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**STATE OF NEW YORK MORTGAGE AGENCY**

**LOW INTEREST RATE MORTGAGE PROGRAM**

**MORTGAGE PURCHASE AGREEMENT**

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**Seller**

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**Address**

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Dated: 10/97

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# MORTGAGE PURCHASE AGREEMENT

**THIS AGREEMENT** between the State of New York Mortgage Agency, 641 Lexington Avenue, New York, New York 10022 (hereinafter referred to as "SONYMA " or the "Agency") and the institution designated as "Seller" on the cover page of this Agreement (hereinafter referred to as "Seller").

## WITNESSETH:

In consideration of the warranties, representations and mutual agreements herein set forth, SONYMA and Seller hereby agree as follows:

1. **DEFINITIONS.** The following terms shall, for all purposes of this Agreement, have the following meanings:

(a) **Act.** The State of New York Mortgage Agency Act, Chapter 612 of the Laws of New York, 1970, as amended, being Title 17 of Article 8 of the Public Authorities Law of the State.

(b) **Agreement.** This Mortgage Purchase Agreement by and between the Seller and SONYMA.

(c) **Application.** The Participation Application by which Seller offered to sell Mortgage Loans to SONYMA.

(d) **Availability of Funds and Notice of Terms Bulletin.** Each Availability of Funds and Notice of Terms Bulletin, which will be periodic notice to participating Sellers announcing the availability of funds for Mortgage Loans and stating the applicable interest rate, time frame when funds will be available and any other requirements specifically applicable to Mortgage Loans financed with such funds.

(e) **Bonds.** The Bonds issued or to be issued by SONYMA.

(f) **Certificate as to Unsecured Credit Agreement.** Certification submitted by Seller with the Application and executed by the financial institution with which Seller entered into an unsecured credit agreement or other agreement relating to the provision of funds to close Mortgage Loans.

(g) **Closing Date.** The date, with respect to any Mortgage Loan sold or offered for sale to SONYMA by Seller under this Agreement, upon which such Mortgage Loan was closed.

(h) **Delivery Date.** With respect to any Mortgage Loan sold to SONYMA by Seller under this Agreement, the date by which all documents and instruments required under the Seller's Guide to be delivered by Seller to SONYMA in connection with the sale of the Mortgage Loan shall be delivered to SONYMA for approval.

(i) **Eligible Property.** A building located in the State of New York which is (i) an existing Single Family Dwelling, Two Family Dwelling, or Multiple Unit Dwelling (three or four unit dwelling) or (ii) newly constructed Single Family Dwelling or Two Family Dwelling (located in a Targeted Area) which has never been occupied as a residence, including the land appurtenant thereto or condominium

interest or cooperative interest therein, to be used as the principal residence of the owner of such building. A building, condominium unit or cooperative unit shall not qualify as an Eligible Property if any portion is used or intended for non-residential purposes or as a vacation home.

(j) **Escrows.** Payments required to be made under the terms of a Mortgage Loan by Mortgagor and to be paid into an escrow account to cover expenses, which must include, but not be limited to, all taxes and special assessments, as well as hazard and flood insurance premiums, and mortgage insurance premiums.

(k) **FHLMC.** Federal Home Loan Mortgage Corporation.

(l) **FNMA.** Federal National Mortgage Association.

(m) **Loan Funding Certification.** The certification by Seller to be submitted with the closed documents file, as described in the Seller's Guide, regarding the source of funding of the Mortgage Loan and describing the parties' rights and responsibilities in connection with related Mortgage Loans.

(n) **Low Interest Rate Mortgage Program.** The residential mortgage loan purchase program financed by the Bonds, formerly known as the Forward Commitment Program. Also includes any other mortgage loan programs financed by the Bonds.

(o) **Mortgage Loan.** A loan evidenced by a promissory note, secured by a mortgage granting a first lien upon a fee simple or leasehold interest (with a remaining terms equal to or greater than the original term of the Mortgage Loan) in the Eligible Property acquired with the proceeds of the loan, or, with respect to a cooperative unit, secured by a lien upon the related shares of stock in the cooperative housing corporation and the proprietary lease related to the financed premises acquired with the proceeds of the Mortgage Loan, subject in each case only to the liens of taxes or assessments which are not delinquent, building restrictions or other restrictive covenants or conditions, leases or tenancies whereby rents or profits are reserved to the owners, joint driveways, sewer rights, party walls, rights of way or other easements, or encroachments, provided that none of the foregoing, in the opinion of SONYMA, materially adversely affect the security for the Mortgage Loan.

(p) **Mortgagor.** The person or persons, each of whom shall be natural persons, who executed the mortgage instrument securing a Mortgage Loan. The term "Mortgagor" shall also include persons who have assumed the obligations of a Mortgagor, who shall also be natural persons.

(q) **Multiple Unit Dwelling.** An owner-occupied dwelling containing two or three rental units, which was first occupied as a residence at least five years prior to the Closing Date.

(r) **Participation Acceptance Notice.** The notice by SONYMA to the Seller which obligates SONYMA to purchase Mortgage Loans from Seller in accordance with this Agreement, the Application, the Seller's Guide, and the Availability of Funds and Notice of Terms Bulletin.

(s) **PMI.** (i) A primary mortgage insurer licensed to do business in the State and qualified to provide insurance on mortgage loans purchased by FHLMC or any successor federal agency or corporation, or (ii) the State of New York Mortgage Agency Mortgage Insurance Fund.

(t) **Property Value.** The lower of (i) the appraised value of the property securing the Mortgage Loan on the Closing Date, or (ii) the purchase price paid for the property by Mortgagor.

(u) **Purchase Date.** The date upon which payment is made to Seller by SONYMA with respect to any Mortgage Loan sold to SONYMA by Seller under this Mortgage Purchase Agreement and the Seller's Guide.

(v) **Reservation System.** System by which Seller reserves funds for a specific Mortgage Loan application, as set forth in the Seller's Guide.

(w) **Seller's Guide.** The guide, as it may be amended from time to time by SONYMA, containing procedures governing the delivery of Mortgage Loans purchased by SONYMA from Seller under this Agreement.

