



State of New York Mortgage Agency

641 Lexington Avenue, New York, NY 10022
(212) 688-4000 • Fax: (212) 872-0789

PRISCILLA ALMODOVAR
President and CEO

By E-mail

October 30, 2009

**RE: Transition from Closing Cost Assistance to Down Payment Assistance
Seller's Guide Bulletin #3-2009**

Dear Participating Lender:

Since 2003, the State of New York Mortgage Agency ("SONYMA") has offered closing cost assistance to borrowers receiving SONYMA mortgages. To date, SONYMA has provided \$94.5 million in closing cost assistance to more than 17,300 New York State homebuyers. The lack of adequate funds for down payment and/or closing costs in a home purchase transaction continues to be a primary obstacle to homeownership for many low- and moderate-income households. To meet this need, SONYMA will continue to provide assistance to its borrowers; however, going forward, SONYMA will transition from its Closing Cost Assistance Loan ("CCAL") to a Down Payment Assistance Loan ("DPAL") effective January 1, 2010.

Down Payment Assistance Loan

The purpose of this transition is to simplify the loan process and reduce paperwork. This change will eliminate the need for lenders to submit documentation requesting SONYMA's approval of the final assistance amount prior to loan closing. Instead, the DPAL amount will be reviewed and approved simultaneously with our review of the SONYMA pre-closing (compliance) file. Please note that only closing cost assistance will be offered by SONYMA for loan reservations made through December 31, 2009. Starting on or after January 1, 2010, we will begin accepting reservations for loans with a Down Payment Assistance Loan (if the applicant opts for this assistance). The transition will apply to all SONYMA programs.

The DPAL assistance will differ from our CCAL program in two critical ways:

- The maximum assistance amount will be the greater of \$3,000 or three percent (3%) of the *home purchase price* (not the loan amount) but, *may not exceed \$10,000*; and
- On September 16, 2009, Governor Paterson executed legislation that enables SONYMA to purchase second mortgages; therefore, SONYMA will be eliminating the co-first lien structure to secure the down payment assistance and will be replacing it with a second mortgage structure. Please be advised that CCAL will continue to retain the co-first lien structure throughout its phase-out.

Note that in some cases the \$3,000 may exceed a borrower's minimum down payment requirement. In those cases, the borrower may opt to apply any surplus monies towards closing costs.

As with SONYMA's CCAL, DPAL may be used in conjunction with any currently available SONYMA program (hereinafter, referred to as the "Programs"). All previously announced terms, conditions, and requirements of the Programs remain in effect, except as stated in this letter or in the SONYMA Down Payment Assistance Loan Addendum to the Seller's Guide (attached hereto). Please be advised of the following:

- Interest Rate for Mortgage Loans with DPALs
The interest rate for mortgage loans with a DPAL will be handled in the same manner as with CCALs. Except for the Homes for Veterans Program, the Habitat for Humanity Program, and the ENERGY-STAR® Program, borrowers opting for a DPAL will pay an interest rate that is 0.50% higher than our standard interest rates.
- DPAL Interest Rate and Terms
DPALs will bear no interest rate and will require no monthly payments.
- DPAL Recapture Requirement. The DPAL will be forgiven over a period of ten years. The entire amount of DPAL will be secured against the property. All or a portion of the DPAL may be required to be repaid or "recaptured" if the SONYMA mortgage loan is paid in full within ten years of purchasing the home. The recapture amount will decline for each month that the SONYMA mortgage remains outstanding and the borrower continues to occupy the financed property. Please see the newly created DPAL Recapture Notification (Form D4) for more details on the recapture calculation.
- Borrower's Required Minimum Cash Contribution. Regardless of the Program being utilized, borrowers are required to contribute a minimum of one percent (1%) of their own funds into the transaction [three percent (3%) for cooperatives and 3- and 4-family properties]. The minimum cash contribution will be based on the net purchase price (the purchase price less the DPAL amount) and may be applied as additional down payment or used towards the payment of closing costs or prepaids. The minimum cash contribution is waived for borrowers receiving a cash gift, gift of equity, gift of land, or inheritance that results in an 80% (or lower) loan-to-value ratio.
- Approval of Final DPAL Amount. As stated above, SONYMA will approve the final assistance amount upon its approval of the pre-closing loan application file. The approved amount will be posted on Lender Online (LOL). ***Lenders will no longer be required to submit a request for disbursement form prior to loan closing.***
- Additional Loan Servicing Requirements. In order for your institution to originate loans with a DPAL, the company servicing these loans must be able to "flag" them on its loan servicing system. Prior to satisfying a mortgage with a DPAL, the servicer will be required to contact SONYMA's mortgage servicing department to determine if any of the DPAL must be recaptured and remitted to SONYMA. Non-servicing lenders are advised that SONYMA's current master servicer, M&T Bank, is able to comply with these requirements.

Any lender/servicer unable to comply with the above will not be eligible to originate loans with a DPAL.

- Insurance Requirements for Loans Utilizing SONYMA DPAL
SONYMA does **not** require additional title insurance, hazard insurance, flood insurance or private mortgage insurance (PMI) coverage for the DPAL.

DPAL Funding Procedures; Second Mortgage Instruments and Assignment of Second Mortgage

As with CCAL, lenders will be required to close and fund the DPAL second mortgage in its name. SONYMA will fund the DPAL simultaneously with the first mortgage loan under its standard mortgage purchase procedures. The DPAL amount approved by SONYMA must be incorporated into the attached SONYMA Down Payment Assistance Loan Enforcement Note and Mortgage (Form #D1/9-09), or the SONYMA Down Payment Assistance Loan Cooperative Enforcement Note and Security Agreement (Form #D2/9-09), as applicable. SONYMA will require lenders to *submit duplicate originals* of the relevant document, as well as a duly executed assignment of second mortgage, in its post-closing file submission to us. Lenders will be responsible for recording and submitting the recorded instruments to SONYMA. A revised Post-Closing File Checklist (Form #223/9-09) is attached hereto.

UCC1 Language for Filing DPALs on Cooperative Share Loans

For cooperative share loans, SONYMA requires two separate UCC1 filings – one for the share loan and one for the DPAL – with different language placed in Box 4 of each form. The language to be added to Box 4 of the UCC1 filing for the share loan must read as follows:

Debtor (s) interest in *(insert #)* shares of stock for *(insert property address, unit #, city, state, zip)* plus Proprietary Lease with *(insert Name of Cooperative Cooperation)* and any replacement or additional Stock and any lease amendments or replacement. This Cooperative financing statement shall be effective until a termination statement is filed.

