**BULK DELIVERY AGREEMENT**

**BY AND BETWEEN**

**[BORROWER]**

**AND**

**[LENDER]**

**DATED AS OF**

**[DATE]**

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**BULK DELIVERY AGREEMENT**

This BULK DELIVERY AGREEMENT (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Bulk Delivery Agreement**”) is made as of the Initial Effective Date (as hereinafter defined) by and between (i) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (each a “**Borrower**” and collectively the “**Borrowers**”), (ii) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Sponsor**”) and (iii) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Lender**”).

**RECITALS:**

1. Each Borrower desires to obtain a Mortgage Loan from Lender to be secured by the Mortgaged Property owned by such Borrower.
2. Each Borrower hereunder shall be a Sponsor Affiliate.
3. Lender is willing to make a Mortgage Loan to each Borrower on the terms and conditions contained in this Bulk Delivery Agreement and in the other Loan Documents (as hereinafter defined) in the original principal amounts set forth on Exhibit A attached hereto (as amended from time to time).
4. Each Borrower shall be the obligor on its own Mortgage Loan.
5. Each Borrower shall enter into a separate Loan Agreement (as hereinafter defined) and Loan Documents to reflect the terms of such Borrower’s Mortgage Loan.
6. For so long as a Mortgage Loan is subject to this Bulk Delivery Agreement such Mortgage Loan and the applicable Borrower shall be subject to the terms herein.

NOW, THEREFORE, in consideration of the making of each Mortgage Loan by Lender and other good and valuable consideration, the receipt and adequacy of which are hereby conclusively acknowledged, the parties hereby covenant, agree, represent and warrant as follows:

**AGREEMENTS:**

# - DEFINITIONS; INCORPORATION OF ATTACHMENTS

## Defined Terms.

* + 1. Capitalized terms used herein shall have the meaning set forth in the applicable Loan Agreement as modified by Appendix I attached hereto.
    2. Unless otherwise specifically set forth to the contrary, reference herein and in the Loan Documents to any “Mortgage Loan” or a “relevant” or “applicable” Mortgage Loan, any “Mortgaged Property,” “the Indebtedness” or “the Loan Documents” or other similar individual loan terms shall refer to that certain Mortgage Loan made to a particular Borrower, that certain Mortgaged Property securing such Mortgage Loan, the Indebtedness evidenced by that certain Note secured by such Mortgaged Property, the Loan Documents entered into by such Borrower in respect of such Mortgage Loan, respectively, or such other term or phrase as it pertains to that particular Mortgage Loan.

## Schedules, Exhibits, and Attachments Incorporated.

The schedules, exhibits, and any other addenda or attachments are incorporated fully into this Bulk Delivery Agreement by this reference and each constitutes a substantive part of this Bulk Delivery Agreement.

# – NO CROSS; ADDITIONAL LOANS

## No Cross Default or Cross Collateralization.

The Note and Loan Documents evidencing a Mortgage Loan shall not be cross-defaulted or cross-collateralized with any other Mortgage Loan, or the Note or Loan Documents evidencing another Mortgage Loan. Each Mortgage Loan shall be the separate obligation of the relevant Borrower, no Borrower shall have any obligation or liability with respect to a Mortgage Loan made to any other Borrower, and no collateral shall be collateral for any Mortgage Loan other than the Mortgage Loan made to such Borrower.

## Future Mortgage Loans.

* + 1. Future Mortgage Loans may be made subject to this Bulk Delivery Agreement by Lender on or prior to the date that is the first day of the month following the date three (3) years after the Initial Effective Date to one or more new borrowers that are a Sponsor Affiliate. Such future Mortgage Loans shall be secured by multifamily properties owned by such new borrowers subject to Lender’s determination that the proposed property constitutes a Multifamily Residential Property,  Lender’s determination that the proposed borrower, Key Principal and Guarantor, if any, meet all of Lender’s eligibility, credit, management and other standards customarily applied by Lender in connection with the origination or purchase of similar mortgage finance structures on similar Multifamily Residential Properties at the time of the request for the future Mortgage Loan, and  mutually agreeable terms as determined at the time of the request for the additional Mortgage Loan. Key Principal or Guarantor shall deliver to Lender a Future Loan Request for the future Mortgage Loan. Key Principal or Guarantor shall provide Lender any information required with respect to the new borrower or proposed Mortgaged Property that is anticipated to secure the future Mortgage Loan.
    2. Notwithstanding anything in this Bulk Delivery Agreement or any other Loan Document to the contrary, any future Mortgage Loan shall be subject to the precondition that Lender must confirm with Fannie Mae that Fannie Mae is generally offering to purchase in the marketplace Mortgage Loans of the execution type requested by the proposed new borrower at the time of the request and at the time the interest rate is set for the requested Mortgage Loan. In the event Fannie Mae is not purchasing Mortgage Loans of the type requested by the proposed new borrower, Lender agrees to offer, to the extent available from Fannie Mae, alternative Mortgage Loan executions based on the types of executions Fannie Mae is generally offering to purchase in the marketplace at that time. Any alternative execution offered would be subject to mutually agreeable documentation necessary to implement the terms and conditions of such alternative execution.

