RIDER TO CONTINUING COVENANT AGREEMENT - TEL

REPLACEMENT RESERVE FUND – IMMEDIATE DEPOSITS

(Revised 9-30-2019)

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

A. Section 4.04 is deleted and replaced with the following:

**4.04 Replacement Reserve Fund.**

(a) Deposits to Replacement Reserve Fund. On the Closing Date, the parties will establish the Replacement Reserve Fund and Borrower will pay the Initial Deposit to Funding Lender for deposit into the Replacement Reserve Fund. Commencing on the date the first installment of principal and/or interest is due under the Project Note and continuing on the same day of each successive month until the Project Loan is paid in full, Borrower will pay the Monthly Deposit to Funding Lender for deposit into the Replacement Reserve Fund, together with its regular monthly payments of principal and/or interest as required by the Project Note. A transfer of funds into the Replacement Reserve Fund from the Repair Reserve Fund, pursuant to the terms of Section 4.03(e), if applicable, will not alter or reduce the amount of any deposits to the Replacement Reserve Fund.

(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 Capital Replacements pursuant to the terms of Section 6.06, Funding Lender may charge Borrower an amount sufficient to pay all reasonable costs and expenses charged by such third party inspector.

(ii) If there are sufficient funds in Replacement Reserve Fund, Funding Lender will be entitled, but not obligated, to deduct from the Replacement Reserve Fund the cost and expenses set forth in Section 4.04(b)(i). Funding Lender will be entitled to charge Borrower for such costs and expenses and Borrower will pay the amount of such item(s) to Funding Lender immediately after Notice from Funding Lender to Borrower of such charge(s).

(iii) If there are insufficient funds in the Replacement Reserve Fund, then Funding Lender will be entitled to charge Borrower for the costs and expenses specified in Section 4.04(b)(i), and Borrower will pay the amount of such item(s) to Funding Lender immediately after Notice from Funding Lender to Borrower of such charge(s).

(c) Adjustments to Replacement Reserve Fund. If the initial term of the Project Loan is greater than 120 months, then the following provisions will apply:

(i) Funding Lender reserves the right to adjust the amount of the Monthly Deposit based on Funding Lender’s assessment of the physical condition of the Mortgaged Property however, Funding Lender will not make such an adjustment prior to the date that is 120 months after the first installment due date, nor more frequently than every 10 years thereafter during the term of the Project Loan.

(ii) Borrower will pay the cost of any assessment required by Funding Lender pursuant to Section 4.04(c)(i) to Funding Lender immediately after Notice from Funding Lender to Borrower of such charge.

(iii) Upon Notice from Funding Lender or Servicer, Borrower will begin paying the Revised Monthly Deposit on the first monthly payment date that is at least 30 days after the date of Funding Lender’s or Servicer’s Notice. If Funding Lender or Servicer does not provide Borrower with Notice of a Revised Monthly Deposit, Borrower will continue to pay the Monthly Deposit or the Revised Monthly Deposit then in effect.

(d) Insufficient Amount in Replacement Reserve Fund. If Borrower requests disbursement from the Replacement Reserve Fund for a Capital Replacement in accordance with this Continuing Covenant Agreement in an amount which exceeds the amount on deposit in the Replacement Reserve Fund, Funding Lender will disburse to Borrower only the amount on deposit in the Replacement Reserve Fund. Borrower will pay all additional amounts required in connection with any such Capital Replacement from Borrower’s own funds.

(e) Reserved.

(f) Reserved.

(g) Disbursements from Replacement Reserve Fund.

(i) Requests for Disbursement. Funding Lender will disburse funds from the Replacement Reserve Fund as follows:

(A) Borrower’s Request. If Borrower determines, at any time or from time to time, that a Capital Replacement is necessary or desirable, Borrower will perform such Capital Replacement and request from Funding Lender, in writing, reimbursement for such Capital Replacement. Borrower’s request for reimbursement will include (1) a detailed description of the Capital Replacement performed, together with evidence, satisfactory to Funding Lender, that the cost of such Capital Replacement has been paid, and (2) if required by Funding Lender, lien waivers from each contractor and material supplier supplying labor or materials for such Capital Replacement.

