**Rider to Continuing Covenant Agreement – TEL**

**Ground Lease Mortgage**

(Revised 3-26-2024)

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

A. The following table is added to Section 1.04:

|  |  |
| --- | --- |
| **Ground Lease Mortgage** | |
| *Select one of the following:* | |
|  | Fee Estate Encumbered by Security Instrument |
|  | Fee Estate Not Encumbered by Security Instrument |
| *(See Section 5.23 and Section 6.19)* | |

B. Reserved

C. Reserved

D. Reserved

E. Reserved

F. Section 5.23 is deleted and replaced with the following:

**5.23 Ground Lease.** Each of the following is true:

(a) The Ground Lease is in full force and effect in accordance with its terms.

(b) Borrower has not waived, canceled or surrendered any of its rights under the Ground Lease.

(c) Borrower is the sole owner of, and has good and marketable title to, the Leasehold Estate.

(d) The Leased Premises and the Mortgaged Property are free and clear of all Liens, encumbrances and other matters affecting title, other than the Lien of the Security Instrument, and matters set forth in the schedule of exceptions to coverage in the title policy issued to and accepted by Funding Lender contemporaneously with the execution of this Continuing Covenant Agreement and insuring Funding Lender’s interest in the Mortgaged Property.

(e) There is no existing Ground Lessee Default and no event has occurred which, with the passage of time or the giving of Notice, or both, would constitute a Ground Lessee Default.

(f) To the best of Borrower’s knowledge after due inquiry and investigation, there is no existing Ground Lessor Default and no event has occurred which, with the passage of time or the giving of Notice, or both, would constitute a Ground Lessor Default.

G. Section 6.19 is deleted and replaced with the following:

**6.19 Ground Lease.**

(a) Notices under Ground Lease. Borrower will deliver to Funding Lender, within 10 days after Borrower’s receipt, a true and correct copy of each notice, demand, complaint or request from Ground Lessor under, or with respect to, the Ground Lease.

(b) Borrower’s Obligations to Comply with Ground Lease.

(i) Subject to the terms of Section 6.08(c) and (d), Borrower will pay the Ground Rent and all other sums of money due and payable at any time under the Ground Lease as and when such sums become due and payable, but in any event before the expiration of any grace period provided in the Ground Lease for the payment of any such sum. Borrower will deliver evidence of any such payments to Funding Lender within 10 days after receipt of a written request from Funding Lender for evidence of such payments.

(ii) Borrower will at all times fully perform, observe and comply with all other terms, covenants and conditions of the Ground Lease to be performed, observed or complied with by Borrower as Ground Lessee under the Ground Lease.

(c) Funding Lender’s Right to Cure Ground Lessee Defaults.

(i) At any time after Funding Lender receives notice of a Ground Lessee Default, Funding Lender may (but will not be obligated to), make any payment, perform any obligation, and take any other action Borrower would have the right to pay, perform, or take under the Ground Lease which Funding Lender deems necessary or desirable to cure the Ground Lessee Default.

(ii) After Funding Lender receives notice of a Ground Lessee Default, Funding Lender and its authorized agents will have the right at any time to enter the Land and Improvements, or any part of the Land and Improvements, to such extent and as often as Funding Lender, in Funding Lender’s Discretion, deems necessary or desirable in order to cure the Ground Lessee Default, subject to the rights of the tenants and occupants of the Mortgaged Property.

(iii) Funding Lender may exercise its rights under this Section immediately after receipt of notice of a Ground Lessee Default and without regard to any grace period provided to Borrower in the Ground Lease to cure the Ground Lessee Default.

(iv) For purposes of exercising its rights under this Section, Funding Lender will not be liable to Borrower for any action taken or omitted to be taken by Funding Lender, in good faith, in reliance on any written notice from Ground Lessor stating that a Ground Lessee Default has occurred and is continuing even though Borrower may question or deny the existence or nature of the Ground Lessee Default.

(v) All expenditures made by Funding Lender pursuant to this Section 6.19(c) to cure a Ground Lessee Default will become an additional part of the Indebtedness as provided in Section 9.02.

(d) Covenants to Protect Leasehold Estate.

