**Rider to Continuing Covenant Agreement – TEL**

**Debt Service Reserve**

(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 1.03:

|  |  |
| --- | --- |
| **Debt Service Reserve Fund** | |
| Minimum Balance means an amount equal to \_\_\_\_ Monthly Payments | |
| **Replenishment:** | |
|  | Not required |
|  | Required after a disbursement |
| **Additional Termination Scenarios:** | |
|  | Not applicable |
|  | The Debt Service Reserve has been reduced to the Minimum Balance |
|  | Other *[list]* |
|  | |
| **Underwritten Acceptable Other Income**: $\_\_\_\_\_\_ | |
| **Underwritten Fixed Expenses**: $\_\_\_\_\_\_\_ | |
| **Underwritten Management Fee**: \_\_% of Effective Gross Income | |
| **Underwritten Operating Expenses**: $\_\_\_\_\_\_\_\_ | |
| *(See Section 4.08)* | |

B. Section 4.08 is deleted and replaced with the following:

**4.08 Debt Service Reserve Fund**.As a condition to making the Funding Loan, Funding Lender has required Borrower to establish a Debt Service Reserve Fund to ensure that adequate funds are available for, among other things, payment of any Projected Deficit (“**Debt Service Reserve Fund**”).

1. Deposits to Debt Service Reserve Fund.

(i) Borrower has established the Debt Service Reserve Fund as of the date of this Continuing Covenant Agreement by making the Initial Debt Service Reserve Deposit to the Debt Service Reserve Fund.

(ii) If the required Monthly Debt Service Reserve Deposit is greater than zero, then beginning on the First Project Loan Payment Date and on each successive Project Loan Payment Date, Borrower must pay the Monthly Debt Service Reserve Deposit to Funding Lender for deposit into the Debt Service Reserve Fund, together with Borrower’s regular Monthly Payments.

(b) Use of Debt Service Reserve. Subject to the pledge and security interest, and other rights of Funding Lender set forth in this Continuing Covenant Agreement, the Debt Service Reserve will be maintained for the purpose of assuring Funding Lender that adequate funds are available for the payment of any Monthly Deficit during the Debt Service Reserve Period.

(c) Letter of Credit. Borrower agrees that any Letter of Credit deposited with Funding Lender is in lieu of cash and is for the convenience of Borrower. Funding Lender will be entitled to draw on the Letter of Credit at any time and in no event will be liable for any damages as a result of drawing on the Letter of Credit. AnyLetter of Credit deposited with Funding Lender in satisfaction of this Section 4.08 must be in the amount of the Initial Debt Service Reserve Deposit and meet the requirements of this Section 4.08 and Section 11.16.

(d) Payments by Borrower. During the Debt Service Reserve Period, on each Project Loan Payment Date, Borrower will pay to Funding Lender the lesser of the following:

(i) The Monthly Payment.

(ii) The Net Operating Income for the calendar month immediately preceding the calendar month in which the Monthly Payment is due.

Nothing contained in this Section 4.08 will relieve Borrower of the obligation to pay monthly reserve amounts required under the Financing Documents.

(e) Operating Statements. For each month in which Borrower fails to timely pay Funding Lender the full Monthly Payment on the Project Loan Payment Date, Borrower will provide to Funding Lender, by the fifth day of that calendar month, each of the following items:

(i) A certified Rent Schedule.

(ii) A statement of income and expenses for Borrower.

(iii) Upon Funding Lender’s request, any other information prepared or used by Borrower in connection with the operation of the Mortgaged Property.

Each Rent Schedule and statement of income and expenses must be prepared in accordance with Section 6.07(a)(ii) and certified as true and complete by a Borrower Principal (who may rely upon Borrower’s agent in making such certification, if such reliance is stated in the certification).

(f) Monthly Deficit. If there is a Monthly Deficit in any month during the Debt Service Reserve Period, Funding Lender will deduct funds from the Debt Service Reserve Fund in such amounts as Funding Lender determines are necessary to cover the Monthly Deficit. If the Debt Service Reserve is insufficient to cover the Monthly Deficit, Borrower must pay all additional amounts required in connection with any such Monthly Payments from Borrower’s own funds.

(g) Replenishment of Debt Service Reserve.

(i) If “Replenishment Required after a disbursement” is marked in Section 1.03, then following any disbursement from the Debt Service Reserve, Borrower will be required to replenish the Debt Service Reserve to the Minimum Balance by depositing additional cash (or by posting a replacement Letter of Credit, as applicable) not more than 30 days following such disbursement.

(ii) If “Replenishment Not required” is marked in Section 1.03, then when the Debt Service Reserve has been reduced to the Minimum Balance, no further disbursements will be made from the Debt Service Reserve Fund. Thereafter, Borrower must make each Monthly Payment for the remainder of the term of the Funding Loan.

(h) Additional Disbursements from Debt Service Reserve Fund. Funding Lender may make additional disbursements from the Debt Service Reserve Fund in Funding Lender’s Discretion, and any such disbursements will be applied to the Indebtedness, notwithstanding that the Funding Loan may be in the Lockout Period. Borrower must pay Prepayment Premium in accordance with the Project Note with respect to any application of the Debt Service Reserve to the reduction of the Indebtedness. Borrower may not pay Prepayment Premium from the funds withdrawn from the Debt Service Reserve.

