**Rider to Loan Agreement**

**Lease-Up Transaction – Credit Enhancement Required**

(Revised 3-26-2024)

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

A. The following table is added to Section 1.03:

|  |  |
| --- | --- |
| **Lease-Up Transaction – Credit Enhancement Required** | |
| Lease-Up Credit Enhancement: *(select one)* | |
|  | Lease-Up Credit Enhancement Reserve Deposit |
|  | Lease-Up Credit Enhancement Letter of Credit |
|  | Lease-Up Credit Enhancement Guaranty |
| Minimum DCR: \_\_\_\_:1.00, based on trailing 3-month (T-3) collections and T-3 Expenses, a \_\_\_-year amortization schedule,and if the Loan has a floating interest rate, an annual interest rate of \_\_\_\_\_\_\_\_% | |
| Minimum NRI: $\_\_\_\_\_\_\_\_\_\_, based on trailing 1-month (T-1) collections | |
| Required Lease-Up Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_ | |
| Underwritten Acceptable Other Income: $\_\_\_\_\_\_\_\_\_ | |
| Underwritten Fixed Expenses: $\_\_\_\_\_\_\_\_\_ | |
| Underwritten Management Fee: \_\_\_\_\_\_\_\_% of Effective Gross Income | |
| Underwritten Operating Expenses: $\_\_\_\_\_\_\_\_\_, which includes the Underwritten Management Fee | |
| *(See Sections 4.10, 5.54, 6.07, 6.43 and 7.05)* | |

B. Section 4.10 is deleted and replaced with the following:

**4.10 Lease-Up Credit Enhancement**.In connection with the Lease-Up Requirements, Borrower must make a Lease-Up Credit Enhancement Reserve Deposit, deposit a Lease-Up Credit Enhancement Letter of Credit, or provide a Lease-Up Credit Enhancement Guaranty.

(a) Lease-Up Credit Enhancement Reserve Fund. This Section 4.10(a) will apply if Lease-Up Credit Enhancement Reserve Deposit is selected in Section 1.03.

1. Deposit to Lease-Up Credit Enhancement Reserve Fund. Borrower and Lender agree that, as of the Effective Date, the Lease-Up Requirements have not been satisfied and that Borrower has established the Lease-Up Credit Enhancement Reserve Fund by depositing the Lease-Up Credit Enhancement Reserve Deposit with Lender on the Effective Date.

(ii) Right to Withdraw Funds from the Lease-Up Credit Enhancement Reserve Fund. Lender, or Loan Servicer on Lender’s behalf, may withdraw all or part of the Lease-Up Credit Enhancement Reserve Fund at any time and without Notice to Borrower and apply such withdrawn funds in accordance with Section 4.10(a)(iii) if either of the following occurs:

(A) On or after the Required Lease-Up Date, if the Lease-Up Requirements have not been satisfied, Lender or Loan Servicer may withdraw (A) funds in the amount required to make the Lease-Up Prepayment, and (B) to the extent Lease-Up Credit Enhancement remains after the Lease-Up Prepayment is made, funds in an amount up to the amount of the Lease-Up Prepayment Charge. Borrower will be responsible for payment of any portion of the Lease-Up Prepayment Charge that exceeds the Lease-Up Credit Enhancement. Upon application of the Lease-Up Prepayment, Lender will recalculate the monthly payments due under the Note in accordance with Section 6.43(e).

(B) An Event of Default has occurred and is continuing.

(iii) Application of Funds. If Lender, or Loan Servicer on Lender’s behalf, withdraws funds from the Lease-Up Credit Enhancement Reserve Fund, then Lender will apply such funds as follows:

(A) With respect to funds withdrawn pursuant to Section 4.10(a)(ii)(A), Lender will apply such funds first to the Lease-Up Prepayment and then, if any funds remain after the Lease-Up Prepayment is made, to the Lease-Up Prepayment Charge. Borrower will be responsible for payment of any portion of the Lease-Up Prepayment Charge that exceeds the Lease-Up Credit Enhancement.

(B) With respect to funds withdrawn pursuant to Section 4.10(a)(ii)(B), Lender will apply such funds, without restriction and without any specific order of priority, to the payment of any and all Indebtedness.

