

**STATE OF NEW YORK MORTGAGE AGENCY  
MORTGAGE INSURANCE FUND  
NEW YORK STATE HOUSING FINANCE AGENCY**

**NYHOMES CONSTRUCTION LOAN FINANCING PROGRAM**

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The State of New York Mortgage Agency Mortgage Insurance Fund (“SONYMA MIF”) and the New York State Housing Finance Agency (“HFA” or the “Lender”) will provide construction and permanent loan financing with SONYMA MIF mortgage insurance for certain HFA mortgage loans which finance the moderate rehabilitation of multi-family properties under the NYHomes Construction Loan Financing Program (the “Program”). Loans financed and insured through the Program will be subject to the requirements set forth in all applicable HFA loan term sheets and to the SONYMA MIF criteria set forth in this term sheet.

**ELIGIBILITY**

**Eligible Lender**

SONYMA MIF mortgage insurance will be available during construction only for loans originated by HFA under the Program.

**Eligible Projects**

Occupied multi-family projects. The scope of work must permit rehabilitation to proceed with tenants in place.

Moderate rehabilitation in an amount equal to at least 20% of the construction loan amount must be undertaken.

**Eligible Borrowers**

Single asset entities including general or limited partnerships, corporations, trusts, joint ventures, limited liability companies and 501(c)(3) corporations. Borrower entities must include a tax credit investor approved by HFA and the SONYMA MIF which will provide equity during the construction period as outlined below. The tax credit equity structure will be reviewed on a case by case basis for projects benefiting from TCAP funds.

The development team for the project as well as its architect, engineer, general contractor, subcontractors and other contractors, consultants and advisors, must have a

demonstrated track record in successful acquisition, rehabilitation, marketing and management of the type of eligible project proposed.

Key principals with an ownership interest in excess of 25% in the project must demonstrate sufficient financial stability and liquidity to rehabilitate and operate the project.

Substantial entities and/or individuals involved with the transaction and approved as guarantors by HFA and the SONYMA MIF will be required to provide guarantees, including, without limitation, completion, payment and environmental guarantees, each in form and substance acceptable to HFA and the SONYMA MIF. Guarantors must demonstrate sufficient financial stability and liquidity to support the required guarantees. Defaults under guarantees and/or material adverse changes in the finances of guarantors shall constitute loan defaults.

Borrowers and guarantors will be required to submit audited financial statements and any other financial documentation as may be required by HFA and the SONYMA MIF supporting their financial participation in the project at closing and during the term of the loan.

HFA shall approve all contractors for the project including, without limitation, architects, engineers, general contractor and subcontractors and all consultants and advisors to the developer. SONYMA MIF reserves the right to approve all contractors and advisors for the project and all contractors and advisors to HFA including, without limitation, appraisers, environmental or market consultants and the construction monitor.

### **Eligible Loans**

Loans secured by a first lien mortgage which provide eligible borrowers with construction and permanent financing for eligible projects in a loan amount not to exceed \$25,000,000 including rehabilitation hard costs not to exceed \$50,000 per unit.

### **Affordability Requirements**

The project shall meet the affordability requirements of the HFA financing.

### **AMOUNT OF MORTGAGE INSURANCE**

The SONYMA MIF will provide mortgage insurance equal to 100% of the construction mortgage loan amount during the rehabilitation of the project and 100% of the permanent loan amount following the conversion of the loan.

## **PERMANENT MORTGAGE LOAN UNDERWRITING CRITERIA**

### **Permanent Loan Amount**

The lesser of 80% loan-to-value or 90% loan-to-cost of the development based on a review by the SONYMA MIF. The permanent loan amount is also subject to compliance with the income-to-expense ratio requirement.

### **Permanent Loan Income to Expense Ratio**

The SONYMA MIF income-to-expense ratio is calculated by dividing effective gross income by total projected expenses including operating expenses, debt service and annual fees.

The minimum income-to-expense ratio is 1.05 to 1.00.

### **Permanent Loan Income to Expense Ratio for Mixed Use Projects**

If retail income is less than 25% of total income, the required income to expense ratio is 1.05X which is our standard ratio for multifamily projects.

If retail income is between 25% and 49% of total income, the required income to expense ratio is 1.10X.

If retail income is 50% or more of total income, the required income to expense ratio is 1.15X which is our standard ratio for retail projects.

The assumed vacancy rate for retail space should be the greater of 10% or market in all cases.

## **CONSTRUCTION LOAN REQUIREMENTS**

### **Equity Contribution**

A minimum 10% equity investment from non-loan proceeds is required at closing. The equity requirement may be satisfied from sources including cash, deferred developer fee and property contributions as more particularly required by HFA.

The tax credit investor will be required to make an initial equity contribution to the project at closing in a minimum amount equal to 15% of the aggregate tax credit equity contribution. The tax credit equity structure will be reviewed on a case by case basis for projects benefiting from TCAP funds.

The initial tax credit equity contribution, together with all subsequent tax credit equity contributions and all contributions from project cash flow shall be held in an escrow

account to be established with the bond trustee and disbursed to fund the rehabilitation in accordance with directions from HFA.

### **Construction Guarantees**

Approved entity and/or individual guarantors will be required to provide completion and full payment guarantees during the construction loan period. General contractors which are related to one or more development entities will be required to provide a supporting completion guarantee during construction.

General contractors will be required to provide payment and performance bonds or a letter of credit in a minimum amount of 10% of the contract sum through construction completion. General contractors will also be required to provide a latent defects guarantee in an amount equal to 2% of the contract sum to survive for one year following final completion. General contractors will be expected to require payment and performance bonds or letters of credit from all subcontractors.