Pursuant to the terms of a certain agreement between the Debtor and the Secured Party entitled "Security Agreement - Coop", the security interest described herein is a first-position lien.

The language to be added to Box 4 of the UCC1 filing for the DPAL must read as follows:

Debtor (s) interest in *(insert #)* shares of stock for *(insert property address, unit #, city, state, zip)* plus Proprietary Lease with *(insert Name of Cooperative Cooperation)* and any replacement or additional Stock and any lease amendments or replacement. This Cooperative financing statement shall be effective until a termination statement is filed.

Pursuant to the terms of a certain agreement between the Debtor and the Secured Party entitled "Down Payment Assistance Loan Cooperative Enforcement Note and Security Agreement", the security interest described herein is a second lien which is subordinate to a first-position security interest of the Secured Party filed or to be filed in connection with the collateral described hereinabove.

SONYMA will be posting samples on its website, which outline how to complete UCC forms when a DPAL is utilized. A revised Post-Closing Cooperative Share Loan File Checklist (Form #224/9-09) is attached hereto.

New York State Mortgage Tax on DPALs

Pursuant to Section 2.207 of DPAL Addendum to the Seller's Guide, lenders are reminded that the New York State mortgage tax (and recording fees) must be paid on the second mortgage.

Seller's Guide Addendum and Revised and New Forms

To accommodate these changes, SONYMA has added or modified the following forms:

Form Name and Number	Required Effective Date	Comments
• SONYMA Down Payment Assistance Loan Enforcement Note and Mortgage (Form #D1/9-09)	Reservations dated on or after 1/1/10	Newly created second mortgage and note form to be used specifically for DPALs.
• SONYMA Down Payment Assistance Loan Cooperative Enforcement Note and Security Agreement (Form #D2/9-09)	Reservations dated on or after 1/1/10	Newly created second note and security agreement form to be used specifically for DPALs secured by a cooperative unit.
• Interest Rate Option Form (Form #D3/9-09)	Reservations dated on or after 1/1/10	Newly created form which is virtually identical to the CCAL Interest Rate Option Form (Form #C9) but incorporates references to DPAL.
• SONYMA Down Payment Assistance Loan Recapture Notification (Form #D4/9-09)	Reservations dated on or after 1/1/10	Newly created form which is virtually identical to the CCAL Recapture Notification (Form #C4) but incorporates references to DPAL.
• Pre-Closing Application File Checklist (Form #225/9-09)	Can be used immediately, but not required until 1/1/10	Incorporates the above forms and requirements.
• Post-Closing File Checklist (Form #223/9-09)	Can be used immediately, but not required until 1/1/10	Incorporates the above forms and requirements.
• Post-Closing Cooperative Share Loan File Checklist (Form #224/9-09)	Can be used immediately, but not required until 1/1/10	Incorporates the above forms and requirements.
• SONYMA Loan Transmittal (Form #213/8-09)	Can be used immediately, but not required until 1/1/10	Replaces the Loan Verification Form.

Lenders will be able to access the above referenced new and revised forms on both Lender Online as well as on our website. Additionally, the Down Payment Assistance Loan Seller's Guide Addendum and UCC completion instructions will also be published on our website at www.nyhomes.org.

If you have any additional questions, please contact Gail Kresge at (917) 576-8250 or gkresge@nyhomes.org or Lynn Morris at (917) 613-1465 or lmorris@nyhomes.org.

Sincerely,



George M. Leocata
Senior Vice President
Single Family Programs



SONYMA DOWN PAYMENT ASSISTANCE LOANS
ADDENDUM TO LOW INTEREST RATE MORTGAGE PROGRAM
SELLER'S GUIDE

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2	SONYMA Down Payment Assistance Cooperative Enforcement Note and Security Agreement	D2/9-09
3	Interest Rate Option Form	D3/9-09
4	SONYMA Down Payment Assistance Loan Recapture Notification	D4/9-09

NOTE TO PARTICIPATING LENDERS: Effective January 1, 2010, SONYMA will no longer offer its Closing Cost Assistance Loan for new loan Reservations. Instead, the Agency will offer the Down Payment Assistance Loan. This Addendum serves to support only Down Payment Assistance Loans. For information on Closing Cost Assistance Loans during this transition period, please continue to refer to the Closing Cost Assistance Loan Addendum to the Seller's Guide.

SONYMA DOWN PAYMENT ASSISTANCE LOANS
ADDENDUM TO LOW INTEREST RATE MORTGAGE PROGRAM
SELLER'S GUIDE

PART I - GENERAL

SECTION 1.1 - DEFINITIONS. All terms used in this Addendum to the Low Interest Rate Mortgage Program Seller's Guide, but not defined herein shall retain the assigned meaning as referenced in the Low Interest Rate Mortgage Program Seller's Guide (the "Seller's Guide"). Terms defined in this Section 1.1 shall be applicable to Mortgage Loans wherein a Down Payment Assistance Loan has been provided. Terms defined in this Section 1.1 shall be interpreted in conjunction with the definition of such terms set forth in the Seller's Guide.

- (a) **Down Payment** An amount not less than 3 percent (3%) [5 percent (5%) for cooperatives, and 10 percent (10%) for Three- and Four-Family Dwellings] of the purchase price or appraised value of the Eligible Property, whichever is less, and as further defined in Section 3.101 of the Seller's Guide.

- (b) **Down Payment Assistance Loan** The mortgage loan or cooperative share loan that provides Down Payment assistance, and if applicable, closing cost assistance to eligible Mortgagors and secures the Down Payment assistance provided to Mortgagor by SONYMA pursuant to this Addendum, as evidenced by the DPAL Enforcement Document.

- (c) **DPAL Enforcement Document** The document, executed by all Mortgagors, that secures the Down Payment Assistance Loan as a second lien. For Mortgage Loans, the Down Payment Assistance Loan Enforcement Note and Mortgage (Exhibit 1; Form D1); or, with respect only to cooperative share loans, the Down Payment Assistance Loan Cooperative Enforcement Note and Security Agreement (Exhibit 2; Form D2).

PART II - PURCHASE REQUIREMENTS FOR MORTGAGE LOANS UTILIZING THE DOWN PAYMENT ASSISTANCE LOAN

SECTION 2.1 - PRELIMINARY REQUIREMENTS. Section 2.1 covers only those requirements under this Addendum differing from the requirements set forth in Section 2.1 of the Seller's Guide. This Section 2.1 and Section 2.1 of the Seller's Guide shall be read together.

- 2.101 **Use of Funds** The Down Payment Assistance Loan may be used in conjunction with any available SONYMA program and is only available to

Mortgagors obtaining SONYMA Mortgage Loans, or other mortgage programs as designated by SONYMA.