(c) Each Future Loan Request shall be accompanied by the Due Diligence Fees. The Due Diligence Fees shall be non-refundable but shall be fully refundable in the event the closing fails to occur due to a default by Lender. However, Fannie Mae and Lender legal fees and expenses are due and payable whether or not the future Mortgage Loan is closed.

(d) Within ten (10) days of making the Future Loan Request, Key Principal or Guarantor shall deposit with Lender the Future Loan Cost Deposit. The Future Loan Cost Deposit shall be applied by Lender to cover the Future Loan Costs. On or prior to the proposed Effective Date of the future Mortgage Loan, Lender shall notify the applicable new borrower, Key Principal or Guarantor of the actual amount of the Future Loan Costs incurred by Lender and Fannie Mae in connection with the future Mortgage Loan. If the actual amount of the Future Loan Costs exceeds the Future Loan Cost Deposit, the applicable new borrower, Key Principal or Guarantor shall, on or before the proposed Effective Date of the future Mortgage Loan, pay to Lender the remainder of such Future Loan Costs (after applying the Future Loan Cost Deposit). If the amount of the Future Loan Cost Deposit exceeds the actual amount of the Future Loan Costs, Lender shall, on or promptly after the Effective Date of the future Mortgage Loan, disburse or return the Future Loan Cost Deposit (less any Future Loan Costs) directly to the party who deposited the Future Loan Cost Deposit with Lender. The applicable new borrower, Key Principal or Guarantor may revoke the Future Loan Request prior to the proposed Effective Date and receive a return of the Future Loan Cost Deposit (less Future Loan Costs incurred as of the date of such revocation).

## Supplemental Loans.

A Borrower may participate in the Fannie Mae “Supplemental Loan” product in accordance with the Underwriting and Servicing Requirements if the Supplemental Loan productis offered by Fannie Mae. Any Supplemental Loan will be treated as a “loan” made under this Bulk Delivery Agreement.

# – SUBSTITUTION AND RELEASE TERMS

## Right to Substitutions.

Subject to the terms and conditions of this Bulk Delivery Agreement, each Mortgage Loan (together with any applicable Supplemental Loan) is permitted one Substitution during the Substitution Availability Period.

## Procedure for Substitutions.

* + 1. **Request.**

Borrower shall deliver to Lender a Substitution Request for the Substitution. Each Substitution Request shall be accompanied by the Due Diligence Fees. Borrower shall provide Lender any information required with respect to the proposed Substitute Mortgaged Property and Substitute Borrower. The Due Diligence Fees shall be non-refundable but shall be fully refundable in the event the closing fails to occur due to a default by Lender. However, Fannie Mae and Lender legal fees and expenses are due and payable whether or not the Substitution is closed.

* + 1. **Substitution Cost Deposit.**

#### Within ten (10) days of making the Substitution Request, Borrower shall deposit with Lender the Substitution Cost Deposit. The Substitution Cost Deposit shall be applied by Lender to cover the Substitution Costs. On or prior to the proposed Effective Date of the Substitution, Lender shall notify the applicable Borrower of the actual amount of the Substitution Costs incurred by Lender and Fannie Mae in connection with the Substitution. If the actual amount of the Substitution Costs exceeds the Substitution Cost Deposit the applicable Borrower shall, on or before the Effective Date of the Substitution, pay to Lender the remainder of such Substitution Costs (after applying the Substitution Cost Deposit). If the amount of the Substitution Cost Deposit exceeds the actual amount of the Substitution Costs, Lender shall, on or promptly after the Effective Date of the Substitution, disburse or return the Substitution Cost Deposit (less any Substitution Costs), directly to Borrower. Borrower may revoke the Substitution Request prior to the proposed Effective Date and receive a return of the Substitution Cost Deposit (less Substitution Costs incurred as of the date of such revocation).

* + 1. **Underwriting.**

#### Lender shall evaluate the proposed Substitute Mortgaged Property, Release Mortgaged Property, and Substitute Borrower in accordance with the Underwriting and Servicing Requirements and this Bulk Delivery Agreement.

#### A Substitution shall be effected if all of the following conditions are satisfied:

##### the Substitute Mortgaged Property has a Debt Service Coverage Ratio equal to or greater than the greater of the Debt Service Coverage Ratio of the Release Mortgaged Property immediately prior to the Substitution, or the Original DSCR of the Release Mortgaged Property;

##### the Substitute Mortgaged Property has a Loan to Value Ratio equal to or lesser than the lesser of the Loan to Value Ratio of the Release Mortgaged Property immediately prior to the Substitution or the Original LTV of the Release Mortgaged Property;

##### immediately after such Substitution, the amount of the Mortgage Loan (together with any applicable Supplemental Loan) then Outstanding will not exceed one hundred percent (100%) of the aggregate fair market value of all real property securing such Mortgage Loan (and any applicable Supplemental Loan) (where fair market value is determined for these purposes based upon a current Appraisal or some other commercially reasonable valuation method as determined by Lender); and

##### the Substitute Mortgaged Property is owned by the original applicable Borrower that owns the Release Mortgaged Property or a new Substitute Borrower approved by Lender pursuant to the Underwriting and Servicing Requirements and the terms of this Bulk Delivery Agreement.

