



# State of New York Mortgage Agency

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

By E-mail

December 9, 2009

**RE: SONYMA Tax Credit Advance Loan**

Dear Participating Lender:

Last month, President Obama signed a bill that extended the Federal homebuyer tax credit for homes in contract by April 30, 2010 and closed by June 30, 2010. The legislation provides first-time homebuyers with a tax credit of ten percent (10%) of the home purchase price, not to exceed \$8,000. It also provides a maximum credit of ten percent (10%) of the home purchase price, not to exceed \$6,500 for long time homeowners purchasing a principal residence by the aforementioned dates. The credit is received in the form of a tax refund when homebuyers file or amend their Federal income tax return.

To give homebuyers the ability to use the benefit of this tax credit in a home purchase, the State of New York Mortgage Agency ("SONYMA"), as an alternative to our Down Payment Assistance Loan ("DPAL"), will offer a loan product that advances the full amount of the tax credit towards the purchase of a home. The Tax Credit Advance Loan ("TCAL") may be used towards down payment and/or closing costs and pre-paid expenses in conjunction with any available SONYMA loan program.

The TCAL will be structured as a second mortgage and will be available for loan reservations made on or after January 1, 2010. The features of TCAL are detailed on the attached term sheet. The major differences between SONYMA's DPAL and TCAL products are as follows:

	<i>DPAL</i>	<i>TCAL</i>
<b>Maximum Assistance</b>	Greater of \$3,000 or 3% of the home purchase price, but may not exceed \$10,000.	10% of the home purchase price, not to exceed \$8,000 [\$6,500 for non-first-time homebuyers (eligible military veterans and/or who are purchasing in a Target Area)].
<b>Interest Rate</b>	0%	Deferred until July 1, 2011; thereafter, 1% higher than SONYMA first mortgage
<b>Monthly Payment</b>	None	If not paid in full, payments will commence August 1, 2011
<b>SONYMA First Mortgage Interest Rate Add-on</b>	0.50% (except the Homes for Veterans, ENERGY STAR®, and Habitat for Humanity Programs)	None

	<b>DPAL</b>	<b>TCAL</b>
<b>Product Expiration</b>	None	Contracts must be dated before May 1, 2010 and loans must close by June 30, 2010.
<b>Repayment Terms</b>	After 10 years, the loan is forgiven. If SONYMA's first mortgage loan is paid off prior to the 10 <sup>th</sup> year, a portion of the DPAL may require repayment.	Borrowers will have until June 30, 2011 to pay the loan in full with no interest. Afterwards, interest at the above rate will accrue and monthly payments will be required.

SONYMA's TCAL 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 and term sheet. Please be advised of the following:

- Purpose of Interest Rate and Monthly Payment Deferral Period. As stated above, interest and monthly payments will be deferred until 2011. The purpose of the deferral period is to give borrowers the incentive to pay off the TCAL upon receipt of their Federal tax credit from the IRS. Borrowers who pay off the TCAL during the deferral period will not accrue any interest charges.
- Insurance Requirements for Loans Utilizing TCAL. SONYMA does **not** require additional title insurance, hazard insurance, flood insurance or private mortgage insurance (PMI) coverage for the TCAL.

The attached chart provides more details on the differences between DPAL and TCAL.

### **Reserving TCALs on Lender Online**

When reserving a loan with a TCAL on Lender Online (LOL), lenders must select one of the currently available Programs that ARE NOT combined with a DPAL. For example, select "Low Interest Rate Program" and not "Low Interest Rate Program with DPAL." Upon selection of the program, a second page will open requesting whether the applicant wishes to also apply for a TCAL. If the lender clicks on the TCAL link, a new section will appear on the main loan reservation screen requiring additional information.

Please note that SONYMA will treat the TCAL as a separate mortgage and will assign a second SONYMA loan number to the TCAL. The SONYMA TCAL number will have a prefix of 990. The last six (6) digits will be the sequential number following the SONYMA first mortgage number. (For example, a loan reserved under the Achieving the Dream Program could be assigned a number of 895-735000. The TCAL number would be 990-735001.)

### **TCAL Funding Procedures; Second Mortgage Instruments and Assignment of Second Mortgage**

Lenders will be required to close and fund the TCAL second mortgage in their name. SONYMA will fund the TCAL simultaneously with the first mortgage loan under its standard mortgage purchase procedures. Since the TCAL does not start accruing interest until July 1, 2011, no interest should be collected from the purchaser at loan closing and SONYMA will not pay interest to lenders on the TCAL purchase date. The TCAL amount must be incorporated into the attached SONYMA Tax Credit Advance Loan Mortgage (Form #T1/12-09) and SONYMA Tax Credit Advance Loan Note

(Form #T2/12-09), or the Tax Credit Advance Loan Cooperative Security Agreement (Form #T3/12-09) and SONYMA Tax Credit Advance Loan Cooperative Note (Form #T4/12-09), as applicable. SONYMA will require lenders to *submit duplicate originals* of the relevant documents, as well as a duly executed assignment of second mortgage, in its post-closing file submission. Lenders will be responsible for recording and submitting the recorded instruments to SONYMA.

The aforementioned legal instruments contain the following language:

- 10 year maturity that starts with the first payment date of August 1, 2011;
- Any partial payments made prior to the first payment date will require the TCAL to be re-amortized and the payment modified;
- Links the first mortgage and the TCAL as follows:
  - a. a default on the first loan would also be a default on the TCAL and vice versa; and
  - b. payoff of the first mortgage would require payoff of the TCAL (but NOT vice versa).
- In the event of default, funds received would be applied fully to the first mortgage before being applied to the TCAL.

#### **UCC1 Language for Filing TCALs on Cooperative Share Loans**

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

"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 supplementary language to be added to Box 4 of the UCC1 filing for the TCAL must read as follows:

"Pursuant to the terms of a certain agreement between the Debtor and the Secured Party entitled "Tax Credit Advance Loan Cooperative 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."

#### **New York State Mortgage Tax on TCALs**

Lenders are reminded that the New York State mortgage tax (and recording fees) must be paid on the TCAL.

#### **TCAL Servicing Requirements**

In order for your institution to originate TCALs, the company servicing these loans (the "Servicer") must be able to complete the following servicing functions:

- Book the TCAL on its loan servicing system as a separate mortgage;
- Link the SONYMA first mortgage with the TCAL for the purposes of complying with the terms of the legal instruments described on pages 2 and 3 of this letter;

- Provide borrowers with a minimum of one notice on or about May 15, 2011 (we prefer more frequent notices) reminding them that the TCAL will begin accruing interest and monthly payments will be required if the TCAL is not paid in full by June 30, 2011;
- Remit all payments to SONYMA using our standard payment billing and reporting process;
- Collect a discharge fee from the homeowner at loan payoff and file satisfaction of mortgage.

Non-servicing lenders are advised that SONYMA's current master servicer, M&T Bank, is able to comply with these requirements. We have revised the procedures to transfer servicing to the master servicer. To access the revised procedures, [click here](#). If you have any questions regarding the mortgage accounting process, please contact Frank Araja at (212) 872-0584 or [faraja@nyhomes.org](mailto:faraja@nyhomes.org).

*Lenders unable to comply with the above servicing requirements will not be eligible to originate loans with a TCAL.*

### **Revised and New Forms**

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

<b><u>Form Name and Number</u></b>	<b><u>Required Effective Date</u></b>	<b><u>Comments</u></b>
• SONYMA Tax Credit Advance Loan Mortgage (Form #T1/12-09)	Required for any mortgage loan with a TCAL	Newly created second mortgage form to be used specifically for TCALs.
• SONYMA Tax Credit Advance Loan Note (Form #T2/12-09)	Required for any mortgage loan with a TCAL	Newly created second note form to be used specifically for TCALs.
• Tax Credit Advance Loan Cooperative Security Agreement (Form #T3/12-09)	Required for any cooperative share loan with a TCAL	Newly created second security agreement form to be used specifically for TCALs secured by a cooperative unit.
• SONYMA Tax Credit Advance Loan Cooperative Note (Form #T4/12-09)	Required for any cooperative share loan with a TCAL	Newly created second note form to be used specifically for TCALs secured by a cooperative unit.
• TCAL Federal Recapture Tax Notification and Disclosure Form (Form #T5/12-09)	Required for any loan with a TCAL	Newly created form. Must be submitted with the Pre-Closing Application File.
• Pre-Closing Application File Checklist (Form #225/12-09)	Can be used immediately, but not required until 1/1/10	Incorporates the above forms and requirements.
• Post-Closing File Checklist (Form #223/12-09)	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 #224/12-09)	Can be used immediately, but not required until 1/1/10	Incorporates the above forms and requirements.