(x) **Servicer.** An institution or a person who has qualified and has agreed, under a Servicing Agreement, to service Mortgage Loans purchased by SONYMA under the Low Interest Rate Mortgage Program.

(y) **Servicer's Guide.** The guide, as it may be amended from time to time by SONYMA, containing the procedures governing the servicing of Mortgage Loans purchased by SONYMA under the Low Interest Rate Mortgage Program. The Servicer's Guide includes applicable accounting procedures.

(z) **Servicing Agreement.** Any agreement between SONYMA and Servicer under which the Servicer agrees to service Mortgage Loans purchased by SONYMA in connection with the Low Interest Rate Mortgage Program.

(aa) **Single Family Dwelling.** A building designed for use by one family, which includes a condominium unit, cooperative unit or factory-made housing which is permanently affixed to real property. The term condominium is used as defined in "Condominium Act," Article 9-B of the Real Property Law of the State. With respect to a condominium unit, (i) the owner of such unit must own an undivided interest in the underlying real estate, with (ii) ownership interest including the property, owned in common with others, which is necessary or contributes to the use and enjoyment of such a structure or unit. With respect to a cooperative unit, (i) the cooperative must be located in a structure owned by a cooperative housing corporation for the purpose of the cooperative ownership of residential real estate in New York State, and (ii) evidence of the ownership of such cooperative unit must be through certificates of stock in, and a proprietary lease from, such cooperative housing corporation.

(bb) **State.** State of New York.

(cc) **Targeted Area.** Areas identified by SONYMA in accordance with the Internal Revenue Code of 1986, as amended, and the regulations there under, and included as part of the Seller's Guide.

(dd) **Two Family Dwelling.** An owner-occupied dwelling containing one rental unit which is: (i) located in a Targeted Area, or (ii) located in a non-Targeted Area and first occupied as a residence at least five years prior to the Closing Date.

## 2. **PURCHASE AND SALE OF MORTGAGE LOANS.**

(a) Seller agrees to sell and SONYMA, subject to the successful sale and delivery of Bonds on terms satisfactory to SONYMA, agrees to purchase Mortgage Loans in accordance with the provisions of the Seller's Guide and the respective Availability of Funds and Notice of Terms Bulletin and in conformance with the Reservation System.

(b) The Delivery Date with respect to each Mortgage Loan must occur as set forth below:

(1) After the Closing Date and prior to the Purchase Date, Seller shall deliver all documents, completed and fully executed, as listed in the appropriate sections of the Seller's Guide.

(2) Within one hundred eighty (180) days of the Closing Date, Seller must deliver all original recorded documents, original title insurance policy, and filed documents as listed in the appropriate sections of the Seller's Guide.

(c) A Purchase Date shall be established, as set forth in the Seller's Guide and Availability of Funds and Notice of Terms Bulletin, by SONYMA for each Mortgage Loan offered for sale to SONYMA by the Seller and accepted for purchase by SONYMA.

(d) The purchase price payable by SONYMA to Seller on the Purchase Date for each Mortgage Loan to be purchased by SONYMA shall be the unpaid principal balance thereof. SONYMA reserves the right to reduce the purchase price by the amount of the commitment fee for the Mortgage Loan. Accrued but unpaid interest to the day immediately preceding the Purchase Date, if any, will be retained by, or forwarded by the Servicer to, the Seller upon receipt of the first monthly payment on the Mortgage Loan after the Purchase Date. Pursuant to the Seller's Guide, SONYMA shall reserve the right to assess a penalty and reduce the purchase price payable to Seller by the amount of the penalty.

(e) Seller agrees to comply with all the terms, conditions and requirements of the Seller's Guide in effect as of the Closing Date, and the applicable Availability of Funds and Notice of Terms Bulletin with respect to such Mortgage Loans closed on such Closing Date unless any such terms, conditions and requirements shall have been waived by SONYMA in writing. For each Mortgage Loan offered for sale by Seller to SONYMA under this Agreement, Seller shall execute, and shall cause the warehousing entity as appropriate, to execute, the Loan Funding Certification in the form provided by SONYMA.

(f) In connection with any unsecured credit agreements under which Seller obtains funds to close Mortgage Loans, Seller shall provide SONYMA with the Certificate as to Unsecured Credit Agreement.

(g) Seller agrees that SONYMA shall have the right to terminate this Agreement if any of the following events occur:

(i) Failure of the Seller to satisfy certain financial requirements. SONYMA shall perform a periodic review of the financial condition of the Seller the expense for which SONYMA may

charge Seller a fee. At such time as SONYMA determines, in its sole discretion, that a Seller's financial performance is not adequate for continued participation in the Low Interest Rate Mortgage Program, SONYMA may terminate this Agreement with Seller.

(ii) Failure of the Seller to satisfy the performance and marketing requirements as set forth in the Seller's Guide.

Seller agrees that SONYMA shall have the right to amend and supplement the Seller's Guide from time to time by mailing the Seller notices, letters, or changed pages, such amendments or supplements to be effective upon the date specified on such notice or letter. In the absence of a specified effective date, upon receipt by the Seller of written notice thereof, but in any event on a date which is no later than 5 business days after the postmarked date of mailing thereof; provided, however, that (i) in the event of any conflict between the provisions of this Agreement and any provision of the Seller's Guide as either may be from time to time amended or supplemented, the Seller's Guide shall govern and (ii) any amendments or supplements to the Seller's Guide shall not apply to Mortgage Loans the Closing Date for which was prior to the effective date thereof.

3. **CONDITIONS TO PURCHASE BY SONYMA.** SONYMA shall be obligated to purchase and pay for any Mortgage Loan offered for sale by Seller under this Agreement only if, with respect to such Mortgage Loan, the following conditions have been met as of the following dates:

(a) As of the Closing Date:

(1) Each Mortgage Loan is lawful under all applicable local, state and federal rules and regulations which govern the affairs of Seller and the Mortgagor, including without limitation all applicable real estate settlement procedures, truth-in-lending and antidiscrimination laws.

