

**AMENDED AND RESTATED SECURED RESIDENTIAL PROMISSORY NOTE**

(735 Davis Residential Component)  
(Affordable Housing Bond Program  
Inclusionary Affordable Housing Program)

Principal Amount: \$ \_\_\_\_\_

San Francisco, CA

Date: \_\_\_\_\_, 2019

FOR VALUE RECEIVED, the undersigned, **735 DAVIS SENIOR LP**, a California Limited Partnership ("Maker"), hereby promises to pay to the order of the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation, or holder (as the case may be, "Holder"), the principal sum \_\_\_\_\_ and No/100 Dollars (\$ \_\_\_\_\_) (the "Residential Loan Amount"), or so much of the Residential Loan Amount as may be disbursed from time to time pursuant to the Agreement described in **Section 1** below, as provided in this Residential Note.

1. Agreement.

1.1 Previous Funding. Pursuant to a Loan Agreement dated May 12, 2017 and the First Amendment to the Loan Agreement dated August 16, 2018, by and between Holder and Maker, Holder previously made a loan in the amount of Two Million Two Hundred Thousand and No/100 Dollars (\$2,200,000.00) (the "Original Loan") for the purpose to conduct predevelopment activities in support of the construction of a multifamily rental housing development comprised of 53 units affordable for low- and moderate-income households, including an approximately 1,000 square foot commercial space (the "Project"). The Original Loan is further evidenced by a Secured Promissory Note dated August 16, 2018, executed by Maker in favor of Holder ("Original Note).

1.2 Increased Funding Amount. Holder is making an additional loan of \_\_\_\_\_ and No/100 Dollars (\$ \_\_\_\_\_) (the "Additional Loan") to Maker for the completion of predevelopment, construction and permanent financing, such that the Original Loan is increased to \$ \_\_\_\_\_ (the "Loan"). This Amended and Restated Secured Residential Promissory Note (this "Residential Note") reflects the Original Loan and the Additional Loan and amends, restates and replaces the Original Residential Note in its entirety. This Residential Note is given under the terms of an Amended and Restated Loan Agreement by and between Maker and Holder (the "Agreement") dated as of the date set forth above, which Agreement is incorporated herein by reference. Maker's obligations under this Residential Note and the Agreement are secured by that certain Residential Deed of Trust, Assignment Of Rents, Security Agreement And Fixture Filing dated as of the date of this Residential Note, made by Maker for the benefit of Holder ("Residential Deed of Trust"). Definitions and rules of interpretation set forth in the Agreement apply to this Residential Note. In the event of any inconsistency between the Agreement and this Residential Note, this Residential Note will control. Upon execution of this Residential Note, the Original Note shall be cancelled and returned to Maker.

2. Interest. Interest will accrue on the principal balance outstanding under this Residential Note from time to time at the rate of [TBD: \_\_\_\_\_ one-three percent (1-3%)] per annum, simple interest, from the date of disbursement of funds by Holder through the date of full payment of all amounts owing under the City Documents. Interest will be calculated on the basis of actual days elapsed and a 360-day year, which will result in higher interest charges than if a 365-day year were used.

3. Default Interest Rate. Upon the occurrence of an Event of Default under any City Document, interest will be deemed to have accrued on the outstanding principal balance of the Loan at a compounded annual rate equal to the lesser of: (a) ten percent (10%); or (b) the maximum lawful rate of interest, commencing on the date the Funding Amount is disbursed through the earlier of: (x) the date on which the Event of Default is cured; or (y) the date on which all amounts due under the City Documents are paid to Holder. Maker acknowledges and agrees that the default interest that must be paid in the event of an Event of Default pursuant to this Section represents a reasonable sum considering all the circumstances existing on the date of this Residential Note and represents a fair and reasonable estimate of the costs that will be sustained by Holder if Maker defaults. Maker further agrees that proof of actual damages would be costly and inconvenient and that default interest will be paid without prejudice to Holder's right to collect any other amounts to be paid or to exercise any of its other rights or remedies under any City Document.

4. Repayment of Funding Amount.

4.1 Subject to Section 13.4 of the Agreement, Maker must make annual payments of principal (each, a "Payment") in an amount equal to the Residual Receipts, if any, attributable to the prior calendar year, beginning on the first June 30th after the end of the calendar year of the Completion Date, and continuing each June 30<sup>th</sup> thereafter up to and including the Maturity Date, as defined below (each, a "Payment Date"). All Payments will be applied to the following in the following order: (a) costs and fees incurred and unpaid; (b) accrued and unpaid interest; and (c) reduction of the principal balance of the Loan. The unpaid principal balance of the Loan, together with all accrued and unpaid interest and unpaid costs and fees incurred, will be due and payable on the date that is the later of (a) the Fifty-Seventh (57<sup>th</sup>) anniversary of the date the Residential Deed of Trust is recorded in the Recorder's Office of San Francisco County or (b) the Fifty-Fifth (55<sup>th</sup>) anniversary of the Conversion Date (the "Maturity Date"). Any Payment Date, including any Excess Proceeds Payment Date and the Maturity Date, that falls on a weekend or holiday will be deemed to fall on the next succeeding business day.