2.102 Servicing

In order for Seller to originate Down Payment Assistance Loans, the Servicer must be able to “flag” these loans on their loan servicing system. Prior to satisfying a Mortgage Loan with a Down Payment Assistance Loan, the Servicer will be required to contact SONYMA’s mortgage servicing department to determine if any of the Down Payment Assistance Loan must be recaptured and remitted to SONYMA. Non-servicing Sellers are advised that SONYMA’s current master Servicer is able to comply with these requirements.

Note: Any Seller unable to comply with the above will be prohibited from originating loans with a Down Payment Assistance Loan.

SECTION 2.2 - MORTGAGE LOAN ELIGIBILITY FOR DOWN PAYMENT ASSISTANCE LOANS. This Section 2.2 covers only those requirements under this Addendum that differ from the requirements set forth in Section 2.2 of the Seller's Guide. This Section 2.2 and Section 2.2 of the Seller's Guide shall be read together.

2.201 Down Payment Assistance Loan Amount

The amount of the Down Payment Assistance Loan must be at least \$1,000 and cannot exceed the greater of \$3,000 or 3 percent (3%) of the purchase price of the Eligible Property, but in no event, shall the Down Payment Assistance Loan exceed \$10,000. Down Payment Assistance Loan funds must first be applied towards Mortgagor’s Down Payment with any remaining funds applied towards closing costs.

2.202 Interest Rate

SONYMA, except for specific mortgage programs identified in separate notices or letters made to Seller, will charge an interest rate on a Mortgage Loan with a Down Payment Assistance Loan that is a half of a percentage (0.5%) higher than a Mortgage Loan without a Down Payment Assistance Loan.

2.203 Term

Term of the Mortgage Loan shall be either 30 or 40 years; the term of the Down Payment Assistance Loan shall be ten (10) years.

2.204 Amortization

Amortization shall be the same as Section 2.205 of the Seller's Guide, except that the Down Payment Assistance Loan will be in the form of a zero percent interest, non-amortizing second mortgage and as such, will not require any regular monthly payments.

- 2.205 **Mortgage Security** Mortgage Security shall be the same as Section 2.210 of the Seller's Guide, except that the Down Payment Assistance Loan shall be evidenced by a DPAL Enforcement Document. The recapture obligation set forth thereunder shall be added to and made a component of the "Sums Secured" section of the security instrument executed as security for the Mortgage Loan.
- 2.206 **Mortgage and Mortgage Note Forms** SONYMA shall require that the forms set forth in Section 2.212 of the Seller's Guide be used for Mortgage Loans sold under this Addendum, provided the Down Payment Assistance Loan shall be evidenced by a DPAL Enforcement Document. The Down Payment Assistance Loan shall also become due and payable if Mortgagor misrepresents any of the statements included in any documents required in connection with the Down Payment Assistance Loan.
- 2.207 **Mortgage Tax on Down Payment Assistance Loans** Seller must calculate and collect the New York State mortgage tax based on the amount of the Down Payment Assistance Loan.
- 2.208 **Release of Down Payment Assistance Loan Obligations** Upon completion of the Down Payment Assistance Loan term and if Mortgagor has satisfied all terms and obligations as set forth in the DPAL Enforcement Document, Mortgagor shall be released from all responsibilities and obligations of the Down Payment Assistance Loan and Servicer will execute a satisfaction of mortgage on SONYMA's behalf. The satisfaction releases Mortgagor from the obligations of the Down Payment Assistance Loan only and does not, in any way, release Mortgagor from any of the terms and obligations of the Mortgage Loan note and security instrument, and such documents shall in all other respect continue to be in full force and effect.
- 2.209 **No Additional Insurance Requirements** SONYMA does *not* require additional title insurance, hazard insurance, flood insurance or private mortgage insurance (PMI) coverage for the Down Payment Assistance Loan.

SECTION 2.3 - BORROWER ELIGIBILITY REQUIREMENTS FOR DOWN PAYMENT ASSISTANCE LOANS.

Section 2.3 covers only those requirements under this Addendum that differ from the requirements set forth in Section 2.3 of the Seller's Guide. This Section 2.3 and Section 2.3 of the Seller's Guide shall be read together.

- 2.301 **Down Payment Assistance Loan Recapture Requirement** In connection with Down Payment Assistance Loans, Seller must inform the Mortgagor of the potential repayment obligation that may be required to be made to SONYMA upon the payoff of the Mortgage Loan within ten (10) years of the Closing Date. The Down Payment Assistance Loan will be subject to repayment, as determined by SONYMA, if Mortgagor:

(i) does not occupy the Eligible Property as his home and principal place of residence within sixty (60) days of the Closing Date; or

(ii) (A) does not maintain ownership and occupancy of the Eligible Property as Mortgagor's principal residence throughout the ten (10) year term; (B) rents, sells, conveys any interest in or otherwise vacates the Eligible Property during the ten (10) year term; (C) pays the full amount of the Mortgage Loan; or (D) defaults under any of the provisions listed in the DPAL Enforcement Document.

To properly disclose this potential repayment obligation, Seller must provide Mortgagor with the Down Payment Assistance Recapture Notification (Exhibit 4; Form D4) on or prior to the Residential Loan Application Date. Form D4 must be executed by the Mortgagor and the original submitted to SONYMA with the application loan file as listed in Section 2.502 below.

SECTION 2.4 - LOAN RESERVATION AND INTEREST RATE LOCK-IN PROCESS FOR DOWN PAYMENT ASSISTANCE LOANS. This Section 2.4 covers only those requirements under this Addendum that differ from the requirements set forth in Section 2.6 of the Seller's Guide. This Section 2.4 and Section 2.6 of the Seller's Guide shall be read together.

The Loan Reservation System shall be as described in Seller's Guide Appendix V – Lender Online User Guide, except that, pursuant to Section 2.202 above, the interest rate on most Mortgage Loans will be higher.

SECTION 2.5 - PRIOR APPROVAL AND PURCHASE OF DOWN PAYMENT ASSISTANCE LOANS. This Section 2.5 covers only those requirements under this Addendum that differ from the requirements set forth in Section 2.7 of the Seller's Guide. This Section 2.5 and Section 2.7 of the Seller's Guide shall be read together.

2.501 **Down Payment Assistance Loan Recapture Notification** Sellers will be required to obtain from Mortgagor a fully completed and executed Down Payment Assistance Loan Recapture Notification (Exhibit 4; Form D4) and must submit it with the Mortgage Loan pre-closing application file to SONYMA as listed in Section 2.502 below.