(2) Each Mortgage Loan which must have private mortgage insurance issued by a PMI is covered by a policy which meets all requirements of the Seller's Guide, is in full force and effect and will upon assignment of the Mortgage Loan inure to the benefit of SONYMA.

(3) Each Mortgage Loan has a commitment for coverage under any applicable pool insurance policy obtained by SONYMA as required by the Seller's Guide.

(4) Each Mortgage Loan is to an individual borrower or borrowers and is in addition to the mortgage loans Seller otherwise would have made.

(5) Each Mortgage Loan is closed on SONYMA printed documents and not on any laser-form documents, unless consented to by SONYMA in writing in accordance with the Seller's Guide.

(6) Other than as set forth below, each Mortgage Loan has been originated and processed by Seller, without the involvement, in any way of third parties, including but not limited to, third party mortgage brokers, real estate brokers or correspondents. **PAYMENTS OF ANY KIND FOR LOAN REFERRALS ARE PROHIBITED.** Notwithstanding the foregoing, the mortgage brokers, as described below, and accepted in writing by SONYMA are authorized to assist the Seller to process Mortgage Loans for sale to SONYMA under the terms hereof provided that:

- (a) The mortgage broker is registered with the New York State Banking Department and makes all disclosures to the Mortgagor as required by regulations of the Banking Department. A mortgage broker may also be an corporation or organization that is eligible to participate as a Seller as described in Section 4 of this Agreement.
- (b) The mortgage broker shall only participate in the initial processing of Mortgage Loans. The mortgage brokers shall not underwrite for commitment purposes or close Mortgage Loans.
- (c) The Seller and mortgage broker may not impose any additional costs on the Mortgagor other than the usual fees and points permitted under the Seller's Guide.
- (d) Seller shall be required to provide technical training for the mortgage broker(s) whose services they will be utilizing.
- (e) Seller hereby agrees to indemnify and hold harmless the Agency against any liabilities which it may incur in connection with the participation by mortgage brokers as authorized in this paragraph 6.
- (7) The unpaid principal balance of the Mortgage Loan and the interest rate thereon have been accurately stated to SONYMA.
- (8) The amount of the unpaid principal balance of the Mortgage Loan is justly due and owing.
- (9) The Mortgage Loan constitutes a valid first lien on the real property described to SONYMA, or with respect to a cooperative unit, the Mortgage Loan must be secured by a lien upon the related shares of stock in the cooperative corporation and the proprietary lease related to the financed premises, subject only to real property taxes not yet due, installments of assessments not yet due, and easements and restrictions of record which do not, in the opinion of SONYMA, adversely affect, to a material degree, the use or value of the real property or the improvements thereon or such cooperative ownership. (Examples of easements and restrictions of record which are acceptable to SONYMA are building restrictions or other restrictive covenants or conditions, leases or tenancies whereby rents or profits are reserved to the owners, joint driveways, sewer rights, party walls, rights of way or other easements, or encroachments.)
- (10) Seller has complied with all the terms, conditions and requirements of the Act.
- (11) Seller has complied and each Mortgage Loan complies with all the terms, conditions and requirements of the Seller's Guide and the applicable Availability of Funds and Notice of Terms Bulletin unless any such terms, conditions and requirements shall have been waived by SONYMA in writing.
- (12) Each Mortgage Loan is evidenced by a promissory note and bears interest at the rate which is specified in the applicable Availability of Funds and Notice of Terms Bulletin.



(13) With respect to each Mortgage Loan, the closing costs, fees and charges, of whatever kind or nature, which were collected from the Mortgagor and from the property seller did not exceed the aggregate of (i) the actual amounts expended for continuation of abstract, title insurance, deed tax, attorneys' fees, credit reports, survey, appraiser's fees and filing and recording fees and other fees and charges permitted by the Seller's Guide; and (ii) the actual amounts paid or escrowed for taxes and insurance.

(14) With respect to each Mortgage Loan, the total origination fees and discount fees (points) charged to Mortgagor and the property seller do not exceed the amounts set forth therefor in the Seller's Guide and the applicable Availability of Funds and Notice of Terms Bulletin.

(15) The note evidencing the Mortgage Loan is a legal, valid and binding obligation of the maker thereof and is enforceable in accordance with its terms. Seller has no notice of any counterclaim, set-off, defense or right of rescission asserted or maintained, or which can be asserted and maintained by Mortgagor or any successor in interest of Mortgagor.

(16) The terms of the Mortgage Loan require that, in addition to interest and principal payments on the Mortgage Loan, the equivalent of one-twelfth of the estimated annual taxes, assessments and applicable insurance premiums, including hazard, flood, and primary mortgage insurance premiums, on the mortgaged property be paid monthly in advance to the Servicer of the Mortgage Loan.

(17) No Mortgage Loan shall exceed the maximum loan amount of the Property Value as set forth in the Seller's Guide.

(18) Seller's commitment letter to the Mortgagor relating to each Mortgage Loan was made after the date of execution of this Agreement by SONYMA, each Mortgage Loan was made to finance the purchase of an Eligible Property and all improvements so financed have been fully completed or moneys have been placed in escrow therefor. Each Mortgage Loan shall have been closed by Seller.

(19) Seller has no knowledge of any improvement on the real property covered by a Mortgage Loan in violation of any laws or regulations affecting the premises including, without limitation, applicable building, zoning and environmental protection laws or regulations.

(20) Seller has no knowledge of the real property subject to each Mortgage Loan being damaged by waste, fire, earthquake, windstorm, flood, tornado or other cause.

(21) Seller has no knowledge of any condemnation proceeding being instituted or threatened against the Eligible Property.

(22) The improvements to the Eligible Property are covered by a valid and subsisting policy of insurance issued by a company authorized by the State Superintendent of Insurance to issue such policies in the State and providing fire and extended coverage to an amount no less than the full insurable value of the Eligible Property, provided that fire and extended coverage shall not be required in an amount in excess of replacement cost of the improvements on the Eligible Property.

