**Rider to Continuing Covenant Agreement – TEL**

**Partial Release of Unimproved Property**

(Revised 6-27-2023)

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

A. The following table is added to Section 1.04:

|  |  |
| --- | --- |
| **Partial Release of Unimproved Property** | |
| *Choose one:* | |
|  | The Release Parcel is described below: |
|  | The Release Parcel description is attached to this Continuing Covenant Agreement immediately following the Partial Release of Unimproved Property Rider |
| *(See Section 7.10)* | |

B. Section 7.10 is deleted and replaced with the following:

**7.10 Funding Lender’s Consent to Partial Release.** Notwithstanding any other provision of this Continuing Covenant Agreement, Funding Lender agrees, upon the request of Borrower, to permit the Partial Release without any prepayment of, or change in the interest rate on, the Indebtedness, provided each of the following conditions is satisfied:

(a) The Borrower delivers Notice to Funding Lender specifying the date of the Partial Release at least 60 days prior to the proposed effective date of the Partial Release.

(b) At the time of Borrower’s Notice to Funding Lender pursuant to Section 7.10(a), Borrower pays to Funding Lender the Transfer Processing Fee.

(c) No Transfer (except Transfers permitted under Section 7.03 or approved by Funding Lender pursuant to Section 7.05) has occurred prior to the release of the Release Parcel.

(d) No Event of Default has occurred and is continuing.

(e) The actual dimensions of the Release Parcel will not materially deviate from the proposed dimensions of the Release Parcel as depicted or described in Section 1.04.

(f) At least 30 days prior to the date of the Partial Release, Borrower delivers to Funding Lender a certificate from a general partner, manager or officer of the Borrower which contains all the following (“**Officer’s Certificate**”):

(i) Confirmation that, simultaneously with the Partial Release, Borrower will convey fee simple title to the Release Parcel to the Transferee identified in the Officer’s Certificate.

(ii) A reasonably detailed description of the Additional Improvements.

(iii) A reasonably detailed description of each of the following:

(A) The impact, during the period the Additional Improvements are being constructed, that construction of the Additional Improvements may have on the Mortgaged Property, including the impact on parking, vehicular and pedestrian traffic flow, vehicular ingress and egress to the Mortgaged Property from public streets, pedestrian ingress and egress to Improvements on the Mortgaged Property and any other impact on the existing Improvements.

(B) The actions to be taken by Borrower to eliminate or reduce any adverse impact on the Mortgaged Property from construction of the Additional Improvements.

(iv) A reasonably detailed description of each of the following:

(A) The impact, after construction of the Additional Improvements is completed, that the completed Additional Improvements may have on the Mortgaged Property including the impact on parking, vehicular and pedestrian traffic flow, vehicular ingress and egress to the Mortgaged Property from public streets, pedestrian ingress and egress to the Improvements on the Mortgaged Property and any other impact on existing Improvements on the Mortgaged Property.

(B) The actions to be taken by Borrower to eliminate or reduce any adverse impact on the Mortgaged Property from the construction and operation of the Additional Improvements.

(v) Confirmation of each of the following:

(A) Borrower has complied with all requirements of and obtained all approvals required under the Operating Agreements applicable to the Partial Release.

(B) The Partial Release does not violate any of the provisions of the Operating Agreements and that, to the extent necessary to comply with the Operating Agreements, the Transferee has assumed all of Borrower’s obligations, if any, relating to the Release Parcel under the Operating Agreements.

(vi) Certification that each of the following is true:

(A) The Release Parcel is not necessary for the operation or use of the Mortgaged Property for its then-current use.

(B) The Release Parcel may be subdivided from the Mortgaged Property without diminution in the value of the Mortgaged Property.

(C) The subdivision in connection with the Partial Release will not adversely affect the utility or operation of the remaining Mortgaged Property.

(vii) If the Partial Release occurs after a Securitization, evidence reasonably satisfactory to the Rating Agencies (if applicable) in support of the conclusions reached in Section 7.10(f)(vi).

(viii) Certification that the Operating Agreements and/or other agreements allow the owner of the Mortgaged Property to continue to use the Release Parcel to the extent that the Release Parcel is necessary for the uses of the Mortgaged Property, including for access, driveways, parking, utilities, drainage flows or any other purpose.

(g) Borrower delivers to Funding Lender a certificate from the architect containing all of the following:

(i) Certifying as to all of the items listed in Sections 7.10(f)(ii) through 7.10(f)(vi).

(ii) Certifying that the Release Parcel and the balance of the Mortgaged Property remaining after the Partial Release and the construction of the Additional Improvements comply with applicable zoning, building, subdivision, land use, parking and other requirements of any Governmental Authority that are applicable to the Release Parcel and the Mortgaged Property.

(iii) Construction of the Additional Improvements on the Release Parcel will not affect the utility or operation of the Mortgaged Property (excluding the Release Parcel) in any material adverse respect.

(iv) Any connection to, or contemplated shared use of, other portions of the Mortgaged Property to provide utility services and access to the Release Parcel will not affect the availability or provision of services to the Mortgaged Property.