2.502 **SONYMA Pre-Closing Review** The provisions relating to the SONYMA Pre-Closing Review set forth in Section 2.706 of the Seller's Guide shall apply to Down Payment Assistance Loans, except that the following documents shall also be forwarded to SONYMA with the documents as set forth in Section 2.706(c) of the Seller's Guide:

(i) Executed Down Payment Assistance Loan Recapture Notification (Exhibit 4; Form D4);

(ii) Executed Interest Rate Option Form (Exhibit 3; Form D3)

2.503 Funding of Down Payment Assistance Loans

(a) SONYMA shall be deemed to have approved the final DPAL amount upon SONYMA's approval of the Pre-Closing Review file. This amount will be published on Lender Online. If, for any reason, the DPAL amount changes after SONYMA has approved the Mortgage Loan, Seller must notify SONYMA prior to the Closing Date.

(b) On the Closing Date, Seller shall advance, on behalf of Mortgagor, the amount of the Down Payment Assistance Loan approved by SONYMA. The amount approved by SONYMA and disbursed by Seller must be inserted into the appropriate DPAL Enforcement Document as set forth in Section 2.205 above.

(c) Upon receipt of the Post-Closing Mortgage Loan file from Seller, SONYMA will review the file to ensure all relevant documents including the fully executed HUD-1 reflect the correct DPAL amount.

(d) On the Purchase Date, SONYMA will wire transfer the amount of the Down Payment Assistance Loan to Seller.

2.504 Purchase of Mortgage Loans by SONYMA

The provisions relating to the purchase of Mortgage Loans shall be the same as set forth in Section 2.710 of the Low Interest Rate Mortgage Program Seller's Guide, except that:

(1) paragraphs (d)(i)(L) is hereby amended and (d)(i)(Q) and (d)(i)(R) are hereby added as follows:

(L) Copy of Uniform Settlement Statement (Form HUD-1) with the final DPAL amount accurately reflected.

(Q) An executed duplicate original of the Down Payment Assistance Loan Enforcement Note and Mortgage (Exhibit 1; Form D1).

(R) An executed duplicate original of the Down Payment Assistance Assignment of Mortgage (Exhibit 1; Form D1).

(2) paragraphs (d)(ii)(E) and (d)(ii)(F) are hereby added as follows:

(E) Recorded Down Payment Assistance Loan Enforcement Note and Mortgage (Exhibit 1; Form

D1).

(F) Recorded Down Payment Assistance Loan Assignment of Mortgage (Form 202; Exhibit Q).

and (3) paragraphs (e)(i)(R) is hereby amended, and (e)(i)(V), (e)(i)(W), and (e)(i)(X) are hereby added as follows:

(R) Copy of Uniform Settlement Statement (Form HUD-1) with the final DPAL amount accurately reflected.

(V) Executed duplicate original of the Cooperative Enforcement Note and Security Agreement (Exhibit 2; Form D2).

(W) Original acknowledgment copy and a photocopy of the UCC Financing Statement (National UCC Financing Statement Form UCC1) **filed separately** with respect to the Mortgage Loan and the Down Payment Assistance Loan.

(X) Original acknowledgment copy and a photocopy of the UCC Financing Statement Cooperative Addendum (New York UCC Financing Statement Cooperative Addendum Form UCC1CAAd) **filed separately** with respect to the Mortgage Loan and the Down Payment Assistance Loan.

PART III - CREDIT AND PROPERTY UNDERWRITING REQUIREMENTS FOR DOWN PAYMENT ASSISTANCE LOANS

Section 3.1 covers only those requirements under this Addendum that differ from the requirements set forth in Section 3.1 of the Seller's Guide. This Section 3.1 and Section 3.1 of the Seller's Guide shall be read together.

SECTION 3.1 - UNDERWRITING GUIDELINES.

- | | | |
|-------|---------------------------------|---|
| 3.101 | Down Payment Requirement | The provisions as to Down Payment shall be the same as set forth in Section 3.101 of the Seller's Guide, except :

(i) The Down Payment Assistance Loan may finance Down Payment (all or a portion of) at least \$1,000 and cannot exceed the higher of \$3,000 or 3 percent (3%) of the purchase price of the Eligible |
|-------|---------------------------------|---|

Property. In no event, however, may the Down Payment Assistance Loan exceed \$10,000.

(ii) Mortgagor must contribute a minimum of one percent (1%) (3 percent (3%) for Three- and Four-Family Dwellings and cooperatives) of his or her own funds into the Mortgage Loan transaction.

Note: If Mortgagor is receiving another form of Down Payment assistance, such assistance must be applied to the Mortgage Loan transaction before applying the SONYMA Down Payment Assistance Loan.

Record and Return to:

Exhibit 1

**SONYMA 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 a Down Payment Assistance Loan ("**DPAL**") in the amount of the Recapture Obligation (as defined in Paragraph 1 of this Note and Mortgage) as funds to be held in trust and to be used solely in connection with the acquisition of the Property (as defined in Paragraph 2 of this Note and Mortgage) ("**DPAL Funds**") 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 a portion of the cost of the purchase price, and if applicable closing costs, 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, Down Payment Assistance Loan Recapture Notification, and any additional documentation required by the Mortgagee in connection with the DPAL ("**DPAL Eligibility Documentation**");
- (b) Such 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 DPAL Funds, and keep and observe all of the terms, covenants and conditions hereof;

- (d) Borrower understands that the amount of the DPAL Funds represents a reduction in the Borrower's cash outlay for down payment, and if applicable, closing costs associated with the acquisition of the Property and that the 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 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 (f) 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 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.

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 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 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 DPAL Funds, except that, if the Remaining 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 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(s)

Borrower(s)

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

**SONYMA Down Payment Assistance Loan
COOPERATIVE ENFORCEMENT NOTE AND SECURITY AGREEMENT**

This Cooperative Enforcement Note And Security Agreement ("**Agreement**") is made as of the ____ day of _____, 20____, between _____ ("**Shareholder**") and _____, a _____ having its principal place of business at _____ ("**Lender**").

1. Description of the Unit. As of the date of this Agreement, the Shareholder (a) acquired ____ shares (the "**Shares**") of capital stock of _____ (the "**Apartment Corporation**"), which Shares are allocated to Unit _____ (the "**Unit**") in the building located at _____, pursuant to the Apartment Corporation's By-Laws; and (b) entered into a proprietary lease for the Unit ("**Proprietary Lease**") by and between the Shareholder, as lessee, and the Apartment Corporation, as lessor.