The amount of coverage shall be sufficient, except for deductibles as permitted by the Seller's Guide, so that in the event of any damage or loss to the property, coverage by the insurance shall provide the greater of: (i) compensation equal to the full amount of damage or loss; or (ii) compensation to the mortgagee under the Mortgage Loan equal to the full amount of the unpaid balance of the Mortgage Loan.

(23) Seller has no knowledge of any facts or circumstances, economic or otherwise, which may have an adverse effect on the credit of any Mortgagor, the prospect of payment of any Mortgage Loan or the value of any security therefor.

(24) If Seller is not servicing the Mortgage Loan, Seller has notified Mortgagor of this fact, and copies of the required documents and instruments will immediately be sent to the Servicer with the entire amount of escrow funds collected on the Closing Date.

(25) With respect to each Mortgage Loan, Seller has met all requirements of the National Flood Insurance Act of 1994, as amended.

(26) To the best of the Seller's knowledge, each representation and warranty set forth in the Recapture Notification and Mortgagor's Affidavit and the Property Seller's Affidavit (as defined in the Seller's Guide) shall be true and correct.

(27) Eligible Property is not from a development, building, or project that has an approved eviction plan.

(b) As of the Delivery Date:

Each mortgage, financing and any other document required to be registered, recorded or filed in a public office to perfect the lien against third parties has been duly and timely filed, registered or recorded in the proper public office in order to give constructive notice thereof to all subsequent purchasers or encumbrancers.

(c) As of the Purchase Date, in addition to the foregoing:

(1) Seller has delivered to SONYMA, with respect to each Mortgage Loan, all documents and instruments required under the Seller's Guide to be delivered to SONYMA in connection with the sale of each Mortgage Loan, and SONYMA has approved all such documents and instruments.

(2) No term, covenant or condition of the note evidencing any Mortgage Loan and the mortgage securing any Mortgage Loan has been waived, altered or modified except as consented to in writing by SONYMA.

(3) No Mortgage Loan is subject to any existing assignment or pledge; Seller has good title thereto and full right and authority to assign and transfer the same and to endorse and deliver the note to SONYMA, free and clear of all encumbrances.

(4) Each Mortgage Loan is covered by a valid and subsisting title insurance policy, the benefits of

which run to SONYMA, on the current standard American Land Title Association mortgage insurance form, issued by a title insurer licensed to do business in the State in an amount equal to that of the original principal balance of the Mortgage Loan, or, where title insurance is not available, is covered by a title opinion or certificate satisfactory to SONYMA.

(5) All necessary documents have been executed and Seller has taken all steps to perfect SONYMA's legal and record title to, and to protect SONYMA's interest in, the Mortgage Loans delivered under this Agreement.

(6) The Mortgagor is not now in default (15 days beyond the payment due date) in the payment of any installment of principal or interest, escrow funds, real property taxes or otherwise in the performance of the Mortgagor's obligations under the mortgage documents and has not to the knowledge of Seller been in default in the performance of any such obligation for a period of longer than sixty days during the life of the Mortgage Loan.

(7) The lien of, or estate created by, each Mortgage Loan has not been satisfied, subordinated, in whole or in part. No part of the Eligible Property has been released therefrom, other than releases agreed to in writing by SONYMA.

(8) Seller shall have performed and complied with all of the terms hereof required to be performed or complied with by it and the representations and warranties set forth in Section 4 hereof are true and correct as of the Purchase Date.

(9) Seller has complied with, and each Mortgage Loan complies with, all the terms, conditions and requirements of the Seller's Guide, the applicable Availability of Funds and Notice of Terms Bulletin and this Agreement unless any such terms, conditions and requirements shall have been waived by SONYMA in writing.

(10) Seller has no reason to believe that the representations and warranties contained in the Recapture Notification and Mortgagor's Affidavit and the Property Seller's Affidavit (as defined in the Seller's Guide) are not true and correct as of the Purchase Date.

By acceptance of payment for each Mortgage Loan on its respective Purchase Date, Seller shall be deemed to have represented and warranted that all such conditions have been met as of the respective dates set forth above.

4. ***SELLER COVENANTS AND WARRANTIES.*** Seller covenants, represents and warrants that:

(a) Seller is a corporation or organization duly organized and validly existing and in good standing under the laws of the jurisdiction under which it was organized and is existing and has the power and authority, corporate and other, to own its properties and carry on its business as now being conducted and is duly qualified to do such business in the State and wherever such qualification is required.

(b) Seller is not under any cease and desist order or other order of a similar nature, temporary or permanent, of any Federal or State authority, nor are there any proceedings presently in progress or to its knowledge contemplated which would, if successful, lead to the issuance of any such order.

(c) As required by the Act, Seller is located in the State and is a bank or trust company, savings bank, savings and loan association, industrial bank, credit union, national banking association, federal savings and loan association, federal savings bank, federal credit union or State licensed or exempt mortgage banker approved as a mortgage lender by FNMA or FHLMC.

(d) Seller has a positive net worth to liabilities ratio, which SONYMA in its sole discretion, shall consider sufficient for participation in the Low Interest Rate Mortgage Program.

(e) Unless Seller has notified SONYMA or has been notified by SONYMA that it will not service Mortgage Loans, Seller has concurrently with the execution hereof entered into a Servicing Agreement, which has not been rescinded, terminated or breached by Seller, with SONYMA.

(f) This Agreement is a valid and binding agreement of Seller, enforceable according to its terms, except as limited by applicable bankruptcy, insolvency, reorganization, or other laws related to creditors' rights generally, the making and performance of which has been duly authorized by all necessary corporate and other action, and does not and will not constitute a violation of any law, any requirement imposed by any judicial or arbitral body of governmental instrumentality, or the charter or by-laws of Seller, or a default under any agreement or instrument by which it is bound or affected.

(g) Neither the making nor performance of this Agreement by Seller requires the consent or approval of any governmental instrumentality or, if such consent or approval is required, it has been obtained.

(h) No Mortgage Loan under this Agreement will be made in satisfaction of an obligation of Seller to originate new loans under SONYMA's previous purchase out-of-portfolio programs described in Section twenty-four hundred five of the Act.

