

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

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

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

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

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

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

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

Shareholder further agrees, covenants and promises as follows:

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

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

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

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

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

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

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

- (c) Shareholder fails to: (i) make any payment due on any of the Sums Secured within thirty (30) days after the date that such payment was due pursuant to the terms of the First Loan Documents; or (ii) keep and adhere to any representation, warranty, covenant, promise, or agreement made by Shareholder under the First Loan Documents or this Agreement (collectively, the “**Loan Documents**”);
- (d) the Proprietary Lease is terminated (and such termination is not reinstated within thirty (30) days after such termination) for any reason, including without limitation, action by the Apartment Corporation, the Shareholder’s voluntary cancellation of the Shares or expiration of the term of the Proprietary Lease; or
- (e) Any misrepresentation, fraud, or other default exists or occurs under the DPAL Eligibility Documentation (as defined herein), in connection with any of the Sums Secured, or otherwise under the Loan Documents.

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

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

9. Amount of Recapture Obligation To Be Repaid.

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

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

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

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

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

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

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

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

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

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

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

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

Shareholder(s):

State of New York)
)ss.:

County of)

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

Notary Public

State of New York)
)ss.:

County of)

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

Notary Public