(i) Borrower will not, without the written consent of Funding Lender (which may be given or withheld by Funding Lender in Funding Lender’s Discretion), take any of the following actions:

(A) Surrender the Leasehold Estate to Ground Lessor or terminate or cancel the Ground Lease.

(B) Amend, modify or change the Ground Lease, either orally or in writing, or waive any of Borrower’s rights under the Ground Lease.

(C) Subordinate the Ground Lease or the Leasehold Estate to any mortgage, deed of trust or other Lien on Ground Lessor’s Fee Estate.

(D) Except as otherwise provided in Sections 6.19(e)(ii) through 6.19(e)(iv), reject or assume the Ground Lease or assign the Leasehold Estate pursuant to Section 365(h) of the Bankruptcy Code.

(ii) Borrower absolutely and unconditionally transfers and assigns to Funding Lender all of Borrower’s rights to surrender, terminate, cancel, modify and change the Ground Lease, and any such surrender, termination, cancellation, modification, or change made without the prior written consent of Funding Lender will be void ab initio and have no legal effect.

(e) Ground Lessee’s Bankruptcy.

(i) Borrower assigns to Funding Lender, as additional security for the Indebtedness, Borrower’s right to reject the Ground Lease under Section 365(h) of the Bankruptcy Code after the occurrence of an Event of Ground Lessee Bankruptcy, subject to Sections 6.19(e)(ii) through 6.19(e)(iv).

(ii) If, after the occurrence of an Event of Ground Lessee Bankruptcy, Borrower decides to reject the Ground Lease, Borrower will give Funding Lender Notice, at least 10 days in advance, of the date on which Borrower intends to apply to the court with jurisdiction respecting an Event of Ground Lessee Bankruptcy or an Event of Ground Lessor Bankruptcy for authority and permission to reject the Ground Lease. Funding Lender will have the right, but not the obligation, within 10 days after receipt of Borrower’s notice, to deliver to Borrower a Notice (“**Funding Lender’s Assumption Notice**”) in which (i) Funding Lender demands that Borrower assume the Ground Lease and assign the Ground Lease to Funding Lender, or its designee, in accordance with the Bankruptcy Code, and (ii) Funding Lender agrees to cure or provide adequate assurance of prompt cure of all Ground Lessee Defaults reasonably susceptible of being cured by Funding Lender and of future performance under the Ground Lease.

(iii) If Funding Lender timely delivers Funding Lender’s Assumption Notice to Borrower, Borrower may not reject the Ground Lease and will, within 15 days after receipt of Funding Lender’s Assumption Notice, comply with the demand contained in clause (i) of the description of Funding Lender’s Assumption Notice in Section 6.19(e)(ii).

(iv) If Funding Lender does not timely deliver Funding Lender’s Assumption Notice to Borrower, Borrower will have the right to reject the Ground Lease.

(f) Ground Lessor’s Bankruptcy.

(i) If, after the occurrence of an Event of Ground Lessor Bankruptcy, Ground Lessor rejects the Ground Lease pursuant to Section 365(h) of the Bankruptcy Code, then each of the following requirements applies:

(A) Borrower, immediately after obtaining notice of the rejection, will deliver a copy of the notice to Funding Lender.

(B) Borrower will not, without Funding Lender’s prior written consent (which may be given or withheld in Funding Lender’s sole and absolute discretion), elect to treat the Ground Lease as terminated pursuant to Section 365(h) or any other applicable provision of the Bankruptcy Code.

(C) The Security Instrument and the Lien created by the Security Instrument will extend to and encumber Borrower’s retained rights under the Ground Lease that are appurtenant to the Leased Premises for the balance of the term of the Ground Lease and for any renewal or extension of those rights under the Ground Lease.

(D) Borrower will transfer and assign to Funding Lender, as additional security for the Indebtedness, Borrower’s rights, after Ground Lessor’s rejection of the Ground Lease, to treat the Ground Lease as terminated, and any termination of the Ground Lease made by Borrower without Funding Lender’s prior written consent will be void ab initio and have no legal effect.