(i) In the performance of the Agreement, Seller will not discriminate or permit discrimination against any person or group of persons on the grounds of age, sex, race, color, marital status, religion, location of residence or national origin in any manner prohibited by the laws of the United States or the laws of the State.

(j) In connection with the transactions contemplated by this Agreement, the Seller has not directly or indirectly contracted or entered into any agreement with any other seller or any other person or institution [except SONYMA or its agents, or as set forth in Section 3 (a) (6)] with respect to any aspect of its participation in the Low Interest Rate Mortgage Program. In particular, the Seller warrants that prior to the delivery of an executed copy of this Agreement to SONYMA, it has not agreed with any other mortgage lender or any other person or institution as to the amount of Mortgage Loans it would agree to originate and sell to SONYMA.

(k) The Seller agrees that, so long as it shall continue to serve in the capacity contemplated under the terms of this Agreement, it will remain in good standing under the laws governing its creation and existence and remain qualified under the laws of the State to do business in the State, will not dissolve or otherwise dispose of all or substantially all of its assets and will not voluntarily consolidate with or merge into any other entity, or permit one or more entities to consolidate with or merge into it; provided, however, that the Seller may, without violating the covenant contained in this subsection, consolidate with or merge into another entity, or permit one or more entities to consolidate with or

merge into it, or sell or otherwise transfer to another such entity all or substantially all of its assets as an entirety and thereafter dissolve, if the surviving, resulting or transferee entity, as the case may be, shall have a positive net worth which SONYMA, in its sole discretion, shall consider sufficient for participation in the Low Interest Rate Mortgage Program, shall be qualified under the laws of the State to do business in the State, shall be qualified under the laws and have all necessary approvals required of the Seller under this Agreement to perform Seller's duties under this Agreement, and shall assume in writing all of the obligations of the Seller under this Agreement, in which event SONYMA shall release the Seller in writing, concurrently with and contingent upon such assumption, from all obligations so assumed.

(l) The Seller will not knowingly take any action or permit any action within its control to be taken which would impair the exemption from Federal income taxation of interest on the Bonds.

(m) No information, certificate of an officer, statement furnished in writing, or report required hereunder, delivered by Seller to SONYMA will, to the knowledge of the Seller, contain any untrue statement of a material fact or omit a material fact necessary to make the information, certificate, statement or report not misleading.

(n) Neither the Seller nor any "related person" as defined in the Internal Revenue Code, pursuant to an arrangement, formal or informal, will acquire Bonds in an amount related to the amount of Mortgage Loans to be acquired from the Seller by SONYMA.

(o) Seller agrees to use its best efforts to familiarize its personnel with all relevant terms included in the Seller's Guide and the Availability of Funds and Notice of Terms Bulletin and to make known to potential Mortgagors the availability of Mortgage Loans, including such steps as may reasonably be required by SONYMA to promote the availability of Mortgage Loans in designated Targeted Areas.

The representations and warranties contained in this Section 4 shall be true and correct when made and by acceptance of payment for each Mortgage Loan on its respective Purchase Date, shall be deemed to be repeated, as set forth in Section 4 hereof, by Seller at and as of such Purchase Date, and shall be true and correct at and as of such Purchase Date.

5. ***INVOLUNTARY TERMINATION OF A SELLER.*** SONYMA may terminate this Agreement with respect to any Seller upon the happening of any one or more of the following events:

(a) Any representation or warranty of the Seller to SONYMA shall be false in any material respect.

(b) Failure of the Seller in any material respect to duly observe or perform any other covenant, condition or agreement in this Agreement to be observed or performed by such Seller for a period of thirty (30) days after a written notice to such Seller from SONYMA specifying such failure and requesting that it be remedied; provided, however, if the failure stated in the notice is correctable in SONYMA's opinion but cannot be corrected within the applicable period, SONYMA shall consent to a reasonable extension of the time if corrective action is instituted by the Seller within the applicable period and diligently pursued until fully corrected.

(c) Decree or order of a court, agency or supervisory authority having jurisdiction in the premises

appointing a conservator, receiver or liquidator in any insolvency, readjustment of debt, marshalling of assets and liabilities or similar proceeding affecting the Seller or substantially all of its properties, or for the winding-up or liquidation of its affairs, if such decree or order shall have remained in force undischarged or unstayed for a period of thirty (30) days.

(d) Consent by the Seller to the appointment of a conservator, receiver or liquidator in any insolvency, readjustment of debt, marshalling of assets and liabilities or similar proceeding affecting the Seller or substantially all of its properties.

(e) Admission in writing by the Seller of its inability to pay debts generally as they mature, or the filing of a petition to take advantage of any applicable bankruptcy or insolvency statute, or the making of an assignment for the benefit of creditors.

(f) Failure by the Seller, in the opinion of SONYMA, to meet required annual financial and performance requirements as set forth in the Seller's Guide.

If any of the events specified in (c), (d) or (e) shall occur, the Seller shall give written notice of such occurrence to SONYMA within two (2) days of the occurrence of such event.

#### **6. *DAMAGES; REPURCHASE.***

(a) Seller shall be liable to SONYMA for any damages, including, without limitation, costs and attorney's fees, suffered by SONYMA by reason of the untruth of any representation or the breach of any covenant or warranty made by Seller herein or in connection with the transaction hereby contemplated. In addition, with respect to any Mortgage Loan, in the event that any representation of Seller shall prove to be untrue when made or in the event of any breach of covenant or warranty, or in the event Seller fails to deliver all required documents in the form and within the time period established in the Seller's Guide and the applicable Availability of Funds and Notice of Terms Bulletin, Seller shall, at the option of and upon the demand of SONYMA, repurchase, within five business days, any such Mortgage Loan for an amount equal to the unpaid principal balance of the Mortgage Loan with an adjustment for accrued interest at the time of repurchase, plus the aggregate amount of any advances and interest thereon, plus an amount equal to any attorneys' fees, legal expenses, court costs, SONYMA origination fees, or other expenses incurred by SONYMA in connection with such Mortgage Loan and the repurchase thereof.

