**NOTE: THIS RIDER IS ONLY APPLICABLE TO PROPERTIES WHERE A SOLAR PROJECT IS BEING CONSTRUCTED OR IS INTENDED TO BE CONSTRUCTED AT THE PROPERTY IN THE FUTURE. IT DOES NOT APPLY TO PROPERTIES WITH A SOLAR PROJECT THAT IS FULLY CONSTRUCTED/IN EXISTENCE**

**Rider to Loan Agreement**

**Solar Project**

(Revised 3-26-2024)

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

A. The following table is added to Section 1.05:

|  |
| --- |
| **Solar Project** |
| **Solar Project**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **Solar Project Completion Date: \_\_\_\_\_\_\_** |
| **Demolition Space:** ☐ Applicable:\_\_\_\_\_\_\_\_\_\_\_or☐ Not applicable |
| **Solar Equipment Owner:** ☐ Applicable:\_\_\_\_\_\_\_\_\_\_\_\_ or☐ Not applicable |
| **Solar Lease:** ☐ Applicable or ☐ Not applicable |
| **Solar Project DSCR: \_\_\_\_\_\_\_\_\_\_\_\_\_** |
| **Solar Project LTV: \_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
| **Additional Buildings/Structures Constructed:** ☐ Applicable or ☐ Not applicable |
| *(See Sections 3.04 and 6.65)* |

B. Section 3.04 is modified to add the following new subsection (s):

(s) Any fees, costs, or expenses incurred by Lender in conjunction with Borrower’s termination of any Solar Agreement or any other agreement related to the Solar Project.

C. A new Section 6.65 is added as follows:

**6.65 Solar Project.** Lender will consider a request from Borrower for Borrower or Solar Equipment Owner, if applicable, to undertake the Solar Project in accordance with this Section. Lender will have no obligation to consent to the Solar Project if the Solar Project is not acceptable to Lender in Lender’s Discretion; provided, however, that Lender will not withhold its consent if each of the requirements set forth in this Section are satisfied.

(a) Solar Project Notice. Prior to the commencement of the Solar Project:

(i) At least 60 days prior to the proposed commencement of construction of the Solar Project, Borrower must submit to Lender a Solar Project Notice.

(ii) Along with the Solar Project Notice, Borrower must submit the Solar Processing Fee and all documentation required for Lender to make the determinations set forth below.

(iii) Lender must determine that, at the time of the Solar Project Notice, and at the time that Lender approves the Solar Project, no Event of Default has occurred and is continuing, and no event or condition has occurred and is continuing that, with the giving of Notice or the passage of time, or both, would become an Event of Default.

(iv) At the time of the Solar Project Notice, Borrower must provide Lender with the following for Lender’s review and approval:

(A) All plans and specifications (whether preliminary or final), including plans and specifications with respect to the Demolition Space, if applicable, the estimated development budget, a sources/uses of funds that demonstrates the origin of the funds necessary to complete the Solar Project, a list of anticipated permits required to commence the Solar Project, the proposed draft construction contract and estimated schedule of work for the Solar Project.

(B) A certification from Borrower that:

1. The Solar Project will not disturb the use or operation of the Mortgaged Property (including ingress, egress, parking and use of the amenities) by the tenants, except as expressly set forth in the plans and specifications for the Solar Project.
2. The Solar Project will not result in the Mortgaged Property being in violation of any applicable zoning, subdivision or building laws, ordinances and regulations.
3. The Solar Project will not cause a permanent material reduction in the quality of amenities at the Mortgaged Property.
4. There are adequate funds available for completion of the Solar Project (at a level of at least 110% of the estimated development budget for the Solar Project) and that the Solar Project will not require any financing by Borrower.
5. The Solar Project and all related equipment will be owned by Borrower or Solar Project Owner, if applicable.

(C) Evidence of builders’ risk insurance coverage and all other insurance coverage required by Lender with respect to the Solar Project in accordance with the terms of this Loan Agreement.

(D) A completion schedule that demonstrates that once the Solar Project commences, it will be completed by the Solar Project Completion Date.

(E) Subject to the conditions set forth in subsection (c) below, copies of the final or drafts of any Solar Agreement that are applicable to the Solar Project.