2. Description of Down Payment Assistance Loan. Shareholder hereby acknowledges that, pursuant to certain agreements between the State of New York Mortgage Agency ("**SONYMA**"), a public benefit corporation having its principal place of business at 641 Lexington Avenue, New York, New York 10022, and the Lender, Lender has furnished Shareholder with a Down Payment Assistance Loan ("**DPAL**") in the amount of the Recapture Obligation (as defined in Paragraph 4 of this Agreement) as funds ("**DPAL Funds**") to be held in trust and to be used solely in connection with the acquisition of the Unit. Shareholder understands that the amount of the Recapture Obligation represents a portion of the cost of the purchase price, and if applicable closing costs, of the Unit and agrees to the recapture of such amount of the Recapture Obligation as required herein as the purchaser of the Unit.

3. Representations, Covenants and Warranties. The Shareholder represents and warrants that:

- (a) Shareholder has, as necessary, read, completed, signed, executed and submitted to Lender the following documents: this Agreement, Down Payment Assistance Loan Recapture Notification, and any additional documentation required by the Lender in connection with the DPAL ("**DPAL Eligibility Documentation**");
- (b) Such DPAL Eligibility Documentation contains no misrepresentation or misinformation;

- (c) The Shareholder warrants and represents that Shareholder has good title to the Shares and to the leasehold granted under the Proprietary Lease, and that the Shareholder has full power, authority and legal right to execute and deliver this Agreement, to grant the security interest granted by this Agreement, and to fulfill the Shareholder's obligations under this Agreement. The Shareholder represents and warrants that the Shareholder is eligible to receive the benefit of the DPAL described above;
- (d) Shareholder understands that the amount of the DPAL Funds represents a reduction in the Shareholder's cash outlay for down payment, and if applicable, closing costs associated with the acquisition of the Unit and that the DPAL Funds are repayable, subject to the terms of this Agreement, in the amount of the Recapture Obligation as determined by SONYMA; and
- (e) Shareholder acquired the Unit for use as the Shareholder's principal residence and (if Shareholder has not already done so) the Shareholder shall promptly move into and occupy the Unit as the Shareholder's principal residence.
- (f) In return for the benefit of the DPAL Funds, Shareholder understands that he or she is required to own and occupy the Unit 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 (g) shall cause the Recapture Obligation to become due and payable.

Shareholder further agrees, covenants and promises as follows:

- (g) Shareholder will own and occupy the Unit as his principal place of residence for a period of ten (10) years commencing on the date hereof (the "**Required Owner Occupancy Period**"); and
- (h) As the purchaser, owner, and occupant of the Unit and the beneficiary of the DPAL Funds provided with respect to the Unit, Shareholder agrees to pay the amount of the Recapture Obligation as required herein. Shareholder agrees to provide to the Lender any documents required by SONYMA with respect to SONYMA's determination of the amount of the Recapture Obligation.
- (i) Shareholder will keep the improvements on or at the Unit insured against loss by fire and other risks as required by the Prior Lender and the Lender.
- (j) Shareholder will keep the Unit in reasonably good repair.

4. Promise to Pay. For value received, the Shareholder promises to pay to the order of Lender, United States funds in the amount _____ Dollars (\$ _____) (the "**Recapture Obligation**"), payable according to provisions set forth in Paragraphs 7 and 9. The Recapture Obligation will not require the payment of installments and will be a standing obligation which will be without interest. If the Shareholder comprises more than one individual, they shall be jointly and severally liable for the repayment of the Recapture Obligation and for the fulfillment of Shareholder's other obligations under this Agreement.

5. Security Interest. The Shareholder hereby grants to Lender, as security for the Shareholder's obligation under this Agreement, a security interest in collateral ("**Collateral**") consisting of (a) the Shares, including thereby any additional or replacement Shares that may be issued to the Shareholder in connection with the Unit; (b) the Shareholder's interest under the Proprietary Lease, including thereby any supplementary or replacement agreement whereunder the Shareholder may acquire any right to possession of the Unit; and (c) proceeds of the foregoing, including without limitation, proceeds of the sale or other disposition of the Shares and/or proceeds, and/or of the subletting or reletting of the Unit.

6. Prior Security Interests. Lender acknowledges that its security interest in the Collateral, and Lender's rights under this Agreement, are subject and subordinate to (a) a security interest held by _____ (the "**Prior Lender**"), to secure funds that were loaned to the Shareholder (the "**First Loan**") pursuant to a first-position security agreement and first-position note (the "**First Security Agreement and First Note**"); and (b) extensions, renewals and replacements of such security interest (any such extensions, renewals or replacements, along with the First Security Agreement and First Note, the "**First Loan Documents**") without regard to the amount secured, provided only that Lender's security interest shall not be subordinate to more than one such security interest at any time. The holder of such superior security interest is called the Prior Lender, even though such security interest may be held by a successor to the Prior Lender or by another lender entirely. Lender acknowledges that its security interest is and will also be subordinate to a security interest afforded to the Apartment Corporation to secure fulfillment of the Shareholder's obligations under the Proprietary Lease.

7. When Recapture Occurs. The Recapture Obligation shall become immediately due and payable in any one or more of the following events (each, a "**Default**"):

- (a) Shareholder: (i) does not occupy the Unit as his home and principal place of
- (b) residence within sixty (60) days of the date of this Agreement; or (ii) (A) does not, except as provided herein, maintain ownership and occupancy of the Unit as Shareholder's principal residence throughout the Required Owner Occupancy

Period (as defined herein), or (B) rents, sells, conveys any interest in or otherwise vacates the Unit during the Required Owner Occupancy Period; or (C) pays the full amount of the sums secured by the First Loan Documents (“**Sums Secured**”);

- (c) Shareholder 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 Loan Documents; or (ii) keep and adhere to any representation, warranty, covenant, promise, or agreement made by Shareholder under the First Loan Documents or this Agreement (collectively, the “**Loan Documents**”);
- (d) the Proprietary Lease is terminated (and such termination is not reinstated within thirty (30) days after such termination) for any reason, including without limitation, action by the Apartment Corporation, the Shareholder’s voluntary cancellation of the Shares or expiration of the term of the Proprietary Lease; or
- (e) 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 Loan Documents will constitute a Default under this Agreement.

8. Notices To Be Given. The Shareholder shall promptly give notice to Lender of (a) Prior Lender’s acceleration of the debt secured by its security interest, or of the commencement of any action to foreclose such security interest, or (b) any attempt by the Apartment Corporation to terminate the Proprietary Lease.