All forms but the checklists are attached hereto. Lenders will be able to access each of the above new and revised forms on Lender Online as well as on our website.

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

Sincerely,

A handwritten signature in black ink, appearing to read "George M. Leocata". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

George M. Leocata  
Senior Vice President  
Single Family Programs



## SONYMA Tax Credit Advance Loan (TCAL) Term Sheet

### LOAN PURPOSE

Tax Credit Advance Loan (TCAL) allows SONYMA borrowers to apply their anticipated Federal homebuyer tax credit toward the purchase of a home. Structured as a subordinate lien, SONYMA will advance funds to eligible homebuyers who plan to file for the 2009-10 Homebuyer Credit ([IRS Form 5405](#)) on their Federal tax returns. TCAL is available as an alternative to SONYMA's Down Payment Assistance Loan. The two products cannot be combined.

### MAIN FEATURES

- Provide funds for down payment and/or closing costs up to:
  - For First-time Homebuyers: 10% of the home purchase price (not to exceed \$8,000);
  - For non-First-time Homebuyers who are *eligible military veterans AND/OR are purchasing a home in SONYMA Target Area*: 10% of the home purchase price (not to exceed \$6,500).
- Borrowers may use TCAL as an alternative to SONYMA's Down Payment Assistance Loan (DPAL) *with no rate add-on*;
- Can only be used in conjunction with a currently available SONYMA program;
- Purchase Contracts must be dated prior to May 1, 2010, and loans must close by June 30, 2010.

### LOAN TERMS

<b>Interest Rate</b>	0% until June 30, 2011. Thereafter, 1% higher than the interest rate on the SONYMA first mortgage.
<b>Monthly Payment</b>	Deferred until August 1, 2011.
<b>Lien Position</b>	Second Mortgage
<b>Eligible Occupancy</b>	Owner-occupied primary residences only
<b>Eligible Terms</b>	10-year terms only
<b>Minimum TCAL Amount</b>	\$1,000
<b>Maximum CLTV</b>	None

### BORROWER ELIGIBILITY

<b>Borrower Eligibility</b>	Unless stated on this term sheet, borrowers must comply with standard SONYMA eligibility and underwriting requirements.*
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## PROPERTY ELIGIBILITY

Properties must comply with standard SONYMA eligibility requirements.\*

## UNDERWRITING

<b>Inclusion of TCAL Payment in Housing Ratio</b>	TCAL payment must be included within SONYMA's maximum housing payment ratio not to exceed 40%.
<b>Minimum Borrower Contribution</b>	Borrowers will be required to contribute a minimum of 1% (3% for cooperatives and 3- and 4-family homes) of the <i>net</i> sales price [contract amount less the TCAL amount applied toward down payment (and any other down payment subsidies)].
<b>Disclosure of TCAL on 1003</b>	The TCAL amount should appear on the 1003 as "Subordinate Financing" within the Details of Transaction section. The proposed payment must be referenced as Other P&I under "Proposed Housing Expense." <b>Note:</b> Lenders will have to include a memo in all loan files with a TCAL citing what portion of the TCAL will be applied to down payment, and what portion will be applied to closing costs.
<b>Impact on Acquisition Cost Calculation</b>	Lenders are reminded that the "net sale price" must be entered on Line #1 of the Acquisition Cost section of the Recapture Notification and Mortgagor's Affidavit (Form 211). The amount of TCAL combined with any other subsidies applied to down payment must be entered on Line #2.
<b>No Cash Back</b>	The TCAL may not exceed the total amount needed for the down payment, closing costs and prepaid expenses (after applying borrower's minimum contribution). Lenders will be responsible for ensuring that borrowers receive no cash back. If after the final HUD-1 is prepared it shows that the borrower will receive cash back, lender must (a) lower the TCAL amount so there is no cash back, or (b) apply the overage amount to the principal balance of the TCAL.
<b>Automated Underwriting Considerations</b>	Due to maximum CLTV requirements, the automated underwriting systems will most likely deny applications with a TCAL. It is recommended that such loans be submitted as manual underwrites.

## OTHER CONSIDERATIONS

<b>Second Mortgage and Note Forms</b>	Borrowers must execute SONYMA 2 <sup>nd</sup> Note and Mortgage forms. <i>SONYMA will not allow the TCAL to be subordinated to another lien other than the SONYMA first mortgage.</i>
<b>Servicing</b>	Servicer must be set up to handle payments and remit to SONYMA.
<b>Federal Recapture Tax</b>	TCALs are subject to the Federal recapture tax, but SONYMA will reimburse the borrower for any recapture tax paid to the IRS.

## IRS-MANDATED REQUIREMENTS REGARDING THE CREDIT

To be eligible for the Federal homebuyer tax credit, borrowers must also meet the below requirements, among others, of the IRS. ***Please note that SONYMA will not review nor will it be responsible for ensuring that applicants comply with these requirements.***

<b>Maximum Modified Adjusted Gross Income</b>	<ul style="list-style-type: none"><li>➤ Individual Filers: Between \$125,000 and \$145,000</li><li>➤ Joint Filers: Between \$225,000 and \$245,000</li></ul>
<b>Repayment of Credit</b>	The tax credit will not have to be repaid to the IRS unless the home ceases to be the borrower's primary residence within 3 years of the purchase date.
<b>Non-Arms Length Purchases</b>	Applicants who purchase properties from a relative or in-law (both as defined by the IRS) are not eligible for the tax credit.
<b>Long Time Homebuyers</b>	Long time homebuyers must have owned and occupied the same residence for 5 consecutive years of the 8-year period ending on the date of new purchase.
<b>Non-Resident Aliens</b>	Non-resident aliens are not eligible for the tax credit.

\*Borrower and property eligibility requirements may differ from program to program. Please visit SONYMA's website (<http://www.nyhomes.org/index.aspx?page=63>) for details on each of SONYMA's programs.



## Comparison of SONYMA Down Payment Assistance Loan and SONYMA Tax Credit Advance Loan

	DOWN PAYMENT ASSISTANCE LOAN (DPAL)	TAX CREDIT ADVANCE LOAN (TCAL)
<b>ELIGIBLE USE</b>	Assistance only available for SONYMA borrowers. Proceeds must first be applied to the minimum down payment. Any excess may be used for closing costs.	Assistance only available for SONYMA borrowers. May be used for down payment and/or closing costs.
<b>MAXIMUM ASSISTANCE AMOUNT</b>	<u>Greater</u> of \$3,000 or 3% of the home purchase price (but not to exceed \$10,000).	10% of the home purchase price, not to exceed \$8,000 [\$6,500 for non-first-time homebuyers (eligible military veterans and/or who are purchasing in a Target Area)].
<b>INTEREST RATE</b>	0%	Deferred until June 30, 2011. Afterwards, 1% higher than SONYMA first mortgage.
<b>MONTHLY PAYMENT REQUIREMENT</b>	No	Yes, if not fully paid by June 30, 2011. Afterwards, payments would begin August 1, 2011.
<b>SONYMA FIRST MORTGAGE INTEREST RATE ADD-ON</b>	0.50% (except the Homes for Veterans, ENERGY STAR®, and Habitat for Humanity Programs)	None
<b>REPAYMENT TERMS</b>	<b>None, as long as the SONYMA first mortgage is not paid in full during the first 10 years. After 10 years, the loan is forgiven. If SONYMA's first mortgage loan is paid off prior to the 10<sup>th</sup> year, a portion of the DPAL may require repayment.</b>	<b>Borrowers will have until June 30, 2011 to pay the loan in full with no interest. Afterwards, interest at 1% higher than the first mortgage rate will accrue and monthly payments will be required.</b>
<b>IMPACT ON PAYMENT RATIOS</b>	None	Yes, the TCAL monthly payment will be considered part of the borrower's monthly housing expense (PITI).
<b>PROGRAM AVAILABILITY</b>	No scheduled expiration date.	Available for loans with contracts dated through April 30, 2010 and closed by June 30, 2010.
<b>FEDERAL RECAPTURE TAX OBLIGATION</b>	Yes, but SONYMA will reimburse the borrower for any recapture tax paid to the IRS.	Yes, but SONYMA will reimburse the borrower for any recapture tax paid to the IRS.

