

FIRST AMENDMENT TO GROUND LEASE

THIS FIRST AMENDMENT TO GROUND LEASE (this “**Amendment**”) is entered into as of [_____], 2024, in San Francisco, California, by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (“**City**” or “**Landlord**”), represented by the Mayor, acting through its Real Estate Division and the Mayor's Office of Housing and Community Development (“**MOHCD**”), and 735 DAVIS SENIOR LP, a California limited partnership (“**Tenant**”).

RECITALS

This Amendment is made with reference to the following facts and circumstances:

A. City and Tenant previously entered into that certain Ground Lease, dated as of May 19, 2019 (the “**Lease**”), and that certain Memorandum of Ground Lease dated as of May 30, 2019, and recorded in the Official Records on May 31, 2019 as Document Number 2019-K777036-00, for the lease of the real property located at 735 Davis Street in San Francisco, California, Assessor’s Parcel Block 0140, Lot 009, 010, & 011 (formerly 008-0140) (the “**Premises**”). Block 0140, Lots 009 and 010 shall be referred to herein as the “**Residential Parcel**” and Block 0140, Lot 011 shall be referred to herein as the “**Commercial Parcels**.”

B. Tenant has developed the Premises with 52 units of affordable housing, plus one managers unit, for low-income persons, including 15 units set aside for homeless seniors (the “**Residential Project**”), and a 1,260 ground floor commercial spaces (the “**Commercial Project**”).

C. Section 14.02 of the Lease states if Tenant subdivides the Commercial Space from the Residential Space, the City will not unreasonably withhold consent to a partial assignment of this Lease to an Affiliate of Tenant who would lease the Commercial Space (the “Commercial Lessee”). As part of such conveyance, City intends to enter into a Commercial Ground Lease with Broadway Davis Retail Associates LLC for the Commercial Parcels, in accordance with all applicable approvals and MOHCD’s Commercial Underwriting Guidelines and intends to amend the Lease to remove the Commercial Parcels and obligations related to the Commercial Project from the Tenant’s leasehold under the Lease.

D. The parties now desire to modify the Lease on the terms and conditions as set forth herein.

AGREEMENT

ACCORDINGLY, in consideration of the matters described in the foregoing Recitals, and for other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, the City and Tenant agree as follows:

1. **Lease Amendments**. The Lease is hereby amended as follows:
 - a. As used in the Lease the terms (1) Site shall only mean the Residential Premises and shall not include the Commercial Premises and (2) Project shall not include the Commercial Project.

- b. Section 9.02 is amended as follows (additions in double underline; deletions in ~~strikethrough~~):

9.02 Permitted Uses and Occupancy Restrictions

The permitted uses of the Project are limited to 52 units of affordable rental housing for low- and moderate income seniors plus one manager's unit, (collectively, the "Residential Units"), and common areas, ~~and approximately 1,260 square feet of commercial uses.~~ Upon the completion of construction, one hundred percent (100%) of the Residential Units, with the exception of the manager's unit, in the Project shall be occupied or held vacant and available for rental by Low Income and Moderate Income Households. In addition, fifteen (15) of the Residential Units must be set aside for Homeless Seniors, per LOSP Program requirements; provided however that this requirement shall only apply so long as the Project receives LOSP subsidy funding or other funding for all such units designated as set aside for Homeless Seniors. Residential Units shall be occupied and rented in accordance with all applicable restrictions imposed on the Project by this Ground Lease. "**Homeless Seniors**" means the referring agency's definition of homeless senior household for initial occupancy and upon available vacancies thereafter, as per the LOSP contract or other funding sources.

- c. The following are deleted from the Lease: the last sentence of Section 14.01, all but the first three sentences of Section 14.02 and 48.10(d).
- d. Attachment 1 (Legal Description of the Site) of the Lease is hereby deleted and replaced in its entirety with the attached Attachment 1.

2. No Joint Venture. This Amendment or any activity by the City hereunder does not create a partnership or joint venture between the City and Tenant relating to the Lease or otherwise. This Amendment does not constitute authorization or approval by the City of any activity conducted by Tenant, and the City shall in no way be responsible for the acts or omissions of Tenant on the Premises or otherwise.

3. Attorneys Fees. In the event a dispute arises concerning this Amendment, the party not prevailing in such dispute shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees. For purposes of this Amendment, reasonable fees of attorneys of City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

4. References. No reference to this Amendment is necessary in any instrument or document at any time referring to the Lease. Any future reference to the Lease shall be deemed a reference to such document as amended hereby.

5. Applicable Law. This Amendment shall be governed by, construed and enforced in accordance with the laws of the State of California.

6. **Further Instruments.** The parties hereto agree to execute such further instruments and to take such further actions as may be reasonably required to carry out the intent of this Amendment.

7. **Effective Date.** The date of which this Amendment shall become effective is as of the date this Amendment is duly executed and exchanged by the parties hereto.

8. **Miscellaneous.** Except as expressly modified herein, the terms, covenants and conditions of the Lease shall remain unmodified and in full force and effect. The Lease as amended by this Amendment constitutes the entire agreement of the parties concerning the subject matter hereof, and supersedes and cancels any and all previous negotiations, agreements, or understandings, if any, regarding the matters contained herein. The execution of this Amendment shall not constitute a waiver of relinquishment of any rights that City may have relating to the Lease. Tenant and City hereby ratify and confirm all of the provisions of the Lease as amended by this Amendment.

[signatures follow]

In witness whereof, the parties hereto have executed this Amendment as of the date written above.

TENANT: 735 DAVIS SENIOR LP,
a California limited partnership

By: 735 Davis Senior BRIDGE LLC,
a California limited liability company
its managing general partner

By: MCB Family Housing, Inc.
a California nonprofit public benefit
corporation,
its sole member and manager

By: _____
Name: Rebecca Hlebasko
Its: Vice President

By: JSCo 735 Davis Senior LLC,
a California limited liability company
its administrative general partner

By: John Stewart Company,
a California corporation,
its sole member and manager

By: _____
Name: Jack D, Gardner
Its: Chairman of the Board

LANDLORD:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
Andrico Q. Penick
Director of Property

By: _____
Daniel Adams
Director, Mayor's Office of Housing and Community Development

APPROVED AS TO FORM:

DAVID CHIU,
City Attorney

By: _____
Deputy City Attorney

Attachment 1

LEGAL DESCRIPTION OF THE SITE

To Be Added

Street Address: 735 Davis Street, San Francisco, CA