RIDER TO CONTINUING COVENANT AGREEMENT – TEL

CONDOMINIUM 100% OWNED BY BORROWER

(Revised 9-30-2019)

The following changes are made to the Continuing Covenant Agreement which precedes this Rider:

A. Section 5.42 is deleted and replaced with the following:

**5.42 Representations Regarding the Condominium.**

(a) Wholly-Owned Condominium. The Mortgaged Property is a Condominium and constitutes 100% of the Condominium Units and 100% of the common elements of the Condominium.

(b) Rights Under Condominium Instruments and Act. The Mortgaged Property granted, conveyed and assigned to Funding Lender includes all rights, easements, rights of way, reservations and powers of the Borrower under the Condominium Act and the Condominium Instruments in Borrower’s capacity as owner of the Condominium Units as well as any rights that Borrower may have, in any capacity, under the Condominium Act and the Condominium Instruments, specifically including all rights to approve any amendments to the Condominium Instruments.

(c) No Sale or Encumbrance. None of the Condominium Units and no portion of the common elements comprising the Condominium have been sold, conveyed or encumbered or are subject to any agreement to convey or encumber.

(d) Control. Borrower, as owner of the Condominium Units, controls the Condominium Association.

B. Section 6.31 is deleted and replaced with the following:

**Covenants Regarding Condominium.**

(a) Condominium Units as Rental Apartment Project. Borrower will own, operate and maintain the Mortgaged Property in accordance with the terms of this Continuing Covenant Agreement and operate the Mortgaged Property solely as a rental apartment project.

(b) Modification of Condominium Instruments. Borrower will not modify or amend the Condominium Instruments without the prior written consent of Funding Lender, which consent may be given or withheld in Funding Lender’s sole and absolute discretion.

(c) Replacement of Directors. Notwithstanding any other provision contained in this Continuing Covenant Agreement, if a receiver is appointed pursuant to this Continuing Covenant Agreement or otherwise, which receiver has authority to replace any director or trustee of the Condominium Association pursuant to the terms of the receivership order, then:

(i) Borrower will, if directed by Funding Lender, cause any trustee or director of the Condominium Association to resign or otherwise be removed effective as of the date of such appointment.

(ii) Borrower agrees that such receiver may thereafter appoint any replacement trustee or director, to the extent permitted by the receivership order.

(d) Additional Insurance. Borrower will maintain insurance meeting the requirements of Section 6.10 with respect to all of the Mortgaged Property, including the common areas.

C. Sections 9.01(aa) and (bb) are deleted and replaced with the following:

(aa) Borrower fails to perform any of its obligations under Section 6.31 (Covenants Regarding the Condominium) or Section 11.16 (Additional Condominium Provisions), and such failure continues for 30 days after Borrower’s receipt of Notice, as set forth in this Continuing Covenant Agreement; provided, however, the occurrence of either of the events set forth below will constitute an immediate Event of Default and will not be subject to the Notice provisions set forth in this Continuing Covenant Agreement:

(i) Borrower terminates or revokes or attempts to terminate or revoke the appointment of Funding Lender as Borrower’s attorney-in-fact either permanently or as to any election in the Condominium Act or Condominium Instruments.

(ii) Borrower agrees to modify the terms of the Condominium Instruments (except to terminate them) without the prior written consent of Funding Lender.

(bb) Funding Lender, at its sole option and discretion, may declare all sums secured by the Security Instrument immediately due and payable and Funding Lender may invoke any remedies permitted under this Continuing Covenant Agreement if any of the following occurs:

(i) Any provision of the applicable statutes pursuant to which the Condominium is established is held invalid and such invalidity would affect the lien of the Security Instrument, or impair the ability of Funding Lender to enforce the lien of the Security Instrument or otherwise materially affect the rights of Funding Lender under the Financing Documents.

(ii) Borrower commences an action for partition of the Mortgaged Property.