After Recording Return To:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

**SONYMA TAX CREDIT ADVANCE LOAN MORTGAGE**

**A. DEFINITIONS**

Words used in multiple sections of this document are defined below and other words are defined in Sections (C)(3), (C)(12), and (C)(13). Certain rules regarding the usage of words used in this document are also provided in Section (C)(10).

1. "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.
2. "Borrower" is \_\_\_\_\_.  
Borrower is the grantor under this TCAL Mortgage.
3. "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.
4. "Lender" is \_\_\_\_\_, which is organized and existing under the laws of the State of \_\_\_\_\_.  
Lender's address is \_\_\_\_\_.  
Lender is the beneficiary under this TCAL Mortgage.
5. "Loan" means the debt evidenced by the TCAL Note, plus interest and late charges due under the TCAL Note, and all sums due under this TCAL Mortgage, plus interest.
6. "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

7. "TCAL Mortgage" means this Tax Credit Advance Loan Mortgage, which is dated \_\_\_\_\_, 20\_\_\_\_.
8. "TCAL Note" means the Tax Credit Advance Loan Note signed by Borrower and dated \_\_\_\_\_, 20\_\_\_\_. The TCAL Note states that Borrower owes Lender \_\_\_\_\_ Dollars (U.S. \$ \_\_\_\_\_) plus interest, as described in the TCAL Note. Borrower has promised to pay this debt as described in the TCAL Note.

**B. TRANSFER OF RIGHTS IN THE PROPERTY**

The Borrower hereby mortgages to the Lender all right, title and interest of the Borrower in and to the real 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:

1. the buildings and improvements on the Property.
2. 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.
3. 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.
4. 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.
5. 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.
6. any right, title and interest of the Borrower in and to any common areas appurtenant thereto.

**C. Borrower and Lender further covenant and agree as follows:**

1. **Payment of Principal and Interest.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the TCAL Note and any late charges due under the TCAL Note. Payments due under the TCAL Note and this TCAL Mortgage shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the TCAL Note or this TCAL Mortgage is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the TCAL Note and this TCAL Mortgage be made in one or more of the following forms, as selected by

Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the TCAL Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 9. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the TCAL Note and this TCAL Mortgage or performing the covenants and agreements secured by this TCAL Mortgage.

Notwithstanding the foregoing, all amounts due hereunder or under the TCAL Note shall be due on any sale or other conveyance of the Property or any interest therein.

2. **Charges; Liens.** Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this TCAL Mortgage, leasehold payments or ground rents on the Property, if any.
3. **Lien Subordinate to First Mortgage.** Lender and Borrower acknowledge that this TCAL Mortgage is subject to a recorded mortgage (the "First Mortgage") which is a first lien on the Property, dated \_\_\_\_\_, executed by Borrower, securing a promissory note (the "First Mortgage Note") in the amount of \$ \_\_\_\_\_, (such First Mortgage and First Mortgage Note are hereinafter collectively called the "First Mortgage Loan Documents" and together evidence the "First Mortgage Loan"), which First Mortgage Loan Documents and the promises, obligations, covenants and conditions contained therein are by this reference incorporated herein as if set forth verbatim. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the First Mortgage Loan Documents and shall comply with all of the promises, obligations, covenants and conditions contained therein.

Lender and Borrower further agree that (i) a default under the First Mortgage Loan Documents shall be a default hereunder and a default hereunder shall be a default under the First Mortgage Loan Documents, (ii) in the event of a default under the First Mortgage Loan Documents, any amounts received by the holder of the TCAL Note shall first be applied to the payment of any amounts due under the First Mortgage Loan Documents, (iii) in the event of the complete payoff of the First Mortgage Loan, Borrower shall simultaneously pay all amounts remaining unpaid under the TCAL Note and this TCAL Mortgage, and (iv) except for the lien created by the First Mortgage Loan Documents, Borrower shall not encumber or allow any lien to be placed upon or filed against the Property without the written consent of the holder of the TCAL Note.

Lender and Borrower acknowledge and agree that this TCAL Mortgage is subject and subordinate in all respects to the liens, terms, covenants and conditions of the First Mortgage and to all advances heretofore made or which may hereafter be made pursuant to the First Mortgage including all sums advanced for the purpose of (a) protecting or further securing the lien of the First Mortgage, curing defaults by the Borrower under the First Mortgage or for any other purpose expressly permitted by the

First Mortgage or (b) constructing, renovating, repairing, furnishing, fixturing or equipping the Property. The terms and provisions of the First Mortgage are paramount and controlling, and they supersede any other terms and provisions hereof in conflict therewith.

- 4. Occupancy.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this TCAL Mortgage and shall continue to occupy the Property as Borrower's principal residence until the Borrower has satisfied the obligations due to the Lender under the TCAL Note.
- 5. Preservation, Maintenance and Protection of the Property; Inspections.** Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Lender or its agent may make reasonable entries upon and inspections of the Property. Lender shall give Borrower notice at the time of or prior to an inspection specifying reasonable cause for the inspection.
- 6. Borrower's Loan Application.** Borrower shall be in default if, during the loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.
- 7. Joint and Several Liability.** Borrower covenants and agrees that Borrower's obligations and liabilities under the TCAL Note shall be joint and several.
- 8. Loan Charges.** Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this TCAL Mortgage, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this TCAL Mortgage to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this TCAL Mortgage or by Applicable Law.
- 9. Notices.** All notices given by Borrower or Lender in connection with this TCAL Mortgage must be in writing. Any notice to Borrower in connection with this TCAL Mortgage shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the address of the Property unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this TCAL Mortgage at any one time. Any notice to

Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this TCAL Mortgage shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this TCAL Mortgage is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this TCAL Mortgage.

**10. Governing Law; Severability; Rules of Construction.** This TCAL Mortgage shall be governed by federal law and the laws of the State of New York. All rights and obligations contained in this TCAL Mortgage are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this TCAL Mortgage or the TCAL Note conflicts with Applicable Law, such conflict shall not affect other provisions of this TCAL Mortgage or the TCAL Note which can be given effect without the conflicting provision.

As used in this TCAL Mortgage: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

If there is more than one Borrower, each will be separately liable. The words "Borrower" and "Lender" will include their heirs, executors, administrators, successors and permitted assigns.

**11. Borrower's Copy.** Borrower shall be given one copy of the TCAL Note and of this TCAL Mortgage.

**12. Sale of TCAL Note; Change of Loan Servicer.** The TCAL Note or a partial interest in the TCAL Note (together with this TCAL Mortgage) may be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects monthly payments due under the TCAL Note and this TCAL Mortgage and performs other mortgage loan servicing obligations under the TCAL Note, this TCAL Mortgage, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the TCAL Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information required by Applicable Law in connection with a notice of transfer of servicing.

**13. Events of Default and Remedies.** If I do not pay the full amount of each monthly payment on the date it is due as required by the TCAL Note, I will be in default. I will also be in default if: (i) I default in the payment of any sums due under the First Mortgage Loan Documents and such default is not made good prior to the due date of the next installment thereunder, or any cure period provided; or (ii) I refinance, sell or otherwise transfer all or part of the Property or any right in the Property, or any beneficial interest in the Borrower (if the Borrower is not a natural person), other than by devise, descent or operation of law, without the Lender's prior written consent; or

(iii) I fail to occupy the Property as required by the TCAL Note and this TCAL Mortgage; or (iv) I omit or misrepresent a material fact in an application for the First Mortgage Loan or in any of the First Mortgage Loan Documents or in any documents executed in connection with the Loan; or (v) I change the use of the Property, or any part thereof, to a use other than for occupancy as a principal residence by me; or (vi) I default under any of the covenants, terms or conditions contained in the TCAL Note or in this TCAL Mortgage, or in any of the First Mortgage Loan Documents, or in any other document concerning or given as security for the indebtedness evidenced by the TCAL Note.

