**Rider to Continuing Covenant Agreement – TEL**

**Recycled SPE Equity Owner**

(Revised 6-27-2023)

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

A. Reserved

B. Section 5.41 is deleted and replaced with the following:

**5.41 Recycled SPE Equity Owner.**

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

(i) Reserved.

(ii) SPE Equity Owner 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) SPE Equity Owner 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 SPE Equity Owner except for tax liens not yet due.

(iv) SPE Equity Owner 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) SPE Equity Owner is not involved in any dispute with any taxing authority.

(vi) SPE Equity Owner has paid all taxes which it owes.

(vii) SPE Equity Owner has never owned any real property or personal property other than its managing member or general partner interest, as applicable in the Borrower, and has never engaged in any business other than its ownership of the managing member or general partner interest, as applicable, in the Borrower.

(viii) SPE Equity Owner 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, if applicable, any Previously Owned Real Property, and such Site Assessments have not identified any recognized environmental conditions that require further investigation or remediation.

(x) SPE Equity Owner has no material contingent or actual obligations not related to its managing member or general partner interest, as applicable, in the Borrower.

(xi) Each amendment and restatement of SPE Equity Owner’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 SPE Equity Owner’s formation, each of the following is true:

(i) Reserved

(ii) SPE Equity Owner 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) SPE Equity Owner has paid all its debts and liabilities from its assets.

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

(v) SPE Equity Owner has maintained all its books, records, financial statements and bank accounts separate from those of any other Person.

(vi) SPE Equity Owner has not had its assets listed as assets on the financial statement of any other Person; provided, however, SPE Equity Owner’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 SPE Equity Owner from such Affiliate and to indicate that SPE Equity Owner’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 SPE Equity Owner’s own separate balance sheet.

(vii) SPE Equity Owner 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) and, if it is a corporation, has not filed a consolidated federal income tax return with any other Person.

(viii) SPE Equity Owner has been, and at all times 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).

(ix) SPE Equity Owner has corrected any known misunderstanding regarding its status as a separate entity.

(x) SPE Equity Owner has conducted all its business and held all of its assets in its own name.

(xi) SPE Equity Owner has not identified itself or any of its affiliates as a division or part of the other.

(xii) SPE Equity Owner has maintained and utilized separate stationery, invoices and checks bearing its own name.

(xiii) SPE Equity Owner has not commingled its assets with those of any other Person and has held all its assets in its own name.

(xiv) SPE Equity Owner has not guaranteed or become obligated for the debts of any other Person.

(xv) SPE Equity Owner has not held itself out as being responsible for the debts or obligations of any other Person.

(xvi) SPE Equity Owner 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.

(xvii) SPE Equity Owner has not pledged its assets to secure the obligations of any other Person and no such pledge remains outstanding except in connection with the Project Loan.

(xviii) SPE Equity Owner has maintained adequate capital in light of its contemplated business operations.

(xix) SPE Equity Owner 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.

(xx) SPE Equity Owner has not owned any subsidiary or any equity interest in any entity other than Borrower.

(xxi) SPE Equity Owner has not incurred any indebtedness that is still outstanding other than indebtedness that is permitted under the Financing Documents.

(xxii) SPE Equity Owner has not had any of its obligations guaranteed by an Affiliate or other Related Party Affiliate, except for guarantees that have been either released or discharged (or that will be discharged as a result of the closing of the Project Loan) or guarantees that are expressly contemplated by the Financing Documents.

(xxiii) None of the tenants holding leasehold interests with respect to the Mortgaged Property are an Affiliate of SPE Equity Owner or other Related Party Affiliate.

 (c) Reserved

C. 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.