#### Within thirty (30) Business Days after receipt of both  the Substitution Request and  all reports, certificates and documents required by Lender pursuant to the Underwriting and Servicing Requirements and this Bulk Delivery Agreement, as well as any additional information requested by Lender, Lender shall notify the applicable Borrower whether the Substitute Mortgaged Property and new Substitute Borrower (if applicable) meets the requirements of this Section 3.02(c) and the Underwriting and Servicing Requirements. Within five (5) Business Days after receipt of Lender’s written notice in response to the Substitution Request, Borrower shall notify Lender whether it elects to proceed with the Substitution.

Notwithstanding the foregoing, the tests set forth above in Section 3.02(c)(2)(A)(i) and Section 3.02(c)(2)(B)(i) shall be waived and a Substitution shall be permitted if, after giving effect to such Substitution, the Substitute Mortgaged Property satisfies the Alternate Coverage and LTV Tests and all other conditions in this Bulk Delivery Agreement.

* + 1. **Partial Prepayment.**

#### If the proposed Substitute Mortgaged Property does not satisfy Section 3.02(c)(2)(A)(i) or Section 3.02(c)(2)(B)(i) (or the Alternate Coverage and LTV Tests, if applicable), but otherwise satisfies Lender’s Underwriting and Servicing Requirements, Lender may, at Borrower’s request,consent to a Permitted Partial Prepayment in connection with the closing of a Substitution. In the event that Lender consents to a Permitted Partial Prepayment, the applicable Borrower shall:

##### elect to proceed with such Substitution subject to the Permitted Partial Prepayment, in which case  the scheduled monthly debt service payments will be adjusted pursuant to an amendment to the Loan Documents and  Borrower shall pay the Permitted Partial Prepayment and the prepayment premium due thereon as provided in the Loan Documents on or before the Effective Date of the Substitution; or

##### decline to proceed with such Substitution and proffer another proposed Substitute Mortgaged Property which shall be subject to the terms of this Article 3.

#### Nothing in this Section 3.02(d) shall obligate Lender to offer or consent to a Permitted Partial Prepayment requested by Borrower in connection with a Substitution.

* + 1. **Borrower Failure to Respond.**

If Lender has not received written notification of Borrower’s election within five (5) Business Days of the date of Borrower’s receipt of Lender’s written notice under Section 3.02(c) or Section 3.02(d), Borrower shall be deemed to have revoked the Substitution Request.

* + 1. **Closing.**

If Lender determines that all applicable conditions precedent contained in Section 3.02 and Article 4 are satisfied, and the Substitution Fee and other fees and deposits set forth herein have been paid, the Substitute Mortgaged Property shall be added in replacement of the Release Mortgaged Property as security for the applicable Mortgage Loan (and Supplemental Loan, if applicable), at a closing to be held at offices designated by Lender on an Effective Date selected by Lender and agreed to by Borrower and occurring simultaneously with the release of the Release Mortgaged Property. In the event that the Substitute Mortgaged Property is owned by a new Substitute Borrower approved by Lender, such new Substitute Borrower shall assume the applicable Mortgage Loan (and Supplemental Loan, if applicable) as of the Effective Date of the Substitution.

* + 1. **Failure to Close Substitution.**

In the event that the applicable Borrower revokes, or is deemed to revoke, the Substitution Request in accordance with Section 3.02(c), Section 3.02(d), or Section 3.02(e), Lender shall disburse or return the Substitution Cost Deposit (less any Substitution Costs incurred as of the date of such revocation) directly to Borrower.

## Release Terms.

* + 1. **Release of Borrower.**

Any Borrower party to this Bulk Delivery Agreement shall automatically without further action be released from this Bulk Delivery Agreement with respect to the applicable Mortgage Loan upon the earliest of the repayment of the Indebtedness with respect to such Mortgage Loan (and any Supplemental Loan) made to such Borrower in accordance with the terms of the Loan Documents, the closing of a Substitution with respect to such Mortgage Loan in accordance with the terms of this Article 3, or any assumption of such Mortgage Loan (and any Supplemental Loan) approved by Lender that is not an assumption of the ownership interests of each Borrower subject to this Bulk Delivery by a new sponsor and this Bulk Delivery Agreement as a whole by such new sponsor.

* + 1. **Release of Mortgaged Property.**

A Mortgaged Property subject to this Bulk Delivery Agreement shall automatically without further action be released from this Bulk Delivery Agreement upon the earlier of the repayment of the Indebtedness with respect to such Mortgaged Property in accordance with the terms of the Loan Documents, or the replacement of such Mortgaged Property with a Substitute Mortgaged Property in connection with a Substitution in accordance with the terms and conditions of this Article 3.