If I am in default, Lender may require that I pay immediately the entire amount then remaining unpaid under the TCAL Note and under this TCAL Mortgage. This requirement is called "Immediate Payment in Full." Lender may, at its option, require Immediate Payment in Full of all sums secured by this TCAL Mortgage. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this TCAL Mortgage. If Lender exercises this option, Lender shall give Borrower written notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is mailed to Borrower at the address of the Property within which Borrower must pay all sums secured by this TCAL Mortgage. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this TCAL Mortgage without further notice or demand on Borrower, including the remedy of a lawsuit to take away all of my remaining rights in the Property and have the Property sold. At this sale Lender or another person or entity may acquire the Property. This is known as "Foreclosure and Sale." In any lawsuit for Foreclosure and Sale, Lender will have the right to collect all costs and disbursements and additional allowances allowed by Applicable Law and will have the right to add all reasonable attorneys' fees to the amount I owe Lender, which fees shall become part of the amounts secured by this TCAL Mortgage. Notwithstanding anything in this TCAL Mortgage or the TCAL Note to the contrary, any amounts received by Lender pursuant to a Foreclosure and Sale shall be first applied to the full repayment of the First Mortgage Loan before any such amounts can be applied to the repayment of the Loan.

**14. Release.** Upon payment of all sums secured by this TCAL Mortgage, Lender shall release this TCAL Mortgage. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this TCAL Mortgage, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

**15. No Assumption.** The TCAL Note and the TCAL Mortgage may not be assumed without Lender's prior written approval.

**16. Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this TCAL Mortgage granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successors in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this TCAL Mortgage by reason of any demand made by the original Borrower or Borrower's

successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

**17. Transfer of the Property.** If all or any part of the Property or any interest in it is sold, transferred, or otherwise conveyed, or if the First Mortgage Loan is refinanced or otherwise paid in full, Lender may, at its option, require Immediate Payment in Full of all sums secured by this TCAL Mortgage by giving me written notice of acceleration in accordance with Section 13 hereinabove.

**18. Modification.** This TCAL 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.

**19. Borrower Authorized to Act.** 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 TCAL 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 TCAL Mortgage on the Borrower's part to be performed.

**20. New York Lien Law Requirements.** I will receive all amounts lent to me by Lender subject to the trust fund provisions of Section 13 of the New York Lien Law. This means that I will: (a) hold all amounts which I receive and which I have a right to receive from Lender under the TCAL Note as a trust fund; and (b) use those amounts to pay for "Cost of Improvement" (as defined in Section 13 of the New York Lien Law) before I use them for any other purpose. The fact that I am holding those amounts as a trust fund means that for any building or other improvement located on the Property I have a special responsibility under the law to use the amount in the manner described in this Section 20.

By signing below, Borrower accepts and agrees to the terms and covenants contained in this TCAL Mortgage.

Witnesses:

\_\_\_\_\_  
Borrower

\_\_\_\_\_  
Seal

\_\_\_\_\_  
Borrower

\_\_\_\_\_  
Seal

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:

**EXHIBIT A**  
**(Legal Description)**

## SONYMA TAX CREDIT ADVANCE LOAN NOTE

\_\_\_\_\_, 20\_\_\_\_, New York  
[Date] [City]

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

### 1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received (i.e., the Tax Credit Advance Loan or "TCAL"), I promise to pay U.S. \$\_\_\_\_\_ (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is \_\_\_\_\_, with offices located at \_\_\_\_\_. I will make all payments under this Tax Credit Advance Loan Note (hereinafter referred to as the "TCAL Note") in the form of cash, check or money order. This TCAL Note is secured by a mortgage (the "TCAL Mortgage") dated as of the date hereof. I understand that the Lender may transfer this TCAL Note. The Lender or anyone who takes this TCAL Note by transfer and who is entitled to receive payments under this TCAL Note is called the "TCAL Note Holder." I understand that my obligation to make payments under this TCAL Note is in addition to my obligation to make payments to the Lender under that certain first mortgage note (the "First Mortgage Note") and first mortgage (the "First Mortgage," and together with the First Mortgage Note, the "First Mortgage Loan Documents") dated as of the date hereof and evidencing a first mortgage loan ("First Mortgage Loan") of \$\_\_\_\_\_.

### 2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of zero percent (0%) until June 30, 2011. If I do not pay the full amount of Principal by June 30, 2011, then as of July 1, 2011, interest will begin to accrue at a yearly rate of \_\_\_\_%. The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 7(B) of this TCAL Note.

### 3. PAYMENTS

If I do not pay the full amount of Principal by June 30, 2011, I will pay principal and interest by making a payment of \$\_\_\_\_\_ every month. I will make my monthly payment on the first day of each month beginning on August 1, 2011. I will make these payments every month until I have paid all of the Principal and interest that I may owe under this TCAL Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, as of July 1, 2021 (the "Maturity Date"), I still owe amounts under this TCAL Note, I will pay those amounts in full on July 1, 2021. I will make my monthly payments at the address of Lender noted above, or at a different place if required by the TCAL Note Holder.

### 4. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the TCAL Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the TCAL Note. I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The TCAL Note Holder will use my Prepayments to

reduce the amount of Principal that I owe under this TCAL Note. However, the TCAL Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the TCAL Note. If I make a partial Prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the TCAL Note Holder agrees in writing to those changes.

**5. INDEBTEDNESS SUBORDINATE**

I acknowledge that the indebtedness evidenced by this TCAL Note is subordinate in right of payment to the First Mortgage Loan.

**6. LOAN CHARGES**

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The TCAL Note Holder may choose to make this refund by reducing the Principal I owe under this TCAL Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

**7. BORROWER'S FAILURE TO PAY AS REQUIRED**

**(A) Late Charge for Overdue Payments**

If the TCAL Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the TCAL Note Holder. The amount of the charge will be 4% of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

**(B) Default**

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default. I will also be in default if: (i) I default in the payment of any sums due under the First Mortgage Loan and such default is not made good prior to the due date of the next installment thereunder, or any cure period provided; or (ii) I refinance, sell or otherwise transfer all or part of the Property (as such term is defined in the TCAL Mortgage) or any right in the Property, or any beneficial interest in the borrower executing this TCAL Note (if such borrower is not a natural person), other than by devise, descent or operation of law, without the Lender's prior written consent; or (iii) I fail to occupy the Property during the term hereof; or (iv) I omit or misrepresent a material fact in an application for the First Mortgage Loan or in any of the First Mortgage Loan Documents or in any documents executed in connection with this TCAL Note; or (v) I change the use of the Property, or any part thereof, to a use other than for occupancy as my principal residence; or (vi) I default under any of the covenants, terms or conditions contained in this TCAL Note or in the TCAL Mortgage, or in any of the First Mortgage Loan Documents, or in any other document concerning or given as security for the indebtedness evidenced hereby.

**(C) Notice of Default**

If I am in default, the TCAL Note Holder may send me a written notice telling me that if I

do not pay the overdue amount by a certain date, the TCAL Note Holder may require me to pay immediately the full amount of Principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

**(D) No Waiver By TCAL Note Holder**

Even if, at a time when I am in default, the TCAL Note Holder does not require me to pay immediately in full as described above, the TCAL Note Holder will still have the right to do so if I am in default at a later time.

**(E) Payment of TCAL Note Holder's Costs and Expenses**

If the TCAL Note Holder has required me to pay immediately in full as described above, the TCAL Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this TCAL Note to the extent not prohibited by applicable law. Those expenses include, but are not limited to, reasonable attorneys' fees.

**8. GIVING OF NOTICES**

Unless applicable law requires a different method, any notice that must be given to me under this TCAL Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the TCAL Note Holder a notice of my different address. Any notice that must be given to the TCAL Note Holder under this TCAL Note will be given by delivering it or by mailing it by first class mail to the TCAL Note Holder at the address of Lender noted in Section 1, above, or at a different address if I am given notice of that different address by the TCAL Note Holder.

