**Rider to Continuing Covenant Agreement – TEL**

**Section 8 Housing Assistance Payments 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:

|  |
| --- |
| **Section 8 Housing Assistance Payments Reserve**  |
| Underwritten Acceptable Other Income: $\_\_\_\_\_\_\_\_\_ |
| Underwritten Fixed Expenses: $\_\_\_\_\_\_\_\_\_ |
| Underwritten Management Fee: \_\_% of Effective Gross Income |
| Underwritten Operating Expenses: $\_\_\_\_\_\_\_\_\_ |
| *(See Section 4.05)*  |

B. Section 4.05 is deleted and replaced with the following:

**4.05 Section 8 Housing Assistance Payments Reserve.** As a condition to making the Funding Loan, Funding Lender has required Borrower to establish the Section 8 Housing Assistance Payments Reserve to ensure that adequate funds are available for, among other things, payment of any Projected Deficit. Only Funding Lender will have the right to make withdrawals from the Section 8 Housing Assistance Payments Reserve, in accordance with the terms of this Continuing Covenant Agreement.

(a) Deposits to Section 8 Housing Assistance Payments Reserve. Borrower has established the Section 8 Housing Assistance Payments Reserve as of the Effective Date by making the Initial HAP Deposit specified in Section 1.03. If the Monthly HAP Deposit specified in Section 1.03 is greater than zero, then beginning on the First Project Loan Payment Date and continuing on each successive Project Loan Payment Date until the Section 8 Housing Assistance Payments Reserve equals the HAP Reserve Cap, Borrower must pay the Monthly HAP Deposit to Funding Lender for deposit into the Section 8 Housing Assistance Payments Reserve, together with Borrower’s Monthly Payments.

(b) Use of Section 8 Housing Assistance Payments Reserve. Subject to the pledge and security interest, and other rights of Funding Lender set forth in this Continuing Covenant Agreement, the Section 8 Housing Assistance Payments Reserve will be maintained for the purpose of assuring Funding Lender that adequate funds are available for the payment of any Projected Deficit during the Section 8 Housing Assistance Payments Reserve Period.

(c) Reserved

(d) Disbursements from the Section 8 Housing Assistance Payments Reserve. Funding Lender may release funds from the Section 8 Housing Assistance Payments Reserve at the discretion of Funding Lender upon the occurrence of all of the following conditions:

(i) The HAP Contract has expired or is not renewed.

(ii) Borrower has insufficient funds from the operation of the Mortgaged Property to pay the Indebtedness when due, including all Impositions, as demonstrated by Borrower to Funding Lender’s satisfaction.

(iii) There is no Event of Default under the Financing Documents.

Funding Lender will first apply the funds in the Section 8 Housing Assistance Payments Reserve as required to pay the Indebtedness and other sums when due and will thereafter release such funds to Borrower as are necessary for the operation of the Mortgaged Property.

(e) Termination. If not sooner terminated by written agreement of Borrower and Funding Lender, the Section 8 Housing Assistance Payments Reserve will terminate upon the first to occur of the following:

(i) Payment in full of the Indebtedness.

(ii) If the HAP Contract has expired or is not renewed, and no legal requirement exists to rent units to specific residents or comply with any affordability restrictions, upon receipt of a written request from Borrower, with evidence satisfactory to Funding Lender that all of the following conditions have been met:

(A) The Mortgaged Property has converted to market rate rents (market rate rent will mean the rent that is comparable to the current rent received for similar, unsubsidized properties in the same area as the Mortgaged Property) and has achieved the then-Current Program Minimum DSCR.

(B) The Mortgaged Property is in satisfactory physical condition as determined by Funding Lender, based on the most recent inspection conducted by Funding Lender or Loan Servicer.

(C) Borrower has provided Funding Lender with rent rolls, financial statements and any other items as Funding Lender may request in order to determine that the Mortgaged Property has achieved 90% occupancy at market rate rents for 90 consecutive days after the expiration of all payments under the HAP Contract.

(D) There is no Event of Default under the Financing Documents.

(iii) Upon receipt of a written request from Borrower, with evidence satisfactory to Funding Lender that all of the following conditions have been met:

1. The Mortgaged Property is subject to a new Long-Term HAP Contract and has achieved the then-Current Program Minimum DSCR.

(B) The Mortgaged Property is in satisfactory physical condition as determined by Funding Lender, based on the most recent inspection conducted by Funding Lender or Loan Servicer.

(C) Borrower has provided Funding Lender with rent rolls, financial statements and any other items as Funding Lender may request in order to determine that the Mortgaged Property has achieved 90% occupancy for 90 consecutive days after the effective date of the new Long-Term HAP Contract.

(D) There is no Event of Default under the Financing Documents.

(iv) The Section 8 Housing Assistance Payments Reserve has been reduced to zero.

Within 30 days after termination of the Section 8 Housing Assistance Payments Reserve, Funding Lender will pay to Borrower all funds remaining in the Section 8 Housing Assistance Payments Reserve.

(f) For purposes of this Section 4.05, “**Projected Deficit**” means a deficit in the NOI such that the NOI is not sufficient to pay the Monthly Payment. In calculating a Projected Deficit for any requirements of this Section 4.05, the following terms will have the meanings set forth below:

“**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 that 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.

“**Underwritten Acceptable Other Income**” means the amount specified in Section 1.03.

“**Underwritten Fixed Expenses**” means the amount specified in Section 1.03.

“**Underwritten Management Fee**” means the amount specified in Section 1.03.

“**Underwritten Operating Expenses**” means the amount specified 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.

C. The following definitions are added to Article XII:

“**Current Program Minimum DSCR**” means the minimum debt service coverage ratio required by Freddie Mac for new loans originated under the Freddie Mac Multifamily Targeted Affordable Housing Tax-Exempt Loan Program (the “**TEL Program**”) or, if Freddie Mac has terminated the TEL Program, the minimum debt service coverage ratio required by Freddie Mac for new loans originated under the TEL Program that existed immediately prior to such termination.

“**HAP Reserve Cap**” means the amount specified in Section 1.03 in the “Other Reserve Funds – Monthly Deposits” table.

“**Initial HAP Deposit**” means the amount specified in Section 1.03 in the “Other Reserve Funds – Effective Date Deposits” table and deposited into escrow with Funding Lender as of the Effective Date**.**

“**Long-Term HAP Contract**” means, if the remaining term of the Project Loan is 20 years or less, a HAP Contract with a term equal to or greater than the remaining term of the Project Loan and, if the remaining term of the Project Loan is greater than 20 years, a HAP Contract with a term of at least 20 years, in any case with contract rents equal to or greater than the HAP Contract that immediately preceded the new HAP Contract.

“**Monthly HAP Deposit**” means the amount specified in Section 1.03 in the “Other Reserve Funds – Monthly Deposits” table.

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

“**Projected Deficit**” is defined in Section 4.05(f).

“**Section 8 Housing Assistance Payments Reserve**” means the total of (i) the Initial HAP Deposit, and (ii) all Monthly HAP Deposits.

“**Section 8 Housing Assistance Payments Reserve Period**” means the period during which Funding Lender holds the Section 8 Housing Assistance Payments Reserve.