**Rider to Continuing Covenant Agreement – TEL**

**Single Purpose Entity Borrower (Loans $20,000,000 and Under)**

(Revised 6-27-2023)

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

A. Section 6.02 is deleted and replaced with the following:

**6.02 Compliance with Organizational Documents.** Borrower will at all times comply with all laws, regulations and requirements of any Governmental Authority relating to Borrower’s formation, continued existence and good standing in its state of formation and, if different, in the Property Jurisdiction. Borrower will at all times comply with its Organizational Documents. Borrower will do all things necessary to observe organizational formalities and will not merge or consolidate with any other Person. Borrower will not amend or restate its Organizational Documents if such change would cause the provisions set forth in those Organizational Documents not to comply with the requirements set forth in this Section 6.02 or 6.13.

B. Section 6.13 is deleted and replaced with the following:

**6.13 Single Purpose Entity Requirements.**

(a) Single Purpose Entity Requirements. Until the Indebtedness is paid in full, each Borrower and any SPE Equity Owner will remain a **“Single Purpose Entity**,**”** which means at all times since its formation it has satisfied, and after the Effective Date, it will continue to satisfy, each of the following conditions:

(i) It will not engage in any business or activity, other than the ownership, operation and maintenance of the Mortgaged Property and activities incidental thereto.

(ii) It will not acquire, own, hold, lease, operate, manage, maintain, develop or improve any assets other than the Mortgaged Property and such Personalty as may be necessary for the operation of the Mortgaged Property and will conduct and operate its business as presently conducted and operated.

(iii) Reserved

(iv) Reserved

(v) Reserved

(vi) Reserved

(vii) Reserved

(viii) Reserved

(ix) It will not commingle its assets with the assets of any other Person and will hold all of its assets in its own name.

(x) It will not acquire obligations or securities of its partners, members, shareholders or Affiliates or incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than the following:

(A) The Indebtedness and any Supplemental Loans.

(B) Customary unsecured trade payables incurred in the ordinary course of owning and operating the Mortgaged Property, provided such trade payables meet the following conditions:

(1) They are not evidenced by a promissory note.

(2) They are paid within 60 days of the date incurred.

(3) In the aggregate, they do not exceed at any time the Trade Payables Maximum.

(C) Reserved

(D) Reserved [Cross-Collateralized Loans]

(E) Reserved [Subordinate Debt]

(F) Soft unsecured debt characterized as deferred developer fees and soft unsecured partner loans required for the purpose of avoiding a default on the Indebtedness and, in each case, payable from excess cash flow only; provided, however, that if Soft Unsecured Debt is not applicable according to Section 1.05, the provisions of this Section 6.13(x)(x)(F) will be inapplicable.

(G) Reserved

(H) Reserved

(xi) It will file its own tax returns and maintain its records, books of account, bank accounts, financial statements, accounting records and other entity documents separate and apart from those of any other Person and will not list its assets as assets on the financial statement of any other Person; provided, however, that (A) Borrower will not be required to file its own tax returns if (1) it is treated as a “disregarded entity” for tax purposes and is not required to file tax returns under applicable law, or (2) it is required by applicable law to file consolidated tax returns, and (B) Borrower’s assets may be included in a consolidated financial statement of its Affiliate provided that (1) appropriate notation will be made on such consolidated financial statements to indicate the separateness of Borrower from such Affiliate and to indicate that Borrower’s assets and credit are not available to satisfy the debts and other obligations of such Affiliate or any other Person, and (2) such assets will also be listed on Borrower’s own separate balance sheet.

(xii) Except for capital contributions or capital distributions permitted under the terms and conditions of its organizational documents, it will only enter into any contract or agreement with any general partner, member, shareholder, principal or Affiliate of Borrower or any Guarantor, or any general partner, member, principal or Affiliate thereof, upon terms and conditions that are commercially reasonable and substantially similar to those that would be available on an arm’s-length basis with third parties.

(xiii) It will not maintain its assets in such a manner that will be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person.

(xiv) Except for each of the following, it will not assume or guaranty the debts or obligations of any other Person, hold itself out to be responsible for the debts of another Person, pledge its assets to secure the obligations of any other Person or otherwise pledge its assets for the benefit of any other Person, or hold out its credit as being available to satisfy the obligations of any other Person:

(A) Any guaranty that has been executed and delivered in connection with the Project Note.

(B) and (C) are reserved.

(xv) It will not make or permit to remain outstanding any loans or advances to any other Person except for those investments permitted under the Financing Documents and will not buy or hold evidence of indebtedness issued by any other Person (other than cash or investment-grade securities).

(xvi) Reserved

(xvii) It will hold itself out to the public as a legal entity separate and distinct from any other Person and conduct its business solely in its own name, will correct any known misunderstanding regarding its separate identity and will not identify itself or any of its Affiliates as a division or department of any other Person.

(xviii) Reserved

(xix) Reserved

(xx) It will pay (or cause the Property Manager to pay on behalf of Borrower from Borrower’s funds) its own liabilities (including salaries of its own employees and any fair and reasonable allocated portion of shared expenses with Affiliates) from its own funds; provided, however, that nothing in this Section 6.13(a)(xx) will require any member or partner of Borrower or any Borrower Principal to make any equity contribution to Borrower.

(xxi) Reserved

(xxii) Reserved

(xxiii) Reserved

(xxiv) Reserved

(xxv) Reserved

(xxvi) Reserved

(xxvii) Reserved

(xxviii) Reserved

(b) SPE Equity Owner Requirements. If SPE Equity Owner is marked “Not Applicable” in Section 1.02, then Borrower will not be required to maintain an SPE Equity Owner in its organizational structure during the term of the Project Loan and all references to SPE Equity Owner in this Continuing Covenant Agreement are not applicable.

(c) Effect of Transfer on Single Purpose Entity Requirements. Notwithstanding anything to the contrary in this Continuing Covenant Agreement, no Transfer will be permitted under Article VII unless the provisions of this Section 6.13 are satisfied at all times.

C. Section 6.35 is deleted and replaced with the following:

**6.35 Adequate Capitalization.** Borrower will maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character, and in light of its contemplated business operations, it will pay its debts and liabilities from its own assets as such debts and liabilities become due; provided, however, nothing in this Section 6.35 will require any member or partner of Borrower or any Borrower Principal to make any equity contribution to Borrower.