(ii) Borrower transfers and assigns to Funding Lender, as additional security for the Indebtedness, all of Borrower’s rights to damages caused by Ground Lessor’s rejection of the Ground Lease after the occurrence of an Event of Ground Lessor Bankruptcy and all of Borrower’s rights to offset such damages against rent payable under the Ground Lease. As long as no Event of Default has occurred and is continuing, Funding Lender agrees that it will not enforce its rights under the preceding sentence, but will permit Borrower to exercise such rights with Funding Lender’s prior written consent.

(iii) Any amounts received by Funding Lender as damages arising out of Ground Lessor’s rejection of the Ground Lease will be applied in the manner set forth in Section 11.28.

(g) Option to Renew or Extend Ground Lease. Borrower will give Funding Lender Notice of Borrower’s intention to exercise each option to renew or extend the term of the Ground Lease at least 90 days, but not more than 150 days, before the last day on which the option may be timely exercised. If Borrower intends to renew or extend the term of the Ground Lease, Borrower will deliver to Funding Lender, together with the Notice of such decision, a copy of the notice of renewal or extension that Borrower delivers to Ground Lessor. If Borrower does not intend to renew or extend the term of the Ground Lease or, if Borrower fails to deliver its Notice of exercise of its option to renew or extend the term of the Ground Lease at least 90 days before the last day on which the option may be timely exercised, Funding Lender will have the right, but not the obligation, to renew or extend the term of the Ground Lease for and on behalf of Borrower.

(h) No Merger of Estates.

(i) If Borrower acquires the Fee Estate, there will be no merger between the Fee Estate and the Leasehold Estate unless all Persons, including Funding Lender, having an interest in the Ground Lease consent in writing to the merger.

(ii) Simultaneously with Borrower’s acquisition of the Fee Estate, the Lien of the Security Instrument will automatically, without the necessity of any further conveyance, be spread to cover the Fee Estate and as so spread will be prior to the Lien of any mortgage, deed of trust or other Lien placed on the Fee Estate after the date of the Security Instrument. Promptly after Borrower’s acquisition of the Fee Estate, Borrower, at its sole cost and expense, including payment of Funding Lender’s Attorneys’ Fees and Costs and out-of-pocket disbursements, will execute and deliver all documents and instruments necessary to subject the Fee Estate to the Lien of the Security Instrument, and will provide to Funding Lender a title insurance policy insuring the priority of Lien of the Security Instrument both on the Fee Estate and the Leasehold Estate is the same as the priority of the Lien of the Security Instrument on the Leasehold Estate as of the Effective Date.

(iii) If Funding Lender acquires the Fee Estate and the Leasehold Estate (whether pursuant to the provisions of the Ground Lease, by foreclosure of the Security Instrument, or otherwise), the Fee Estate and the Leasehold Estate will not merge as a result of such acquisition and will remain separate and distinct for all purposes after such acquisition unless and until Funding Lender elects to merge the Fee Estate and the Leasehold Estate.

(i) New Lease. If (i) the Ground Lease is canceled or terminated for any reason before the natural expiration of its term, and (ii) Funding Lender (or its designee) obtains from Ground Lessor a new lease in accordance with the term of the Ground Lease, then Borrower will have no right, title or interest in and to such new lease or the leasehold estate created by such new lease.

(j) Appointment of Funding Lender as Borrower’s Attorney-In-Fact.

(i) Borrower makes, constitutes and appoints Funding Lender as Borrower’s attorney-in-fact, in Borrower’s name, place and stead, with full power of substitution, to take all actions and to sign all documents and instruments which Funding Lender, in Funding Lender’s Discretion, considers to be necessary or desirable to do each of the following:

(A) Prevent or cure a Ground Lessee Default pursuant to Section 6.19(c).

(B) Perform or carry out any of Borrower’s covenants under Section 6.19(e).

(C) Renew or extend the term of the Ground Lease pursuant to Section 6.19(g).

(D) Appoint arbitrators and conduct arbitration proceedings pursuant to the Ground Lease.

(E) Request and obtain estoppel certificates from Ground Lessor pursuant to the Ground Lease.