(v) Solar Equipment may be installed on the roof(s) of the Mortgaged Property or carports located on the Mortgaged Property; provided, however, that the installation of the Solar Equipment must not void or alter the warranty covering any roof at the Mortgaged Property on which any of the Solar Equipment will be installed; provided further, that if the Solar Equipment is carport-mounted or other structures have been installed to support the Solar Equipment, Borrower much provide confirmation that such structures were specifically designed or suitable for that purpose and suitable for the Mortgaged Property.

(vi) Prior to commencement of the demolition of the Demolition Space, if applicable, Borrower must provide to Lender a projected appraisal confirming that the loan-to-value ratio of the Mortgaged Property after completion of the Solar Project will not exceed 125%, or as otherwise may be required at such time by then-current REMIC regulations.

(vii) At the time of the Solar Project Notice, Lender has determined that:

(A) The debt coverage ratio for the Loan is no less than the Solar Project DSCR.

(B) The loan to value ratio of the Loan to the then current value of the Mortgaged Property is no greater than the Solar Project LTV.

(viii) Borrower pays or reimburses Lender, upon demand, for all costs and expenses including all Attorneys’ Fees and Costs, incurred by Lender in connection with the review of the Solar Project.

(ix) The Guaranty has been modified to include the Rider to Guaranty - Solar Project Completion Guaranty.

(b) Commencement and Completion of the Solar Project. The Borrower is not required to begin the Solar Project; provided, however, if the Solar Project is commenced under this Section 6.65, each of the following conditions will be applicable:

(i) The Solar Project must be completed in a good and workmanlike manner free and clear of all liens including any financing lien and liens of materialmen and mechanics by the Solar Project Completion Date.

(ii) Upon completion of the Solar Project, Borrower must provide Lender with the temporary or permanent certificate(s) of completion, evidence of continued zoning compliance, an endorsement to the title policy evidencing that the Loan continues to be first Lien and that there are not any subordinate liens, architect’s certificate of substantial completion, and final Lien waivers from all applicable contractors and other parties providing material or services in connection with the Solar Project. If Additional Buildings/Structures Constructed is marked “Applicable” in Section 1.05, Borrower must also provide Lender with a revised survey.

(iii) Executed copies of the Solar Agreement applicable to the Solar Project will be provided to Lender; provided, however, to the extent that such final agreements include changes from the initial drafts or Solar Agreement delivered to Lender in connection with the Solar Project Notice, Borrower delivers redlines of such Solar Agreement for Lender’s review and final approval.

(iv) If the Solar Project is not completed in accordance with the requirements of this Section 6.65, Lender, in Lender's sole and absolute discretion, will have the right to cause the removal of all Solar Equipment from the Mortgaged Property at the expense of Borrower, provided that Borrower will reimburse Lender upon demand for all reasonable out of pocket expenses incurred in connection with such removal, including, without limitation, Attorneys' Fees and Costs.

(c) Solar Agreements. Borrower may enter into one or more Solar Agreements, provided that each of the following conditions is satisfied:

1. The terms of the Solar Agreement are materially at least as favorable to Borrower as other agreements customary in the applicable market at the time Borrower enters into the Solar Agreement.
2. The terms of the Solar Agreement are on arms-length terms and may not result in Borrower being in breach of the terms and provisions of Section 6.13 of this Loan Agreement.
3. The Solar Lease, if applicable, must provide that any space leased pursuant to such Solar Lease may only be used for the installation, operation, repair, and maintenance of the Solar Equipment and activities ancillary thereto.
4. The aggregate of the income derived from the space leased pursuant to the Solar Lease, if applicable, accounts for less than 10% of the gross income of the Mortgaged Property on the date that Borrower enters into the Solar Agreement.
5. Each Solar Lease, if applicable, must include each of the following provisions:

(A) The tenant will attorn to Lender and any purchaser at a foreclosure sale, such attornment to be self-executing and effective upon acquisition of title to the Mortgaged Property by any purchaser at a foreclosure sale or by Lender in any manner.

(B) The tenant agrees to execute such further evidence of attornment as Lender or any purchaser at a foreclosure sale may from time to time request.

(C) The tenant will, upon receipt of a written request from Lender following the occurrence of and during the continuance of an Event of Default, pay all Rents payable under the Solar Lease to Lender.

(D) The Solar Lease is subordinate to the lien of the Mortgage, provided that the Solar Lease will not be disturbed so long as the tenant agrees to execute the standard Freddie Mac form Subordination, Nondisturbance and Attornment Agreement – Solar Leases.