### **Construction Monitoring**

A construction monitor selected by the Lender and approved by the SONYMA MIF will be required to provide ongoing construction monitoring services, including requisition review and recommendation, through final completion of the project and to provide monthly construction monitoring reports to HFA.

### **Capitalized Interest**

The construction loan shall be interest only. The financing structure shall provide for capitalized interest to cover all debt service and fees for a period adequate to complete construction and satisfy pre-conversion requirements, as approved by the SONYMA MIF.

## **LOAN TERMS**

### **Loan Term and Amortization**

Maximum permanent loan term of 30 years. Loans must be self-amortizing during the permanent loan period. Debt service should be accelerated to take into account the expiration of any real estate tax abatement or exemption.

### **Subordinate Financing**

Subordinate mortgages are permitted with SONYMA MIF approval. Such loans must be fully subordinated in payment and recovery to the insured loan pursuant to a subordination agreement approved by SONYMA MIF. Debt service on such loans will

be included in the permanent loan income to expense ratio unless debt service is payable only from excess cash flow.

### **Developer Fee**

The maximum developer fee shall not be more than 15% of the total adjusted development cost, as determined by HFA, which is equal to the total development cost less the developer's fee. The developer fee may be subject to adjustment if there is an identity of interest between the developer and the general contractor. The timing of the payment of the developer fee may be subject to approval by the SONYMA MIF. HFA and the SONYMA MIF will, on a project by project basis, require that the developer fee be held in escrow until issuance of the 8609 for the project as additional collateral for the insured loan.

The developer fee cannot be included in the calculation of the 20% rehabilitation requirement.

### **Replacement Reserve Requirement**

A minimum annual deposit to a reserve for replacement in an amount equal to \$250 per unit is required. A greater amount may be required based on a physical needs assessment. An up-front deposit to the replacement reserve may also be required.

### **Third Party Reports**

The Lender must provide the following independent third party reports from contractors acceptable to the SONYMA MIF: 1) an appraisal, 2) a Phase One environmental study, 3) a construction engineering review of plans, specifications, and the adequacy of the construction budget for the project. In addition to the appraisal report, a separate market analysis conducted by a professionally qualified practitioner, acceptable to the SONYMA MIF may also be required.

## **CLOSING REQUIREMENTS**

### **Conditions Precedent to Construction Loan Mortgage Insurance Effectiveness**

The following is a partial list of documentation which must be delivered to the SONYMA MIF, each in form and substance satisfactory to the SONYMA MIF, prior to mortgage insurance being declared effective:

- Agreements with the architect, engineer, general contractor and all other third party contractors, as required by SONYMA MIF, together with payment and performance bonds or letters of credit and such other construction related documentation requested by the SONYMA MIF.

- Mortgage loan documents including, without limitation, Mortgage Note, Mortgage and Building Loan and Project Loan Agreement.
- Guarantees, including, without limitation, completion, payment and environmental guarantees provided by approved guarantors. Loan documents shall provide that material adverse changes in the financial condition of guarantors shall constitute a default and include such other negative covenants and default provisions related to the guarantors as required by the SONYMA MIF.
- Escrow Agreement, as applicable, providing for the escrow of contributions from operating funds and tax credit proceeds to be applied to the rehabilitation of the project.
- Evidence that real estate tax abatements or exemptions, if any, are or, subject only to rehabilitation completion, will be in place for the project.
- Evidence of compliance with zoning and all applicable building codes.
- Certification that there has been no adverse change in the financial status of the Borrower or any guarantor.
- Satisfaction of any project-specific requirements contained in the Commitment to Insure delivered by the SONYMA MIF.

### **Conditions Precedent to Conversion to Permanent Mortgage Insurance**

The following is a partial list of documentation to be delivered to the SONYMA MIF, each in form and substance satisfactory to the SONYMA MIF, prior to the conversion of the construction loan mortgage insurance to permanent loan insurance:

- An Amended Certificate of Occupancy , as required, and Certification of Final Completion.
- Certification of the SONYMA MIF's Rental Achievement Level, evidenced by executed rental contracts. The Rental Achievement Level means that the project has the applicable income-to expense ratio and has achieved a minimum 90% occupancy rate for a minimum of three consecutive months.
- Evidence that, following completion of rehabilitation, the project complies with zoning and all applicable building codes.
- Certification that there have been no material adverse changes in the financial status of the borrower or any guarantor.
- Development cost certification satisfactory to the SONYMA MIF.

- Satisfaction of any project-specific requirements contained in the Commitment to Insure delivered by the SONYMA MIF.

## **SONYMA MIF MORTGAGE INSURANCE PREMIUMS AND FEES**

### **Mortgage Insurance Premiums**

Annual premium in an amount equal to 1.25% of the outstanding insured principal balance is payable in advance during the Construction Loan Mortgage Insurance Period. An initial payment in the amount of the 1.25% annual premium is due at closing. The annual premium will be reduced to 0.50% following the conversion of the construction loan mortgage insurance to permanent mortgage insurance.

### **Processing Fees**

To be determined at the point of application by the SONYMA MIF. Processing fees may include, but not be limited to, the cost of third party reports commissioned by the SONYMA MIF.

### **TERM SHEET**

This term sheet is a summary and does not purport to be a complete description of SONYMA MIF's criteria for mortgage insurance under the Program. This term sheet sets forth only the SONYMA MIF criteria under the Program. The criteria set forth in the applicable HFA term sheet shall also apply. The criteria described herein are subject to change without notice.