# – Conditions Precedent to SUBSTITUTION Request

## Conditions Applicable to Substitution Requests.

Borrower’s right to close the transaction requested in a Substitution Request shall be subject to the satisfaction of, on or before the applicable Effective Date, each of the following conditions precedent in addition to any other conditions precedent contained in the Underwriting and Servicing Requirements and this Bulk Delivery Agreement applicable to such Borrower.

* + 1. **Payment of Expenses and Fees.**

Lender shall have received:

#### the Due Diligence Fees (to have been paid on or before the delivery of the executed Substitution Request);

#### the Substitution Fee (to be paid on or before the Effective Date of the Release);

#### the Substitution Cost Deposit (to have been paid within ten (10) days of making the Substitution Request); and

#### all legal fees and other expenses due (including all Substitution Costs in excess of the Substitution Cost Deposit) in connection with the Substitution.

* + 1. **No Material Adverse Effect.**

There shall have been no Material Adverse Effect from the condition, business or prospects reflected in the financial statements, reports and other information obtained by Lender during its review of any Substitute Borrower, Guarantor, Key Principal and the applicable Substitute Mortgaged Property securing the Mortgage Loan.

* + 1. **No Default.**

There shall exist no Event of Default or Potential Event of Default (that is not otherwise cured by the closing of such Substitution Request) with respect to the Mortgage Loan on the Effective Date for the Substitution Request. The closing of such Substitution shall not result in an Event of Default or Potential Event of Default.

* + 1. **No Insolvency.**

Lender shall have received, on or before the Effective Date, evidence satisfactory to Lender that Substitute Borrower is not Insolvent and will not be rendered Insolvent by the transactions contemplated by the Loan Documents, or after giving effect to such transactions, will not be left with an unreasonably small capital with which to engage in its business or undertakings, have intended to incur, or believe that it has incurred, debts beyond its ability to pay such debts as they mature, or have intended to hinder, delay or defraud any existing or future creditor.

* + 1. **Representations and Warranties.**

All representations and warranties made by Substitute Borrower and Guarantor if any, in the Loan Documents shall be true and correct on the Effective Date of the Substitution with the same force and effect as if such representations and warranties had been made on and as of the original Effective Date of the relevant Mortgage Loan. The Loan Documents applicable to Substitute Borrower or Guarantor shall not contain any untrue or misleading statement of a material fact and shall not fail to state a material fact necessary to make the information contained therein not misleading.

* + 1. **Covenants.**

Borrower and Guarantor are in compliance with each of the covenants applicable to it contained in the Loan Documents, without giving effect to any notice and cure rights of Borrower and Guarantor. In addition, Substitute Borrower and Guarantor shall take all reasonable actions necessary to comply with the requirements of Sections 5.02(b)(3) and 5.02(c) of the Loan Agreement regarding the sale of any MBS backed by the Mortgage Loan and compliance with investor requirements.

* + 1. **Delivery of Closing Documents.**

The receipt by Lender of the following each dated as of the Effective Date of the Substitution, in form and substance satisfactory to Lender in all respects:

#### The Loan Documents applicable to the Substitution Request; and

#### Such other documents, instruments, approvals (and, if requested by Lender, certified duplicates of executed copies thereof) and opinions as Lender may reasonably request.

* + 1. **Opinion.**

Favorable opinions of counsel to Substitute Borrower as to the due organization and qualification of such Substitute Borrower, the due authorization, execution and delivery and enforceability of each Loan Document executed in connection with the Substitution and such other matters as Lender may reasonably require.

* + 1. **Other Conditions.**

In addition, each of the following conditions precedent shall have been met:

#### receipt by Lender of the fully executed Substitution Request;

#### Substitute Borrower and such Substitute Mortgaged Property securing such Mortgage Loan shall comply with the provisions of Section 3.02(c) of this Bulk Delivery Agreement;

#### in connection with any Permitted Partial Prepayment, receipt by Lender of any partial prepayment required under Section 3.02(d);

#### the Effective Date of the Substitution shall occur during the Substitution Availability Period;

#### delivery to the Title Company, with fully executed instructions directing the Title Company to file and/or record in all applicable jurisdictions, all applicable Loan Documents required by Lender to be filed or recorded, including duly executed and delivered original copies of the Security Instrument covering the Substitute Mortgaged Property and UCC-1 Financing Statements covering the portion of the Substitute Mortgaged Property comprised of personal property, and other appropriate instruments, in form and substance satisfactory to Lender and in form proper for recordation, as may be necessary in the opinion of Lender to perfect the Lien created by the applicable additional Security Instrument, and any other relevant Loan Document creating a Lien in favor of Lender, and the payment of all taxes, fees and other charges payable in connection with such execution, delivery, recording and filing;

#### receipt of all documents required for the assumption by a new Substitute Borrower (if applicable) and the replacement of the Substitute Mortgaged Property as security for the applicable Mortgage Loan (and any Supplemental Loan) pursuant to the Underwriting and Servicing Requirements;

#### receipt of an executed amendment to this Bulk Delivery Agreement (if applicable), an executed new Note (if applicable) or amendment to the applicable Note, an executed Security Instrument, anassumption and release agreement in form and substance approved by Lender (if applicable) and other Loan Documents reflecting the Substitution; and

#### as to any Security Instrument covering the Substitute Mortgaged Property, the receipt by Lender of a Title Insurance Policy insuring the Security Instrument, showing no exceptions to coverage other than Permitted Encumbrances.