(b) If Seller has been required to repurchase a Mortgage Loan pursuant to paragraph (a) of this Section 6, Seller may subsequently reoffer that Mortgage Loan for sale to SONYMA if all deficiencies causing SONYMA to require such repurchase shall have been cured.

#### **7. *MISCELLANEOUS.***

(a) Seller warrants that if any Mortgage Loan originated under this Agreement is on a newly constructed property and Seller has provided the construction financing for the property, the rate of interest and/or fees being charged to the contractor or developer for the construction loan are usual and customary and are not in excess of the rate of interest or fees that would have been charged if the permanent mortgage financing was being provided through conventional lending sources other than

SONYMA.

(b) Seller warrants that to the best of Seller's knowledge the purchase price of newly constructed Eligible Property for which a Mortgage Loan is being made is the same as it would be if financing had been provided other than with a Mortgage Loan.

(c) SONYMA, through its employees or agents or those of the New York State Department of Banking, shall have the right, at any time and from time to time, during normal business hours, to examine and audit any and all of Seller's records or accounts pertaining to any Mortgage Loan sold to SONYMA under this Agreement.

(d) SONYMA shall have the right to require Seller to furnish such documents as SONYMA, in its sole discretion and from time to time, deems necessary in order to determine that the provisions of this Agreement have been complied with.

(e) Unless otherwise stated herein, the provisions of this Agreement cannot be waived or modified unless such waiver or modification be in writing and signed by both parties.

(f) All agreements, representations and warranties contained herein or made in writing by or on behalf of Seller in connection with the transaction contemplated hereby shall survive the execution and delivery of this Agreement, the termination of this Agreement, the sale or delivery of the Mortgage Loans and payment therefor, any disposition thereof by SONYMA, and any investigation at any time made by SONYMA or on behalf of SONYMA.

(g) Invalidation of any one of the provisions of this Agreement, by judgment or court order shall in no way affect any other provisions herein contained, which provisions shall remain in full force and effect.

(h) This Agreement shall be effective only if on or prior to the date of execution hereof by SONYMA.

(i) there is executed a Servicing Agreement providing for the servicing of the Mortgage Loans to be purchased by SONYMA hereunder and (ii) there is delivered to SONYMA an opinion of Seller's counsel, in form and substance set forth as Exhibit A to this Agreement and otherwise satisfactory to SONYMA and its counsel.

(i) This Agreement shall be governed by the laws of the State.

(j) Seller hereby consents to the jurisdiction of the Supreme Court of the State of New York for any proceeding in connection with this Agreement or the Application.

(k) No employee of Seller shall receive a Mortgage Loan from Seller, unless waived in writing by SONYMA.

(l) This Agreement shall not be assignable by the Seller without the written consent of SONYMA and in the event of any attempted assignment thereof without such written consent, SONYMA may, at its option, terminate this Agreement as to its obligation to make any further purchases of Mortgage Loans

from Seller. The Seller shall have no right to resign from the obligations and duties hereby imposed upon it without the prior written consent of SONYMA.

(m) This Agreement and all obligations and rights arising hereunder shall bind and inure to the benefit of SONYMA and Seller and their respective successors in interest and permitted assigns.

(n) The captions contained in this Agreement are intended for convenience and reference purposes only and shall in no way be deemed to define, limit or describe the scope or intent of this Agreement or any provision thereof, nor in any way affect this Agreement.

(o) This Agreement may be executed in one or more counterparts, each of which shall be an original but such counterparts shall together constitute but one and the same agreement.

8. ***NO REMEDY EXCLUSIVE.*** Unless otherwise expressly provided, no remedy herein conferred upon or reserved to any party is intended to be exclusive of any other available remedy, but each remedy shall be cumulative and shall be in addition to other remedies given under this Agreement or existing at law or in equity. No delay or omission to exercise any right or power accruing under this Agreement shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

9. ***NOTICE.*** Whenever it is provided in this Agreement that notice or other communication is to be given or directed to either party, notice to the Seller shall be directed to its address as it appears in the Application, and notice to SONYMA shall be directed to: Vice President for Single Family Programs, State of New York Mortgage Agency, 641 Lexington Avenue, New York, N.Y. 10022, or notice shall be directed to such other addresses as either party may from time to time designate in writing to the other. Any notice shall be deemed to have been sufficiently given for all purposes of this Agreement if it is addressed as set forth above and delivered by hand or sent by registered mail, first-class postage prepaid, return receipt requested.

10. ***STANDARD PROVISIONS FOR STATE CONTRACTS.*** The Standard Provisions For State Contracts annexed hereto as Exhibit B shall be binding upon the Seller as if incorporated in this Agreement.



**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their duly authorized officers as of the date hereof.

STATE OF NEW YORK MORTGAGE AGENCY

BY \_\_\_\_\_

\_\_\_\_\_  
(Printed Name)

DATE \_\_\_\_\_

TITLE \_\_\_\_\_

\_\_\_\_\_  
(Seller)

BY \_\_\_\_\_

\_\_\_\_\_  
(Printed Name)

DATE \_\_\_\_\_

TITLE \_\_\_\_\_

## EXHIBIT A

### FORM OF OPINION OF COUNSEL

[to appear on counsel's letterhead]

, 20

State of New York Mortgage Agency  
641 Lexington Avenue  
New York, New York 10022

Gentlemen:

I have acted as counsel to \_\_\_\_\_ (hereinafter referred to as the "Bank") in connection with the authorization, execution and delivery by the Bank of the Mortgage Purchase Agreement (hereinafter referred to as the "Purchase Agreement"), executed by the Bank on \_\_\_\_\_, \_\_\_\_\_, between the Bank and the State of New York Mortgage Agency (hereinafter referred to as the "Agency") [*and the Servicing Agreement (hereinafter referred to as the "Servicing Agreement")*], executed by the Bank on \_\_\_\_\_, \_\_\_\_\_, between the Bank and the Agency]\*.

I have reviewed the organizational documents of the Bank, all corporate proceedings in connection with the authorization, execution and delivery of the Purchase Agreement [*and the Servicing Agreement*], and I have examined such other documents and instruments and satisfied myself as to such other matters of fact and law as I have deemed necessary as a basis for the conclusions of law contained in the opinions set forth below.

