**CONSENT TO TRANSFER AND RATIFICATION OF LOAN OBLIGATIONS**

**(1031 Reverse Exchange)**

This CONSENT TO TRANSFER AND RATIFICATION OF LOAN OBLIGATIONS (“**Agreement**”) is dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_ by and among \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Transferor**”), \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Transferee**”), [**DRAFTING NOTE: INCLUDE ANY GUARANTOR REMAINING IN PLACE AFTER THE EXCHANGE**:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Guarantor**”)], \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Borrower**”), and **Fannie Mae**, a corporation duly organized under the Federal National Mortgage Association Charter Act, as amended, 12 U.S.C. §1716 et seq., and existing under the laws of the United States (“**Fannie Mae**”).

**RECITALS:**

A. Pursuant to that certain Multifamily Loan and Security Agreement dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, executed by and between Borrower and \_\_\_\_\_\_\_\_\_\_\_\_ (“**Original Lender**”) (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Loan Agreement**”), Original Lender made a loan to Borrower in the original principal amount of $\_\_\_\_\_\_\_\_\_ (the “**Mortgage** **Loan**”), as evidenced by, among other things, that certain Multifamily Note dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, executed by Borrower and made payable to Original Lender in the amount of the Mortgage Loan (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Note**”), which Note has been assigned to Fannie Mae. The current servicer of the Mortgage Loan is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Loan Servicer**”).

B. In addition to the Loan Agreement, the Mortgage Loan and the Note are secured by, among other things, a Multifamily Mortgage, Deed of Trust or Deed to Secure Debt dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **[INSERT RECORDING INFORMATION IF NECESSARY -** and recorded [as instrument number\_\_\_\_\_\_\_\_\_\_] [at deed book \_\_\_\_ and page number \_\_\_\_\_\_] in the land records of \_\_\_\_\_\_\_\_\_\_\_ County, \_\_\_\_\_\_\_\_**]** (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Security** **Instrument**”) encumbering the land as more particularly described therein located at **[DRAFTING NOTE: INSERT PROPERTY ADDRESS** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**]** (the “**Mortgaged** **Property**”).

C. The Security Instrument has been assigned to Fannie Mae pursuant to that certain Assignment of Multifamily Mortgage, Deed of Trust or Deed to Secure Debt dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **[INSERT RECORDING INFORMATION IF NECESSARY -** and recorded [as instrument number\_\_\_\_\_\_\_\_\_\_] [at deed book \_\_\_\_ and page number \_\_\_\_\_\_] in the land records of \_\_\_\_\_\_\_\_\_\_\_ County, \_\_\_\_\_\_\_\_**]**.

D. The Loan Agreement, the Note, the Security Instrument, that certain Environmental Indemnity Agreement made by Borrower for the benefit of Original Lender dated as of the date of the Loan Agreement (the “**Environmental Indemnity Agreement**”) and any other documents executed in connection with the Mortgage Loan are referred to collectively as the “**Loan Documents**.” Borrower is liable for the payment and performance of all of Borrower’s obligations under the Loan Documents.

**[**E. Guarantor is liable under the [Guaranty of Non-Recourse Obligations][Guaranty (Payment)] dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “**Guaranty**”).**]**

**[**F.**]** Each of the Loan Documents has been duly assigned or endorsed to Fannie Mae.

**[**G.**]** Fannie Mae has been asked to consent to the transfer of one hundred percent (100%) of the ownership interest in Borrower from Transferor to Transferee (the “**Transfer**”).

**[**H.**]** Fannie Mae has agreed to consent to the Transfer subject to the terms and conditions stated below.

**AGREEMENTS:**

NOW, THEREFORE, in consideration of the mutual covenants in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Recitals.**

The recitals set forth above are incorporated herein by reference.

1. **Defined Terms.**

Capitalized terms used and not specifically defined herein have the meanings given to such terms in the Loan Agreement. The following terms, when used in this Agreement, shall have the following meanings:

“**Claims**” means any and all possible claims, demands, actions, costs, expenses and liabilities whatsoever, known or unknown, at law or in equity, originating in whole or in part, on or before the date of this Agreement, which Borrower, Transferor, [Guarantor,] or any of their respective partners, members, officers, agents or employees, may now or hereafter have against the Indemnitees, if any and irrespective of whether any such claims arise out of contract, tort, violation of laws, or regulations, or otherwise in connection with any of the Loan Documents, including any contracting for, charging, taking, reserving, collecting or receiving interest in excess of the highest lawful rate applicable thereto and any loss, cost or damage, of any kind or character, arising out of or in any way connected with or in any way resulting from the acts, actions or omissions of the Indemnitees, including any requirement that the Loan Documents be modified as a condition to the transactions contemplated by this Agreement, any charging, collecting or contracting for prepayment premiums, transfer fees, or assumption fees, any breach of fiduciary duty, breach of any duty of fair dealing, breach of confidence, breach of funding commitment, undue influence, duress, economic coercion, violation of any federal or state securities or Blue Sky laws or regulations, conflict of interest, negligence, bad faith, malpractice, violations of the Racketeer Influenced and Corrupt Organizations Act, intentional or negligent infliction of mental distress, tortious interference with contractual relations, tortious interference with corporate governance or prospective business advantage, breach of contract, deceptive trade practices, libel, slander, conspiracy or any claim for wrongfully accelerating the Note or wrongfully attempting to foreclose on any collateral relating to the Mortgage Loan, but in each case only to the extent permitted by applicable law.

“**Indemnitees**” means, collectively, Original Lender, Fannie Mae, Loan Servicer and their respective successors, assigns, agents, directors, officers, employees and attorneys, and each current or substitute trustee under the Security Instrument.

“**Transfer Fee**” means $\_\_\_\_\_\_\_\_\_\_.

1. **Ratification of Borrower’s [and Guarantor’s] Obligations[; Guarantor’s Acknowledgement].**
   1. Borrower, as constituted after the Transfer, hereby ratifies all of its payment and performance obligations set forth in the Note, the Security Instrument, the Loan Agreement, and the other Loan Documents [other than the Guaranty] in accordance with their respective terms and conditions, as the same may be modified from time to time, including payment of all sums due under the Loan Documents [other than the Guaranty]. Borrower, as constituted after the Transfer further agrees to abide by and be bound by all of the terms of the Loan Documents [other than the Guaranty], all as though each of the Loan Documents had been made, executed and delivered by Borrower as constituted after the Transfer.
   2. Guarantor hereby ratifies the terms of the Guaranty agreements made by Guarantor and agrees that all of such agreements remain in full force and effect. Guarantor hereby acknowledges and consents to the Transfer.]
2. **Assumption by Transferee.**

As described in that certain **[DRAFTING NOTE: DESCRIBE ORGANIZATIONAL DOCUMENT(S) AND ANY ASSUMPTION AGREEMENT EVIDENCING THE EXCHANGE REQUIRED TRANSFER]** dated \_\_\_\_\_\_\_\_\_ by and between Transferor and Transferee, Transferor has transferred and Transferee has assumed one hundred percent (100%) of the ownership interests in Borrower.

1. **Borrower’s Representations and Warranties.**

Borrower represents and warrants to Fannie Mae as of the date of this Agreement that:

* 1. the Note has an unpaid principal balance of $\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and prior to default currently bears interest at the rate of \_\_\_\_\_\_\_\_\_\_ percent (\_\_\_\_\_%) per annum;
  2. the Loan Documents require that monthly payments of principal and interest in the amount of $\_\_\_\_\_\_\_\_\_\_\_\_\_ **[DRAFTING NOTE: INSERT PAYMENT INFORMATION EFFECTIVE AS OF THE DATE OF THIS AGREEMENT – UPDATE AS NECESSARY FOR INTEREST ONLY LOANS]** be made on or before the first day of each month, continuing to and including \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, when all sums due under the Loan Documents will be immediately due and payable in full;
  3. there are no defenses, offsets or counterclaims to the Note, the Security Instrument, the Loan Agreement, [the Guaranty,] or the other Loan Documents;
  4. there are no defaults by Transferor under the provisions of the Note, the Security Instrument, the Loan Agreement, [the Guaranty,] or the other Loan Documents;
  5. all provisions of the Note, the Security Instrument, the Loan Agreement, [the Guaranty,] and other Loan Documents are in full force and effect;
  6. there are no subordinate liens covering or relating to the Mortgaged Property, nor are there any mechanics’ liens or liens for unpaid taxes or assessments encumbering the Mortgaged Property, nor has notice of a lien or notice of intent to file a lien been received except for mechanics’ or materialmen’s liens which attach automatically under the laws of the Governmental Authority upon the commencement of any work upon, or delivery of any materials to, the Mortgaged Property and for which Transferor is not delinquent in the payment for any such services or materials;
  7. as constituted after the Transfer, [\_\_\_\_\_\_\_\_\_\_, Key Principal] [Guarantor] will continue to directly or indirectly Control Borrower; [and]
  8. all requirements to complete the Exchange Required Transfer set forth in Section 11.[\_\_] (Exchange Required Transfer) have been satisfied[.][; and]
  9. **[DRAFTING NOTE: DELETE IF THERE WAS NO OPERATING LEASE:** the Exchange Operating Lease and SASA have been terminated and, as applicable, released of record[.][; and]**]**
  10. **[DRAFTING NOTE: DELETE IF THERE WAS NO EXCHANGE LOAN:** the Exchange Loan has been repaid or forgiven and the Exchange Loan Documentation has been terminated.**]**