(iii) A court of competent jurisdiction issues a final order determining that the Condominium is not considered a validly created condominium as established under the Condominium Act.

D. Section 10.02(k) is deleted and replaced with the following:

(k) Borrower agrees to indemnify and hold Funding Lender harmless from and against any and all losses, costs, liabilities, or damages (including Attorneys’ Fees and Costs) arising out of Borrower’s failure to comply with any state or local law, ordinance, statute, or regulation promulgated by any Governmental Authority and covering the Condominium.

E. Section 11.16 is deleted and replaced with the following:

**11.16 Additional Condominium Provisions**.

(a) Borrower agrees that the Condominium Instruments are subordinated to this Continuing Covenant Agreement and all other Financing Documents.

(b) Borrower hereby irrevocably constitutes and appoints Funding Lender as Borrower’s proxy and attorney-in-fact (which appointment will be deemed coupled with an interest) for and on its behalf to perform all of the obligations of Borrower and to exercise all of the rights and powers of Borrower under the Condominium Instruments without any liability to Borrower or third parties, unless such liability arises from Funding Lender’s gross negligence or willful misconduct.

(c) Borrower hereby instructs and grants and gives to Funding Lender as Borrower’s attorney-in-fact, full power and authority to do and perform every act authorized, permitted, requisite or necessary to be done by Borrower under the provisions of the Condominium Instruments to all intents and purposes the same as Borrower might do. Borrower hereby ratifies and confirms all such acts that Funding Lender lawfully does or performs by virtue of this appointment. Borrower acknowledges and agrees that the provisions set forth in this Section do not impose, burden or obligate Funding Lender to do or perform any act whatsoever. Notwithstanding anything in this Section to the contrary, Funding Lender may not exercise the rights and powers as Borrower’s attorney-in-fact prior to the occurrence of an Event of Default.

(d) Nothing contained in this Continuing Covenant Agreement is intended to or will be construed to constitute Funding Lender as the Declarant under the Condominium Act and/or the Condominium Instruments or as owner of the Condominium, a partner or joint venturer of Borrower.

F. The following definitions are added to Article XII:

**“Condominium”** means **\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [INSERT NAME OF CONDOMINIUM]**,a condominium regimeestablished pursuant to the Declaration.

“**Condominium Act**” means the laws codified in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **[INSERT LAWS ESTABLISHING THE CONDOMINIUM]** as amended from time to time.

“**Condominium Association**” means the association of owners of the Condominium.

“**Condominium Instruments**” means the Declaration, the bylaws (as modified and expanded) and plats **[LIST ANY OTHER CONDOMINIUM INSTRUMENTS]** which established the Condominium under the Condominium Act.

**“Condominium Units”** means the \_\_\_ units **[INSERT TOTAL NUMBER OF UNITS]** in the Condominium.

**“Declarant”** is the Person that established the Condominium pursuant to the Declaration, or such Person’s successors and assigns.

**“Declaration”** means the **\_\_\_\_\_\_\_\_\_\_\_\_\_ [INSERT NAME OF DECLARATION OF CONDOMINIUM**] dated \_\_\_\_\_\_\_\_\_\_\_\_, as recorded in the official records of \_\_\_\_\_\_\_\_ County, State of \_\_\_\_\_\_\_\_\_\_, in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, which established the Condominium.

G. Section (xxiv) of the definition of **“Mortgaged Property”** in Article XII is deleted and replaced with the following:

(xxiv) All rights, easements, rights of way, reservations and powers of Borrower under the Condominium Act and the Condominium Instruments in Borrower’s capacity as owner of the Condominium Units and as Declarant as well as any rights that Borrower may have, in any capacity, under the Condominium Act and the Condominium Instruments and as developer of the Condominium, if applicable, in addition to Borrower’s rights as owner of the Condominium Units specifically including all rights to approve any amendments to the Condominium Instruments and all rights to expand the Condominium.