(ii) Borrower gives and grants to Funding Lender, as Borrower’s attorney-in-fact, full power and authority to do and perform every act and sign every document and instrument necessary and proper to be done in the exercise of the foregoing power as fully as Borrower might or could do, and Borrower ratifies and confirms all acts that Funding Lender, as Borrower’s attorney-in-fact, will lawfully do or cause to be done by virtue of this power of attorney. This power of attorney, being coupled with an interest, will be irrevocable as long as any of the Indebtedness remains unpaid.

H. The following definitions are added to Article XII:

“**Event of Ground Lessee Bankruptcy**” means either of the following actions taken by or with respect to Borrower, if the Project Loan is secured by an interest under a Ground Lease:

(i) Borrower pursuant to or within the meaning of the Bankruptcy Code (A) commences a voluntary case, or (B) consents to the entry of an order for relief against it in an involuntary case.

(ii) A court of competent jurisdiction enters an order or decree under the Bankruptcy Code that is for relief against Borrower in an involuntary case.

“**Event of Ground Lessor Bankruptcy**” means either of the following actions taken by or with respect to Ground Lessor:

(i) Ground Lessor pursuant to or within the meaning of the Bankruptcy Code (A) commences a voluntary case, or (B) consents to the entry of an order for relief against it in an involuntary case.

(ii) A court of competent jurisdiction enters an order or decree under the Bankruptcy Code that is for relief against Ground Lessor in an involuntary case.

“**Fee Estate**” means the fee estate of Ground Lessor in the Land.

“**Funding Lender’s Assumption Notice**” is defined in Section 6.19(e)(ii).

“**Ground Lease**” means the lease described in Exhibit C of the Security Instrument pursuant to which Borrower leases the Land, as such lease may be amended, modified, supplemented, renewed and extended.

“**Ground Lessee**” means the lessee under the Ground Lease.

“**Ground Lessee Default**” means either of the following:

(i) A default by Borrower in making any payment of Ground Rent, additional rent or other sum of money payable by Borrower to Ground Lessor under the Ground Lease on the date such payment is due and payable.

(ii) A default by Borrower in performing or observing any of the terms, covenants or conditions of the Ground Lease other than the payments referred to in clause (i) required to be performed or observed by ground lessee.

“**Ground Lessor**” means the lessor under the Ground Lease.

“**Ground Lessor Default**” means a default by Ground Lessor in performing or observing any of the terms, covenants or conditions of the Ground Lease required to be performed or observed by Ground Lessor.

“**Ground Rent**” means the base or minimum rent payable in fixed monthly or other periodic installments under the Ground Lease.

“**Leased Premises**” means the Land and any other real property leased by Borrower pursuant to the Ground Lease, if applicable.

“**Leasehold Estate**” means Borrower’s interest in the Land and any other real property leased by Borrower pursuant to the Ground Lease, if applicable, including all of the following:

(i) All rights of Borrower to renew or extend the term of the Ground Lease.

(ii) All amounts deposited by Borrower with Ground Lessor under the Ground Lease.

(iii) Borrower’s right or privilege to terminate, cancel, surrender, modify or amend the Ground Lease.

(iv) All other options, privileges and rights granted and demised to Borrower under the Ground Lease and all appurtenances with respect to the Ground Lease.

I. This Section I will apply if Fee Estate Encumbered by Security Instrument is selected in Article I. The definitions of “Fixtures”, “Mortgaged Property” and “Personalty” in Article XII are deleted and replaced with the following:

“**Fixtures**” means all property owned by Borrower or Ground Lessor which is attached to the Land or the Improvements so as to constitute a fixture under applicable law, including: machinery, equipment, engines, boilers, incinerators and installed building materials; systems and equipment for the purpose of supplying or distributing heating, cooling, electricity, gas, water, air or light; antennas, cable, wiring and conduits used in connection with radio, television, security, fire prevention or fire detection or otherwise used to carry electronic signals; telephone systems and equipment; elevators and related machinery and equipment; fire detection, prevention and extinguishing systems and apparatus; security and access control systems and apparatus; plumbing systems; water heaters, ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers and other appliances; light fixtures, awnings, storm windows and storm doors; pictures, screens, blinds, shades, curtains and curtain rods; mirrors; cabinets, paneling, rugs and floor and wall coverings; fences, trees and plants; swimming pools; and exercise equipment.