**9. OBLIGATIONS OF PERSONS UNDER THIS TCAL NOTE**

If more than one person signs this TCAL Note, each person is fully and personally obligated to keep all of the promises made in this TCAL Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this TCAL Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this TCAL Note, is also obligated to keep all of the promises made in this TCAL Note. The TCAL Note Holder may enforce its rights under this TCAL Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this TCAL Note.

**10. WAIVERS**

I and any other person who has obligations under this TCAL Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the TCAL Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the TCAL Note Holder to give notice to other persons that amounts due have not been paid.

**11. TCAL MORTGAGE**

In addition to the protections given to the TCAL Note Holder under this TCAL Note, the TCAL Mortgage, dated the same date as this TCAL Note, protects the TCAL Note Holder from possible losses which might result if I do not keep the promises which I make in this TCAL Note. The TCAL Mortgage describes how and under what conditions I may be required to make immediate payment in full of all

amounts I owe under this TCAL Note.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

\_\_\_\_\_  
(Seal)  
- Borrower

\_\_\_\_\_  
(Seal)  
- Borrower

\_\_\_\_\_  
(Seal)  
- Borrower

*[Sign Original Only]*

**ENDORSEMENT**

PAY TO THE ORDER OF THE STATE OF NEW YORK MORTGAGE AGENCY WITHOUT RECOURSE.

\_\_\_\_\_  
LENDER

\_\_\_\_\_  
AUTHORIZED SIGNATURE

\_\_\_\_\_  
PRINTED NAME AND TITLE OF SIGNATORY

**SONYMA TAX CREDIT ADVANCE LOAN COOPERATIVE  
SECURITY AGREEMENT**

**A. DEFINITIONS**

Words used in multiple sections of this document are defined below and other words are defined in Sections (C)(3), (C)(12), and (C)(13). Certain rules regarding the usage of words used in this document are also provided in Section (C)(10).

1. "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.
2. "Borrower" is \_\_\_\_\_.  
Borrower is the grantor under this TCAL Security Agreement.
3. "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.
4. "Lender" is \_\_\_\_\_, which is organized and existing under the laws of the State of \_\_\_\_\_.  
Lender's address is \_\_\_\_\_.  
Lender is the beneficiary under this TCAL Security Agreement.
5. "Loan" means the debt evidenced by the TCAL Note, plus interest and late charges due under the TCAL Note, and all sums due under this TCAL Security Agreement, plus interest.
6. "Security" means the property that is described below under the heading "Transfer of Rights In The Security."
7. "TCAL Security Agreement" means this SONYMA Tax Credit Advance Loan Cooperative Security Agreement, which is dated \_\_\_\_\_, 20\_\_.
8. "TCAL Note" means the SONYMA Tax Credit Advance Loan Cooperative Note signed by Borrower and dated \_\_\_\_\_, 20\_\_. The TCAL Note states that Borrower owes Lender \_\_\_\_\_ Dollars (U.S. \$\_\_\_\_\_) plus interest, as described in the TCAL Note. Borrower has promised to pay this debt as described in the TCAL Note.

**B. TRANSFER OF RIGHTS IN THE SECURITY**

The Borrower hereby pledges to the Lender all right, title and interest of the Borrower in and to (i) the shares of capital stock as well as any replacement and additional shares of such capital stock

(the "Shares") of \_\_\_\_\_ (the "Apartment Corporation"), (ii) the proprietary lease and any replacement or amendment thereto (the "Lease") for Unit \_\_\_\_ (the "Unit") in the building located at \_\_\_\_\_, New York \_\_\_\_\_, such building being physically located on the real property described in Schedule A annexed hereto and hereby made a part hereof, and (iii) the proceeds of any sale of the Shares, transfer of the Unit, subsequent assignment of the Lease, or the subletting or reletting of the Unit (the "Proceeds," and together with the Shares and the Lease, collectively referred to hereinafter as the "Security").

**C. Borrower and Lender further covenant and agree as follows:**

- 1. Payment of Principal and Interest.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the TCAL Note and any late charges due under the TCAL Note. Payments due under the TCAL Note and this TCAL Security Agreement shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the TCAL Note or this TCAL Security Agreement is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the TCAL Note and this TCAL Security Agreement be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the TCAL Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 9. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the TCAL Note and this TCAL Security Agreement or performing the covenants and agreements secured by this TCAL Security Agreement.

Notwithstanding the foregoing, all amounts due hereunder or under the TCAL Note shall be due on any sale or other conveyance of the Security or any interest therein.

- 2. Charges; Liens.** Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Security which can attain priority over this TCAL Security Agreement, if any.
- 3. Lien Subordinate to First-Position Security Agreement.** Lender and Borrower acknowledge that this TCAL Security Agreement is subject to a recorded security agreement (the "First Security Agreement ") which is a first lien on the Security, dated \_\_\_\_\_, 20\_\_\_\_, executed by Borrower, securing a promissory note (the "First Note") in the amount of \$\_\_\_\_\_, (such First Security Agreement and First Note are hereinafter collectively called the "First Loan Documents" and together evidence the "First Cooperative Loan"), which First Loan Documents and the promises, obligations, covenants and conditions contained therein are by this reference incorporated herein as if set forth verbatim. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the First Loan Documents and shall comply with all of the promises, obligations, covenants and conditions contained therein.

Lender and Borrower further agree that (i) a default under the First Loan Documents shall be a default hereunder and a default hereunder shall be a default under the First Loan Documents, (ii) in the event of a default under the First Loan Documents, any amounts received by the holder of the TCAL Note shall first be applied to the payment of any amounts due under the First Loan Documents, (iii) in the event of the complete payoff of the First Cooperative Loan, Borrower shall simultaneously pay all amounts remaining unpaid under the TCAL Note and this TCAL Security Agreement, and (iv) except for the lien created by the First Loan Documents, Borrower shall not encumber or allow any lien to be placed upon or filed against the Security without the written consent of the holder of the TCAL Note.

Lender and Borrower acknowledge and agree that this TCAL Security Agreement is subject and subordinate in all respects to the liens, terms, covenants and conditions of the First Security Agreement and to all advances heretofore made or which may hereafter be made pursuant to the First Cooperative Loan including all sums advanced for the purpose of (a) protecting or further securing the lien of the First Security Agreement, curing defaults by the Borrower under the First Security Agreement or for any other purpose expressly permitted by the First Security Agreement or (b) constructing, renovating, repairing, furnishing, fixturing or equipping the Unit. The terms and provisions of the First Security Agreement are paramount and controlling, and they supersede any other terms and provisions hereof in conflict therewith.

- 4. Occupancy.** Borrower shall occupy, establish, and use the Unit as Borrower's principal residence within 60 days after the execution of this TCAL Security Agreement and shall continue to occupy the Unit as Borrower's principal residence until the Borrower has satisfied the obligations due to the Lender under the TCAL Note.
- 5. Additional Documents.** Upon Lender's request, Borrower shall sign any financing statements and renewals thereof in addition to any other documents that Lender may require to establish or protect its rights in the Security. Additionally, Borrower hereby authorizes Lender to sign these documents in Borrower's name and to file and record them as needed in order to perfect and maintain a security interest in the Security.
- 6. Borrower's Loan Application.** Borrower shall be in default if, during the loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Unit as Borrower's principal residence.
- 7. Joint and Several Liability.** Borrower covenants and agrees that Borrower's obligations and liabilities under the TCAL Note shall be joint and several.
- 8. Loan Charges.** Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Security and rights under this TCAL Security Agreement, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this TCAL Security Agreement to charge a specific fee to Borrower

shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this TCAL Security Agreement or by Applicable Law.

**9. Notices.** All notices given by Borrower or Lender in connection with this TCAL Security Agreement must be in writing. Any notice to Borrower in connection with this TCAL Security Agreement shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the address of the Unit unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this TCAL Security Agreement at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this TCAL Security Agreement shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this TCAL Security Agreement is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this TCAL Security Agreement.