# – FEES

## Fees.

Borrower shall pay Lender’s and Fannie Mae’s reasonable third party out-of-pocket fees and expenses payable in accordance with this Bulk Delivery Agreement, including the legal fees and expenses described in Section 2.02 and Section 4.01(a) of this Bulk Delivery Agreement, whether or not a request under this Bulk Delivery Agreement closes; provided, however, if Borrower makes a request and fails to close on a request for any reason other than the default by Lender, then Borrower shall also pay to Lender and Fannie Mae all actual damages incurred by Lender and Fannie Mae in connection with the failure to close.

# - DEFAULTS/REMEDIES

## Events of Default.

Each of the following shall constitute an “Event of Default” by the applicable Borrower under Section 14.01(a) in the applicable Loan Agreement, provided that an Event of Default that relates solely to any Mortgage Loan shall not be an Event of Default under any other Mortgage Loan made to any other Borrower:

* + 1. the failure by such Borrower to pay when due any amount payable by such Borrower under this Bulk Delivery Agreement, including any fees, costs or expenses beyond the cure period, if any, set forth herein; or
    2. any warranty, representation or other written statement made by or on behalf of a Borrower, Guarantor or Key Principal for such Borrower’s Mortgage Loan contained in this Bulk Delivery Agreement, any other Loan Document or in any instrument furnished in compliance with or in reference to any of the foregoing, is false or misleading in any material respect on any date when made or deemed made.

# - MISCELLANEOUS

## Miscellaneous; Governing Law; Consent to Jurisdiction and Venue.

* + 1. **Recitals.**

The recitals set forth above are incorporated herein by reference as if fully set forth in the body of this Bulk Delivery Agreement.

* + 1. **Governing** L**aw.**

This Bulk Delivery Agreement shall be governed by the laws of the District of Columbia without regard to the application of choice of law principles.

* + 1. **Venue.**

Any controversy arising under or in relation to this Bulk Delivery Agreement shall be litigated exclusively in the District of Columbia without regard to conflicts of laws principles. The state and federal courts and authorities with jurisdiction in the District of Columbia shall have exclusive jurisdiction over all controversies which shall arise under or in relation to this Bulk Delivery Agreement. Each Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise.

## Notice.

* + 1. **Process of Serving Notice.**

All notices under this Bulk Delivery Agreement shall be given in accordance with the notice procedures set forth in such Borrower’s Loan Agreement.

* + 1. **Change of Address.**

Any party to this Bulk Delivery Agreement may change the address to which notices intended for it are to be directed by means of notice given to the other parties identified in this Bulk Delivery Agreement.

* + 1. **Receipt of Notices.**

Neither Borrower nor Lender shall refuse or reject delivery of any notice given in accordance with this Bulk Delivery Agreement. Each party is required to acknowledge, in writing, the receipt of any notice upon request by the other party.

## Successors and Assigns Bound.

This Bulk Delivery Agreement shall bind, and the rights granted by this Bulk Delivery Agreement shall inure to, the successors and assigns of Lender and the permitted successors and assigns of Borrower. However, a Transfer (as defined in the respective Loan Documents) not permitted by the Loan Documents shall be an Event of Default and shall be void ab initio.

## Counterparts.

This Bulk Delivery Agreement may be executed in any number of counterparts with the same effect as if the parties hereto had signed the same document and all such counterparts shall be construed together and shall constitute one (1) instrument.

## Joint and Several Liability.

Subject to the provisions of Section 1.01 of this Bulk Delivery Agreement, if more than one Person signs this Bulk Delivery Agreement as a Borrower of a Mortgage Loan, the obligations of such Persons shall be joint and several.

## Relationship of Parties; No Third Party Beneficiary.

* + 1. **Solely Creditor and Debtor.**

The relationship between Lender and Borrower shall be solely that of creditor and debtor, respectively, and nothing contained in this Bulk Delivery Agreement shall create any other relationship between Lender and Borrower. Nothing contained in this Bulk Delivery Agreement shall constitute Lender as a joint venturer, partner or agent of Borrower, or render Lender liable for any debts, obligations, acts, omissions, representations or contracts of Borrower.

* + 1. **No Third Party Beneficiaries.**

No creditor of any party to this Bulk Delivery Agreement and no other person shall be a third party beneficiary of this Bulk Delivery Agreement or any account created or contemplated under this Bulk Delivery Agreement. Nothing contained in this Bulk Delivery Agreement shall be deemed or construed to create an obligation on the part of Lender to any third party nor shall any third party have a right to enforce against Lender any right that Borrower may have under this Bulk Delivery Agreement.

