**Rider to Continuing Covenant Agreement – TEL**

**Recycled Borrower**

(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 1.02:

|  |  |
| --- | --- |
| **Recycled Borrower** | |
| **Additional Separateness Covenants** *(select one)* | |
|  | Recycled Borrower – Option #1  Section 5.40(c) does not apply to the Project Loan because one of the following is true:   * Project Loan Amount is $20,000,000 or less * Project Loan subject to a Cross Collateralization Agreement with a Total Indebtedness  of $20,000,000 or less |
|  | Recycled Borrower – Option #2  Section 5.40(c) applies to the Project Loan because one of the following is true:   * Project Loan Amount is greater than $20,000,000 * Project Loan subject to a Cross Collateralization Agreement with a Total Indebtedness greater than $20,000,000 |

B. Reserved.

C. Section 5.40 is deleted and replaced with the following:

**5.40 Recycled Borrower.**

(a) Underwriting Representations. Borrower represents that as of the Effective Date, each of the following is true:

(i) Reserved.

(ii) Borrower is and always has been duly formed, validly existing, and in good standing in the state of its formation and in all other jurisdictions where it is qualified to do business.

(iii) Borrower is not now, nor has it ever been, party to any lawsuit, arbitration, summons, or legal proceeding that is still pending or that resulted in a judgment against it that has not been paid in full, and there are no liens of any nature against Borrower except for tax liens not yet due.

(iv) Borrower is in compliance with all laws, regulations, and orders applicable to it and, except as otherwise disclosed in this Continuing Covenant Agreement, has received all permits necessary for it to operate.

(v) Borrower is not involved in any dispute with any taxing authority.

(vi) Borrower has paid all taxes which it owes.

(vii) Borrower has never owned any real property other than the Mortgaged Property and personal property necessary or incidental to its ownership or operation of the Mortgaged Property and has never engaged in any business other than the ownership and operation of the Mortgaged Property.

(viii) Borrower has provided Funding Lender with complete financial statements that reflect a fair and accurate view of the entity’s financial condition.

(ix) If required by Funding Lender, Funding Lender has received a current Site Assessment for the Mortgaged Property and such Site Assessment has not identified any recognized environmental conditions that require further investigation or remediation.

(x) Borrower has no material contingent or actual obligations not related to the Mortgaged Property.

(xi) Each amendment and restatement of Borrower’s Organizational Documents has been accomplished in accordance with, and was permitted by, the relevant provisions of said documents prior to its amendment or restatement from time to time.

(b) Separateness Representations. Borrower represents that from the date of its formation, each of the following is true:

(i) Reserved.

(ii) Borrower has not entered into any contract or agreement with any Related Party Affiliate, except upon terms and conditions that are commercially reasonable and substantially similar to those available in an arm’s-length transaction with an unrelated party.

(iii) Borrower has paid (or has caused Property Manager to pay, on behalf of Borrower and from Borrower’s funds) all its debts and liabilities from its assets, including any fair and reasonable allocated portion of shared expenses with Affiliates.

(iv) Borrower has done or caused to be done all things necessary to observe all organizational formalities applicable to it and to preserve its existence.

(v) Borrower has maintained all its books, records, financial statements, and bank accounts separate from those of any other Person and has not had its assets listed as assets on the financial statement of any other Person; provided, however, Borrower’s assets may have been included in a consolidated financial statement of its Affiliate if each of the following conditions is met:

(A) Appropriate notation was made on such consolidated financial statements to indicate the separateness of Borrower from such Affiliate and to indicate that Borrower’s assets and credit were not available to satisfy the debts and other obligations of such Affiliate or any other Person.

(B) Such assets were also listed on Borrower’s own separate balance sheet.

(vi) Borrower has filed its own tax returns (except to the extent that it has been a tax-disregarded entity not required to file tax returns under applicable law or was required by applicable law to file consolidated tax returns) and, if it is a corporation, has not filed a consolidated federal income tax return with any other Person.

(vii) Borrower has at all times done each of the following:

(A) Has been and has held itself out to the public as a legal entity separate and distinct from any other Person (including any Affiliate or other Related Party Affiliate) and corrected any known misunderstanding regarding its status as a separate entity.

(B) Conducted all its business and held all its assets in its own name.

(viii) Borrower has not done any of the following:

(A) Guaranteed or become obligated for the debts of any other Person.

(B) Held itself out as being responsible for the debts or obligations of any other Person.

(C) Pledged its assets to secure the obligations of any other Person.

(D) Had any of its obligations guaranteed by an Affiliate or other Related Party Affiliate, except for guarantees that have been released or discharged or that will be released and discharged in connection with closing the Project Loan and guarantees expressly contemplated by the Financing Documents.

(E) Incurred any indebtedness that is still outstanding other than Indebtedness that is permitted under the Financing Documents.

(F) Identified itself or any of its Affiliates as a division or part of the other.

(G) Commingled its assets with those of any other Person.

(ix) Borrower has maintained adequate capital in light of its contemplated business operations.

(x) None of the tenants holding leasehold interests with respect to the Mortgaged Property are an Affiliate of Borrower or other Related Party Affiliate.

(c) Additional Separateness Representations for Large Loans: If “Recycled Borrower – Option #2” is checked in the “Recycled Borrower” table in Section 1.02, then Borrower represents that from the date of its formation, each of the following is true:

(i) Borrower has maintained and used separate stationery, invoices and checks bearing its own name.

(ii) Borrower has allocated fairly and reasonably any overhead expenses that have been shared with an Affiliate, including paying for office space and services performed by any employee of an Affiliate or Related Party Affiliate.

(iii) Borrower has maintained a sufficient number of employees in light of its contemplated business operations and has paid the salaries of its own employees from its own funds.

(iv) Borrower has not owned any subsidiary or any equity interest in any other entity.

(d) Reserved.

D. The following definition is added to Article XII:

“**Related Party Affiliate**” means any of the Borrower’s Affiliates, constituents, or owners, or any guarantors of any of the Borrower’s obligations or any Affiliate of any of the foregoing.