**Rider to Continuing Covenant Agreement – TEL**

**Condominium Partially Owned by Borrower**

(Revised 6-27-2023)

The following changes are made to the Continuing Covenant Agreement that precedes this Rider:

A. The following table is added to Section 1.04:

|  |  |  |
| --- | --- | --- |
| **Condominium Partially Owned by Borrower** | | |
| **Name of Condominium**: | | |
|  | Number of Borrower Condominium Units: \_\_\_\_ | |
|  | Number of Third-Party Units: \_\_\_\_ | |
|  | ***Choose one:*** | |
|  |  | No Third-Party Unit owner is an Affiliate of Borrower. |
|  | One or more Third-Party Unit owners are Affiliates of Borrower. |

B. Reserved.

C. Section 5.42 is deleted and replaced with the following:

**5.42 Representations Regarding the Condominium**.

(a) The Mortgaged Property is a portion of the condominium named in Section 1.04 (“**Condominium**”) established under the laws governing condominiums in the Property Jurisdiction (“**Condominium Act**”), consisting of the Borrower Condominium Units and the Third-Party Units. The number of Third-Party Units is listed in Section 1.04, and they are owned by one or more Persons whose affiliation to Borrower is as specified in Section 1.04.

(b) The Condominium was created pursuant to and is governed by certain instruments, which may include a recorded map or plat, a condominium declaration, and bylaws (all the instruments that created and govern the Condominium are, collectively, the “**Condominium Instruments**”).

(c) Borrower has delivered complete and correct copies of all the Condominium Instruments to Funding Lender.

(d) Borrower, as owner of the Borrower Condominium Units, controls the board of trustees or directors and the association of owners of the Condominium (“**Condominium Association**”).

(e) None of the Borrower Condominium Units, and no portion of or interest in the common elements of the Condominium that are owned or controlled by Borrower, have been sold, conveyed, or encumbered, or are subject to any agreement to convey or encumber.

(f) The Mortgaged Property includes all rights, easements, rights of way, reservations and powers of the Borrower under the Condominium Act and the Condominium Instruments, in Borrower’s capacity as owner of the Borrower Condominium Units, as well as any rights that Borrower may have, in any capacity, under the Condominium Act and the Condominium Instruments, specifically including all rights to approve any amendments to the Condominium Instruments.

D. Section 6.31 is deleted and replaced with the following:

**6.31 Covenants Regarding the Condominium**.

(a) Borrower will operate the Borrower Condominium Units solely as a rental apartment project.

(b) None of the Borrower Condominium Units, and no portion of or interest in the common elements of the Condominium that are owned or controlled by Borrower, will be sold, conveyed, or encumbered, or will be subject to any agreement to convey or encumber.

(c) Borrower will not vote to allow the Condominium Instruments to be modified or amended without the prior written consent of Funding Lender, which consent may be given or withheld in Funding Lender’s sole and absolute discretion.

(d) Borrower will pay when due all assessments for common charges, expenses, and other amounts due to the Condominium Association.

(e) Borrower will immediately deliver to Funding Lender a copy of any notice received by Borrower from the Condominium Association asserting that Borrower is in breach of any payment obligation or in default under the Condominium Instruments.

(f) Borrower will maintain insurance meeting the requirements of Section 6.10 with respect to the Borrower Condominium Units, including each of the following, to the extent the Condominium Association insurance does not provide such coverage:

(i) Common areas.

(ii) Interior walls, the space between the interior walls and the exterior walls, and the floors and Fixtures.

(iii) In the event of an insured loss, each Borrower Condominium Unit’s share of the deductible under the master policy held by the Condominium Association, which deductible share may be in the form of a special assessment levied on Condominium Unit owners by the Condominium Association.

(g) If a casualty or condemnation results in distribution of proceeds to owners of the Condominium Units, all proceeds allocable to the Borrower Condominium Units will be deposited into an account established in connection with the Replacement Reserve Fund or other Imposition Reserve Deposits held by Funding Lender to be disbursed in accordance with the provisions of this Continuing Covenant Agreement.

(h) If a receiver is appointed pursuant to this Continuing Covenant Agreement or otherwise, which receiver has authority to replace any director or trustee of the Condominium Association pursuant to the terms of the receivership order, then:

(i) Borrower will, if directed by Funding Lender, cause any trustee or director of the Condominium Association to resign or otherwise be removed effective as of the date of such appointment, and

(ii) Borrower agrees that such receiver may thereafter appoint any replacement trustee or director of the Condominium Association, to the extent permitted by the receivership order.