## Severability; Entire Agreement; Amendments.

The invalidity or unenforceability of any provision of this Bulk Delivery Agreement or any other Loan Document shall not affect the validity or enforceability of any other provision of this Bulk Delivery Agreement or of any other Loan Document, all of which shall remain in full force and effect, including any Guaranty. This Bulk Delivery Agreement and the Loan Documents contain the complete and entire agreement among the parties as to the matters covered, rights granted and the obligations assumed in this Bulk Delivery Agreement. This Bulk Delivery Agreement may not be amended or modified except by written agreement signed by the parties hereto.

## Construction.

The captions and headings of the sections of this Bulk Delivery Agreement are for convenience only and shall be disregarded in construing this Bulk Delivery Agreement.

* + 1. Any reference in this Bulk Delivery Agreement to an “Exhibit” or “Schedule” or a “Section” or an “Article” shall, unless otherwise explicitly provided, be construed as referring, respectively, to an exhibit or schedule attached to this Bulk Delivery Agreement or to a Section or Article of this Bulk Delivery Agreement.
    2. Any reference in this Bulk Delivery Agreement to a statute or regulation shall be construed as referring to that statute or regulation as amended from time to time.
    3. Use of the singular in this Bulk Delivery Agreement includes the plural and use of the plural includes the singular.
    4. As used in this Bulk Delivery Agreement, the term “including” means “including, but not limited to” or “including, without limitation,” and is for example only and not a limitation.
    5. Whenever Borrower’s knowledge is implicated in this Bulk Delivery Agreement or the phrase “to Borrower’s knowledge” or a similar phrase is used in this Bulk Delivery Agreement, Borrower’s knowledge or such phrase(s) shall be interpreted to mean to the best of Borrower’s knowledge after reasonable and diligent inquiry and investigation.
    6. Unless otherwise provided in this Bulk Delivery Agreement, if Lender’s approval, designation, determination, selection, estimate, action or decision is required, permitted or contemplated hereunder, such approval, designation, determination, selection, estimate, action or decision shall be made in Lender’s sole and absolute discretion.
    7. All references in this Bulk Delivery Agreement to a separate instrument or agreement shall include such instrument or agreement as the same may be amended or supplemented from time to time pursuant to the applicable provisions thereof.
    8. “Lender may” shall mean at Lender’s discretion, but shall not be an obligation.

## Counting of Days.

Except where otherwise specifically provided, any reference in this Bulk Delivery Agreement to a period of “days” means calendar days, not Business Days. If the date on which Borrower is required to perform an obligation under this Bulk Delivery Agreement is not a Business Day, Borrower shall be required to perform such obligation by the Business Day immediately preceding such date; provided, however, in respect of any Payment Date, or if the Maturity Date is other than a Business Day, Borrower shall be obligated to make such payment by the Business Day immediately following such date.

## Time is of the Essence.

Borrower agrees that, with respect to each and every obligation and covenant contained in this Bulk Delivery Agreement, time is of the essence.

## Final Agreement.

THIS BULK DELIVERY AGREEMENT ALONG WITH ALL OF THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Bulk Delivery Agreement and the other Loan Documents. This Bulk Delivery Agreement, the other Loan Documents and any of their provisions may not be waived, modified, amended, discharged or terminated except by an agreement in writing signed by the party against which the enforcement of the waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in that agreement.

## Waiver of Trial By Jury.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH OF BORROWER AND LENDER (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS BULK DELIVERY AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR THE RELATIONSHIP BETWEEN THE PARTIES AS BORROWER AND LENDER, THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

**[Remainder of Page Intentionally Blank]**

**IN WITNESS WHEREOF**, Borrower, Sponsor and Lender have signed and delivered this Bulk Delivery Agreement under seal (where applicable) or have caused this Bulk Delivery Agreement to be signed and delivered under seal (where applicable) by their duly authorized representatives. Where applicable law so provides, Borrower, Sponsor and Lender intend that this Bulk Delivery Agreement shall be deemed to be signed and delivered as a sealed instrument.

**BORROWER**:

[INSERT BORROWER SIGNATURE BLOCK(S)]

By: (SEAL)

Name:

Title:

**SPONSOR**:

[INSERT SPONSOR SIGNATURE BLOCK(S)]

By: (SEAL)

Name:

Title:

**LENDER**:

[INSERT LENDER SIGNATURE BLOCK(S)]

By: (SEAL)

Name:

Title:

**APPENDIX I TO**

**BULK DELIVERY AGREEMENT**

**Definitions**

A. Capitalized terms used in this Bulk Delivery Agreement have the meanings given to such terms in the applicable Loan Agreement subject to this Bulk Delivery Agreement.

B. For so long as a Mortgage Loan is subject to this Bulk Delivery Agreement, the provisions of this Bulk Delivery Agreement and the following definition shall apply to the Mortgage Loan:

“**Bulk Delivery Agreement**” means the Bulk Delivery Agreement dated as of [DATE] executed by Borrower, the party designated therein as “Sponsor,” and Lender as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

C. The following definitions in any Loan Agreement subject to this Bulk Delivery Agreement are hereby revised as follows:

“**Event of Default**” with respect to a particular Mortgage Loan, means the occurrence of any Event of Default in such Borrower’s Loan Documents and any event listed in Article 7 of the Bulk Delivery Agreement with respect to such Mortgage Loan.

“**Indebtedness**” has the meaning set forth in the Security Instrument provided that such definition is hereby modified to include the obligations of a Borrower under the Bulk Delivery Agreement as such obligations pertain to the applicable Mortgage Loan (and any Supplemental Loan).

“**Loan Documents**” means for any Mortgage Loan and any Supplemental Loan, the Bulk Delivery Agreement, the applicable Note, Loan Agreement, Security Instrument, Environmental Indemnity Agreement, Guaranty, all guaranties (if any), all indemnity agreements, all Collateral Agreements, all O&M Plans, and any other documents now or in the future executed by such Borrower, Guarantor, any other guarantor or any other Person in connection with the Mortgage Loan or Supplemental Loan (as applicable), as such documents may be amended, restated, replaced, supplemented or otherwise modified from time to time.

D. The following capitalized terms used in this Bulk Delivery Agreement have the meanings given to such terms in this Appendix I, notwithstanding any different definition applicable to and set forth in the Loan Agreement:

“**Alternate Coverage and LTV Tests**” means:

(a) the Debt Service Coverage Ratio is not less than 1.55:1.0 with respect to a fixed rate Mortgage Loan and 1.30:1.0 with respect to a variable rate Mortgage Loan; and

(b) the Loan to Value Ratio does not exceed fifty-five percent (55%).

“**Appraisal**” means an appraisal of Multifamily Residential Property conforming to the Underwriting and Servicing Requirements.

“**Borrower**” means any Borrower party to the Bulk Delivery Agreement from time to time.

“**Debt Service**” means, as of any date, the sum of the amount of interest and principal amortization that would be payable during the applicable period determined by Lender in accordance with the Underwriting and Servicing Requirements.

“**Debt Service Coverage Ratio**” means, for any Mortgaged Property, for any specified date, the ratio (expressed as a percentage) of:

(a) the Net Cash Flow for the specified period for the preceding number of months for the subject Mortgaged Property, as determined in accordance with the Underwriting and Servicing Requirements.

to

(b) the Debt Service on the specified date, assuming, for the purpose of calculating the Debt Service for this definition, that the amount of any Mortgage Loan Outstanding and the amount of any Supplemental Loan Outstanding shall be the “Loan Amount” for the subject Mortgaged Property.

“**Due Diligence Fees**” means with respect to a Mortgaged Property, an amount equal to $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. **[DRAFTING NOTE - LENDER TO INSERT DUE DILIGENCE FEE WHICH MUST INCLUDE $1,500 FEE DUE TO FANNIE MAE]**

“**Effective Date**” means the Initial Effective Date, and each date after the Initial Effective Date on which a funding, Substitution, Release or other transaction requested in a request takes place.

“**Fannie Mae**” means the corporation duly organized and existing under the laws of the United States.

“**First Anniversary**” means the date that is the first day of the month following the date one (1) year after the original Effective Date of such Mortgage Loan.

**“Future Loan Cost Deposit”** means with respect to a Future Loan Request, a deposit in an amount of a deposit determined by Lender upon receipt of a Future Loan Request to cover the anticipated Future Loan Costs.

**“Future Loan Costs”** means all reasonable out-of-pocket costs and expenses incurred by Lender and Fannie Mae, including any out-of-pocket legal fees and expenses incurred by Fannie Mae and Lender in connection with a proposed future Mortgage Loan whether such proposed future Mortgage Loan actually closes.

“**Future Loan Request**” means a written request from Key Principal or Guarantor to Lender for a future Mortgage Loan under this Bulk Delivery Agreement.

“**Initial Effective Date**” means the date of this Bulk Delivery Agreement.

“**Loan to Value Ratio**” means, for a Mortgaged Property, for any specified date, the ratio (expressed as a percentage) of:

(a) the “Loan Amount” related to the subject Mortgaged Property on the specified date assuming, for the purpose of calculating the Loan to Value Ratio for this definition, that the amount of any Mortgage Loan Outstanding and the amount of any Supplemental Loan Outstanding shall be the “Loan Amount” for the subject Mortgaged Property,

to

(b) the Valuation most recently obtained prior to the specified date for the subject Mortgaged Property.

“**Material Adverse Effect**” means, with respect to any circumstance, act, condition or event of whatever nature (including any adverse determination in any litigation, arbitration, or governmental investigation or proceeding), whether singly or in conjunction with any other event or events, act or acts, condition or conditions, or circumstance or circumstances, whether or not related, a material adverse change in or a materially adverse effect upon any of (a) the business, operations, property or condition (financial or otherwise) of such entity, to the extent specifically referred to in the applicable provision of the Loan Document, (b) the present or future ability of such entity to the extent specifically referred to in the applicable provision of the Loan Document, to perform the Obligations for which it is liable, (c) the validity, priority, perfection or enforceability of this Bulk Delivery Agreement or any other Loan Document or the rights or remedies of Lender under any Loan Document, or (d) the value of, or Lender’s ability to have recourse against, any Mortgaged Property.