**10. Governing Law; Severability; Rules of Construction.** This TCAL Security Agreement shall be governed by federal law and the laws of the State of New York. All rights and obligations contained in this TCAL Security Agreement are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this TCAL Security Agreement or the TCAL Note conflicts with Applicable Law, such conflict shall not affect other provisions of this TCAL Security Agreement or the TCAL Note which can be given effect without the conflicting provision.

As used in this TCAL Security Agreement: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

If there is more than one Borrower, each will be separately liable. The words "Borrower" and "Lender" will include their heirs, executors, administrators, successors and permitted assigns.

**11. Borrower's Copy.** Borrower shall be given one copy of the TCAL Note and of this TCAL Security Agreement.

**12. Sale of TCAL Note; Change of Loan Servicer.** The TCAL Note or a partial interest in the TCAL Note (together with this TCAL Security Agreement) may be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects monthly payments due under the TCAL Note and this

TCAL Security Agreement and performs other loan servicing obligations under the TCAL Note, this TCAL Security Agreement, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the TCAL Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information required by Applicable Law in connection with a notice of transfer of servicing.

**13. Events of Default and Remedies.** If I do not pay the full amount of each monthly payment on the date it is due as required by the TCAL Note, I will be in default. I will also be in default if: (i) I default in the payment of any sums due under the First Loan Documents and such default is not made good prior to the due date of the next installment thereunder, or any cure period provided; or (ii) I refinance, sell, transfer, encumber or pledge (aside from the pledge of the First Loan Documents) the Unit, the Security, or any right in the Unit or the Security, or any beneficial interest in the Borrower (if the Borrower is not a natural person), other than by devise, descent or operation of law, without the Lender's prior written consent; or (iii) I fail to occupy the Unit as required by the TCAL Note and this TCAL Security Agreement; or (iv) the 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 Borrower's voluntary cancellation of the Shares or expiration of the term of the Lease; or (v) I omit or misrepresent a material fact in an application for the First Cooperative Loan or in any of the First Loan Documents or in any documents executed in connection with the Loan; or (vi) I change the use of the Unit to a use other than for occupancy as my principal residence; or (vii) I default under any of the covenants, terms or conditions contained in the TCAL Note or in this TCAL Security Agreement, or in any of the First Loan Documents, or in any other document concerning or given as security for the indebtedness evidenced by the TCAL Note.

If I am in default, Lender may require that I pay immediately the entire amount then remaining unpaid under the TCAL Note and under this TCAL Security Agreement. This requirement is called "Immediate Payment in Full." Lender may, at its option, require Immediate Payment in Full of all sums secured by this TCAL Security Agreement. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this TCAL Security Agreement. If Lender exercises this option, Lender shall give Borrower written notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is mailed to Borrower at the address of the Unit within which Borrower must pay all sums secured by this TCAL Security Agreement. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this TCAL Security Agreement without further notice or demand on Borrower, including the remedy of a lawsuit to take away all of my remaining rights in the Security and have the Security sold. At this sale Lender or another person or entity may acquire the Security. This is known as "Foreclosure and Sale." In any lawsuit for Foreclosure and Sale, Lender will have the right to collect all costs and disbursements and additional allowances allowed by Applicable Law and will have the right to add all reasonable attorneys' fees to the amount I owe Lender, which fees shall become part of the amounts secured by this TCAL Security Agreement. Notwithstanding anything in this TCAL Security Agreement or

the TCAL Note to the contrary, any amounts received by Lender pursuant to a Foreclosure and Sale shall be first applied to the full repayment of the First Cooperative Loan before any such amounts can be applied to the repayment of the Loan.

- 14. Release.** Upon payment of all sums secured by this TCAL Security Agreement, Lender shall release this TCAL Security Agreement. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this TCAL Security Agreement, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.
- 15. No Assumption.** The TCAL Note and the TCAL Security Agreement may not be assumed without Lender's prior written approval.
- 16. Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this TCAL Security Agreement granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successors in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this TCAL Security Agreement by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.
- 17. Transfer of the Security.** If all or any part of the Security or any interest in it is sold, transferred, encumbered, pledged (aside from the pledge of the First Loan Documents) or otherwise conveyed, or if the First Cooperative Loan is refinanced or otherwise paid in full, Lender may, at its option, require Immediate Payment in Full of all sums secured by this TCAL Security Agreement by giving me written notice of acceleration in accordance with Section 13 hereinabove.
- 18. Modification.** This TCAL Security Agreement 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.
- 19. Borrower Authorized to Act.** 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 TCAL Security Agreement and to pledge all right, title and interest of the Borrower in and to the Security pursuant to the terms hereof and to keep and observe all of the terms, covenants and conditions of this TCAL Security Agreement on the Borrower's part to be performed.

By signing below, Borrower accepts and agrees to the terms and covenants contained in this TCAL Security Agreement.

Witnesses:

\_\_\_\_\_ Seal  
Borrower

\_\_\_\_\_ Seal  
Borrower

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:

**EXHIBIT A**  
**(Legal Description)**

# SONYMA TAX CREDIT ADVANCE LOAN COOPERATIVE NOTE

\_\_\_\_\_, 20\_\_\_\_, New York  
[Date] [City]  
\_\_\_\_\_, Unit \_\_\_\_  
[Street Address]

## 1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received (i.e., the Tax Credit Advance Loan or "TCAL"), I promise to pay U.S. \$\_\_\_\_\_ (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is \_\_\_\_\_, with offices located at \_\_\_\_\_. I will make all payments under this Tax Credit Advance Loan Note (hereinafter referred to as the "TCAL Note") in the form of cash, check or money order. This TCAL Note is secured by a security agreement (the "TCAL Security Agreement") dated as of the date hereof. I understand that the Lender may transfer this TCAL Note. The Lender or anyone who takes this TCAL Note by transfer and who is entitled to receive payments under this TCAL Note is called the "TCAL Note Holder." I understand that my obligation to make payments under this TCAL Note is in addition to my obligation to make payments to the Lender under that certain note (the "First Note") and first-position security agreement (the "First Security Agreement," and together with the First Note, the "First Loan Documents") dated as of the date hereof and evidencing a cooperative loan ("First Cooperative Loan") of \$\_\_\_\_\_.

## 2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of zero percent (0%) until June 30, 2011. If I do not pay the full amount of Principal by June 30, 2011, then as of July 1, 2011, interest will begin to accrue at a yearly rate of \_\_\_\_%. The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 7(B) of this TCAL Note.

## 3. PAYMENTS

If I do not pay the full amount of Principal by the June 30, 2011, I will pay principal and interest by making a payment of \$\_\_\_\_\_ every month. I will make my monthly payment on the first day of each month beginning on August 1, 2011. I will make these payments every month until I have paid all of the Principal and interest that I may owe under this TCAL Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, as of July 1, 2021, (the "Maturity Date"), I still owe amounts under this TCAL Note, I will pay those amounts in full on July 1, 2021. I will make my monthly payments at the address of Lender noted above, or at a different place if required by the TCAL Note Holder.

## 4. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the TCAL Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not

made all the monthly payments due under the TCAL Note. I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The TCAL Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this TCAL Note. However, the TCAL Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the TCAL Note. If I make a partial Prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the TCAL Note Holder agrees in writing to those changes.

**5. INDEBTEDNESS SUBORDINATE**

I acknowledge that the indebtedness evidenced by this TCAL Note is subordinate in right of payment to the First Cooperative Loan.

**6. LOAN CHARGES**

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The TCAL Note Holder may choose to make this refund by reducing the Principal I owe under this TCAL Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

**7. BORROWER'S FAILURE TO PAY AS REQUIRED**

**(A) Late Charge for Overdue Payments**

If the TCAL Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the TCAL Note Holder. The amount of the charge will be 4% of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

**(B) Default**

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default. I will also be in default if: (i) I default in the payment of any sums due under the First Cooperative Loan and such default is not made good prior to the due date of the next installment thereunder, or any cure period provided; or (ii) I refinance, sell or otherwise transfer all or part of the Security (as such term is defined in the TCAL Security Agreement) or any right in the Security, or any beneficial interest in the borrower executing this TCAL Note (if such borrower is not a natural person), other than by devise, descent or operation of law, without the Lender's prior written consent; or (iii) I fail to occupy the Unit (as such term is defined in the TCAL Security Agreement) during the term hereof; or (iv) I omit or misrepresent a material fact in an application for the First Cooperative Loan or in any of the First Loan Documents or in any documents executed in connection with this TCAL Note; or (v) I change the use of the Unit to a use other than for occupancy as my principal residence; or (vi) I default under any of the covenants, terms or conditions contained in this TCAL Note or in the TCAL Security Agreement, or in any of the First Loan Documents, or in any other document concerning or given as security for the indebtedness evidenced hereby.

