RIDER TO CONTINUING COVENANT AGREEMENT - TEL

REPAIR RESERVE FUND

(Revised 9-30-2019)

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

A. Section 4.03 is deleted and replaced with the following:

**4.03 Repair Reserve Fund.**

(a) Deposits to Repair Reserve Fund. Funding Lender and Borrower acknowledge that Borrower has established the Repair Reserve Fund by depositing the Repair Reserve Deposit with Funding Lender on the date of this Continuing Covenant Agreement, and that Borrower must complete the Repairs required pursuant to Section 6.14.

(b) Costs Charged by Lender.

(i) If Funding Lender, in Funding Lender’s Discretion, retains a professional inspection engineer or other qualified third party to inspect any Repairs pursuant to the terms of Section 6.06, Funding Lender may charge Borrower an amount sufficient to pay all reasonable fees and expenses charged by such third party inspector.

(ii) If no Repair Reserve Fund has been established, then Funding Lender will be entitled to charge Borrower for the costs specified in Section 4.03(b)(i), and Borrower will pay the amount of such item to Funding Lender immediately after Notice from Funding Lender to Borrower of such charge.

(iii) If a Repair Reserve Fund has been established, Funding Lender will be entitled, but not obligated, to deduct from the Repair Reserve Fund the charges set forth in Section 4.03(b)(i). Funding Lender will be entitled to charge Borrower for each of the charges and Borrower will pay the amount of such item to Funding Lender immediately after Notice from Funding Lender to Borrower of such charge.

(c) Insufficient Amount in Repair Reserve Fund. If Funding Lender determines, in Funding Lender’s Discretion that the money in the Repair Reserve Fund is insufficient to pay for the Repairs, Funding Lender will provide Borrower with Notice of such insufficiency, and as soon as possible (but in no event later than 20 days after such Notice) Borrower will pay to Funding Lender an amount, in cash, equal to such deficiency, which Funding Lender will deposit in the Repair Reserve Fund.

(d) Disbursements of Repair Reserve Fund.

(i) Disbursement. From time to time, as construction and completion of the Repairs progresses, upon Borrower’s submission of a Repair Disbursement Request in the form attached to this Continuing Covenant Agreement as Exhibit D, and provided that no Event of Default has occurred and no condition exists which but for the passage of time or giving of Notice, or both, would constitute an Event of Default, Funding Lender will make disbursements from the Repair Reserve Fund for payment or reimbursement of the actual costs of the Repairs. In connection with each disbursement, Borrower will take each of the following actions:

(A) Sign Borrower’s Repair Disbursement Request.

(B) Include with each Repair Disbursement Request a report setting out the progress of the Repairs and any other reports or information relating to the construction of the Repairs that may be reasonably requested by Funding Lender.

(C) Include with each Repair Disbursement Request copies of any applicable invoices and/or bills and appropriate lien waivers for the prior period for which disbursement was made, executed by all contractors and suppliers supplying labor or materials for the Repairs.

(D) Include with each Repair Disbursement Request, a report prepared by the professional engineer employed by Funding Lender as to the status of the Repairs, unless Funding Lender has waived this requirement in writing.

(E) Include with each Repair Disbursement Request, Borrower’s written representation and warranty that the Repairs as completed to the applicable stage do not violate any laws, ordinances, rules or regulations, or building setback lines or restrictions, applicable to the Mortgaged Property.

Except for the final Repair Disbursement Request, no Repair Disbursement Request may be for an amount less than the Minimum Repair Disbursement Request Amount.

(ii) Conditions Precedent. Funding Lender will not be obligated to make any disbursement from the Repair Reserve Fund to or for the benefit of Borrower unless at the time of such Repair Disbursement Request all of the following conditions exist:

(A) There exists no condition, event or act that would constitute a default (with or without Notice and/or lapse of time) under this Continuing Covenant Agreement or any other Financing Document.