(B) Funding Lender’s Request. If Funding Lender reasonably determines at any time or from time to time, that a Capital Replacement is necessary for the proper maintenance of the Mortgaged Property, it will so notify Borrower, in writing, requesting that Borrower obtain and submit to Funding Lender bids for all labor and materials required in connection with such Capital Replacement. Borrower will submit such bids and a time schedule for completing each Capital Replacement to Funding Lender within 30 days after Borrower’s receipt of Funding Lender’s Notice. Borrower will perform such Capital Replacement and request from Funding Lender, in writing, reimbursement for such Capital Replacement. Borrower’s request for reimbursement will include (1) a detailed description of the Capital Replacement performed, together with evidence, satisfactory to Funding Lender, that the cost of such Capital Replacement has been paid, and (2) if required by Funding Lender, lien waivers from each contractor and material supplier supplying labor or materials for such Capital Replacement.

(ii) Conditions Precedent. Disbursement from the Replacement Reserve Fund will be made no more frequently than once every Replacement Reserve Disbursement Period and, except for the final disbursement, no disbursement will be made in an amount less than the Minimum Replacement Disbursement Request Amount. Disbursements will be made only if the following conditions precedent have been satisfied, as determined by Funding Lender in Funding Lender’s Discretion:

(A) Each Capital Replacement has been performed and/or installed on the Mortgaged Property in a good and workmanlike manner with suitable materials (or in the case of a partial disbursement, performed and/or installed on the Mortgaged Property to an acceptable stage), in accordance with good building practices and all applicable laws, ordinances, rules and regulations, building setback lines and restrictions applicable to the Mortgaged Property, and has been paid for by Borrower as evidenced by copies of all applicable paid invoices or bills submitted to Funding Lender by Borrower at the time Borrower requests disbursement from the Replacement Reserve Fund.

(B) There is no condition, event or act that would constitute a default (with or without Notice and/or lapse of time).

(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 a bond or other security against loss in accordance with applicable law.

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

(h) Right to Complete Capital Replacements. If Borrower abandons or fails to proceed diligently with any Capital Replacement in a timely fashion or an Event of Default occurs and continues under this Continuing Covenant Agreement for 30 days after Notice of such failure by Funding Lender to Borrower, Funding Lender will have the right (but not the obligation) to enter upon the Mortgaged Property and take over and cause the completion of such Capital Replacement. However, no such Notice or cure period will apply in the case of such failure which could, in Funding Lender’s sole and absolute discretion, absent immediate exercise by Funding Lender of a right or remedy under this Continuing Covenant Agreement, result in harm to Funding Lender, tenants or third parties or impairment of the security given under this Continuing Covenant Agreement, the Security Instrument or any other Financing Document. 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 for 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 Capital Replacement and the payment, settlement or compromise of all bills and claims for materials and work performed in connection with the Capital Replacement) and do any and all things necessary or proper to complete any Capital Replacement, 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 any Capital Replacement, but Funding Lender may, in Funding Lender’s 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 Project Note, this Continuing Covenant Agreement, the Security Instrument and any other Financing Document pertaining to the protection of Funding Lender’s security and advances made by Funding Lender.

(i) Completion of Capital Replacements. Funding Lender’s disbursement of monies from the Replacement Reserve Fund or other acknowledgment of completion of any Capital Replacement in a manner satisfactory to Funding Lender in Funding Lender’s Discretion will not be deemed a certification by Funding Lender that the Capital Replacement 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 ensuring that all Capital Replacements are completed in accordance with all such requirements of any Governmental Authority.

(j) Reserved.

(k) Reserved.

B. The following definitions are added to Article XII:

“**Initial Deposit**” means $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

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

“**Monthly Deposit**” means $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

“**Replacement Reserve Deposit**” means the Initial Deposit, the Monthly Deposit and/or the Revised Monthly Deposit, as appropriate.

“**Replacement Reserve Disbursement Period**” means the interval between disbursements from the Replacement Reserve Fund, which interval will be no shorter than once a **[SERVICER MAY SELECT APPLICABLE PERIOD AND DELETE INAPPLICABLE PERIOD]** month **[OR]** quarter.

“**Replacement Reserve Fund**” means the account established pursuant to this Continuing Covenant Agreement to defray the costs of Capital Replacements.

“**Revised Monthly Deposit**” means the adjusted amount per month that Funding Lender determines Borrower must deposit in the Replacement Reserve Fund following any adjustment determination by Funding Lender pursuant to Section 4.04(c).