**(C) Notice of Default**

If I am in default, the TCAL Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the TCAL Note Holder may require me to pay immediately the full amount of Principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

**(D) No Waiver By TCAL Note Holder**

Even if, at a time when I am in default, the TCAL Note Holder does not require me to pay immediately in full as described above, the TCAL Note Holder will still have the right to do so if I am in default at a later time.

**(E) Payment of TCAL Note Holder's Costs and Expenses**

If the TCAL Note Holder has required me to pay immediately in full as described above, the TCAL Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this TCAL Note to the extent not prohibited by applicable law. Those expenses include, but are not limited to, reasonable attorneys' fees.

**8. GIVING OF NOTICES**

Unless applicable law requires a different method, any notice that must be given to me under this TCAL Note will be given by delivering it or by mailing it by first class mail to me at the mailing address for the Unit or at a different address if I give the TCAL Note Holder a notice of my different address. Any notice that must be given to the TCAL Note Holder under this TCAL Note will be given by delivering it or by mailing it by first class mail to the TCAL Note Holder at the address of Lender noted in Section 1, above, or at a different address if I am given notice of that different address by the TCAL Note Holder.

**9. OBLIGATIONS OF PERSONS UNDER THIS TCAL NOTE**

If more than one person signs this TCAL Note, each person is fully and personally obligated to keep all of the promises made in this TCAL Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this TCAL Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this TCAL Note, is also obligated to keep all of the promises made in this TCAL Note. The TCAL Note Holder may enforce its rights under this TCAL Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this TCAL Note.

**10. WAIVERS**

I and any other person who has obligations under this TCAL Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the TCAL Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the TCAL Note Holder to give notice to other persons that amounts due have not been paid.

**11. TCAL SECURITY AGREEMENT**

In addition to the protections given to the TCAL Note Holder under this TCAL Note, the TCAL Security Agreement, dated the same date as this TCAL Note, protects the TCAL Note Holder from

possible losses which might result if I do not keep the promises which I make in this TCAL Note. The TCAL Security Agreement describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this TCAL Note.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

\_\_\_\_\_  
(Seal)  
- Borrower

\_\_\_\_\_  
(Seal)  
- Borrower

\_\_\_\_\_  
(Seal)  
- Borrower

*[Sign Original Only]*

**ENDORSEMENT**

PAY TO THE ORDER OF THE STATE OF NEW YORK MORTGAGE AGENCY WITHOUT RECOURSE.

\_\_\_\_\_  
SELLER/LENDER

\_\_\_\_\_  
AUTHORIZED SIGNATURE

\_\_\_\_\_  
NAME AND TITLE OF SIGNATORY



**STATE OF NEW YORK MORTGAGE AGENCY**  
 (A MUNICIPAL CORPORATION AND POLITICAL SUBDIVISION OF NEW YORK STATE)

**TAX CREDIT ADVANCE LOAN (TCAL)**  
**FEDERAL RECAPTURE TAX NOTIFICATION AND DISCLOSURE FORM**

SONYMA TCAL # \_\_\_\_\_ Borrower(s): \_\_\_\_\_

Lender Name: \_\_\_\_\_

**PART I – TCAL DISCLOSURE**

(I/We), the above “Borrowers”, (am/are) applying for a Tax Credit Advance Loan (“TCAL”) being offered by the State of New York Mortgage Agency (the "Agency" or "SONYMA"). (I/We) understand that (I/we) will be eligible for a TCAL if (I/we) qualify for any available SONYMA first mortgage product (the “SONYMA First Mortgage”). By signing below, (I/we) hereby acknowledge receipt of the terms of SONYMA TCAL, some of which are described as follows:

- TCAL is intended to advance to Borrower the money that Borrower expects to receive from the Federal homebuyer tax credit when he/she files his/her Federal tax return.
- TCAL provides down payment and/or closing cost assistance in an amount up to **10%** of the home purchase price, but in no event can the assistance exceed **\$8,000** (\$6,500 for long time previous homeowners who are U.S. military veterans and/or are purchasing a home in a Federally-designated target area).
- (I/We) understand that the TCAL is offered as an alternative to SONYMA’s Down Payment Assistance Loan and the two products cannot be used in combination.
- SONYMA, through its TCAL, will pay the maximum allowable amount, specified in the above paragraph, towards Borrower’s down payment and/or closing costs and pre-paid expenses. *No cash back will be permitted.* If at closing, it appears that (I/we) will receive cash back, either the TCAL amount must be reduced or the excess will be immediately applied to the balance of the TCAL.
- To be eligible for the Federal homebuyer tax credit, (I/we) must meet specific requirements of the IRS. ***(I/we) understand that SONYMA will not review nor will it be responsible for ensuring that (I/we) comply with these requirements, and that (my/our) receipt of a TCAL does not imply that (I/we) (am/are) eligible for the Federal homebuyer tax credit.***
- (I/We) must contribute into the home purchase transaction a minimum **1%** (or **3%** for cooperative units and 3- and 4-family homes) 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 any TCAL funds) that is derived from a qualified gift, the minimum contribution is not required.
- (I/We) have the right to repay all or a portion of the TCAL without interest until **June 30, 2011**. If after June 30, 2011, any balance remains, (I/we) will be charged interest at an interest rate that is 1% higher than my/our SONYMA First Mortgage. In addition, if any balance remains after June 30, 2011, (I/we) will be required to make monthly payments (based on the unpaid principal balance of the TCAL) starting on **August 1, 2011**.
- If (I/we) understand that if (my/our) SONYMA First Mortgage is paid in full, the TCAL must also be simultaneously paid in full. SONYMA will not permit the TCAL to remain outstanding if the SONYMA First Mortgage is paid in full.

Borr. Initials \_\_\_\_\_ Co-Borr. Initials \_\_\_\_\_

**PART II – TCAL FEDERAL RECAPTURE TAX NOTIFICATION**

In addition to the SONYMA First Mortgage, the TCAL for which (I/we) (am/are) applying is being financed with proceeds of tax-exempt bonds. The Internal Revenue Code of 1986, as amended (the "Code") requires a payment to the Federal government of certain gain (I/we) realize on the sale or transfer of (my/our) home. This gain which must be paid, called the "recapture amount," is due in connection with (my/our) Federal income tax return for the year the house is sold. This provision applies to any disposition of (my/our) home within nine (9) years of the date (I/we) acquire it with certain limited exceptions. The recapture amount will (i) increase during the first five years of ownership with full "recapture" occurring if (I/we) sell (my/our) house at the end of the fifth year following the date of the TCAL and (ii) decrease ratably to zero with respect to a sale occurring in years six through nine. The recapture amount may not exceed the LESSER of (i) 50 percent of the gain (I/we) realize by the sale of (my/our) home or (ii) 6.25 percent of (my/our) original TCAL amount. (I/We) will not have to pay part or all of the recapture if (my/our) income, at the time of the sale of (my/our) home is less than a prescribed amount. NEVERTHELESS, THE CODE REQUIRES THAT (I/WE) FILE FORM 8828 (OR A SUCCESSOR) TITLED "RECAPTURE OF FEDERAL MORTGAGE SUBSIDY" WHEN (I/WE) SELL OR TRANSFER TITLE EVEN IF I/WE REALIZED NO GAIN ON THE SALE OR TRANSFER OR IF MY/OUR INCOME IS LESS THAN THE PRESCRIBED AMOUNT. The information (I/we) will need to compute the recapture amount will be provided to (me/us) at the time (my/our) TCAL is made.

For additional information, please consult the following attachments to this Recapture Notification. YOU SHOULD MAINTAIN THIS INFORMATION FOR YOUR RECORDS.

