

**Loan Agreement Rider – TAH Express**

**Tax Credit Properties (Revised 05-20-2019)**

**[IF THE TAX CREDIT INVESTOR IS NO LONGER IN THE BORROWER OWNERSHIP STRUCTURE ON THE CLOSING DATE, DELETE THE FOLLOWING SECTIONS A, E., AND G., AND MARK THEM “RESERVED.”]**

1. The following new table is added to Article I of the Loan Agreement:

|  |  |
| --- | --- |
| Tax Credit Property | |
| Equity Investor |  |
| Borrower GP/Manager |  |
| Borrower Sponsor |  |

1. Section 3.03(t) is deleted and replaced with the following:

(t) Borrower fails to comply with the requirements of Section 5.29 of this Loan Agreement (related to Tax Credits).

C. Section 5.29 is deleted and replaced with the following:

**5.29 Tax Credit Property**. Borrower represents and warrants all of the following are correct:

1. Borrower is in compliance with all requirements of the extended low-income housing regulatory agreement or restrictive covenants executed by Borrower and the agency of the Property Jurisdiction designated to allocate the low-income housing tax credits e(the “Tax Credits”) (the “Tax Credit Agency”) and recorded in the land records for the Property Jurisdiction, setting forth the terms under which the Mortgaged Property is to be operated and which must meet the requirements of the United States Tax Code Section 42(h)(6)(B) (the “Tax Credit Regulatory Agreement”).
2. Borrower has not received any notice from the Tax Credit Agency that Borrower is in default under the Tax Credit Regulatory Agreement.
3. The copy of the Tax Credit Regulatory Agreement that Borrower has provided to Lender includes all amendments, schedules and exhibits and is complete in all respects.

D. Section 6.25 is deleted and replaced with the following:

**6.25** **Tax credit Property.** Borrower will do each of the following:

1. Borrower will submit to Lender, each year at the time of the annual submission of Borrower’s financial analysis of operations, a copy of the following sections of Borrower’s federal tax return, as applicable: Internal Revenue Forms 1065, 8586, 8609 and Form 8609, Schedule A, which must reflect the total Tax Credits allocated to the Mortgaged Property and the Tax Credits claimed for the Mortgaged Property in the preceding year.
2. Borrower acknowledges and agrees that any default, event of default or breach (however such terms may be defined) after the expiration of any applicable notice and/or cure periods under the Tax Credit Regulatory Agreement will be an Event of Default under this Loan Agreement and that any costs, damages or other amounts, including reasonable Attorneys’ Fees and Costs incurred by Lender as a result of such an Event of Default by Borrower, including amounts paid to cure any default or event of default under the Tax Credit Regulatory Agreement, will be an obligation of Borrower and become a part of the Indebtedness.
3. Borrower will submit annually (or such other shorter period required under the Tax Regulatory Agreement) to Lender evidence that the Mortgaged Property is in ongoing compliance with all income, occupancy and rent restrictions under the Tax Credit Regulatory Agreement relating to the Mortgaged Property. Such submissions to Lender will be made contemporaneously with the submission of reports to the Tax Credit Agency as required under the Tax Credit Regulatory Agreement.

E. Section 7.03(b) is deleted and replaced with the following:

(b) **Purchase of Investor Interests in a Tax Credit Property.**   
After the close of the ten-year “credit period” (as defined in and determined in accordance with Section 42(f) of the Internal Revenue Code), a Transfer of all the interests in Borrower held by Equity Investor to an entity that is either directly or indirectly owned and under the Control of Borrower Sponsor (“**Purchase Option Transferee**”) (“**Purchase Option Transfer**”) provided that each of the following conditions is satisfied:

* + - * 1. Immediately prior to and following the Purchase Option Transfer, each of the following is true:

###### Borrower owns the Mortgaged Property

###### Borrower GP/Manager remains the Borrower GP/Manager (as defined below) of Borrower

###### Borrower Sponsor owns and controls Borrower GP/Manager

* + - * 1. Borrower provides Lender with 30 days prior Notice of the proposed Transfer and pays the Purchase Option Transfer Processing Fee to Lender.
        2. Borrower pays Lender all of Lender’s costs, including the cost of all title searches, title insurance and recording costs, and all Attorneys’ Fees and Costs; provided, however, that Lender will not be entitled to collect a Transfer Fee.
        3. At the time of the Purchase Option Transfer, 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.
        4. Lender determines that Purchase Option Transferee’s organization, credit and experience are appropriate to the overall structure and documentation of the existing financing, and Purchase Option Transferee delivers to Lender a certification that each of the following is true:

(1) Purchase Option Transferee has not been convicted of fraud or a crime involving moral turpitude (or if an entity, then no principal of such entity has been convicted of fraud or a crime involving moral turpitude).

(2) Purchase Option Transferee has not been involved in a bankruptcy or reorganization within the ten years preceding the date of the Purchase Option Transfer.

(3) Purchase Option Transferee is not on any Prohibited Parties List.

F. Section 10.26 is deleted and replaced with the following:

## 10.26 Tax Credit Regulatory Agreement. Lender agrees that if the Tax Credit Regulatory Agreement, by its terms, terminates upon foreclosure under the Security Instrument or upon a transfer of the Mortgaged Property by instrument in lieu of foreclosure, in accordance with United States Tax Code Section 42(h)(6)(E), the lien of the Security Instrument and this Loan Agreement will be subordinate to the Tax Credit Regulatory Agreement, regardless of the order of recording of the Security Instrument and the Tax Credit Regulatory Agreement; provided, however, Lender reserves the right not to subordinate the lien of the Security Instrument to the Tax Credit Regulatory Agreement if remedies reserved to the Tax Credit Agency under the Tax Credit Regulatory Agreement exceed those of specific performance or injunctive relief. In such event, Borrower acknowledges that Lender may require the Tax Credit Agency to enter into a subordination agreement satisfactory to Lender.

G. The following new definitions are added to Article XI:

**“Borrower GP/Manager”** means individually and collectively the managing general partner(s), managing member(s) or controlling shareholder(s) of Borrower, but does not include the non-profit managing general partner of Borrower if required to meet the requirements of the California Revenue and Taxation Code for the welfare exemption.

“**Control**” means to possess, directly or indirectly, the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise, including the power to elect a majority of the directors or trustees of a corporation or trust, as the case may be.