1. **Transferee’s Representations and Warranties.**

Transferee represents and warrants to Fannie Mae as of the date of this Agreement that Transferee does not have any knowledge that any of the representations made by Borrower in Section 5 above are not true and correct.

1. **Consent to Transfer.**
   1. Fannie Mae hereby consents to the Transfer. Fannie Mae’s consent to the Transfer is not intended to be and shall not be construed as a consent to any subsequent transfer which requires Lender’s consent pursuant to the terms of the Loan Agreement.
   2. Borrower[,] [and] Transferee[, and Guarantor] understand and intend that Fannie Mae will rely on the representations and warranties contained herein.
2. **[Intentionally Deleted.]**
3. **Amendment and Modification of Loan Documents.**

As additional consideration for Fannie Mae’s consent to the Transfer as provided herein, Borrower, Transferee, and Fannie Mae have agreed to modify the Loan Documents as set forth in that certain [First] Amendment to Multifamily Loan and Security Agreement.**[DRAFTING NOTE: LENDER TO PRODUCE AMENDMENT TO MLSA BASED ON FORM 6601 TO INCLUDE FINAL ORGANIZATIONAL CHART]**

1. **Confirmation of Key Principal.**

The parties hereby agree that the party identified as Key Principal in the Loan Agreement is still **[DRAFTING NOTE – INSERT NAME OF KEY PRINCIPAL:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**]**.

1. **Limitation of Amendment.**

Except as expressly stated herein, all terms and conditions of the Loan Documents, including the Loan Agreement, Note, [and] Security Instrument [, and Guaranty], shall remain unchanged and in full force and effect.

1. **Further Assurances.**

Borrower[,] [and] Transferee[, and Guarantor] agree at any time and from time to time upon request by Fannie Mae to take, or cause to be taken, any action and to execute and deliver any additional documents which, in the opinion of Fannie Mae, may be necessary in order to assure to Fannie Mae the full benefits of the amendments contained in this Agreement.

1. **Modification.**

This Agreement embodies and constitutes the entire understanding among the parties with respect to the transactions contemplated herein, and all prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Agreement. Neither this Agreement nor any provision hereof may be waived, modified, amended, discharged, or terminated except by an instrument in writing signed by the party against which the enforcement of such waiver, modification, amendment, discharge, or termination is sought, and then only to the extent set forth in such instrument. Except as expressly modified by this Agreement, the Loan Documents shall remain in full force and effect and this Agreement shall have no effect on the priority or validity of the liens set forth in the Security Instrument or the other Loan Documents, which are incorporated herein by reference.

1. **Priority; No Impairment of Lien.**

Nothing set forth herein shall affect the priority, validity or extent of the lien of any of the Loan Documents, nor, except as expressly set forth herein, release or change the liability of any party who may now be, or after the date of this Agreement become, liable, primarily or secondarily, under the Loan Documents.

1. **Costs.**

Borrower agrees to pay all fees and costs (including attorneys’ fees) incurred by Fannie Mae and the Loan Servicer in connection with Fannie Mae’s consent to and approval of the Transfer and the Transfer Fee in consideration of the consent to that transfer.

1. **[Intentionally Deleted.]**
2. **Indemnification.**
   1. Borrower[,] [and] Transferee[, and Guarantor] each unconditionally and irrevocably releases and forever discharges the Indemnitees from all Claims, agrees to indemnify the Indemnitees and hold them harmless from any and all claims, losses, causes of action, costs and expenses of every kind or character in connection with the Claims or the Transfer.
   2. This release is accepted by Fannie Mae and Loan Servicer pursuant to this Agreement and shall not be construed as an admission of liability on the part of any party.
   3. Each of Borrower[,] [and] Transferee[, and Guarantor] hereby represents and warrants that it hasnot assigned, pledged or contracted to assign or pledge any Claim to any other person.
3. **Non-Recourse.**

Article 3 (Personal Liability) of the Loan Agreement is hereby incorporated herein as if fully set forth in the body of this Agreement.