(i) If any provision of the Condominium Act is held invalid and such invalidity would affect the lien of the Security Instrument, impair the ability of Fiscal Agent and/or Funding Lender to enforce the lien of the Security Instrument, or otherwise materially affect the rights of Funding Lender under the Financing Documents, Borrower will execute such additional documents as may be necessary to affirm its obligations to Funding Lender under the Financing Documents and to protect or further perfect the lien of the Security Instrument against the Mortgaged Property.

(j) If a court of competent jurisdiction issues a final order determining that the Condominium is not considered a validly created condominium as established under the Condominium Act, Borrower will execute such additional documents as may be necessary to affirm its obligations to Funding Lender under the Financing Documents and to protect or further perfect the lien of the Security Instrument against the Mortgaged Property.

E. Section 9.01(aa) is deleted and replaced with the following:

(aa) Any of the following occurs:

(i) Borrower terminates or revokes or attempts to terminate or revoke the appointment of Funding Lender as Borrower’s attorney-in-fact either permanently or as to any election in the Condominium Act or Condominium Instruments.

(ii) Borrower agrees to modify the terms of the Condominium Instruments without the prior written consent of Funding Lender.

(iii) The Condominium becomes subject to an action for partition at the suit of any Condominium Unit owner or otherwise, and such action has been commenced and not dismissed within 30 days after commencement of such suit.

(iv) Any provision of the Condominium Act is held invalid and such invalidity would affect the lien of the Security Instrument, impair the ability of Fiscal Agent and/or Funding Lender to enforce the lien of the Security Instrument, or otherwise materially affect the rights of Funding Lender under the Financing Documents.

(v) A court of competent jurisdiction issues a final order determining that the Condominium is not considered a validly created condominium as established under the Condominium Act.

F. Section 10.02(k) is deleted and replaced with the following:

(k) Borrower agrees to indemnify, hold harmless and defend the Indemnitees against any and all losses, claims, damages, liabilities, and expenses, including Attorneys’ Fees and Costs, which may be imposed or incurred by any of them directly or indirectly arising out of, or in any way relating to, or as a result of any failure of Borrower to comply with any laws, regulations, ordinances, codes, statutes, or decrees of any the Property Jurisdiction or any Governmental Authority with respect to the formation or operation of the Condominium.

G. Section 11.20 is deleted and replaced with the following:

**11.20 Additional Condominium Provisions**.

(a) Reserved.

(b) Borrower hereby irrevocably constitutes, authorizes, and appoints Funding Lender as Borrower’s proxy and attorney in fact for and on behalf of Borrower to perform all of Borrower’s obligations and to exercise all of Borrower’s rights and powers under the Condominium Instruments and the Condominium Act without any liability to Borrower or third parties, unless such liability arises from Funding Lender’s gross negligence or willful misconduct. This power of attorney is coupled with an interest and therefore is irrevocable. However, nothing in this Section 11.20(b) will require Funding Lender to incur any expense or take any action. Funding Lender agrees that it will not exercise the power of attorney granted in this Section 11.20(b) prior to the occurrence of an Event of Default. All expenditures made by Funding Lender pursuant to this Section 11.20(b) will become an additional part of the Indebtedness as provided in Section 9.02.

(c) Nothing contained in this Continuing Covenant Agreement is intended to or will be construed to constitute Funding Lender as any of the following:

1. The Declarant under the Condominium Act or the Condominium Instruments.
2. Owner of the Condominium

(iii) A partner or joint venturer of Borrower.

H. The following definitions are added to Article XII:

“**Borrower Condominium Units**” means the units of the Condominium owned by Borrower, the number of which is specified in Section 1.04.

“**Condominium**” is defined in Section 5.42.

“**Condominium Act**” is defined in Section 5.42.

“**Condominium Association**” is defined in Section 5.42.

“**Condominium Instruments**” is defined in Section 5.42.

“**Condominium Units**”means collectively the Borrower Condominium Units and the Third-Party Units.

“**Declarant**”is the Person that established the Condominium pursuant to the Declaration, or such Person’s successors and assigns.

“**Third-Party Units**” means the units owned by one or more Persons other than Borrower, the number of which is specified in Section 1.04.

I. Section (xxiv) of the definition of “**Mortgaged Property**” in Article XII is deleted and replaced with the following:

(xxiv) All rights, easements, rights of way, reservations and powers of Borrower under the Condominium Act and the Condominium Instruments in Borrower’s capacity as owner of the Borrower Condominium Units and as Declarant, if applicable, as well as any rights that Borrower may have, in any capacity, under the Condominium Act and the Condominium Instruments and as developer of the Condominium, if applicable, in addition to Borrower’s rights as owner of the Borrower Condominium Units specifically including all rights to approve any amendments to the Condominium Instruments and all rights to expand the Condominium.