9. Amount of Recapture Obligation To Be Repaid.

- (a) The amount to be repaid by and recaptured from Shareholder will be the amount of the Recapture Obligation, as determined by SONYMA pursuant to this Agreement, payable upon the date of the earliest occurrence of the following: (i) Shareholder’s failure to occupy the Unit as Shareholder’s principal place of residence (subject to the provisions of Paragraph 7(a) of this Agreement); or (ii) any other Default, if any, as defined in Paragraph 7 hereinabove; or (iii) payment in full of the Sums Secured; or (iv) any refinancing of the Sums Secured; or (v) any sale or conveyance of the full ownership interest in the Unit, during the applicable Required Owner Occupancy Period.

- (b) If the Recapture Obligation initially becomes due and payable as provided in Paragraph 9(a)(i), (ii) or (iii) hereinabove, the amount of the Recapture Obligation due and payable, as determined by SONYMA, will equal the entire amount of the DPAL Funds but reduced by 1/120th thereof for each full and complete month that Shareholder has owned and occupied the Unit as Shareholder's principal residence and the First Loan remains outstanding (the "**Remaining DPAL Funds**").
- (c) If the Recapture Obligation becomes due and payable as provided in Paragraph 9(a)(iv) or (v) hereinabove, the amount of the Recapture Obligation due and payable, as determined by SONYMA, shall be the Remaining DPAL Funds, except that, if the Remaining DPAL Funds are greater than Net Profit (as defined herein), then the amount of the Recapture Obligation to be repaid by the Shareholder 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 Unit, or in the event of any refinancing of the Sums Secured, the current appraised value of the Unit, less the sum of the following: (i) repayment due on the outstanding balance of the principal and accrued interest payable on the First Loan and other components of the Sums Secured (exclusive of the initial amount of the Recapture Obligation); and (ii) Shareholder's initial down payment made on the Unit (the initial cash portion of the purchase price exclusive of the initial amount of the Recapture Obligation); and (iii) costs of any capital improvements paid or incurred by Shareholder with respect to the Unit; and (iv) closing costs paid or incurred by Shareholder with respect to any refinancing or sale or conveyance of the full ownership interest in the Unit of the Sums Secured (but not including any costs: (x) associated with a refinance loan obtained by the Shareholder, such as appraisal fees, title insurance fees, etc., or (y) any "seller concessions" which are paid by the Shareholder to enhance the sale of the Unit). If the Net Profit is zero or less, no Recapture Obligation will be due. Notwithstanding the above, if Shareholder owns and occupies the Unit as his principal place of residence in compliance with the terms of this Agreement for the Required Owner Occupancy Period and the First Loan remains outstanding after the expiration of such Required Owner Occupancy Period, the Recapture Obligation will be reduced to zero and extinguished and Shareholder will not be required to repay any portion of the DPAL Funds.
- (d) If the Lender incurs any costs in collecting the Recapture Obligation secured by this Agreement, 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 Agreement.

10. Documentation. The Shareholder, at Shareholder's expense, shall execute, deliver and (where applicable) pay the cost of recording or filing such instruments as Lender may require from time to time to evidence or confirm the Shareholder's obligations under this Agreement and/or to evidence or perfect Lender's security interest in the Collateral. Such instruments may include without limitation Uniform Commercial Code ("**UCC**") Financing Statements.

11. Release. Provided that the Shareholder has complied with all the terms of the Loan Documents, this Agreement 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 Shareholder nor Lender will have any further rights or obligations under this Agreement against each other, except that, if the Shareholder 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 Agreement 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 this Agreement have been discharged by the Shareholder (such date hereinafter referred to as the "**Extended Fulfillment Date**"). On or after the Extended Fulfillment Date, if the Shareholder has complied with all of the requirements of this Agreement, the Lender will, at Shareholder's sole cost and expense and upon written request by Shareholder, execute and furnish Shareholder with a termination statement or other appropriate documentation of such release solely with respect to and only affecting this Agreement ("**Release**"). Upon discharge of this Agreement, the first priority lien created by the First Loan Documents shall continue in force and effect except as expressly provided therein.

12. Compliance with Proprietary Lease. The Shareholder shall fulfill the Shareholder's obligations under the Proprietary Lease, including without limitation those relating to payment of maintenance charges and maintenance of the Unit.

13. Notices. Any notices, demands, certifications, requests, communications or the like ("**Notices**") required or permitted to be given under this Agreement, unless otherwise specifically provided in this Agreement, shall be in writing and shall be delivered personally or given by regular, certified or registered mail, correct postage prepaid, to the parties hereto and to SONYMA. Notices shall be directed to the addresses set forth herein, or to such other addresses as any addressee may designate in writing from time to time upon notice to the others. Notices to SONYMA shall be marked "Attention: Vice President, Single Family Programs". Notices shall be deemed given when actually personally delivered and receipted, or when deposited with a Post Office registry clerk or in an official United States post box.

14. Governing Law. The terms, covenants and conditions of this Agreement shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State of New York.

15. Successors and Assigns. All the terms, covenants and conditions of this Agreement shall apply, bind and inure to the benefit of the Shareholder, Lender, and their respective heirs, personal representative, successors and permitted assigns, all subsequent holders of this Agreement, and all subsequent owners, encumbrances, tenants and subtenants of the Shares of the Unit, except to the extent expressly provided to the contrary herein.

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

17. Counterparts. This Agreement may be executed in one or more duplicate originals bearing the same date.

18. Construction. If there is more than one Shareholder each will be separately liable. The words "Shareholder" and "Lender" will include their heirs, executors, administrators, successors, and permitted assigns. If there are more than one Shareholder or Lender the words "Shareholder" and "Lender" used in this Agreement 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. Shareholder and Lender 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.

The Shareholder(s) state(s) that he, she or they have read this Agreement, and that he, she or they duly signed this Agreement as of the date first set forth above.

Shareholder(s):

State of New York)
)ss.:

County of)

On the _____ day of _____, before me personally appeared _____, to me known and known to me to be the individual described in and who executed the foregoing instrument, and he/she duly acknowledged to me that he/she executed the same as his or her free act and deed.

Notary Public

State of New York)
)ss.:

County of)

On the _____ day of _____, before me personally appeared _____, to me known and known to me to be the individual described in and who executed the foregoing instrument, and he/she duly acknowledged to me that he/she executed the same as his or her free act and deed.

Notary Public



INTEREST RATE OPTION FORM

Lender Name: _____

SONYMA Loan # _____ Loan Amount: \$ _____

I/We, _____ [the "Borrower(s)"], the undersigned, have applied to the State of New York Mortgage Agency ("SONYMA") for mortgage financing, through the above named Lender, to purchase the property located at _____ (the "Residence").