“**Mortgaged Property**” for the purposes of this Bulk Delivery Agreement, means, individually and collectively, each Multifamily Residential Property described on Exhibit A to this Bulk Delivery Agreement (as amended from time to time), but excluding each Release Mortgaged Property from and after the date of its release from this Bulk Delivery Agreement.

“**Multifamily Residential Property**” means a residential property located in the United States and conforming to the Underwriting and Servicing Requirements.

“**Original DSCR**” means the underwritten, amortizing Debt Service Coverage Ratio of a Mortgaged Property at the time the Mortgage Loan for such Mortgaged Property was originated, which is set forth on Schedule 1.

“**Original LTV**” means the underwritten Loan to Value Ratio of a Mortgaged Property at the time the Mortgage Loan for such Mortgaged Property was originated, which is set forth on Schedule 1.

“**Outstanding**” or “**outstanding**” means, when used in connection with promissory notes, other debt instruments, Mortgage Loans or Supplemental Loans, for a specified date, promissory notes or other debt instruments which have been issued, Mortgage Loans or Supplemental Loans which have been made, but have not been repaid in full as of the specified date.

“**Permitted Partial Prepayment**” means a partial prepayment of the Indebtedness in connection with Lender’s approval of a proposed Substitution in an amount not greater than fifteen percent (15%) of the then-current unpaid principal balance of the Mortgage Loan.

“**Potential Event of Default**” means any event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default.

“**Release Mortgaged Property**” means a Mortgaged Property securing a Mortgage Loan made to a Borrower that is anticipated to be released from this Bulk Delivery Agreement.

“**Sponsor** **Affiliate**” means, as to any particular Person, any Person directly or indirectly, through one or more intermediaries, Controlled by Sponsor.

“**Substitute Borrower**” means a Borrower that is a Sponsor Affiliate and owns a Substitute Mortgaged Property and is approved by Lender in accordance with the Underwriting and Servicing Requirements.

“**Substitute Mortgaged Property**” means a Multifamily Residential Property that replaces a Released Mortgaged Property and that meets the requirements of this Bulk Delivery Agreement.

“**Substitution**” means, with respect to each Mortgage Loan (together with any applicable Supplemental Loan) subject to this Bulk Delivery Agreement, the one-time right to effect the simultaneous release of a Release Mortgaged Property and replace it with a Substitute Mortgaged Property pursuant to the terms of this Bulk Delivery Agreement.

“**Substitution Availability Period**” means, with respect to each Mortgage Loan subject to this Bulk Delivery Agreement, the period that begins on the First Anniversary of such Mortgage Loan and ends on the date that is one (1) year prior to the Maturity Date of such Mortgage Loan.

“**Substitution Cost Deposit**” means a deposit determined by Lender upon receipt of a Substitution Request to cover the anticipated Substitution Costs.

“**Substitution Costs**” means all reasonable out-of-pocket costs and expenses incurred by Lender and Fannie Mae, including any out-of-pocket legal fees and expenses incurred by Fannie Mae and Lender in connection with a Substitution whether such Substitution actually closes.

“**Substitution Fee**” means with respect to any Substitution, a fee in the amount which is the greater of (a) 50 basis points (0.50%) multiplied by the Mortgage Loan amount of the Substitute Mortgaged Property being added in connection with the Substitution, and (b) $50,000.

“**Substitution Request**” means a written request from any Borrower to Lender for a Substitution under this Bulk Delivery Agreement.

“**Supplemental Loan**” means such loan made in accordance with the Fannie Mae Supplemental Loan product.

“**Underwriting and Servicing Requirements**” means Lender’s overall requirements for Multifamily Residential Properties in connection with similar loans sold or anticipated to be sold to Fannie Mae, pursuant to Fannie Mae’s then current guidelines, including, requirements relating to appraisals, physical needs assessments, environmental site assessments, and servicing and asset management, as such requirements may be amended, modified, updated, superseded, supplemented or replaced from time to time.

“**Valuation**” means the value determined by Lender pursuant to the Underwriting and Servicing Requirements.

**EXHIBIT A TO BULK DELIVERY AGREEMENT**

**Mortgaged Properties**

**SCHEDULE 1 TO BULK DELIVERY AGREEMENT**

**Original DSCR and Original LTV**

**[DRAFTING NOTE: INSERT THE ORIGINAL UNDERWRITTEN, *AMORTIZING* DSCR AND ORIGINAL UNDERWRITTEN LTV AS APPROVED BY FANNIE MAE FOR EACH MORTGAGED PROPERTY]**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Borrower** | **Mortgaged Property Name** | **Date added to Bulk Delivery Agreement** | **Original DSCR** | **Original LTV** |
|  |  |  |  |  |
|  |  |  |  |  |