Attachment 1 - Determining Your Recapture Tax for a SONYMA First Mortgage with a TCAL

Attachment 2 - Example of How to Compute the Recapture Amount

Attachment 3 - Sample Table

Attachment 4 - Recapture Worksheet

\_\_\_\_\_  
(Borrower)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Borrower)

\_\_\_\_\_  
(Date)

**DETERMINING YOUR RECAPTURE TAX FOR A SONYMA FIRST MORTGAGE WITH A TCAL**

**(Note: The following is intended only to familiarize (me/us) with this requirement. (I/We) should obtain the applicable IRS forms and instructions or consult (my/our) tax advisor to actually compute (my/our) recapture tax. THE FOLLOWING 4 ATTACHMENTS SHOULD ONLY BE USED WHEN A BORROWER HAS OBTAINED A TCAL FROM SONYMA.**

1. To determine the recapture tax, first multiply the sum of (my/our) original loan amount and original TCAL amount (\$ \_\_\_\_\_) by 6.25%. This is \$ \_\_\_\_\_ and is the "maximum recapture tax."
2. Next, determine if (I/we) are entitled to a "holding period adjustment." Multiply the appropriate percentage shown in Column 1 (holding period percentage) of Sample Table in Attachment 3, reflecting the year in which (I/we) sold (my/our) home times the dollar amount calculated in (1.) above.

This amount, \$ \_\_\_\_\_, is (my/our) "adjusted recapture tax."

3. Now determine if (I/we) are entitled to a "low-income reduction" or are excluded from paying any recapture tax. Look under column 2 of the Sample Table in Attachment 3 to determine the Adjusted Qualifying Income reflecting (my/our) family size at the time of sale. If (my/our) modified adjusted gross income (adjusted gross income from IRS Form 1040 plus tax-exempt income less the gain realized by the sale of this house) is less than the Adjusted Qualifying Income, (I/we) are excluded from paying any recapture tax. If (my/our) modified adjusted gross income exceeds the Adjusted Qualifying Income by more than \$5,000, (I/we) are not entitled to a "low-income reduction". If (my/our) income is within \$5,000 of the chart amount, the difference between (my/our) income and the chart amount is divided by \$5,000, and the resulting percentage is multiplied by the amount calculated in (2.) above. (I/We) now have computed the recapture tax. (I/We) are liable to pay the lesser of this amount or one-half of the gain on the sale of (my/our) home.

Note: The Income Limits in Attachment 3 are hypothetical amounts for illustration purposes only. At or subsequent to closing, (I/we) will be given the actual limits applicable to (me/us).

**EXAMPLE OF HOW TO COMPUTE THE RECAPTURE AMOUNT**

J, a single individual, purchases a home with a \$55,000 SONYMA First Mortgage and an \$8,000 TCAL provided by the State of New York Mortgage Agency. At the time of purchase, the applicable income limit for a single person is \$20,000. J marries S, and they have two children, E and M. They sell their home 6 years and 2 months later and realize a gain of \$12,000 on the sale of the home. In the year of sale, J and S's household income (adjusted gross income plus tax-exempt interest but not including any gain on the sale of this house) is \$32,000. Before adjustments, the maximum recapture amount would be \$3,937.50 ( $0.0625 \times \$63,000$ ).

However, because the home was held more than 5 years, the holding period adjustment reduces the recapture amount to \$2,362.50 (sale on or after the sixth anniversary of closing, but before the seventh anniversary of closing = 60% holding period percentage). The recapture amount is further reduced because J and S's household income (\$32,000) is \$3,822 less than the income eligibility limit of (\$30,822 plus \$5,000) or \$35,822.

The recapture amount is reduced by the income percentage which is the difference between J and S's household income (\$32,000) and the eligibility limit (\$30,822) divided by \$5,000. (\$32,000 is \$1,178 more than \$30,822 and \$1,178 divided by \$5,000 = 23%.  $\$2,063 \times 23\% = \$543.37$ ).

Since J and S realized a \$12,000 gain on the sale of their home, the 50% gain-on-sale limitation did not further reduce the \$543.37 recapture amount due. If the gain on sale had been \$200 instead of \$12,000, then the recapture amount would have been \$100, which is the lesser of the computed amount of \$543.37 or 50% of the gain on sale ( $\$200 \times 50\% = \$100$ ).

This example is modified from the Draft Report prepared by the United States General Accounting Office entitled "Home Ownership, Limiting Mortgage Assistance Provided to Owners with Rapid Income Growth" to reflect changes enacted by the Budget Reconciliation Act of 1990.

If \$20,000 was the applicable income limit for one-person household, \$23,000 would be the applicable 3-or-more person household limit ( $\$20,000 \times 115\%$ ). The \$23,000 amount is increased by 1.05 to the "nth" power, where "n" is the number of full years the home was owned, to \$30,822. ( $\$23,000 \times 1.05$  to the 6th power equals  $1.34 \times \$23,000 = \$30,822$ .)

**SAMPLE TABLE**

[Note: The incomes provided in Column 2 of this table are merely examples to assist (me/us) in understanding the recapture calculation described in Attachment 2. Actual Income Calculations will be provided at or subsequent to Closing].

Date that (I/we) <u>sell (my/our) home</u> Before the first anniversary of closing (See note above)	(Column 1) <b>Holding Period</b> <u>Percentage</u>	(Column 2) <b><u>Adjusted Qualifying Income</u></b> Number of Family Members Living in Your Home <u>At The Time of Sale</u>	
		<u>2 or less</u>	<u>3 or more</u>
	20%	\$20,000	\$23,000
On or after the first anniversary of closing, but before the second anniversary of closing	40%	\$21,000	\$24,150
On or after the second anniversary of closing, but before the third anniversary of closing	60%	\$22,050	\$25,357
On or after the third anniversary of closing, but before the fourth anniversary of closing	80%	\$23,152	\$26,625
On or after the fourth anniversary of closing, but before the fifth anniversary of closing	100%	\$24,310	\$27,957
On or after the fifth anniversary of closing, but before the sixth anniversary of closing	80%	\$25,526	\$29,354
On or after the sixth anniversary of closing, but before the seventh anniversary of closing	60%	\$26,802	\$30,822
On or after the seventh anniversary of closing, but before the eighth anniversary of closing	40%	\$28,142	\$32,363
On or after the eighth anniversary of closing, but before the ninth anniversary of closing	20%	\$29,549	\$33,981

**RECAPTURE WORKSHEET**

- A. Calculate 50% of the gain on sale of the home.  
[Gain \$ \_\_\_\_\_ x 50%] = \$ \_\_\_\_\_.
- B. Home was sold or transferred during what year? \_\_\_\_\_ year  
Applicable % (See Attachment 3, Column 1) \_\_\_\_\_%.
- C. Original mortgage loan amount \$ \_\_\_\_\_.
- D. Amount in C. x 6.25% (.0625) = \$ \_\_\_\_\_ (Maximum Recapture Tax possible).
- E. [% shown in B.] x D. = \$ \_\_\_\_\_.
- F. Maximum Federal income limit for (my/our) area, the year sold, and current family size (See Attachment 3, Column 2) = \$ \_\_\_\_\_.
- G. Mortgagor(s)' modified adjusted gross income for year in which house is sold.
- |  |          |
|--|----------|
| (adjusted gross income on Form 1040, 1040A, or 1040EZ) | \$ _____ |
| (tax-exempt income) +                                  | \$ _____ |
| (100% of gain on sale on home) -                       | \$ _____ |
| (modified adjusted gross income) =                     | \$ _____ |
- H. If F. is greater than or equal to the result in G., no recapture; stop here.
- I. If G. is greater than or equal to (F. + \$5,000), go to M.
- J. If G. is less than (F. + \$5,000), compute the difference between G. and F. here: \$ \_\_\_\_\_.
- K. The amount in J. divided by \$5,000 = \_\_\_\_\_%.
- L. K. times E. = \$ \_\_\_\_\_ (adjusted recapture tax). (Go to N.)
- M. The LESSER of (A.) or (E.) is the recapture amount owed  
\$ \_\_\_\_\_.
- N. The LESSER of (A.) or (L.) is the recapture amount owed.  
\$ \_\_\_\_\_.