On the basis of the foregoing, I am of the opinion that:

(a) the Bank is a \_\_\_\_\_ duly organized under the laws of \_\_\_\_\_ and validly existing and in good standing under the laws of \_\_\_\_\_ and has the power and authority, corporate and other, to own its properties and carry on its business as it is now being conducted and as contemplated under the Purchase Agreement [*and the Servicing Agreement*], is duly qualified to do such business in the State of New York and wherever such qualification is required and possesses all requisite power and authority to execute, deliver and comply with its obligations under the terms of the Purchase Agreement [*and the Servicing Agreement*];

(b) the execution and delivery of the Purchase Agreement [*and the Servicing Agreement*] in the manner contemplated therein by the Bank, and the performance and compliance with the terms thereof, (i) will not violate the instruments creating the Bank, or governing its operations, or any laws or any requirements imposed by any judicial or arbitral body or governmental instrumentality which could have any material adverse effect whatsoever on the validity, performance or enforceability of any of the terms of the Purchase Agreement [*and the Servicing Agreement*] applicable to the Bank, and (ii) will not constitute a material default (or any event which will constitute a default with notice or lapse of time) under, or a breach of, any material contract, agreement or other instrument by which the Bank is bound or affected;

(c) the Purchase Agreement [*and the Servicing Agreement*], and all documents and instruments contemplated thereby which are executed and delivered by the Bank, will constitute valid, legal and binding obligations of the Bank, enforceable in accordance with their respective terms, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization or similar laws affecting the enforcement of creditors' rights generally, the making and performance of which have been duly authorized by all necessary corporate and other action;

(d) the Bank is not under any cease and desist order or other order of a similar nature, temporary or permanent, of any Federal or state authority, nor are there any proceedings presently in progress, or to my knowledge contemplated, which would, if successful, lead to the issuance of any such order;

(e) there are no bankruptcy, insolvency or similar proceedings instituted by or against the Bank and the Bank has not made any assignment for the benefit of its creditors or voluntarily suspended payment of its obligations;

(f) the Bank is located in the State of New York and is a bank or trust company, savings bank, savings and loan association, industrial bank, credit union, national banking association, federal savings and loan association, federal savings bank, federal credit union or New York State licensed or exempt mortgage banker approved as a mortgage lender by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

(g) neither the making nor performance of the Purchase Agreement [*and the Servicing Agreement*] requires the consent or approval of any governmental instrumentality or, if such consent or approval is required, it has been obtained.

Very truly yours,

---

\* The material in brackets is to be included in those cases where the Bank has executed both the Purchase Agreement and the Servicing Agreement.

## **EXHIBIT B**

### **STANDARD PROVISIONS FOR NEW YORK STATE CONTRACT**

1. This Agreement may not be assigned by Seller (the "Contractor") or its right, title or interest therein assigned, transferred, conveyed, sublet or disposed of without the prior written consent of SONYMA.

2. This Agreement shall be deemed executory only to the extent of money available to SONYMA for the performance of the terms hereof and no liability on account thereof shall be incurred by SONYMA beyond moneys available for the purpose thereof.

3. The Contractor specifically agrees, as required by Labor Law, Sections 220 and 220-d, as amended, with respect to any part of the Agreement which may involve the employment of laborers, workmen and mechanics, that:

(a) No laborer, workman or mechanic, in the employ of the Contractor, subcontractor or other person doing or contracting to do the whole or any part of the work contemplated by the Agreement shall be permitted or required to work more than eight hours in any one calendar day or more than five days in any one week, except in the emergencies set forth in the Labor Law.

(b) The wages paid for a legal day's work shall not be less than the prevailing rate of wages as defined by law.

(c) The minimum hourly rate of wages to be paid shall not be less than that stated in the agreement and any redetermination of the prevailing rate of wages after the agreement is approved shall be deemed to be incorporated herein by reference as of the effective date of redetermination and shall form a part of this Agreement.

(d) The Labor Law provides that the Agreement may be forfeited and no sum paid for any work thereunder on a second conviction for willfully paying less than:

(1) The stipulated wage scale as provided in Labor Law, Section 220, subdivision 3, as amended, or

(2) Less than the stipulated minimum hourly wage scale as provided in Labor Law, Section 220-d, as amended.

4. The Contractor specifically agrees, with respect to any part of the Agreement that calls for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, as required by the provisions of the Labor Law, Section 220-e, as amended that:

(a) In hiring of employees for the performance of work under this Agreement or any subcontract hereunder, or for the manufacture, sale or distribution of materials, equipment or supplies hereunder, no consultant, subcontractor nor any person acting on behalf of such consultant or

subcontractor, shall by reason of race, creed, color, sex, or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates.

(b) No consultant, subcontractor nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this contract on account of race, creed, color, sex, or national origin.

(c) There may be deducted from the amount payable to the Contractor by SONYMA under this Agreement a penalty of five dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of the Agreement.

(d) This Agreement may be cancelled or terminated by SONYMA and all moneys due or to become due hereunder may be forfeited for a second or any subsequent violation of the terms or conditions of this section of the Agreement.

(e) The aforesaid provisions of this section covering every Agreement for or on behalf of SONYMA for the manufacture, sale or distribution of materials, equipment or supplies shall be limited to operations performed within the territorial limits of the State of New York.

5. During the performance of this Agreement, the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability, or marital status.

(b) If directed to do so by the Commissioner of Human Rights, the Contractor will send to each labor union or representative of workers with which the Contractor has or is bound by a collective bargaining or other agreement or understanding, a notice, to be provided by the State Commissioner of Human Rights, advising such labor union or representative of the Contractor's agreement under clauses (a) through (g) (hereinafter called "non-discrimination clauses"). If the Contractor was directed to do so by SONYMA as part of the bid or negotiation of this Agreement, the Contractor shall request such labor union or representative to furnish a written statement that such labor union or representative will not discriminate because of race, creed, color, sex, national origin, age, disability or marital status, and that such labor union or representative will cooperate, within the limits of its legal and contractual authority, in the implementation of the policy and provisions of these non-discrimination clauses and that it consents and agrees that recruitment, employment and the terms and conditions of employment under this Agreement shall be in accordance with the purposes and provisions of these non-discrimination clauses. If such labor union or representative fails or refuses to comply with such request that it furnish such a statement, the Contractor shall promptly notify the State Commissioner of Human Rights of such failure or refusal.