(i) Termination. The Debt Service Reserve Fund will terminate upon the first to occur of the following:

(i) Payment in full of the Indebtedness.

(ii) Provided no Event of Default has occurred and is continuing, Funding Lender receives a written release request from Borrower confirming that one of the Additional Termination Scenarios marked in Section 1.03 (if applicable) has occurred.

Within 30 days after termination of the Debt Service Reserve Fund, Funding Lender will pay to Borrower all funds remaining in the Debt Service Reserve Fund.

C. The following definitions are added to Article XII, or amend and restate existing definitions in Article XII, as applicable:

“**Acceptable Other Income**” means the lesser of Actual Acceptable Other Income or the Underwritten Acceptable Other Income.

“**Actual Acceptable Other Income**” means the averaged and annualized amount of any other income derived from the Mortgaged Property, other than Gross Potential Rent and any interest income, that has been collected consistently by Borrower during the preceding 3 months (T-3) and that is acceptable to and approved by Funding Lender in Funding Lender’s sole discretion.

“**Actual Fixed Expenses**” means: (i) Taxes for the Mortgaged Property, (ii) Insurance premiums, and (iii) expenses for utilities, water and sewer for the preceding 3 months (T-3). Capital expenditures are specifically excluded from this definition. For the purposes of determining the amount of Taxes for the Mortgaged Property, Funding Lender will have the right in its discretion to base its determination on the actual taxes in place, the next year’s bill, or any assessed value published by the applicable Governmental Authority on its website that will take effect within the 12 months following the date of determination. For the purposes of determining the amount of Insurance premiums, Funding Lender may base its determination on the actual premiums in place or the premiums to be in effect within the next 12 months, if known.

“**Actual Operating Expenses**” means operating expenses for the Mortgaged Property for the preceding 3 months (T-3), including the expenses for repair and maintenance of the Mortgaged Property, the Management Fee, payroll expenses, general and administrative expenses, and other miscellaneous operating expenses. Capital expenditures are specifically excluded from this definition.

“**Bad Debt**” means that portion of Gross Potential Rent which is assumed not to be collected by Borrower due to tenant non-payment.

“**Concessions**” means: (i) rental abatements, (ii) “free” rent, (iii) inducements, and (iv) other incentives.

“**Debt Service Reserve**” means the total of (i) the Initial Debt Service Reserve Deposit, and (ii) all Monthly Debt Service Reserve Deposits.

“**Debt Service Reserve Fund**” is defined in Section 4.08.

“**Debt Service Reserve Period**” means the period during which Funding Lender holds the Debt Service Reserve.

“**Effective Gross Income**” means the positive annualized amount of the Gross Potential Rent, net of the Concessions, subject to the Vacancy Rate, minus Bad Debt, plus the Acceptable Other Income.

“**Expenses**” means the Fixed Expenses plus Operating Expenses plus the annualized amount of the Monthly Replacement Reserve Deposit (even if such deposit is deferred).

“**Fixed Expenses**” means the greater of: (i) the annualized Actual Fixed Expenses for the Mortgaged Property, or (ii) the Underwritten Fixed Expenses.

**“Gross Potential Rent”** means the sum of: (i) monthly rents actually collected from tenants under residential Leases identified in each of the most current rent rolls and (ii) achievable monthly rents attributable to residential vacant units, calculated at market rents, as determined by Funding Lender in Funding Lender's Discretion. (Market rents attributable to employee and model units may be included in the calculation of Gross Potential Rent if they are also included in operating expenses.)

**“Initial Debt Service Reserve Deposit”** is specified in Section 1.03.

“**Management Fee**” means the Property Manager’s contractual management fee at the time of the applicable calculation.

“**Minimum Balance**” is defined in Section 1.03.

“**Monthly Debt Service Reserve Deposit**” is specified in Section 1.03.

“**Monthly Deficit**” means the excess, if any, of the Monthly Payment over the Net Operating Income.

“**Monthly Payment**” means the monthly payment of principal and interest or interest only due on each Project Loan Payment Date under the terms of the Project Note.

“**Net Operating Income”** means the positive, annualized amount by which Effective Gross Income exceeds Expenses**.**

“**Operating Expenses**” means the greater of: (i) the annualized Actual Operating Expenses for the Mortgaged Property, or (ii) the Underwritten Operating Expenses.

“**Projected Deficit**” means a deficit in the Net Operating Income such that the Net Operating Income is not sufficient to pay the Monthly Payment.

“**Underwritten Acceptable Other Income**” is specified in Section 1.03.

“**Underwritten Fixed Expenses**” is specified in Section 1.03.

“**Underwritten Management Fee**” is specified in Section 1.03.

“**Underwritten Operating Expenses**” is specified in Section 1.03 and includes the Underwritten Management Fee.

“**Vacancy Rate**” means the greater of: (i) actual vacancy, or (ii) 5%, as determined by Funding Lender. Units occupied by employees and model units will be deemed occupied for purposes of calculating the Vacancy Rate.