4.2 Subject to Section 13.4 of the Agreement, Maker must make payments of principal and interest (each, an "Excess Proceeds Payment") in an amount equal to the Excess Proceeds (as determined below), if any, on the date that is thirty (30) days after the later of the date on which Maker receives its Form 8609 from the California Tax Credit Allocation Committee or the date on which Maker receives Excess Proceeds from its limited partner or other financing sources (the "Excess Proceeds Payment Date"), in accordance with HCD if applicable. The allocation of Excess Proceeds to repay the Commercial Note shall be determined pursuant to a cost allocation method attributable to the Retail Portion of the Commercial Space established by Maker and reasonably agreed to by the Holder, and Holder agrees that the remaining portion of Excess Proceeds shall be used to repay the Residential Note. All Excess Proceeds Payments will be applied to the following in the following order: (a) costs and fees incurred and unpaid; (b) accrued and unpaid interest; and (c) reduction of the principal balance of the Loan.

5. Security. Maker's obligations under this Residential Note are secured by the Residential Deed of Trust.

6. Terms of Payment.

6.1 All Payments must be made in currency of the United States of America then lawful for payment of public and private debts.

6.2 All Payments must be made payable to Holder and mailed or delivered in person to Holder's office at One South Van Ness Avenue, 5<sup>th</sup> Floor, San Francisco, CA 94103, or to any other place Holder from time to time designates.

6.3 In no event will Maker be obligated under the terms of this Residential Note to pay interest exceeding the lawful rate. Accordingly, if the payment of any sum by Maker pursuant to the terms of this Residential Note would result in the payment of interest exceeding the amount that Holder may charge legally under applicable state and/or federal law, the amount by which the payment exceeds the amount payable at the lawful interest rate will be deducted automatically from the principal balance owing under this Residential Note.

6.4 Maker waives the right to designate how Payments will be applied pursuant to California Civil Code Sections 1479 and 2822. Holder will have the right in its sole discretion to determine the order and method of application of Payments to obligations under this Residential Note.

6.5 Subject to this Section, Holder will not seek or obtain judgment against Maker or its Limited Partner for the payment of any amounts due under this Residential Note following a judicial or nonjudicial foreclosure of the Residential Deed of Trust, and Holder's sole recourse against Maker for any default under this Residential Note will be limited to the collateral for the Loan, *provided, however*, that this Section will be deemed void and of no effect if Maker challenges Holder's right to foreclose following an Event of Default in any legal proceeding on the grounds that the City Documents are not valid and enforceable under California law. This provision does not limit in any way Holder's right to recover sums arising under any obligation of Maker to indemnify Holder of sums incurred by Holder as a result of Maker's fraud, willful misrepresentation, misapplication of funds (including Loan Funds and Rents (as defined in the Residential Deed of Trust)), waste or negligent or intentional damage to the collateral for the Loan.

6.6 Except as otherwise set forth herein or in the Agreement, no prepayment of this Residential Note shall be permitted without Holder's prior written consent.

7. Default.

7.1 Any of the following will constitute an Event of Default under this Residential Note:

(a) Maker fails to make any Payment required under this Residential Note within ten (10) days of the date it is due; or

(b) the occurrence of any other Event of Default under the Agreement or other instrument securing the obligations of Maker under this Residential Note or under any other agreement between Maker and Holder with respect to the Project.

7.2 Upon the occurrence of any Event of Default, without notice to or demand upon Maker, which are expressly waived by Maker (except for notices or demands otherwise required by applicable laws to the extent not effectively waived by Maker and any notices or demands specified in the City Documents), Holder may exercise all rights and remedies available under this Residential Note, the Agreement or otherwise available to Holder at law or in equity. Maker acknowledges and agrees that Holder's remedies include the right to accelerate the Maturity Date by declaring the outstanding principal balance of the Loan, together with all accrued and unpaid interest and unpaid fees and costs incurred, due and payable immediately, in which case, the Maturity Date will be superseded and replaced by the date established by Holder.

8. Waivers.

8.1 Maker expressly agrees that the term of this Residential Note or the date of any payment due hereunder may be extended from time to time with Holder's consent, and that Holder may accept further security or release any security for this Residential Note, all without in any way affecting the liability of Maker.

8.2 No extension of time for any Payment made by agreement by Holder with any person now or hereafter liable for the payment of this Residential Note will operate to release, discharge, modify, change or affect the original liability of Maker under this Residential Note, either in whole or in part.

8.3 The obligations of Maker under this Residential Note are absolute, and Maker waives any and all rights to offset, deduct or withhold any Payments or charges due under this Residential Note for any reason whatsoever.

9. Miscellaneous Provisions.

9.1 All notices to Holder or Maker must be given in the manner and at the addresses set forth in the Agreement, or to the addresses Holder and/or Maker hereafter designate in accordance with the Agreement.

9.2 In the event of any legal proceedings arising from the enforcement of or a default under this Residential Note or in any bankruptcy proceeding of Maker, the non-prevailing party promises to pay all reasonable costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the proceeding, as provided in the Agreement.

9.3 This Residential Note may be amended only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

9.4 This Residential Note is governed by and must be construed in accordance with the laws of the State of California, without regard to the choice of law rules of the State.

9.5 Time is of the essence in the performance of any obligations hereunder.

**[Remainder of this page intentionally left blank.]**

**"MAKER"**

735 Davis Senior LP, a California limited partnership

By: 735 DAVIS SENIOR BRIDGE LLC

Its: Managing General Partner

By: MCB Family Housing, Inc., a California  
nonprofit public benefit corporation

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Name: Smitha Seshadri  
Title: Senior Vice President

By: JSCo 735 DAVIS SENIOR LLC

Its: Administrative General Partner

By: John Stewart Company, a California  
corporation

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Name: Jack D. Gardner  
Title: President