(c) If directed to do so by the Commission of Human Rights, the Contractor will post and keep posted in conspicuous places, available to employees and applicants for employment, notices to be provided by the State Commissioner of Human Rights setting forth the substance of the provisions of clauses (a) and (b) and such provisions of the State's laws against discrimination as

the State Commissioner of Human Rights shall determine.

(d) The Contractor will state, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, sex, national origin, age, disability or marital status.

(e) The Contractor will comply with the provisions of Sections 290-299 of the Executive Law and with the Civil Rights Law, will furnish all information and reports deemed necessary by the State Commissioner of Human Rights under these non-discrimination clauses and such sections of the Executive Law, and will permit access to the Contractor's books, records and accounts by the State Commissioner of Human Rights, the Attorney General and the Industrial Commissioner for the purposes of investigation to ascertain compliance with these non-discrimination clauses and such sections of the Executive Law and Civil Rights Law.

(f) This Agreement may be forthwith canceled, terminated or suspended, in whole or in part, by SONYMA upon the basis of a finding made by the State Commissioner of Human Rights that the Contractor has not complied with these non-discrimination clauses, and the Contractor may be declared ineligible for future contracts made by or on behalf of the State or public authority or agency of the State, until the Contractor satisfies the State Commissioner of Human Rights that the Contractor has established and is carrying out a program in conformity with the provisions of these non-discrimination clauses. Such finding shall be made by the State Commissioner of Human Rights after conciliation efforts by the Commissioner have failed to achieve compliance with these non-discrimination clauses and after a verified complaint has been filed with the Commissioner, notice thereof has been given to the Contractor and an opportunity has been afforded the Contractor to be heard publicly in accordance with the Executive Law. Such sanctions may be imposed and remedies invoked independently of or in addition to sanctions and remedies otherwise provided by law.

(g) The Contractor will include the provisions of clauses (a) through (f) in every subcontract or purchase order in such manner that such provisions will be binding upon each subcontractor or vendor as to operations to be performed within the State of New York. The Contractor will take such action in enforcing such provisions of such subcontract or purchase order as the State Commissioner of Human Rights or SONYMA may direct, including sanctions or remedies for non-compliance. If the Contractor becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction by the State Commissioner of Human Rights or the contracting agency, the Contractor shall promptly so notify the Attorney General, requesting the Attorney General to intervene and protect the interests of the State of New York.

6. (a) If Contractor has previously submitted a bid, then by submission of such bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his knowledge and belief:

(1) The prices in this bid have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition as to any matter relating to such prices with any other bidder or with any competitor;

(2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor;

(3) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

(b) A bid shall not be considered for award nor shall any award be made where (a)(1) (2) and (3) above have not been complied with provided, however, that if in any case the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefor. Where (a)(1) (2) and (3) above have not been complied with, the bid shall not be considered for award nor shall any award be made unless the head of the purchasing unit of SONYMA to which the bid is made, or his/her designee, determines that such disclosure was not made for the purpose of restricting competition.

The fact that a bidder (a) has published price lists, rates, or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such time, or (c) has sold the same items to other customers at the same prices being bid, does not constitute, without more, a disclosure within the meaning of paragraph A-6(a).

7. This Agreement shall be void and of no force and effect unless the Contractor shall provide coverage for the benefit of, and keep covered during the life of this Agreement, such employees as are required to be covered by the provisions of the Worker's Compensation Law.

8. If, in carrying out this work a harmful dust hazard is created for which appliances or methods for the elimination of harmful dust have been approved by the Board of Standards and Appeals, then the Contractor shall install, maintain and effectively operate such appliances and methods during the life of this Agreement, and in case of failure of compliance of the Contractor, as provided by Section 222-a of the Labor Law, the Agreement shall be void.

9. In accordance with Chapters 406 and 821 of the Laws of 1981, the Contractor hereby promises, asserts and represents that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating or shall participate in an international boycott in violation of the provisions of the United States Export Administration Act of 1969, as amended, or the United States Export Administration Act of 1979, or the effective Regulations of the United States Department of Commerce promulgated under either act.

It is understood further that SONYMA in awarding a contract does so in material reliance upon the promise and presentation made by the Contractor in the foregoing paragraph and that such contract shall be rendered forfeit and void by the State Comptroller if subsequent to the execution of the contract, the Contractor or such owned of affiliated person, firm, partnership or corporation has been convicted of a violation of the aforesaid Acts or Regulations or has been found upon final determination of the United States Commerce Department or any other appropriate agency of the United States of have violated such Acts or Regulations.

The Contractor agrees to and shall notify the Commissioner of General Services and the Director

of the Bureau of Contracts and State Expenditures in the Department of Audit and Control of any such conviction or final determination of violation within five (5) days thereof.

10. The contractor hereby agrees to the provisions of Section §2601 and §2602 of the Public Authorities Law which require that upon the refusal of a person, when called before a grand jury, head of a state department, temporary state commission or other state agency, the organized crime task force in the department of law, head of a city department, or other city agency, which is empowered to compel the attendance of witnesses and examine them under oath to testify in an investigation concerning any transaction or contract had with the state, any political subdivision thereof, a public authority or with any public department, agency or official of the state or of any political subdivision thereof, or of a public authority, to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant questions concerning such transaction or contract,

(a) such person, and any firm, partnership or corporation of which he is a member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with any public authority or official thereof for goods, work or services, for the period of five years after such refusal, and

(b) any and all contracts with any public authority or official thereof, since the effective date of this law, by such person, and by any firm, partnership, or corporation of which he is a member, partner, director or officer may be cancelled or terminated by the public authority without incurring any penalty or damages on account of such cancellation or termination, but any monies owing by the public authority for goods delivered or work done prior to the cancellation or termination shall be paid.