**Rider to Loan Agreement**

**Tax Credit Property**

(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:

|  |  |  |
| --- | --- | --- |
| **Tax Credit Property** | | |
|  | **Status of Tax Credit Regulatory Agreement** *(choose one)*: | |
|  |  | Tax Credit Regulatory Agreement will not be recorded until the Mortgaged Property has been placed in service (“**Not Yet Placed in Service**”) |
|  |  | Tax Credit Regulatory Agreement has been recorded or will be recorded on or prior to the Effective Date (“**Recorded Regulatory Agreement**”) |
|  |  | Tax Credit Regulatory Agreement has been recorded prior to the Effective Date and a replacement Tax Credit Regulatory Agreement will be recorded after the Effective Date (“**Recorded but to be Replaced Regulatory Agreement**”) |
|  | **Soft Unsecured Debt** *(choose one)*: | |
|  |  | Permitted |
|  |  | Not applicable |
|  | **Equity Investor Participant**  *(choose one)*: | |
|  |  | Yes |
|  |  | Not applicable |
| *(See Sections 3.03, 5.44, 6.13, and Article VII)* | | |

B. Section 3.03(x) is deleted and replaced with the following:

(x) A default, event of default, or breach (however such terms may be defined in the Tax Credit Regulatory Agreement) occurs after the expiration of any applicable notice and/or cure periods under the Tax Credit Regulatory Agreement.

C. Section 5.44 is deleted and replaced with the following:

**5.44 Low Income Housing Tax Credit Regulatory Agreement**.

(a) If “**Not Yet Placed in Service**” is selected in Section 1.05, then Borrower has been awarded Tax Credits, but the Tax Credit Regulatory Agreement will not be recorded until the Mortgaged Property has been placed in service. Borrower represents and warrants that all the following are correct:

(i) Borrower is in compliance with all requirements of the application to receive an allocation of Tax Credits (“**Tax Credit** **Application**”). Borrower has not received any notice from the Tax Credit Agency that Borrower is in default under the Tax Credit Application or that the Tax Credit Agency will not issue and record a Tax Credit Regulatory Agreement when the Mortgaged Property is placed in service.

(ii) The copy of the Tax Credit Application Borrower has provided to Lender includes all amendments, schedules, and exhibits and is complete and accurate in all respects.

(b) If “**Recorded Regulatory Agreement**” is selected in Section 1.05, then Borrower has been awarded Tax Credits and the Tax Credit Regulatory Agreement has been recorded or will be recorded on or prior to the Effective Date. Borrower represents and warrants that all the following are correct:

(i) Borrower is in compliance with all requirements of the Tax Credit Regulatory Agreement. Borrower has not received any notice from the Tax Credit Agency that Borrower is in default under the Tax Credit Regulatory Agreement.

(ii) The copy of the Tax Credit Regulatory Agreement that Borrower has provided to Lender includes all amendments, schedules, and exhibits and is complete and accurate in all respects.

(c) If “**Recorded but to be Replaced Regulatory Agreement**” is selected in Section 1.05, then Borrower has been awarded Tax Credits and the Tax Credit Regulatory Agreement has been recorded prior to the Effective Date and Borrower has been awarded new Tax Credits under a new Tax Credit Regulatory Agreement that will replace the existing Tax Credit Regulatory Agreement when the new Tax Credit Regulatory Agreement is recorded. Borrower represents and warrants that all of the following are correct:

(i) Borrower is in compliance with all requirements of the application to receive an allocation of Tax Credits (“**Tax Credit Application**”) and the existing Tax Credit Regulatory Agreement. Borrower has not received any notice from the Tax Credit Agency that (A) Borrower is in default under the Tax Credit Application, (B) the Tax Credit Agency will not issue and record a new Tax Credit Regulatory Agreement when the Mortgaged Property is placed in service, or (C) Borrower is in default under the existing Tax Credit Regulatory Agreement.

(ii) The copy of the Tax Credit Application and the existing Tax Credit Regulatory Agreement that Borrower has provided to Lender includes all amendments, schedules and exhibits and is complete and accurate in all respects.

D. If Soft Unsecured Debt is permitted according to Section 1.05, then Section 6.13(a)(x)(F) is deleted and replaced with the following:

(F) Soft unsecured debt characterized as deferred developer fees and soft unsecured partner loans required for the purpose of avoiding a default on the Indebtedness and, in each case, payable from excess cash flow only.

E. Section 6.39 is deleted and replaced with the following:

**6.39 Low-Income Housing Tax Credit Regulatory Agreement**. Lender acknowledges that Tax Credits have been allocated with respect to the Mortgaged Property and that the Mortgaged Property is, or will be, subject to a Tax Credit Regulatory Agreement executed, or to be executed, in connection with the allocation of the Tax Credits.

(a) Annual Tax Credit Reporting Requirements. Borrower will submit to Lender, each year at the time of 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-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.

(b) Cross-Default.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.

(c) Annual Compliance.Borrower will submit annually (or such other shorter period required under the Tax Credit 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 Tax Credit Agency as required under the Tax Credit Regulatory Agreement.

(d) Tax Credit Regulatory Agreement. Lender agrees that if the Tax Credit Regulatory Agreement recorded, or to be recorded, against the Mortgaged Property, 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 Tax Code Section 42(h)(6)(E), the lien of the Security Instrument and this Loan Agreement will be subordinate to such Tax Credit Regulatory Agreement, regardless of the order of recording of the Security Instrument and the Tax Credit Regulatory Agreement document; 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 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 in form and substance satisfactory to Lender. To the extent a Tax Credit Regulatory Agreement is not recorded as of the date of this Loan Agreement, Borrower will first obtain Lender’s consent prior to recording the Tax Credit Regulatory Agreement.

(e) Recourse Liability.Sections 3.03(a) and 3.03(b) of this Loan Agreement will be operative only after Equity Investor has been given 30 days’ notice of the applicable Event of Default, together with an opportunity within such 30-day period to remedy the applicable Event of Default. In all events, Lender may, during such 30-day period, exercise all of its rights and remedies under this Loan Agreement upon the occurrence of such Event of Default, other than foreclosure of the Mortgaged Property.

F. The following definitions are added to Article XII:

“**Tax Credit Agency**” means the designated agency of the Property Jurisdiction to allocate Tax Credits, acting through any authorized representative.

“**Tax Credit Application**” is defined in Section 5.44.

“**Tax Credit Regulatory Agreement**” means the extended low-income housing commitment, regulatory agreement or restrictive covenants executed or to be executed by Borrower and Tax Credit Agency and properly recorded in the appropriate land records for the Property Jurisdiction, setting forth certain terms and conditions under which the Mortgaged Property is to be operated and that must meet the requirements of Tax Code Section 42(h)(6)(B).

“**Tax Credits**” means the low-income housing tax credits allocated by Tax Credit Agency pursuant to Section 42 of the Tax Code.

G. The remaining paragraphs of this Tax Credit Property Rider (Paragraphs H through O are only applicable if “**Equity Investor Participant**” – “**Yes**” is selected in Section 1.05. If “**Equity Investor Participant**” is “**Not applicable**,” then none of the remaining paragraphs of this Rider are applicable for this Loan.

H. Section 7.01(k) is deleted and replaced with the following:

(k) A Transfer of any Controlling Interest in Equity Investor, Equity Investor GP/Manager and any entity that Controls Equity Investor GP/Manager if Equity Investor is a Required Equity Owner under Section 7.02(c).

I. Section 7.02(b)(i) is deleted and replaced with the following:

(i) A Transfer of any legal or equitable interests in an entity that is not Borrower or a Designated Entity for Transfers so long as such Transfer does not result in a Prohibited Transfer under Section 7.01(b), 7.01(d) or 7.01(k).

J. Section 7.02(c) is deleted and replaced with the following:

(c) Even if the name of the Equity Investor is not set forth in Article I, Equity Investor will be considered a Required Equity Owner with a Required Equity Ownership Interest equal to the percentage of ownership in Borrower on the Effective Date. However, if the following conditions are met, Equity Investor will no longer be considered a Required Equity Owner and the Transfer of its interests in Borrower will be a Permitted Transfer under Section 7.02(b)(ii).

(i) Equity Investor has made all low income housing tax credit capital contributions payable to Borrower under the Operating Agreement.

(ii) The initial compliance period with respect to the Tax Credits allocated with respect to the Mortgaged Property (“**Compliance Period**”) has ended.

K. Sections 7.03(a)(vii) and 7.03(a)(viii) are deleted and replaced with the following:

(vii) Removal by Equity Investor of Borrower GP/Manager.

(A) A “**Removal by Equity Investor of Borrower/GP Manager**” is a Transfer of any ownership interests of Borrower GP/Manager in Borrower or any direct or indirect ownership interests of Borrower GP/Manager Principal in Borrower GP/Manager as the result of (1) the removal of a Borrower GP/Manager as the managing general partner/member of Borrower upon the occurrence of an event of default by Borrower GP/Manager under the Operating Agreement and (2) its replacement as managing general partner/member with Equity Investor, Equity Investor GP/Manager or an entity Controlled by Equity Investor in accordance with the terms of the Operating Agreement.

(B) The Borrower set forth in Article I, as of the Effective Date, owns the Mortgaged Property at the time of the Transfer and remains the Borrower under the Note after the Transfer.

(C) After such Transfer, Equity Investor GP/Manager will Control the entity that replaces the Borrower GP/Manager.

(D) Equity Investor identifies an individual or entity satisfying Lender’s then current underwriting standards to be the Replacement Guarantor and the Replacement Guarantor executes and delivers a Replacement Guaranty.

(E) If, at any time, the initial owners of the Equity Investor GP/Manager do not retain Control of the Equity Investor GP/Manager, the provisions of this Section 7.03(a)(vii) will be of no further force and effect.

(F) Reserved

(viii) Related Entity Investor Transfer. While Equity Investor is a Required Equity Owner, a Transfer by Equity Investor of its direct or indirect interests in Borrower to an entity that is directly or indirectly owned and Controlled by Equity Investor GP/Manager (“**Related Entity Investor Transferee**”), and such a Transfer will not constitute a Required Equity Owner Transfer under Section 7.03(c)(ii).

L. Section 7.03(c)(iv) is deleted and replaced with the following:

(iv) Equity Investor Substitution Transfer.

(A) “**Equity Investor Substitution Transfer**” is a Transfer by Equity Investor or Equity Investor GP/Manager of part or all its direct or indirect interest in Borrower to an Approved Substitute Equity Investor. An Equity Investor Substitution Transfer is not a Required Equity Owner Transfer under Section 7.03(c)(ii).

(B) Notwithstanding Section 7.04(a), Borrower provides Lender with Notice, together with the Equity Investor Substitution Transfer Review Package, at least 45 days prior to the proposed Conditionally Permitted Transfer. The Equity Investor Substitution Transfer Review Package must include:

1. The documentation described in Section 7.04.
2. The most recent financial statements for the Financial Organization Transferee or LIHTC Syndicator Transferee, as applicable, audited by an independent certified public accountant acceptable to Lender, provided, that, the most recent long-term credit report from one or more Rating Agencies may be provided for a Financial Organization Transferee in lieu of the most recent financial statements.
3. Written certification by the Financial Organization Transferee or LIHTC Syndicator Transferee, as applicable, in a form acceptable to Lender, that it meets the applicable requirements of a Financial Organization Transferee or LIHTC Syndicator Transferee.
4. Any additional information requested by Lender to determine that the conditions of Section 7.04 and the requirements of a Financial Organization Transferee or LIHTC Syndicator Transferee have been met.
5. Written evidence acceptable to Lender that the Financial Organization Transferee or LIHTC Syndicator Transferee, as applicable, has agreed to be bound by the terms and provisions of the Operating Agreement.

(C) Notwithstanding Section 7.04(q), Borrower pays to Lender the Conditional Transfer Fee at the time of the Equity Investor Substitution Transfer.

M. Section 9.01(h) is deleted and replaced with the following:

(h) Borrower fails to perform any of its obligations under this Loan Agreement (other than those specified in this Section 9.01), as and when required, which failure continues for a period of 30 days after Notice of such failure by Lender (i) to Borrower, and (ii) to Equity Investor. However, if Borrower’s failure to perform its obligations as described in this Section 9.01(h) is of the nature that it cannot be cured within the 30 day cure period after such Notice from Lender but reasonably could be cured within 90 days, then Borrower and/or Equity Investor will have additional time as determined by Lender in Lender’s Discretion, not to exceed an additional 60 days, in which to cure such default, provided that Borrower and/or Equity Investor has diligently commenced to cure such default during the initial 30 day cure period and diligently pursues the cure of such default. However, no such Notice or cure periods will apply in the case of any such failure that could, in Lender’s judgment, absent immediate exercise by Lender of a right or remedy under this Loan Agreement, result in harm to Lender, danger to tenants or third parties, or impairment of the Note, the Security Instrument or this Loan Agreement or any other security given under any other Loan Document.

N. Section 11.03(d) is deleted and replaced with the following:

(d) Lender agrees that, if Equity Investor is a Borrower Principal, Lender will endeavor as a courtesy to Equity Investor to deliver a copy of such Notice to Equity Investor, provided however that any failure to provide such courtesy copy Notice will not affect the validity or sufficiency of any Notice to Borrower, will not affect Lender’s rights and remedies under this Loan Agreement or under any other Loan Documents, nor subject Lender to any claims by or liability to Equity Investor. Such Notice will be given in the manner provided in this Section, at Equity Investor’s address set forth in Article I. Equity Investor may change the address to which Notices intended for it are to be directed by means of Notice given to Lender in accordance with this Section 11.03.

O. The following definitions are added to Article XII:

“**Approved Substitute Equity Investor**” means a Permissible Substitute Equity Investor that meets the Equity Investor Substitution Transfer Requirements.

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

“**Borrower GP/Manager Principal**”means individually and collectively the individuals and entities that Control the Borrower GP/Manager.

“**Compliance Period**”is defined in Section 7.02(c)(ii).

“**Equity Investor**” means the entity specified in Article I, together with its permitted successors and assigns, including any Related Entity Investor Transferee and/or any Approved Substitute Equity Investor.

“**Equity Investor GP/Manager**” means individually and collectively the managing general partner(s), managing member(s) or controlling shareholder(s) of Equity Investor.

“**Equity Investor Substitution Transfer**” is defined in Section 7.03(c)(iv)(A).

“**Equity Investor Substitution Transfer Requirements**” means the requirements set forth in the definition of Financial Organization Transferee or LIHTC Syndicator Transferee, as applicable.

“**Equity Investor Substitution Transfer Review Package**” means the items required to be submitted to Lender pursuant to Section 7.03(c)(iv)(B) above.

“**Financial Organization Transferee**” means a financial institution, financial service firm or insurance company, or a wholly-owned subsidiary of any of the foregoing, that is regulated and supervised by a federal or state regulatory agency and that meets the following requirements:

1. it has a long-term credit rating of BBB- or better by S&P Global Ratings and Baa3 or better by Moody’s Investors Service, Inc. or a minimum net worth of no less than $500,000,000;
2. it has at least 7 years’ experience in investing in low income housing tax credits; and
3. it has asset management resources and expertise with the systems and facilities necessary for support or has engaged an external asset management firm to provide those services at the time of the Equity Investor Substitution Transfer.

“**LIHTC Syndicator Transferee**” means a syndicated tax credit fund or such fund’s manager (or the parent company of such fund’s manager) that meets the following requirements:

1. it has a minimum net worth of at least 2 times the original principal balance of the Loan and a minimum liquidity of at least the greater of (A) 200% of the annual debt service on the Loan or (B) 20% of the original principal balance of the Loan;
2. it has at least 7 years’ experience in syndicating low income housing tax credits;
3. it has the financial capacity to meet its current obligations, together with any remaining capital contributions payable to Borrower under the Operating Agreement; and
4. it has syndicated at least $1,400,000,000 of allocated low income housing tax credits over the past 7 years (in the aggregate), and at least $200,000,000 in each of the last 3 years.

“**Operating Agreement**” means the Borrower’s limited partnership agreement (if Borrower is a limited partnership) or the Borrower’s operating agreement (if Borrower is a limited liability company) that has been amended and restated with the admission of the Equity Investor as the Borrower’s limited partner or investor member, as such amended and restated limited partnership or operating agreement may be amended.

“**Permissible Substitute Equity Investor**” means a Financial Organization Transferee or a LIHTC Syndicator Transferee.

“**Related Entity Investor Transferee**” is defined in Section 7.03(a)(viii).

“**Removal by Equity Investor of Borrower/GP Manager**” is defined in Section 7.03(a)(vii).