1. Any and all easements established by a Solar Agreement must comply with Section 7.11 of this Loan Agreement.

(v) Borrower will deliver a fully executed copy of each Solar Agreement to Lender promptly after the Solar Agreement is fully executed.

(d) Ongoing Operations of Solar Project.

(i) At all times during the term of the Loan, no Person other than Borrower or Solar Equipment Owner, if applicable, shall have any possessory ownership, lien, or other interest in the Solar Project, and no Person shall be granted an option, right of first refusal, or right of first offer to purchase the Solar Project or any interest in the Solar Project.

(ii) Borrower or Solar Equipment Owner, if applicable, shall not enter into, modify, amend or terminate any Solar Agreement nor enter into any new or renewed Solar Agreement without the prior approval of Lender.

(iii) Borrower or Solar Equipment Owner, if applicable, shall obtain and maintain all required permits, licenses, and certificates necessary to comply with all zoning, subdivision or building laws, ordinances and regulations.

(iv) The Mortgaged Property must at all times remain connected to the electric grid regardless of the energy production of the Solar Equipment.

(v) At all times during the term of the Loan, the Solar Equipment will be covered for hazards, catastrophic risk, and general liability insurance as required by this Loan Agreement. If any portion of the Solar Equipment is located in a Special Flood Hazard Area, tenant will maintain adequate flood insurance.

(vi) The Solar Project will be maintained in a good working order and operated in accordance with industry best practice and applicable federal, state and local laws, utility tariffs and market rules.

(e) Public Utility Status.

(i) Borrower will not:

(A) Take any action (including causing third-party action) toward becoming or being characterized as a Public Utility.

(B) Hold itself out as being a Public Utility or seek any benefit of utility status.

(C) Provide electric energy to anyone other than a tenant or local electric utility.

(D) Cause the Solar Equipment to cross any public streets or rights of way.

(E) Collect a premium for solar electricity furnished to tenants.

(F) Sell electricity to any party other than to the tenant(s) or local distribution utility pursuant to net metering or community solar arrangements, as permitted by governmental regulations and utility tariffs.

(ii) Borrower will promptly notify Lender if any communications are made to Borrower by tenants, Governmental Authorities, or third parties suggesting Borrower may be operating as a Public Utility, or if Borrower otherwise becomes aware it may be operating as a Public Utility.

D. The following definitions are added to Article XII:

**“Demolition Space**” means the buildings or structures being demolished in connection with the Solar Project, as described in Section 1.05, if applicable.

“**Public Utility**” means any Person subject to regulation as an electric utility by any Governmental Authority.

“**Solar Agreement**” means any instrument or agreement, or combination of instruments and agreements (*e.g.*, power purchase agreement, interconnection agreement, license, Solar Lease, easement, covenant, security agreement, construction agreement, maintenance agreement) related to the design, ownership, financing, installation, operation and/or maintenance of a system for conversion of solar energy to electrical energy on the Mortgaged Property.

“**Solar Equipment**” means equipment installed on the Mortgaged Property capable of producing electricity from photovoltaic energy.

**“Solar Equipment Owner”** is set forth in Section 1.05, if applicable.

**“Solar Lease**” means, if Solar Lease is marked “Applicable” in Section 1.05, that certain lease entered into by and between the Borrower and the Solar Equipment Owner for the leasing of that portion of the Mortgaged Property containing the Solar Equipment.

“**Solar Processing Fee**” means a nonrefundable fee of $15,000.00 for Lender’s review of a Borrower request.

“**Solar Project**” is set forth in Section 1.05.

“**Solar Project Completion Date**” is set forth in Section 1.05.

“**Solar Project DSCR**” is set forth in Section 1.05.

**“Solar Project LTV**” is set forth in Section 1.05.

“**Solar Project Notice**” means a written request to Lender for approval to begin the Solar Project.

E. The definition of “Governmental Authority” within Article XII is deleted in its entirety and replaced with the following:

“**Governmental Authority**” means any board, commission, department, agency or body of any municipal, county, state or federal governmental unit, or any subdivision of any of them, that has or acquires jurisdiction over the Mortgaged Property, or the use, operation or improvement of the Mortgaged Property, or over Borrower, including any board, commission, department, agency or body of any municipal, county, state or federal governmental unit, or any subdivision of any of them, with authority to regulate or oversee the generation (including siting), storage, transmission, sale, or distribution of electricity, including the Federal Energy Regulatory Commission and any state public service commission, public utilities commission, or like body.