I/We understand that I/we am/are liable to SONYMA, as of the date my/our loan is reserved with SONYMA, for payment of a Lock-in deposit in the amount of one percent (1.0%) of the Loan Amount referenced above. The Lender will collect this Lock-in deposit within fourteen (14) calendar days from the SONYMA Reservation Date. If I/we cancel, withdraw, or make material misrepresentations on application, I/we will forfeit the one percent.

I/We understand that SONYMA is currently offering a Down Payment Assistance Loan ("DPAL"), for which I/we am/are eligible if I/we qualify for SONYMA mortgage financing. I/we hereby acknowledge receipt of the terms of SONYMA DPAL, some of which are described as follows:

- DPAL provides down payment assistance in an amount up to the greater of **\$3,000** or **3%** of the home purchase price, but in no event can the assistance exceed \$10,000.
- SONYMA, through its DPAL, will pay the maximum allowable amount, specified above, towards Borrower's down payment. If the maximum assistance exceeds the amount of the required down payment, the remaining DPAL can be applied towards my/our closing costs.
- I/We must contribute into the home purchase transaction a minimum **1% or 3%** of the home purchase price from my/our own savings or assets. (My/Our minimum cash contribution depends on the type of property I/we am/are financing.) If I/we have a 20% down payment (excluding the application of the DPAL funds) that is derived from a qualified gift, gift of equity, or inheritance, the minimum contribution is not required.
- DPAL bears no interest (0%) and requires no monthly payments.
- The DPAL will be **forgiven** after ten years provided I/we live in the Residence and make my/our regularly scheduled monthly mortgage payment. If I/we pay my/our SONYMA mortgage in full during the first 10 years of the purchase of the Residence, a portion of the DPAL may have to be repaid. Every month the SONYMA loan remains outstanding and the Residence is owned and occupied as my/our principal residence, 1/120th of the DPAL will be forgiven.

I/We understand that if I/we opt to utilize a DPAL in the financing of the Residence, the interest rate of the SONYMA loan will be 0.50% higher than the interest rate currently being offered for the SONYMA program for which I/we am/are applying.*

*Please note the above DPAL Rate Adjustment is not applicable for the Homes for Veterans Program, the Habitat for Humanity Mortgage Program, or purchase of an Energy-Star labeled home.

I/We have reviewed the above SONYMA Down Payment Assistance Loan parameters and have chosen to:

Accept to use DPAL for my/our home purchase under the terms specified below and as specified in the DPAL Recapture Notification (Form #D4).

****Interest Rate:** _____ **Lock-in Period:** _____ **Days**

Decline to use DPAL for my/our home purchase. My interest rate and lock period are specified below.

****Interest Rate:** _____ **Lock-in Period:** _____ **Days**

**For loans reserved with a Short-Term Lock, the loan must close within One Hundred Days (100) days of the Lock-in (Reservation) Date. For loans reserved with a Long-Term Lock, the loan must close within two hundred and forty (240) days of the Lock-in (Reservation) Date. For loans that do not close by this date, an extension can be requested by submitting a Commitment Extension Request Form (Form 235) to SONYMA. Please note that, if the extension is approved by SONYMA, the loan will close at an interest rate that is the higher of the initial Lock-in rate or the rate available on the mortgage closing date for the applicable program.

Change Option (Available only until the loan is approved by SONYMA)

By checking this box, I/we am/are exercising my/our one-time option to change to the selection above. I/We understand that if I/we decline to use DPAL for my/our home purchase, any additional funds necessary to close my/our loan must be derived from a verifiable source acceptable to SONYMA. I/We have executed revised loan documents reflecting this change.

Initial: _____ **Date:** _____

Borrower

Date

Borrower

Date

SONYMA DOWN PAYMENT ASSISTANCE LOAN (DPAL) RECAPTURE NOTIFICATION

Lender: _____

Borrower(s): _____

Residence: _____

BORROWERS SHOULD MAINTAIN A COPY OF THIS RECAPTURE NOTIFICATION AND ATTACHMENTS FOR THEIR RECORDS.

PART I - RECAPTURE NOTIFICATION

A home purchase assisted with down payment assistance funds provided by a State of New York Mortgage Agency ("SONYMA") Down Payment Assistance Loan (the "DPAL Loan"), subject to the first mortgage or cooperative share loan (the "First Mortgage"), and secured by the Down Payment Assistance Loan Enforcement Note and Mortgage, or for a cooperative share loan, secured by a Down Payment Assistance Cooperative Enforcement Note and Security Agreement (individually, the "DPAL Enforcement Document"), requires a repayment or "recapture" of the DPAL Loan to Lender upon the occurrence of any of the conditions set forth below. The amount that must be recaptured from the Borrower and repaid to the Lender is called the "Recapture Obligation" and shall be determined by SONYMA.

Unless otherwise defined herein, terms used in this DPAL Recapture Notification shall have the same meanings as such terms respectively bear in the DPAL Enforcement Document executed on the closing date of the home. With respect to any inconsistency between the provisions contained herein and anything contained in the DPAL Enforcement Document the provisions contained in the DPAL Enforcement Document shall govern.

The Borrower shall pay the Recapture Amount upon the date of the earliest occurrence of the following: (1) the sale or conveyance of any ownership interest in the property secured by the DPAL Loan (the "Residence"); (2) any refinancing or payoff of the First Mortgage Loan; (3) Borrower's failure to occupy the Residence as Borrower's principal residence as described in the DPAL Enforcement Document and (4) any other Default as defined in the DPAL Enforcement Document.

The Recapture Obligation shall equal the lesser of the Remaining DPAL Loan or the Net Profit. The Remaining DPAL Loan is the amount of the DPAL Loan less 1/120th thereof for each full and complete month the First Mortgage Loan was outstanding and the Residence was owned and occupied as the Borrower's principal residence. The Net Profit is the amount equal to the difference between the total proceeds of the sale or other disposition of the Residence (or if a refinance, the current appraised value of the Residence) less the sum of the following: (i) 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, as defined in the DPAL Enforcement Document, exclusive of the amount of the DPAL; and (ii) Borrower's initial down payment made on the Residence (the initial cash portion of the purchase price, exclusive of the Recapture Obligation); (iii) costs of any capital improvements made to the Residence by Borrower; and (iv) closing costs paid or incurred by the Borrower with respect to the sale or conveyance of full ownership interest of the Residence of the Sums Secured [but not including any: (a) "seller concessions" which are paid by the Borrower to enhance the sale of the Residence; or (b) costs associated with a refinance loan obtained by the Borrower]. If the Net Profit is zero or less, no recapture obligation is due. Notwithstanding the above, if the Borrower owns and occupies the Residence as his/her principal place of residence in compliance with the terms of the DPAL Enforcement Document for the Required Owner Occupancy Period and the First Mortgage 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 DPAL Loan.