(B) Borrower is in full compliance with the provisions of this Continuing Covenant Agreement, the other Financing Documents and any request or demand by Funding Lender permitted by this Continuing Covenant Agreement.

(C) No lien or claim based on furnishing labor or materials has been recorded, filed or asserted against the Mortgaged Property, unless Borrower has properly provided bond or other security against loss in accordance with applicable law.

(D) All licenses, permits, and approvals of any Governmental Authority required for the Repairs as completed to the applicable stage have been obtained and submitted to Funding Lender upon Funding Lender’s request.

(iii) Reporting Requirements; Completion. Prior to the applicable Completion Date, Borrower will deliver to Funding Lender, in addition to the information required by Section 4.03(d)(i) above, all of the following:

(A) Contractor’s Certificate. If required by Funding Lender, a certificate signed by each major contractor and supplier of materials, as reasonably determined by Funding Lender, engaged to provide labor or materials for the Repairs to the effect that such contractor or supplier has been paid in full for all work completed and that the portion of the Repairs provided by such contractor or supplier has been fully completed in accordance with the plans and specifications (if any) provided to it by Borrower and that such portion of the Repairs is in compliance with all applicable building codes and other rules and regulations promulgated by any applicable regulatory authority or Governmental Authority.

(B) Borrower’s Certificate. A certificate signed by Borrower to the effect that the Repairs have been fully paid for and that all money disbursed from the Repair Reserve Fund has been used for the Repairs and no claim exists against Borrower or against the Mortgaged Property out of which a lien based on furnishing labor or material exists or might ripen. Borrower may except from the certificate described in the preceding sentence any claim(s) that Borrower intends to contest, provided that any such claim is described in Borrower’s certificate and Borrower certifies to Funding Lender that the money in the Repair Reserve Fund is sufficient to make payment of the full amount which might in any event be payable in order to satisfy such claim(s). If required by Funding Lender, Borrower also must certify to Funding Lender that the Repairs are in compliance with all applicable building codes and zoning ordinances.

(C) Engineer’s Certificate. If required by Funding Lender, a certificate signed by the professional engineer employed by Funding Lender to the effect that the Repairs have been completed in a good and workmanlike manner in compliance with the Repair Schedule of Work and all applicable building codes, zoning ordinances and other rules and regulations promulgated by applicable regulatory or Governmental Authorities.

(D) Other Certificates. Any other certificates of approval, acceptance or compliance required by Funding Lender from any Governmental Authority having jurisdiction over the Mortgaged Property and the Repairs.

(iv) Inspection. Prior to and as a condition of the final disbursement of funds from the Repair Reserve Fund, Funding Lender will have the right to inspect or cause the Repairs and Improvements to be inspected in accordance with the terms of Section 6.06(a), to determine whether all interior and exterior Repairs have been completed in a manner acceptable to Funding Lender.

(v) Indirect and Excess Disbursements from Repair Reserve Fund. Funding Lender, in its sole and absolute discretion, is authorized to hold, use and disburse funds from the Repair Reserve Fund to pay any and all costs, charges and expenses whatsoever and howsoever incurred or required in connection with the construction and completion of the Repairs, or, if an Event of Default has occurred and is continuing, in the payment or performance of any obligation of Borrower to Funding Lender. If Funding Lender, for purposes specified in this Section 4.03, elects to pay any portion of the money in the Repair Reserve Fund to parties other than Borrower, then Funding Lender may do so, at any time and from time to time, and the amount of advances to which Borrower will be entitled under this Continuing Covenant Agreement will be correspondingly reduced.

(vi) Repair Schedule of Work. All disbursements from the Repair Reserve Fund will be limited to the costs of those items set forth on the Repair Schedule of Work. Without the prior written consent of Funding Lender, Borrower will not make any payments from the Repair Reserve Fund other than for the costs of those items set forth on the Repair Schedule of Work or alter the Repair Schedule of Work.