(h) If the Partial Release occurs following a Securitization, the Partial Release of the Release Parcel will be permitted only if one of the following occurs:

(i) Immediately after the Partial Release, the loan to value ratio of the Mortgaged Property (with the value of the Mortgaged Property first being reduced by the outstanding principal balance of any indebtedness secured by the Mortgaged Property that is at the same level or priority with the Indebtedness and taking into account only the related land and buildings and not any personal property or going-concern value) is less than or equal to 125%, as determined by Funding Lender, using any commercially reasonable valuation method permitted in connection with a Securitization.

(ii) At the time of the Partial Release, the Borrower pays down the principal balance of the Project Loan by at least one of the following amounts:

(1) If the Release Parcel is sold, the net proceeds of an arm’s length sale of the Release Parcel to an unrelated Person.

(2) The fair market value of the Release Parcel at the time of the Partial Release.

(3) An amount such that the loan-to-value ratio of the Project Loan (as determined by Funding Lender) does not increase after the Partial Release.

(iii) In connection with the Partial Release, Funding Lender receives an No Adverse Effect Opinion.

(i) Borrower delivers to Funding Lender a legal description of the Release Parcel from a surveyor licensed in the Property Jurisdiction, and a survey, prepared by that surveyor, of the Release Parcel and the remainder of the Mortgaged Property.

(j) Borrower delivers to Funding Lender an endorsement to the Funding Lender’s title policy indicating that the Release Parcel has been legally subdivided from the remainder of the Mortgaged Property, and an endorsement to the title policy indicating that the Release Parcel and the balance of the Mortgaged Property constitutes a separate tax lot.

(k) Borrower delivers to Funding Lender an endorsement to Funding Lender’s title policy, effective as of the date of the Partial Release, insuring Funding Lender’s interest in any easements created in connection with the Partial Release, extending the effective date of the Funding Lender’s title policy to the effective date of the Partial Release, and confirming no change in the priority of the Mortgage on the balance of the Mortgaged Property or in the amount of the insurance or the coverage under the Funding Lender’s title policy.

(l) Borrower delivers to Funding Lender a letter from the municipality where the Mortgaged Property is located or a zoning report prepared by a company acceptable to Funding Lender stating that the Release Parcel and the balance of the Mortgaged Property comply with applicable laws, rules and regulations pertaining to zoning, land use, parking and building requirements.

(m) Borrower submits to Funding Lender and Fiscal Agent, at least 30 days prior to the date of the proposed Partial Release, all documents required to release the lien of the Security Instrument on the Release Parcel and any required modifications to the Security Instrument and any of the other Financing Documents for execution by Funding Lender or Fiscal Agent, as applicable, in a form appropriate in the Property Jurisdiction.

(n) If the Transferee is an Affiliate of Borrower, Borrower has delivered to Funding Lender each of the following:

(i) Evidence that such Affiliate has given Borrower fair consideration for the Release Parcel.

(ii) If required by Funding Lender, a nonconsolidation opinion satisfactory to Funding Lender.

(o) Borrower delivers to Funding Lender each of the following:

(i) Documentation evidencing the assumption by Transferee of all of Borrower’s obligations relating to the Release Parcel under the Operating Agreements.

(ii) Either of the following:

(A) Documentation evidencing the release of Borrower from all of Borrower’s obligations relating to the Release Parcel under the Operating Agreements, to the extent Borrower is not released from such obligations by operation of law because of the Partial Release.

(B) A certificate from a general partner, manager or officer of the Borrower certifying that Borrower is released by operation of law from all of Borrower’s obligations relating to the Release Parcel under the Operating Agreements.

(p) Each Guarantor delivers to Funding Lender a written agreement that such Guarantor’s Guaranty continues in full force and effect notwithstanding the Partial Release.

(q) Borrower executes such other documents and instruments and obtains such opinions of counsel as Funding Lender reasonably requires.

(r) Borrower pays all third party costs, taxes and expenses associated with the release of the lien of the Security Instrument and the transfer of the Release Parcel to the Transferee, including Fiscal Agent’s and Funding Lender’s Attorneys’ Fees and Costs.

(s) The Partial Release does not affect the liability of Borrower or any other Person for the payment of the Indebtedness or affect the lien of the Security Instrument upon the remainder of the Mortgaged Property for the full amount of the Indebtedness then remaining unpaid.

(t) Funding Lender’s release of the Release Parcel will not do any of the following:

(i) Cure or waive, or be deemed or construed to cure or waive, any Event of Default then in existence.

(ii) Invalidate any act done by Funding Lender in response to any such Event of Default (including the delivery of any Notice of default).

(iii) Invalidate, extinguish, limit, impair, or otherwise affect any indemnity in favor of Funding Lender with respect to the Release Parcel.

C. The following definitions are added to Article XII:

“**Additional Improvements**” means any improvements planned to be constructed on the Release Parcel.

“**Officer’s Certificate**” is defined in Section 7.10(f).

“**Operating Agreements**” means any Leases, operating agreements, and any other agreements applicable to the Mortgaged Property, including the Release Parcel.

“**Partial Release**” means the release of the Release Parcel from the lien of the Security Instrument.

“**Release Parcel**” means the unimproved portion of the Mortgaged Property described in Section 1.04.

“**Transferee**” means a Person other than Borrower to whom Borrower transfers title to the Release Parcel.