For additional information, please consult the following attachments to this DPAL Recapture Notification:

Attachment I - DPAL Recapture Worksheet

Attachment II - Example of How to Compute the Recapture Amount

PART II - PROCEDURE

Prior to sale of the Residence or payoff of the First Mortgage, contact the servicing institution to which your First Mortgage payments are being made to determine the amount of recapture owed, if any. The following documents must be submitted:

1. Completed DPAL Recapture Worksheet (Attachment I).
2. Copy of executed contract of sale on the Residence, or if a refinance, copy of a current appraisal report of the Residence.
3. Payoff letter from First Mortgage servicing institution which states the entire payoff amount, including, but not limited to, the current outstanding principal balance of loan and accrued interest.
4. Estimated Borrower closing costs associated with the sale or transfer of the Residence. This list should include a description of each item as well as the estimated cost of each item. Eligible closing costs related to the sale or transfer of the Residence include, but are not limited to, expenses paid or incurred by the Borrower such as broker's or realtor's fees, attorneys' fees, transfer taxes and filing fees. Such expenses must be reasonable and customary for the area in which the Residence is located. Borrower closing costs do not include: (a) any "seller concessions" which are paid by the Borrower to enhance the sale of the Residence; or (b) any costs associated with a refinance loan obtained by the Borrower.
5. Description of any capital improvements paid or incurred by the Borrower with respect to the Residence as well as documentation supporting the cost of such improvements. Such documentation should include copies of contracts for work performed, copies of paid receipts for materials purchased and canceled checks for such work.

PART III - CERTIFICATION

(I/We) have read the Down Payment Assistance Loan Recapture Notification as set forth in Part I hereof, and understand that (I/We) may be required to pay the recapture amount to Lender as a result of financing a portion of (my/our) Residence purchase with a DPAL Loan.

(I/We) acknowledge receipt of this Down Payment Loan Recapture Notification.

Execution at Time of Loan Application

Borrower

Date

Borrower

Date

Attachment I

DPAL RECAPTURE WORKSHEET

- A. Original DPAL Loan Amount \$ _____
- B. Determine the Remaining DPAL Loan (refer to the appropriate DPAL Enforcement Document).
- 1) Borrower's recapture period: _____ months
- 2) Number of full months Borrower has owned and occupied the Residence (number of full months elapsed from date of closing to anticipated date of sale): _____ months
- 3) B(1) minus B(2) = _____ months
- 4) B(3) divided by B(1) = :
- 5) Calculate the Remaining DPAL Loan [B(4) multiplied by A]: \$ _____
- C. Determine Borrower's Net Profit.
- 1) Sales Price of current sale (or appraised value, if a refinance): \$ _____
- 2) Less: a. Repayment due on Lender Loan (outstanding principal and accrued interest): $-\$$ _____
- b. Borrower's down payment on original purchase (excluding the original Recapture Obligation): $-\$$ _____
- c. Capital Improvements made to the Residence by the Borrower: $-\$$ _____
- d. Eligible Borrower's Closing Costs (including realtor's commission) of current sale: $-\$$ _____
- 3) Subtotal [C(2a)+C(2b)+C(2c)+C(2d)] \$ _____
- 4) Net Profit [C(1) - C(3)]: \$ _____
- D. Amount of DPAL Loan to be repaid to Lender:
Lesser of Net Profit [C(4)] or the Remaining DPAL Loan [B(5)] \$ _____

If result is less than zero, no recapture is due.

Note: Attach all documentation listed on page 2 to support this worksheet, including a copy of the appraisal report if the DPAL is being paid in full due to a refinance of the mortgage.

Attachment II

EXAMPLE OF HOW TO COMPUTE THE DPAL RECAPTURE AMOUNT

J and M, first time homebuyers, purchase a residence for \$50,000. The purchase is financed with a \$46,500 State of New York Mortgage Agency ("SONYMA") Loan ("First Mortgage"), a \$3,000 Down Payment Assistance Loan (the "DPAL Loan") (which funds down payment and if applicable, closing costs) and a \$500 cash contribution by J and M. The recapture period is 10 years. Due to a job change, J and M must sell the Residence three years after they purchase it. During the time J and M owned the Residence they added a bathroom and constructed a deck, investing a total of \$10,000 in improvements to the Residence. The Residence sells for \$62,000. J and M owe \$43,500 on their First Mortgage - \$43,400 of outstanding principal and accrued interest of \$100. J and M incur \$5,000 in closing costs including realtor's commission. J and M calculate the recapture amount as follows.

A.	Original DPAL Loan Amount	\$ <u>3,000</u>
B.	Determine the Remaining DPAL Loan (refer to the appropriate DPAL Enforcement Document).	
	1) Borrower's recapture period:	<u>120</u> months
	2) Number of full months Borrower has owned and occupied the Residence (number of full months elapsed from date of closing to anticipated date of sale):	<u>36</u> months
	3) B(1) minus B(2) =	<u>84</u> months
	4) B(3) divided by B(1) = :	<u>0.70</u>
	5) Calculate the Remaining DPAL Loan [B(4) multiplied by A]:	\$ <u>2,100</u>
C.	Determine Borrower's Net Profit.	
	1) Sales Price of current sale (or current appraised value, if a refinance):	\$ <u>62,000</u>
	2) Less: a. Repayment due on First Mortgage (outstanding principal and accrued interest):	\$ <u>43,500</u>
	b. Borrower's down payment on original purchase (excluding the original Recapture Obligation):	\$ <u>500</u>
	c. Capital Improvements made to the Residence by the Borrower:	\$ <u>10,000</u>
	d. Borrower's eligible closing costs (including realtor's commission) of current sale:	\$ <u>5,000</u>
	3) Subtotal [C(2a)+C(2b)+C(2c)+C(2d)]	\$ <u>56,500</u>
	4) Net Profit [C(1) - C(3)]:	\$ <u>3,000</u>
D.	Amount of DPAL Loan to be repaid to Lender:	
	Lesser of Net Profit [C(4)] or the Remaining DPAL Loan [B(5)] =	\$ <u>2,100</u>

If result is less than zero, no recapture is due.

J and M must repay the entire remaining \$2,100 DPAL Loan to the Lender upon the sale of their Residence.

Note: Attach all documentation listed on page 2 to support this worksheet, including a copy of the appraisal report if the DPAL is being paid in full due to a refinance of the First Mortgage.