(iv) Release of Lease-Up Credit Enhancement Reserve Fund. Lender will return the funds in the Lease-Up Credit Enhancement Reserve Fund to Borrower within 30 days after the first of the following to occur:

(A) Payment of the Indebtedness in full, including all accrued but unpaid interest and prepayment charges.

(B) Provided no Event of Default exists, upon receipt of a written release request from Borrower if either (i) the Lease-Up Requirements have been satisfied before the Required Lease-Up Date or (ii) the Lease-Up Prepayment has been made, together with the Lease-Up Prepayment Charge.

(b)Lease-Up Credit Enhancement Letter of Credit. This Section 4.10(b) will apply if Lease-Up Credit Enhancement Letter of Credit is selected in Section 1.03.

(i) Deposit of Lease-Up Credit Enhancement Letter of Credit. Borrower and Lender agree that, as of the Effective Date, the Lease-Up Requirements have not been satisfied and that Borrower has deposited a Lease-Up Credit Enhancement Letter of Credit with Lender on the Effective Date.

(ii) Right to Draw Upon Lease-Up Credit Enhancement Letter of Credit. Lender, or Loan Servicer on Lender’s behalf, may draw upon all or part of the Lease-Up Credit Enhancement Letter of Credit at any time and without Notice to Borrower and apply the Proceeds in accordance with Section 4.10(b)(iv) if any of the following occurs:

(A) On or after the Required Lease-Up Date, if the Lease-Up Requirements have not been satisfied, Lender or Loan Servicer may draw upon the Lease-Up Credit Enhancement Letter of Credit (A) for the amount required to make the Lease-Up Prepayment, and (B) to the extent Lease-Up Credit Enhancement remains after the Lease-Up Prepayment is made, for an amount up to the amount of the Lease-Up Prepayment Charge. Borrower will be responsible for payment of any portion of the Lease-Up Prepayment Charge that exceeds the Lease-Up Credit Enhancement. Upon application of the Lease-Up Prepayment, Lender will recalculate the monthly payments due under the Note in accordance with Section 6.43(e).

(B) An Event of Default has occurred and is continuing.

(C) Subject to the provisions of Section 4.10(b)(iv)(B), at any time during the 30-day period prior to the expiration date of the Lease-Up Credit Enhancement Letter of Credit if Borrower fails to deliver a renewal or replacement Lease-Up Credit Enhancement Letter of Credit when required by Section 4.10(b)(iii), below, if applicable.

(iii) Renewal or Replacement of Lease-Up Credit Enhancement Letter of Credit. Until either (i) the Lease-Up Requirements have been satisfied or (ii) the Lease-Up Prepayment has been made (together with the Lease-Up Prepayment Charge), at least 30 days prior to the expiration date of the Lease-Up Credit Enhancement Letter of Credit, Borrower must deliver to Lender a renewal or replacement of the Lease-Up Credit Enhancement Letter of Credit which must also meet the requirements of this Section 4.10(b) and Section 11.16.

(iv) Application of Funds. If Lender, or Loan Servicer on Lender’s behalf, draws upon the Lease-Up Credit Enhancement Letter of Credit, then Lender will apply the Proceeds as follows:

(A) With respect to draws pursuant to Section 4.10(b)(ii)(A), Lender will apply such Proceeds first to the Lease-Up Prepayment and then, if any Proceeds remain after the Lease-Up Prepayment is made, to the Lease-Up Prepayment Charge. Borrower will be responsible for payment of any portion of the Lease-Up Prepayment Charge that exceeds the Lease-Up Credit Enhancement.

(B) With respect to draws pursuant to Section 4.10(b)(ii)(B), Lender will apply such funds, without restriction and without any specific order of priority, to the payment of any and all Indebtedness.

(C) With respect to draws pursuant to Section 4.10(b)(ii)(C), then Lender will hold the Proceeds in escrow until the first to occur of the following:

(1) Any event or condition that would have entitled Lender to draw upon the Lease-Up Credit Enhancement Letter of Credit under Section 4.10(b)(ii)(A) or Section 4.10(b)(ii)(B), in which case Lender may apply the Proceeds as described in Section 4.10(b)(iv)(A) or Section 4.10(b)(iv)(B), as applicable.

(2) The satisfaction of the conditions for release of the Lease-Up Credit Enhancement Letter of Credit under Section 4.10(b)(v), in which case Lender will release the Proceeds to Borrower.

Either Lender or Loan Servicer may hold the Proceeds. Neither Lender nor Loan Servicer will have any obligation to invest the Proceeds or to pay to Borrower interest on the Proceeds, nor will Lender or Loan Servicer have any liability or obligation to Borrower with regard to loss of the Proceeds except by reason of its own gross negligence or intentional misconduct.

(v) Release of Lease-Up Credit Enhancement Letter of Credit; Return of Proceeds. Lender will release the Lease-Up Credit Enhancement Letter of Credit or, as applicable, return the Proceeds to Borrower, within 30 days after the first of the following to occur:

(A) Payment of the Indebtedness in full, including all accrued but unpaid interest and prepayment charges.

(B) Provided no Event of Default exists, upon receipt of a written release request from Borrower if either (i) the Lease-Up Requirements have been satisfied, or (ii) the Lease-Up Prepayment has been made, together with the Lease-Up Prepayment Charge.

(c)Lease-Up Credit Enhancement Guaranty. This Section 4.10(c) will apply if Lease-Up Credit Enhancement Guaranty is selected in Section 1.03. Guarantor will provide a Lease-Up Credit Enhancement Guaranty as further detailed in the Lease-Up Credit Enhancement Rider to the Guaranty.

C. Section 5.54 is deleted and replaced with the following:

**5.54** **Completion of Work**. Except for any Repairs identified on the Repair Schedule of Work in Section 1.03, all work in connection with the construction of the Mortgaged Property (or the most recent renovation or rehabilitation of the Mortgaged Property, if applicable) (“**Prior Work**”) is complete. The Prior Work has been completed in a good and workmanlike manner, free and clear of all Liens, and in accordance with all plans and specifications and all applicable laws, ordinances, rules, regulations, building setback lines and restrictions applicable to the Mortgaged Property. Borrower has paid in full all costs for labor, materials and other costs related to the Prior Work.

D. Section 6.07(b)(i) is deleted and replaced with the following:

(i) Within 15 days after the end of each calendar month prior to the satisfaction of the Lease-Up Requirements (or the making of a Lease-Up Prepayment, if earlier), 25 days after the end of each calendar quarter after the satisfaction of the Lease-Up Requirements (or the making of a Lease-Up Prepayment, if earlier) and prior to Securitization, and within 35 days after each calendar quarter after Securitization, each of the following:

(A) A Rent Schedule dated no earlier than the date that is 5 days prior to the end of such quarter, or month, as applicable.

(B) A statement of income and expenses for Borrower that is either of the following:

(1) For the 12-month period ending on the last day of such quarter, or month, as applicable.

(2) If at the end of such quarter, or month, as applicable, Borrower or any Affiliate of Borrower has owned the Mortgaged Property for less than 12 months, for the period commencing with the acquisition of the Mortgaged Property by Borrower or its Affiliate, and ending on the last day of such quarter, or month, as applicable.

(C) When requested by Lender, a balance sheet showing all assets and liabilities of Borrower as of the end of that fiscal quarter, or month, as applicable.

E. Section 6.43 is deleted and replaced with the following:

**6.43 Lease-Up Requirements**.

(a) Before the Lease-Up Requirements are satisfied (unless a Lease-Up Prepayment has already been made), Lender will from time to time upon Borrower’s written request determine whether the Lease-Up Requirements have been satisfied. Borrower may make such written request no more often than once every 30 days. Lender may also make such determination at any other time and from time to time as Lender may elect in its sole discretion, with or without Borrower’s written request. To the extent not previously provided, Borrower must provide to Lender such information as Lender may require to determine whether the Lease-Up Requirements have been satisfied.

(b) For the purposes of this Loan Agreement, the “**Lease-Up Requirements**”will be deemed satisfied if Lender determines that:

(i) The Minimum DCR Requirement has been satisfied.

(ii) The Minimum NRI Requirement has been satisfied.

(c) If Lease-Up Credit Enhancement Reserve Deposit or Lease-Up Credit Enhancement Letter of Credit is selected in Section 1.03, this Section 6.43(c) will apply. Unless Lender determines that the Lease-Up Requirements have been satisfied prior to the Required Lease-Up Date, Lender will be entitled to apply the Lease-Up Credit Enhancement to make a Lease-Up Prepayment and, to the extent any Lease-Up Credit Enhancement remains after the Lease-Up Prepayment is made, to pay the Lease-Up Prepayment Charge, all in accordance with Section 4.10. If any portion of the Lease-Up Prepayment Charge remains unpaid after the application of the Lease-Up Credit Enhancement, Borrower will be liable for the outstanding balance.

(d) If Lease-Up Credit Enhancement Guaranty is selected in Section 1.03, this Section 6.43(d) will apply. Unless Lender determines that the Lease-Up Requirements have been satisfied prior to the Required Lease-Up Date, Borrower must pay to Lender within 5 days after Lender’s demand the Lease-Up Prepayment and the Lease-Up Prepayment Charge, which demand may be made by Lender at any time on or after the Required Lease-Up Date. Any amounts received by Lender from Guarantor pursuant to the Lease-Up Credit Enhancement Guaranty will be applied first to the Lease-Up Prepayment and then to the Lease-Up Prepayment Charge. If Guarantor fails to satisfy in full its obligations under the Lease-Up Credit Enhancement Guaranty, or if any portion of the Lease-Up Prepayment or the Lease-Up Prepayment Charge remains unpaid after the application of funds received pursuant to the Lease-Up Credit Enhancement Guaranty, Borrower will remain liable for the outstanding balance.

(e) Notwithstanding anything to the contrary in the Note or in any other Loan Document, upon the application of the Lease-Up Prepayment:

1. If the Note provides for an Amortization Period, Lender will recalculate the monthly installment of principal and interest due under the Note to an amount that would fully amortize the outstanding principal balance of the Note as of the date of such prepayment over the remainder of the Amortization Period, which calculation by Lender will be binding and conclusive absent manifest error.
2. If the Note does not provide for an Amortization Period, then Lender will recalculate the monthly installment of interest due under the Note.

F. Section 7.05(a)(xix) is deleted and replaced with the following*:*

(xix) Either (i) Securitization has occurred, or (ii) the Lease-Up Requirements have been satisfied, or (iii) a Lease-Up Prepayment has been made (together with the Lease-Up Prepayment Charge).

G. The following definitions are added to Article XII:

“**Acceptable Other Income**” means the lesser of Actual Acceptable Other Income or the Underwritten Acceptable Other Income.

“**Actual Acceptable Other Income**” means the averaged and annualized amount of any other income derived from the Mortgaged Property, other than Gross Potential Rent and any interest income, that has been collected consistently by Borrower during the preceding 3 months and that is acceptable to and approved by Lender in Lender’s sole discretion.

“**Actual Fixed Expenses**” means: (i) Taxes for the Mortgaged Property, (ii) Insurance premiums, and (iii) expenses for utilities, water and sewer for the preceding 3 months. Capital expenditures are specifically excluded from this definition. For the purposes of determining the amount of Taxes for the Mortgaged Property, Lender will have the right in its discretion to base its determination on the actual taxes in place, the next year’s bill, or any assessed value published by the applicable Governmental Authority on its website that will take effect within the 12 months following the date of determination. For the purposes of determining the amount of Insurance premiums, Lender may base its determination on the actual premiums in place or the premiums to be in effect within the next 12 months, if known.

“**Actual Operating Expenses**” means operating expenses for the Mortgaged Property for the preceding 3 months, including the expenses for repair and maintenance of the Mortgaged Property, the Management Fee, payroll expenses, general and administrative expenses, and other miscellaneous operating expenses. Capital expenditures are specifically excluded from this definition.

“**Amortization Period**” is defined in the Note.

“**Bad Debt**” means that portion of Gross Potential Rent which is assumed not to be collected by Borrower due to tenant non-payment.

“**Concessions**” means: (i) rental abatements, (ii) “free” rent, (iii) inducements, and (iv) other incentives.

“**Effective Gross Income**” means the positive annualized amount of the Gross Potential Rent, net of the Concessions, subject to the Vacancy Rate, minus Bad Debt, plus the Acceptable Other Income.

“**Expenses**” means the Fixed Expenses plus Operating Expenses plus the annualized amount of the Monthly Replacement Reserve Deposit (even if such deposit is deferred).

“**Fixed Expenses**” means the greater of: (i) the annualized Actual Fixed Expenses for the Mortgaged Property, or (ii) the Underwritten Fixed Expenses.

“**Gross Potential Rent**” means the sum of: (i) monthly rents actually collected from tenants under residential Leases identified in each of the most current rent rolls, and (ii) achievable monthly rents attributable to residential vacant units, calculated at market rents, as determined by Lender in Lender's Discretion. (Market rents attributable to employee and model units may be included in the calculation of Gross Potential Rent if they are also included in operating expenses.)

“**Lease-Up Credit Enhancement**” means (i) if Lease-Up Credit Enhancement Reserve Deposit is selected in Section 1.03, the funds in the Lease-Up Credit Enhancement Reserve Fund; (ii) if Lease-Up Credit Enhancement Letter of Credit is selected in Section 1.03, the Lease-Up Credit Enhancement Letter of Credit and the Proceeds of the Lease-Up Credit Enhancement Letter of Credit; and (iii) if Lease-Up Credit Enhancement Guaranty is selected in Section 1.03, the Lease-Up Credit Enhancement Guaranty.

“**Lease-Up Credit Enhancement Amount**” is defined in Section 1.03 in the “Other Reserve Funds – Closing Date Deposits” table

“**Lease-Up Credit Enhancement Guaranty**” means the obligation of Guarantor(s) under the Guaranty to pay the Lease-Up Prepayment and the Lease-Up Prepayment Charge**.**

“**Lease-Up Credit Enhancement Letter of Credit**”means one or more Letters of Credit in an amount equal to the Lease-Up Credit Enhancement Amount and satisfying the provisions of Section 11.16.

“**Lease-Up Credit Enhancement Reserve Deposit**”means a cash deposit in the amount of the Lease-Up Credit Enhancement Amount.

“**Lease-Up Credit Enhancement Reserve Fund**”is the fund established pursuant to Section 4.10(a).

“**Lease-Up Prepayment**” means a prepayment of the Loan in an amount equal to the lesser of: (i) the Lease-Up Credit Enhancement Amount, or (ii) the amount that will cause the Mortgaged Property to achieve the Minimum DCR Requirement, as determined by Lender. The Lease-Up Prepayment must be made if required under the terms of this Loan Agreement notwithstanding that the Loan may be in the Lockout Period or Defeasance Period.

“**Lease-Up Prepayment Charge**” means the Prepayment Charge due in connection with the Lease-Up Prepayment, calculated according to the Prepayment Structure selected in this Loan Agreement.

“**Lease-Up Requirements**” is defined in Section 6.43.

“**Management Fee**” means the Property Manager’s contractual management fee at the time of the applicable calculation.

“**Minimum DCR**” is defined in Section 1.03.

“**Minimum DCR Requirement**” means during the immediately preceding 3 consecutive months, the NOI of the Mortgaged Property supports an average debt coverage ratio of at least the Minimum DCR specified in Section 1.03.

“**Minimum NRI**” is defined in Section 1.03.

“**Minimum NRI Requirement**” means during the immediately preceding month, the NRI equals at least the Minimum NRI specified in Section 1.03.

“**NOI”** means the positive, annualized amount by which Effective Gross Income exceeds Expenses**.**

“**NRI**” means Gross Potential Rents, net of Concessions, subject to the Vacancy Rate, minus Bad Debt, plus short term Lease premiums (up to a maximum of 5% of the units in the Mortgaged Property, net of any prepaid revenues), plus any payments from any Governmental Payor Program if the Loan is a Seniors Housing Loan.

“**Operating Expenses**” means the greater of: (i) the annualized Actual Operating Expenses for the Mortgaged Property, or (ii) the Underwritten Operating Expenses.

“**Prior Work**” is defined in Section 5.54.

“**Required Lease-Up Date**” is as specified in Section 1.03. Borrower may request an extension of the Required Lease-Up Date at least 30 days before the then-current Required Lease-Up Date, which extension will be granted or denied by Lender in its sole discretion and will be conditioned on, among other things, the payment to Lender of a review fee of $10,000 and an extension fee in an amount to be determined by Lender consistent with its then-current practices.

“**Underwritten Acceptable Other Income**” is defined in Section 1.03.

“**Underwritten Fixed Expenses**” is defined in Section 1.03.

“**Underwritten Management Fee**” is defined in Section 1.03.

“**Underwritten Operating Expenses**” is defined in Section 1.03.

“**Vacancy Rate**” means the greater of: (i) actual vacancy, or (ii) 5%, as determined by Lender. Units occupied by employees and model units will be deemed occupied for purposes of calculating the Vacancy Rate.