**Rider to Loan Agreement**

**Lease-Up Debt Service Reserve**

(Revised 2-14-2023)

The following changes are made to the Loan Agreement which precedes this Rider:

A. The following table is added to Section 1.03:

|  |  |
| --- | --- |
| **Lease-Up Debt Service Reserve** | |
| **Lease-Up Debt Service Reserve Release Requirement**: a debt coverage ratio of 1.\_\_:1.00, as determined by Lender, based on the following, as applicable: | |
|  | An interest-only debt coverage ratio |
|  | An amortizing debt coverage ratio, based on a \_\_\_-year amortization schedule |
|  | If the Loan has a Floating Interest Rate, then an interest rate equal to \_\_% |
| *(See Section 4.16)* | |

B. Section 4.16 is deleted and replaced with the following:

**4.16 Lease-Up Debt Service Reserve**.As a condition to making the Loan, Lender has required Borrower to establish the Lease-Up Debt Service Reserve to ensure that adequate funds are available for, among other things, payment of any Projected Deficit.

(a) Establishment of Lease-Up Debt Service Reserve. Borrower has established the Lease-Up Debt Service Reserve as of the Effective Date by depositing the Lease-Up Debt Service Reserve Deposit with Lender.

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

(c) Letter of Credit. Borrower agrees that any Letter of Credit deposited with Lender is in lieu of cash and is for the convenience of the Borrower. 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. Any Letter of Credit deposited with Lender in satisfaction of this Section 4.16 must satisfy the conditions set forth in Section 11.16.

(d) Payments by Borrower. During the Lease-Up Debt Service Reserve Period, on each Installment Due Date, Borrower will pay to Lender the lesser of the following: (i) the Monthly Payment, or (ii) the NOI for the calendar month immediately preceding the calendar month in which the Monthly Payment is due. Nothing contained in this Section 4.16 will relieve Borrower of the obligation to pay monthly reserve amounts required under the Loan Documents.

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

(i) A certified Rent Schedule.

(ii) Monthly operating statements reflecting all items of income and expense in connection with the operation of the Mortgaged Property or in connection with any services provided in connection with the operation of the Mortgaged Property.

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

Each Rent Schedule and operating statement must be prepared in accordance with GAAP consistently applied 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 Lease-Up Debt Service Reserve Period, Lender will deduct funds from the Lease-Up Debt Service Reserve in such amounts as Lender determines are necessary to cover the Monthly Deficit. If the Lease-Up 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) Additional Disbursements from Lease-Up Debt Service Reserve. Lender may make additional disbursements from the Lease-Up Debt Service Reserve in Lender’s Discretion, and any such disbursements will be applied to the Indebtedness notwithstanding that the Loan may be in the Lockout Period or Defeasance Period. Borrower must pay a Prepayment Charge in accordance with this Loan Agreement with respect to any application of the Lease-Up Debt Service Reserve to the reduction of the Indebtedness. Borrower may not pay the Prepayment Charge from the funds withdrawn from the Lease-Up Debt Service Reserve.

(h) Replenishment of Lease-Up Debt Service Reserve. Following any disbursement from the Lease-Up Debt Service Reserve, Borrower will be required to replenish the Lease-Up Debt Service Reserve (by depositing additional cash, or by posting a replacement Letter of Credit, as applicable) to the amount of the Lease-Up Debt Service Reserve Deposit not more than 30 days following such disbursement.

(i) Termination. If not sooner terminated by written agreement of Borrower and Lender, the Lease-Up Debt Service Reserve 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 or is continuing, upon satisfaction of the Lease-Up Debt Service Reserve Release Requirement; provided, that the following have been satisfied:

(A) Borrower has made a written request at least 30 daysbefore the date of the termination of the Lease-Up Debt Service Reserve. Such request must be in writing and be accompanied by such information as Lender may require to determine whether the Lease-Up Debt Service Reserve Release Requirement has occurred (to the extent not previously provided).

(B) For each of the 3 consecutive months preceding the date of determination, the NOI supports a debt coverage ratio of at least the Lease-Up Debt Service Reserve Release Requirement.

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

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

“**Lease-Up Debt Service Reserve Deposit**”means the amount set forth in Section 1.03.

“**Lease-Up Debt Service Reserve**” means the amount of the Lease-Up Debt Service Reserve Deposit deposited into escrow with Lender as of the Effective Date, in the form of cash ora Letter of Credit.

“**Lease-Up Debt Service Reserve Period**” means the period during which Lender holds the Lease-Up Debt Service Reserve.

“**Lease-Up Debt Service Reserve Release Requirement**” is defined in Section 1.03.

“**Lease-Up Rider**” means either the Rider to Loan Agreement – Lease Up Transaction - Credit Enhancement Required or the Rider to Loan Agreement – Lease Up Transaction - No Credit Enhancement Required, as applicable.

“**Monthly Deficit**” means the excess, if any, of the Monthly Payment over NOI.

“**Monthly Payment**” means the monthly payment of principal and interest or interest only due pursuant to the terms of the Note.

“**NOI**” is defined in, and will be determined in accordance with, the terms of the Lease-Up Rider, including Section 6.43.

“**NRI**” is defined in, and will be determined in accordance with, the terms of the Lease-Up Rider, including Section 6.43.

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