“**Mortgaged Property**” means all of Borrower’s and Ground Lessor’spresent and future right, title and interest in and to all of the following:

(i) The Land, including Borrower’s interest in the Land pursuant to the Ground Lease, the Ground Lease and the Leasehold Estate, and Ground Lessor’s interest in the Land, the Ground Lease, and the Fee Estate.

(ii) The Improvements.

(iii) The Fixtures.

(iv) The Personalty.

(v) All current and future rights, including air rights, development rights, zoning rights and other similar rights or interests, easements, tenements, rights of way, strips and gores of land, streets, alleys, roads, sewer rights, waters, watercourses and appurtenances related to or benefiting the Land or the Improvements, or both, and all rights-of-way, streets, alleys and roads which may have been or may in the future be vacated.

(vi) All proceeds paid or to be paid by any insurer of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, whether or not Borrower or Ground Lessor obtained the Insurance pursuant to Funding Lender’s requirement or the Ground Lease.

(vii) All awards, payments and other compensation made or to be made by any municipal, state or federal authority with respect to the Land or the Leasehold Estate, as applicable, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, including any awards or settlements resulting from Condemnation proceedings or the total or partial taking of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property under the power of eminent domain or otherwise and including any conveyance in lieu of such condemnation or taking.

(viii) All contracts, options and other agreements for the sale of the Land, or the Leasehold Estate, as applicable, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property entered into by Borrower or Ground Lessor now or in the future, including cash or securities deposited to secure performance by parties of their obligations.

(ix) All proceeds from the conversion, voluntary or involuntary, of any of the items described in items (i) through (viii) of this definition, into cash or liquidated claims, and the right to collect such proceeds.

(x) All Rents and Leases (including the Ground Lease).

(xi) All earnings, royalties, accounts receivable, issues and profits from the Land, the Improvements or any other part of the Mortgaged Property, and all undisbursed proceeds of the Project Loan.

(xii) All Imposition Reserve Deposits.

(xiii) All refunds or rebates of Impositions by any Governmental Authority or insurance company (other than refunds applicable to periods before the real property tax year in which this Continuing Covenant Agreement is dated).

(xiv) All tenant security deposits which have not been forfeited by any tenant under any Lease (including the Ground Lease) and any bond or other security in lieu of such deposits.

(xv) All names under or by which any of the Mortgaged Property may be operated or known, and all trademarks, trade names and goodwill relating to any of the Mortgaged Property.

(xvi) If required by the terms of this Continuing Covenant Agreement, all rights under any Letter of Credit and the Proceeds, as such Proceeds may increase or decrease from time to time.

(xvii) If the Project Note provides for interest to accrue at an adjustable or variable rate and there is a Rate Cap Agreement, the Rate Cap Collateral.

#### (xviii) Reserved

#### (xix) Reserved

#### (xx) Reserved

#### (xxi) Reserved

#### (xxii) Reserved

#### (xxiii) Reserved

#### (xxiv) Reserved

#### (xxv) Reserved

“**Personalty**” means all of the following:

(i) Accounts (including deposit accounts) related to the Mortgaged Property.

(ii) Equipment and inventory which are used now or in the future in connection with the ownership, management or operation of the Land or Improvements or are located on the Land or Improvements, including furniture, furnishings, machinery, building materials, goods, supplies, tools, books, records (whether in written or electronic form) and computer equipment (hardware and software).

(iii) Other tangible personal property which is used now or in the future in connection with the ownership, management or operation of the Land or Improvements or is located on the Land or in the Improvements, including ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers and other appliances (other than Fixtures).

(iv) Any operating agreements relating to the Land or the Improvements.

(v) Any surveys, plans and specifications and contracts for architectural, engineering and construction services relating to the Land or the Improvements.

(vi) All other intangible property, general intangibles and rights relating to the operation of, or used in connection with, the Land or the Improvements, including all governmental permits relating to any activities on the Land and including subsidy or similar payments received from any sources, including a Governmental Authority.

(vii) Any rights of Borrower in or under any Letter of Credit.