(e) Termination of Repair Reserve Fund. The provisions of this Section 4.03 will cease to be effective upon the completion of the Repairs in accordance with this Continuing Covenant Agreement to Funding Lender’s satisfaction, and the full disbursement by Funding Lender of the Repair Reserve Fund. If there are funds remaining in the Repair Reserve Fund after the Repairs have been completed in accordance with this Continuing Covenant Agreement, and provided no Event of Default has occurred and is continuing under this Continuing Covenant Agreement or under any of the other Financing Documents, and no condition exists which but for the passage of time or giving of Notice, or both, would constitute an Event of Default, such funds remaining in the Repair Reserve Fund will be **[SELECT OPTION]** refunded by Funding Lender to Borrower. [**OR]** deposited by Funding Lender into the Replacement Reserve Fund established by Funding Lender pursuant to Section 4.04.

(f) Right to Complete Repairs. If Borrower abandons or fails to proceed diligently with the Repairs or otherwise, or there exists an Event of Default under this Continuing Covenant Agreement, Funding Lender will have the right (but not the obligation) to enter upon the Mortgaged Property and take over and cause the completion of the Repairs. Any contracts entered into or indebtedness incurred upon the exercise of such right may be in the name of Borrower, and Funding Lender is irrevocably appointed the attorney in fact of Borrower, such appointment being coupled with an interest, to enter into such contracts, incur such obligations, enforce any contracts or agreements made by or on behalf of Borrower (including the prosecution and defense of all actions and proceedings in connection with the Repairs and the payment, settlement, or compromise of all claims for materials and work performed in connection with the Repairs) and do any and all things necessary or proper to complete the Repairs including signing Borrower’s name to any contracts and documents as may be deemed necessary by Funding Lender. In no event will Funding Lender be required to expend its own funds to complete the Repairs, but Funding Lender may, in Funding Lender’s sole and absolute discretion, advance such funds. Any funds advanced will be added to the Indebtedness, secured by the Security Instrument and payable to Funding Lender by Borrower in accordance with the provisions of the Financing Documents pertaining to the protection of Funding Lender’s security and advances made by Funding Lender. Borrower waives any and all claims it may have against Funding Lender for materials used, work performed or resultant damage to the Mortgaged Property.

(g) Completion of Repairs. Funding Lender’s disbursement of monies in the Repair Reserve Fund or other acknowledgment of completion of any Repair in a manner satisfactory to Funding Lender will not be deemed a certification by Funding Lender that the Repair has been completed in accordance with applicable building, zoning or other codes, ordinances, statutes, laws, regulations or requirements of any Governmental Authority. Borrower will at all times have the sole responsibility for insuring that all Repairs are completed in accordance with all such governmental requirements.

(h) Reserved.

(i) Reserved.

(j) Reserved.

B. The following definitions are added to Article XII:

“**Minimum Repair Disbursement Request Amount**” means $\_\_\_\_\_\_\_\_\_\_\_\_\_. **[SERVICER MAY DETERMINE AMOUNT]**

“**Repair Disbursement Request**” means Borrower’s written requests to Funding Lender in the form attached as Exhibit D for the disbursement of money from the Repair Reserve Fund pursuant to Article IV.

“**Repair Reserve Deposit**” means $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

“**Repair Reserve Disbursement Period**” means the interval between disbursements from the Repair Reserve Fund, which interval will be no shorter than once every \_\_\_\_\_\_\_\_\_ days **[SERVICER MAY DETERMINE INTERVAL]** during the term of this Continuing Covenant Agreement.

“**Repair Reserve Fund**” means the account which may be established by this Continuing Covenant Agreement into which the Repair Reserve Deposit is deposited.

“**Repair Schedule of Work**” means the Repair Schedule of Work attached as Exhibit C.

**[NOTE: EXHIBIT C AND EXHIBIT D MUST BE ATTACHED TO THE CONTINUING COVENANT AGREEMENT.]**