the enforcement of the modification, amendment, change, discharge or termination is sought.

18. The Borrower warrants and represents that the Borrower (and the undersigned representatives of the Borrower, if any) has full power, authority and legal right to execute and deliver this Note and Mortgage and to mortgage all right, title and interest of the Borrower in and to the Property pursuant to the terms hereof and to keep and observe all of the terms, covenants and conditions of this Note and Mortgage on the Borrower's part to be performed.

19. If there is more than one Borrower, each will be separately liable. The words "Borrower" and "Mortgagee" will include their heirs, executors, administrators, successors, and permitted assigns. If there are more than one Borrower or Mortgagee, the words "Borrower" and "Mortgagee" used in this Note and Mortgage will be read as if written in the plural. Words in the masculine or feminine gender appearing herein will be deemed to refer to either or both male or female persons, as the sense of the sentence requires. Borrower and Mortgagee agree that each party and its counsel have reviewed this instrument and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation hereof or of any amendments or exhibits hereto.

20. This Note and Mortgage may be executed in one or more duplicate originals bearing the same date.

21. Provided that the Borrower has complied with all the terms of the Loan Documents, this Note and Mortgage will be deemed of no further force and effect at the expiration of the Required Owner Occupancy Period and as of such date ("**Fulfillment Date**") neither Borrower nor Mortgagee will have any further rights or obligations under Note and Mortgage against each other, except that, if the Borrower has failed to fulfill the owner occupancy requirements hereof, or has not paid any Recapture Obligation that has become due hereunder, or has otherwise defaulted under the terms of the Loan Documents, then the security interest created by this Note and Mortgage will continue irrespective of the Fulfillment Date until the date upon which the amount of the Recapture Obligation plus all costs of collection payable under the terms of the Note and Mortgage have been discharged by the Borrower (such date hereinafter referred to as the "**Extended Fulfillment Date**"). On or after the Extended Fulfillment Date, if the Borrower has complied with all of the requirements of this Note and Mortgage, the Mortgagee will, at Borrower's sole cost and expense and upon written request by Borrower, execute and furnish Borrower with a satisfaction of mortgage solely with respect to and only affecting this Note and Mortgage ("**Release**"). Upon discharge of this Note and Mortgage, the first priority lien created by the First Mortgage Loan Documents shall continue in force and effect except as expressly provided therein.

22. All of the terms, covenants and conditions hereof run with the land and will apply to, bind, and inure to the benefit of Borrower and Mortgagee and their respective heirs, personal representatives, successors and assigns and all subsequent holders of this Note and Mortgage, and all subsequent owners, encumbrancers, tenants and subtenants of the Property or any part thereof or interest therein, except to the extent expressly provided to the contrary herein.

The Borrower states that the Borrower(s) has read this Note and Mortgage, received a completed copy of same, and has duly signed this Note and Mortgage as of the date at the top of the first page.

Borrower/Titleholder

Borrower/Titleholder

ACKNOWLEDGEMENT

STATE OF NEW YORK)
) ss.:
COUNTY OF _____)

On the ____ day of _____ in the year _____, before me, the undersigned, a notary public in and for said state, personally appeared _____ personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose names(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

Notary Public
Commission Expires:

STATE OF NEW YORK)
) ss.:
COUNTY OF _____)

On the ____ day of _____ in the year _____, before me, the undersigned, a notary public in and for said state, personally appeared _____ personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose names(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

Notary Public
Commission Expires:

SCHEDULE A
LEGAL DESCRIPTION