**Rider to Continuing Covenant Agreement – TEL**

**Rental Achievement**

(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:

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| **Rental Achievement** |
| **Earn Out Expiration Date**: \_\_\_\_\_\_\_, 20\_\_ |
|  |
| Performance Standard: *(select one)* |
| [ ]  | NOI Performance Standard |
| [ ]  | Occupancy and Income Performance Standard |
| [ ]  | Occupancy, Income, and NOI Performance Standard  |
| Performance Standard Evaluation Period: *(select one)* |
| [ ]  | The Performance Standard is met (i) on average for the three months immediately preceding the Release Request and (ii) without averaging for the month immediately preceding the Release Request (T-3 Average, T-1 Actual). |
| [ ]  | The Performance Standard is met without averaging in each of the three months immediately preceding the Release Request (T-3 Actual).  |
| [ ]  | The Performance Standard is met (i) on average for the six months immediately preceding the Release Request and (ii) without averaging in each of the three months immediately preceding the Release Request (T-6 Average, T-3 Actual). |
| [ ]  | The Performance Standard is met without averaging in each of the six months immediately preceding the Release Request (T-6 Actual). |
|  |
| **Required Percentage of Rentable Units**: \_\_\_%, or [ ]  N/A |
| **Required Rents**: $\_\_\_\_\_\_, or [ ]  N/A |
| **Required Debt Coverage Ratio**:1.\_\_ x 1.0, based on a \_\_\_-year amortization schedule. If the Project Loan has a floating interest rate, Required Debt Coverage Ratio will be calculated using an annual interest rate of \_\_\_%. |
| **Underwritten Acceptable Other Income**: $\_\_\_\_\_\_ |
| **Underwritten Fixed Expenses**: $\_\_\_\_\_\_\_ |
| **Underwritten Management Fee**: \_\_% of Effective Gross Income |
| **Underwritten Operating Expenses**: $\_\_\_\_\_\_\_\_ |
| *(See Section 4.06)* |

B. Section 4.06 is deleted and replaced with the following:

**4.06 Rental Achievement – Cash or Letter of Credit Reserve.** Borrower and Funding Lender agree that as of the Effective Date, the Performance Standard has not been met. As a condition of Funding Lender making the Funding Loan, Borrower has established the Rental Achievement Reserve Fund by depositing with Funding Lender on the Closing Date either cash or a Letter of Credit in the amount of the Rental Achievement Reserve Deposit specified in the table titled “Other Reserve Funds – Closing Date Deposits” in Section 1.03.

(a) Rental Achievement Reserve Fund – Cash. This Section 4.06(a) will apply if the Rental Achievement Reserve Fund was funded with a cash deposit.

(i) Funding Lender, or Loan Servicer on Funding Lender’s behalf, may withdraw all or part of the Rental Achievement Reserve Fund at any time and without Notice to Borrower and apply such withdrawn funds as follows:

(A) To reduce the unpaid principal balance of the Project Loan if the Earn Out Expiration Date has occurred and the Mortgaged Property has not achieved the Performance Standard.

(B) To reduce the unpaid principal balance of the Project Loan if an Event of Default has occurred and is continuing.

(ii) The Rental Achievement Reserve Fund will terminate upon the first to occur of the following:

(A) Payment in full of the Indebtedness.

(B) Provided no Event of Default has occurred and is continuing, upon Funding Lender’s receipt of a Release Request confirming to Funding Lender’s satisfaction that the Mortgaged Property has met the Performance Standard prior to the Earn Out Expiration Date.

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

(iii) If Funding Lender, or Loan Servicer on Funding Lender’s behalf, withdraws funds from the Rental Achievement Reserve Fund in accordance with Section 4.06(a)(i)(A) or Section 4.06(a)(i)(B), then on the next Project Loan Payment Date, Funding Lender will apply the funds to reduce the unpaid principal balance of the Project Loan (and correspondingly reduce the unpaid principal balance of the Funding Loan) (any such application of funds being a “**Rental Achievement Prepayment**”) notwithstanding that the Project Loan may be in the Lockout Period. Borrower must pay Prepayment Premium on the Rental Achievement Prepayment calculated as provided in the Project Note. Borrower may not pay the Prepayment Premium from the funds withdrawn from the Rental Achievement Reserve Fund.

(b) Rental Achievement Reserve Fund – Letter of Credit. This Section 4.06(b) will apply if the Rental Achievement Reserve Fund was funded with a Rental Achievement Letter of Credit in lieu of a cash deposit.

(i) Funding Lender, or Loan Servicer on Funding Lender’s behalf, may draw upon all or part of the Rental Achievement Letter of Credit or any renewal or replacement Rental Achievement Letter of Credit at any time and without Notice to Borrower and apply the proceeds as follows:

(A) To reduce the unpaid principal balance of the Project Loan if the Earn Out Expiration Date has occurred and the Mortgaged Property has not achieved the Performance Standard.

(B) To reduce the unpaid principal balance of the Project Loan if an Event of Default has occurred and is continuing.

(C) To reduce the unpaid principal balance of the Project Loan at any time during the 30-day period prior to the expiration date of the Rental Achievement Letter of Credit if Borrower has failed to deliver a renewal or replacement Rental Achievement Letter of Credit when required by Section 4.06(c), below, if applicable.

(ii) Until the Performance Standard is met, at least 30 days prior to the expiration date of the Rental Achievement Letter of Credit, Borrower will deliver to Funding Lender a renewal or replacement of the Rental Achievement Letter of Credit, which must also meet the requirements of this Section 4.06 and Section 11.16.