1. **Governing Law; Consent to Jurisdiction and Venue.**

Section 15.01 (Governing Law; Consent to Jurisdiction and Venue) of the Loan Agreement is hereby incorporated herein as if fully set forth in the body of this Agreement.

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

All notices under this Agreement shall be:

* + 1. in writing and shall be:
       1. delivered, in person;
       2. mailed, postage prepaid, either by registered or certified delivery, return receipt requested;
       3. sent by overnight courier; or
       4. sent by electronic mail with originals to follow by overnight courier;
    2. addressed to the intended recipient at its respective address set forth at the end of this Agreement; and
    3. deemed given on the earlier to occur of:

(A) the date when the notice is received by the addressee; or

(B) if the recipient refuses or rejects delivery, the date on which the notice is so refused or rejected, as conclusively established by the records of the United States Postal Service or any express courier service.

* 1. **Change of Address.**

Any party to this Agreement may change the address to which notices intended for it are to be directed by means of notice given to the other parties to this Agreement in accordance with this Section 20.

* 1. **Default Method of Notice.**

Any required notice under this Agreement which does not specify how notices are to be given shall be given in accordance with this Section 20.

* 1. **Receipt of Notices.**

No party to this Agreement shall refuse or reject delivery of any notice given in accordance with this Agreement. Each party is required to acknowledge, in writing, the receipt of any notice upon request by the other party.

1. **Counterparts.**

This Agreement may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall constitute one and the same instrument.

1. **Severability; Entire Agreement; Amendments.**

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

1. **Construction.**
   1. The captions and headings of the sections of this Agreement are for convenience only and shall be disregarded in construing this Agreement.
   2. Any reference in this 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 Agreement or to a Section or Article of this Agreement. All exhibits and schedules attached to or referred to in this Agreement, if any, are incorporated by reference into this Agreement.
   3. Any reference in this Agreement to a statute or regulation shall be construed as referring to that statute or regulation as amended from time to time.
   4. Use of the singular in this Agreement includes the plural and use of the plural includes the singular.
   5. As used in this Agreement, the term “including” means “including, but not limited to” or “including, without limitation,” and is for example only and not a limitation.
   6. Whenever a party’s knowledge is implicated in this Agreement or the phrase “to the knowledge” of a party or a similar phrase is used in this Agreement, such party’s knowledge or such phrase(s) shall be interpreted to mean to the best of such party’s knowledge after reasonable and diligent inquiry and investigation.
   7. Unless otherwise provided in this Agreement, if Lender’s approval is required for any matter hereunder, such approval may be granted or withheld in Lender’s sole and absolute discretion.
   8. Unless otherwise provided in this Agreement, if Lender’s designation, determination, selection, estimate, action or decision is required, permitted or contemplated hereunder, such designation, determination, selection, estimate, action or decision shall be made in Lender’s sole and absolute discretion.
   9. All references in this 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.

“Lender may” shall mean at Lender’s discretion, but shall not be an obligation.

1. **WAIVER OF TRIAL BY JURY.**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE PARTIES HERETO (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR THE RELATIONSHIP BETWEEN THE PARTIES, 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.

**[DRAFTING NOTE FOR TRANSACTIONS SECURED BY MORTGAGED PROPERTY IN MAINE -- THE FOLLOWING STATEMENT MUST BE INCLUDED IN AT LEAST ONE LOAN DOCUMENT EXECUTED CONTEMPORANEOUSLY WITH THE OTHER LOAN DOCUMENTS**.

Borrower may not maintain any action on any agreement with lender to lend money, extend credit, forbear from collection of the indebtedness or make any other accommodation for the repayment of the indebtedness for more than $250,000, unless the agreement on which the action is brought, or some memorandum of it, is in writing and signed by an individual authorized to sign for lender.**]**

**[Remainder of Page Intentionally Blank]**

IN WITNESS WHEREOF, each party has signed and delivered this Agreement under seal (where applicable) or has caused this Agreement to be signed and delivered under seal (where applicable) by its duly authorized representative. Where applicable law so provides, each party intends that this Agreement shall be deemed to be signed and delivered as a sealed instrument.

**TRANSFEROR**:

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

By: (SEAL)

Name:

Title:

Notice Address:

**TRANSFEREE**:

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

By: (SEAL)

Name:

Title:

**BORROWER**:

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

By: (SEAL)

Name:

Title:

Notice Address:

**[GUARANTOR**:

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

By: (SEAL)

Name:

Title:

Notice Address:

**]**

**FANNIE MAE**:

By: (SEAL)

Name:

Title:

Notice Address: