**Rider to Loan Agreement**

**Seniors Housing – Operating Lease**

(Revised 6-14-2022)

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

# A. Section 5.39 is deleted and replaced with the following:

### **5.39 Seniors Housing Operator.**

### (a)Any management or similar agreement or Operating Lease between Borrower and Operator or between Operator and any Property Manager or Facility Operator is (i) in full force and effect, and (ii) upon terms which are commercially reasonable and substantially similar to those available in an arm’s-length transaction with unaffiliated third parties.

### (b) There is no default, breach or violation existing under any management or similar agreement or Operating Lease by any party thereto and no event (other than payments due but not yet delinquent) which, with the passage of time or with notice and the expiration of any grace or cure period, would constitute a default, breach or violation by any party under any management or similar agreement or Operating Lease.

### B. Sections 6.07(d) and 6.07(e) are deleted and replaced with the following:

### (d) Form of Statements; Audited Financials. A natural person having authority to bind Borrower (or, as the context requires, the SPE Equity Owner, Operator or Guarantor) acting in his or her capacity as a manager, general partner or an officer of Borrower, SPE Equity Owner, Operator or Guarantor, as applicable, and not in his or her individual capacity, will certify each of the statements, schedules and reports required by Sections 6.07(b), 6.07(c), 6.07(f) and 6.07(i) to be complete and accurate. Each of the statements, schedules and reports required by Sections 6.07(b), 6.07(c), 6.07(f) and 6.07(i) will be in such form and contain such detail as Lender may reasonably require. Lender also may require that any of the statements, schedules or reports listed in Sections 6.07(b), 6.07(c), 6.07(f) and 6.07(i)be audited at Borrower’s expense by independent certified public accountants acceptable to Lender, at any time when an Event of Default has occurred and is continuing or at any time that Lender, in its reasonable judgment, determines that audited financial statements are required for an accurate assessment of the financial condition of Borrower or of the Mortgaged Property.

### (e) Failure to Timely Provide Financial Statements. If Borrower fails to provide**,** or cause to be provided, in a timely manner the statements, schedules and reports required by Sections 6.07(b), 6.07(c), 6.07(f) and 6.07(i), Lender will give Notice to Borrower specifying the statements, schedules and reports required by Sections 6.07(b), 6.07(c), 6.07(f) and 6.07(i) that Borrower has failed to provide or cause to be provided. If Borrower has not provided or caused to be provided the required statements, schedules and reports within 10 Business Days following such Notice, then (i) Borrower will pay a late fee of $500 for each late statement, schedule or report, plus an additional $500 per month that any such statement, schedule or report continues to be late, and (ii) Lender will have the right to have the books and records relating to the Mortgaged Property audited, at Borrower’s expense, by independent certified public accountants selected by Lender in order to obtain such statements, schedules and reports, and all related costs and expenses of Lender will become immediately due and payable and will become an additional part of the Indebtedness as provided in Section 9.02. Notice to Borrower of Lender’s exercise of its rights to require an audit will not be required in the case of an emergency, as determined in Lender’s Discretion, or when an Event of Default has occurred and is continuing.

## C. Section 6.07(i) is deleted and replaced with the following:

## (i) Borrower will cause Operator to furnish Lender each of the following:

## (i) If, in connection with this Loan, the Borrower purchased the Mortgaged Property, then a statement of income and expenses for Operator’s operation of the Mortgaged Property from the origination date to the end of the first full calendar quarter following such origination date, such statement to be provided within 25 days after the end of such quarter; or, for all other cases (for example, a refinance of a loan, a purchase of partnership or other interests, or new debt being placed on the Mortgaged Property), a statement of income and expenses for Operator’s operation of the Mortgaged Property for the trailing 6 months, such statement to be provided within 25 days after the end of such quarter.

(ii) After Borrower has caused Operator to furnish such statements required by Section 6.07(i)(i) above, within 25 days after the end of each subsequent calendar quarter of Operator, the following:

### (A) A Rent Schedule.

(B) A statement of income and expenses for Operator’s operation of the Mortgaged Property that is either of the following:

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

(2) If at the end of such quarter 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.

(iii) Within 25 days after the end of each fiscal quarter of Operator, a statement of change in financial position of Borrower, a balance sheet showing all assets and liabilities of Operator relating to the Mortgaged Property as of the end of that fiscal quarter.

(iv) Within 90 days after the end of each fiscal year of Operator, each of the following:

(A) An annual statement of income and expenses for Operator’s operation of the Mortgaged Property for that fiscal year.

(B) A statement of changes in financial position of Borrower relating to the Mortgaged Property for that fiscal year.

(C) A balance sheet showing all assets and liabilities of Operator relating to the Mortgaged Property as of the end of that fiscal year and a profit and loss statement for Operator.

(D) An accounting of all security deposits held pursuant to all Leases, including the name of the institution (if any) and the names and identification numbers of the accounts (if any) in which such security deposits are held and the name of the person to contact at such financial institution, along with any authority or release necessary for Lender to access information regarding such accounts.

(v) Prior to a Securitization, if applicable, and thereafter upon Lender’s reasonable request:

(A) A monthly Rent Schedule and a monthly statement of income and expenses for Operator’s operation of the Mortgaged Property.

(B) Such other financial information or property management information (including information on tenants under Leases to the extent such information is available to Operator, copies of bank account statements from financial institutions where funds owned or controlled by Operator are maintained, and an accounting of security deposits) as may be required by Lender from time to time.

# D. Section 6.32 is deleted and replaced with the following:

# **6.32 Additional Covenants Regarding Operator.**

###### (a) Borrower will furnish to Lender (i) within 5 days after the receipt by Borrower from Operator, copies of all notices of Borrower’s default or failure to pay or perform an obligation under the Operating Lease, and/or (ii) immediately upon the issuance by Borrower to Operator, copies of all notices of Operator’s default or failure to pay or perform an obligation under the Operating Lease.

###### (b) Without the prior written approval of Lender, Borrower will not take any of the following actions:

###### (i) Surrender, terminate, cancel, modify, renew, or extend the Operating Lease.

###### (ii) Permit the change of the Operator.

###### (iii) Enter into any other agreement relating to the operation of the Facility with the Operator or any other Person.

###### (iv) Consent to the assignment by the Operator of its interest under the Operating Lease or similar agreement.

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###### (c) If at any time Lender consents to the appointment of a new Facility Operator, such new operator and Borrower will, as a condition of Lender’s consent, execute an assignment of operating agreement, in a form acceptable to Lender in Lender’s Discretion. If any such replacement operator is an Affiliate of Borrower, and if a nonconsolidation opinion was delivered at the origination of the Loan, Borrower will deliver to Lender an updated nonconsolidation opinion in form and substance satisfactory to Lender with regard to nonconsolidation.

### E. Section 7.01(g) is deleted and replaced with the following:

###### (g) Any Transfer described in any of Sections 7.01(b), 7.01(c), 7.01(d) and 7.01(e); provided, however, that for purposes of this Section 7.01(g), 7.01(b), 7.01(c), 7.01(d) and 7.01(e) are modified to replace the word “Borrower” or the phrase “Borrower or any Designated Entity for Transfers”, as applicable, with “Operator.”

### F. Sections 9.01(x) and 9.01(y) are deleted and replaced with the following:

###### (x) With regard to the Operating Lease:

###### (i) The Operating Lease is terminated without Lender’s consent for any reason prior to the stated term of the Operating Lease or during any renewal period of the Operating Lease.

###### (ii) Operator fails to exercise any or all renewal options contained in the Operating Lease.

###### (iii) Borrower and Operator amend, modify, or revise in any way the Operating Lease without the prior written consent of Lender.

###### (iv) A default occurs and is continuing under the Operating Lease.

###### Notwithstanding the foregoing, it will not be an Event of Default upon the occurrence of any of (i), (ii), or (iv) if Borrower has entered into a new Operating Lease for the Facility with a term commencing upon the termination of the existing Operating Lease (or as to circumstances described in clause (iv), commencing upon the termination of the existing Operating Lease, which will be on a date agreed to by Lender, in Lender’s sole discretion), containing the same terms and conditions as the existing Operating Lease or including such other terms and conditions as Lender may have approved in writing, with a new operator for the Facility which Lender has approved in writing prior to the execution of the new Operating Lease, which approval will be given in Lender’s sole discretion in accordance with the terms of Sections 6.32(b) and 6.32(c).

###### (y) Any failure by Operator to perform any of its obligations as and when required under any Loan Document which continues beyond the applicable cure period, if any, specified in that Loan Document.

# G. The following definitions are added to Article XII:

###### “**Operating Lease**” means the OperatingLease described in Section 1.06, with the date specified in Section 1.06, between Borrower, as landlord, and Operator, as tenant, leasing the Land and Improvements, together with certain personal property used in connection with the Land and Improvements, as described in the Lease, including all modifications, extensions, renewals, and replacements.

# “**Operator**” means the Person identified as such in Section 1.06.