(iii) If Funding Lender draws upon the Rental Achievement Letter of Credit in accordance with Section 4.06(b)(i)(A) or Section 4.06(b)(i)(B), then on the next Project Loan Payment Date, Funding Lender will apply the proceeds to reduce the unpaid principal balance of the Project Loan (and correspondingly reduce the unpaid principal balance of the Funding Loan) (any such application of funds being a “**Rental Achievement Prepayment**”) notwithstanding that the Project Loan may be in the Lockout Period. Borrower must pay Prepayment Premium on the Rental Achievement Prepayment calculated as provided in the Project Note. Borrower may not pay the Prepayment Premium from the proceeds of a draw upon the Rental Achievement Letter of Credit.

(iv) If Funding Lender draws upon the Rental Achievement Letter of Credit under Section 4.06(b)(i)(C), then Funding Lender will hold the proceeds in escrow until the first to occur of the following:

(A) Any event or condition that would have entitled Funding Lender to draw upon the Rental Achievement Letter of Credit under Section 4.06(b)(i) or (ii), in which case Funding Lender may apply the proceeds as described in Section 4.06(d)(i).

(B) The satisfaction of the conditions for release of the Rental Achievement Letter of Credit under Section 4.06(e), in which case Funding Lender will release the proceeds to Borrower.

Either Funding Lender or Loan Servicer may hold the proceeds. Neither Funding Lender nor Loan Servicer will have any obligation to invest the proceeds or, unless applicable law requires, to pay to Borrower interest on the proceeds, nor will Funding Lender or Loan Servicer have any liability or obligation to Borrower with regard to loss of the proceeds except by reason of its own gross negligence or intentional misconduct.

(v) Release of Rental Achievement Letter of Credit; Return of Proceeds. Funding Lender will release the Rental Achievement Letter of Credit or, as applicable, return the proceeds to Borrower, within 30 days after the first of the following to occur:

(A) Payment in full of the Indebtedness.

(B) Provided no Event of Default has occurred and is continuing, upon Funding Lender’s receipt of a Release Request confirming to Funding Lender’s satisfaction that the Mortgaged Property has met the Performance Standard prior to the Earn Out Expiration Date.

(c) Calculating the Performance Standard. For purposes of this Section 4.06, “**Performance Standard**” means the Performance Standard marked in the “Rental Achievement” table in Section 1.03, each of which is described below:

(i) “**NOI Performance Standard**” means the achievement of an NOI that supports the Required Debt Coverage Ratio, as determined by Funding Lender, measured over the Performance Standard Evaluation Period.

(ii) “**Occupancy and Income Performance Standard**” means that over the Performance Standard Evaluation Period, both of the following have occurred:

(A) The ratio of units leased to tenants (under Leases meeting the requirements set forth in this Continuing Covenant Agreement) to total rentable units equals at least the Required Percentage of Rentable Units.

(B) The monthly rents actually collected from tenants, net of Concessions and Bad Debt, as calculated and allocated by Funding Lender, equals at least the Required Rents.

(iii) “**Occupancy, Income, and NOI Performance Standard**” means that over the Performance Standard Evaluation Period, all the following have occurred:

(A) The ratio of units leased to tenants (under Leases meeting the requirements set forth in this Continuing Covenant Agreement) to total rentable units equals at least the Required Percentage of Rentable Units.

(B) Monthly rents actually collected from tenants, net of Concessions and Bad Debt as calculated and allocated by Funding Lender, equals at least the Required Rents.

(C) The NOI supports the Required Debt Coverage Ratio as determined by Funding Lender.

(d) In calculating the Performance Standard for any requirements of this Section 4.06, the following terms will have the meanings set forth below (if 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.

“**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.)

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

“**NOI”** 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.

“**Rental Achievement Prepayment**” is defined in either Section 4.06(a)(iii) or Section 4.06(b)(iii), as applicable.

“**Required Debt Coverage Ratio**” is set forth in Section 1.03.

“**Required Percentage of Rentable Units**” is set forth in Section 1.03.

“**Required Rents**” is set forth in Section 1.03.

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

“**Underwritten Fixed Expenses**” is set forth in Section 1.03.

“**Underwritten Management Fee**” is set forth in Section 1.03.

“**Underwritten Operating Expenses**” is the amount set forth in Section 1.03, which 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.

B. The following definitions are added to Article XII:

“**Earn Out Expiration Date**” is as specified in Section 1.03, as such date may be extended by Funding Lender in writing.

“**Performance Standard**” is defined in Section 4.06(c).

“**Performance Standard Evaluation Period**” is specified in Section 1.03.

“**Release Request**” means a written request from Borrower for the release of the Rental Achievement Reserve Fund to Borrower, whether cash or Rental Achievement Letter of Credit.

“**Rental Achievement Letter of Credit**” means one or more Letters of Credit in an amount specified in Section 1.03 and satisfying the provisions of Section 11.16.

“**Rental Achievement Reserve Deposit**” means the amount set forth in Section 1.03.

“**Rental Achievement Reserve Fund**” means either (i) the account established pursuant to this Continuing Covenant Agreement into which the Rental Achievement Reserve Deposit will be deposited or (ii) the Rental Achievement Letter of Credit and any Reserve Fund created by Funding Lender into which proceeds of the Rental Achievement Letter of Credit may be deposited pursuant to Section 4.06(b).