

EXHIBIT B

Freddie Mac Loan Number: _____
Property Name: The Reserve at Napa

SUBORDINATION AGREEMENT - REGULATORY AGREEMENT ONLY

GOVERNMENTAL ENTITY

(NO SUBORDINATE DEBT)

(Revised 1-29-2018)

THIS SUBORDINATION AGREEMENT FOR REGULATORY AGREEMENT (“**Agreement**”) is effective as of the ___ day of June, 2018 by and among the **CITY OF NAPA**, a California charter city (“**Governmental Entity**”), **NAPA SENIOR APARTMENTS, L.P.**, a California limited partnership (“**Borrower**”), and **CITIBANK N.A.**, a national banking association (“**Lender**”).

RECITALS

- A. Simultaneously herewith Borrower is refinancing a loan secured by certain improved real property located in the County of Napa, State of California, as more particularly described on Exhibit A attached hereto (“**Property**”).
- B. The Mortgaged Property is currently subject to certain obligations under Regulatory Agreement: Inclusionary Housing Covenants, Conditions and Restrictions to Insure Affordable Housing dated August 1, 2001 (“**Regulatory Agreement**”) between Governmental Entity and Borrower and recorded on title to the Property on August 9, 2001 as Document No. 2001-0027160 in the Napa Official Records (“**Official Records**”), pursuant to which the Property was subjected to certain restrictions by Governmental Entity in connection with the prior development or rehabilitation of the Property.
- C. In connection with the refinancing of the loan secured by the Property by Borrower, Lender is making a loan to Borrower in the original principal amount of [\$8,500,0000] (“**Loan**”) pursuant to a Multifamily Loan and Security Agreement between Lender and Borrower (as supplemented or amended from time to time, the “**Loan Agreement**”) and evidenced by a Multifamily Note by Borrower to Lender (as supplemented or amended from time to time, the “**Note**”). The Loan is to be secured by a Multifamily Deed of Trust, Assignment of Rents and Security Agreement that will be recorded among the Official Records (as supplemented or amended from time to time, the “**Mortgage**”) (the Loan Agreement, the Note and the Mortgage, together with all other documents executed with respect to the Loan, are hereinafter collectively referred to as the “**Loan Documents**”).
- D. As a condition to making the Loan, Lender requires that the Loan Documents be a lien on the Property superior to the lien of the Regulatory Agreement and that the rights of Lender under the Loan Documents be superior to the rights of Governmental Entity and Borrower under the Regulatory Agreement. Lender will not make the Loan unless Governmental

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Entity and Borrower agree to subordinate their rights and obligations under the Regulatory Agreement.

- E. Borrower and Governmental Entity hereby agree to subordinate the Regulatory Agreement on and subject to the terms, conditions and requirements set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Recitals.** The foregoing Recitals are hereby incorporated into this Agreement as agreements among the parties.
2. **Subordination.** The Governmental Entity hereby covenants and agrees that the Regulatory Agreement is and will at all times continue to be, subordinate, subject and inferior to the rights of Lender under the Loan Documents and that the liens, rights (including approval and consent rights), remedies, payment interests, priority interests, and security interests granted to Governmental Entity pursuant to or in connection with the Regulatory Agreement are hereby expressly acknowledged to be in all respects and at all times, subject, subordinate and inferior in all respects to the liens, rights (including approval and consent rights), remedies, payment, priority and security interests granted to Lender pursuant to the Loan Documents and the terms, covenants, conditions, operations and effects thereof. Notwithstanding the above, Governmental Entity may exercise the remedies of specific performance or injunctive relief at any time in the event of a default under, or breach of, the terms of the Regulatory Agreement.
3. **Financing, Encumbrance and Transfer Approval.** Governmental Entity hereby approves the financing evidenced by the Mortgage. Governmental Entity further agrees that any transfer of the Property in connection with foreclosure or deed in lieu thereof will not require Governmental Entity's consent.
4. **Reserved.**
5. **Lender Notice of Default.** In consideration of Governmental Entity's agreements contained in this Agreement, Lender agrees that in the event of any default by Borrower under the Loan Documents, Governmental Entity will be entitled to receive a copy of any notice of default given by Lender to Borrower under the Loan Documents. Neither the giving nor the failure to give a notice to Governmental Entity pursuant to this Section 5 will affect the validity of any notice given by Lender to the Borrower.

Notwithstanding anything to the contrary set forth herein, Lender declares, agrees and acknowledges that:

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- (a) Lender shall not complete a foreclosure sale of the Property, or any portion thereof, or record a deed in lieu of foreclosure with respect to the Property, or any portion thereof, unless and until the Lender delivers to Governmental Entity a copy of the Notice (as defined below) sent by Lender to Borrower of the default under the Loan Documents and Governmental Entity has failed to cure such default within the time periods set forth below. Failure of Lender to send Notice to Governmental Entity will not prevent the exercise of Lender's rights and remedies under the Loan Documents (other than the completion of the foreclosure sale or recording of deed in lieu of foreclosure). Governmental Entity will have the right, but not the obligation, to cure any monetary default under the Loan Documents within 30 days following the date of such Notice; provided, however, that Lender will be entitled during such 30-day period to continue to pursue its remedies under the Loan Documents (other than the completion of the foreclosure sale or recording of deed in lieu of foreclosure). Governmental Entity may, within 90 days after the date of the Notice, cure a non-monetary default under the Loan Documents if during such 90-day period, Governmental Entity keeps current all payments required by the Loan Documents. If such a non-monetary default under the Loan Documents creates an unacceptable level of risk relative to the Mortgaged Property, or Lender's secured position relative to the Mortgaged Property, as determined by Lender in its sole discretion, then during such 90-day period Lender may exercise all available rights and remedies to protect and preserve the Mortgaged Property and the rents, revenues and other proceeds from the Mortgaged Property. Governmental Entity will not be subrogated to the rights of Lender under the Loan Documents by reason of Governmental Entity having cured any default under the Loan Documents. Notwithstanding anything in this Section 5 to the contrary, Governmental Entity's right to cure any default under the Loan Documents will terminate immediately upon the occurrence of any bankruptcy, reorganization, insolvency, composition, restructuring, dissolution, liquidation, receivership, assignment for the benefit of creditors, or custodianship action or proceeding under any federal or state law with respect to Borrower or USA Properties Fund, Inc., the guarantor of the Loan.
- (b) If Governmental Entity cures all of the noticed defaults within the cure periods set forth above, the Lender will rescind any notice of default recorded and request dismissal of any receiver who has been appointed.
- (c) Following the timely cure of all noticed defaults by the Governmental Entity, the Lender will not exercise its right to accelerate (or will de-accelerate) the amounts due under the Loan Documents by reason of the noticed defaults cured by Governmental Entity; provided, however, that nothing herein shall be construed to waive or limit any of Lender's rights or remedies as to any uncured noticed default, or any subsequent default by Borrower.

- 6. Governmental Entity Notice of Default.** Governmental Entity must give Lender a concurrent copy of each material notice (including without limitation each notice of default) given by Governmental Entity under or with respect to the Regulatory Agreement, and agrees that Lender, at Lender's sole election, will have the right (but not the obligation)

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to cure any default by Borrower under the Regulatory Agreement on its and/or Borrower's behalf. Governmental Entity hereby represents and warrants that, to the best of its knowledge, there is no current default under the Regulatory Agreement

- 7. Governmental Entity's Rights.** Except as set forth in Sections 2 and 8 of this Agreement, nothing in this Agreement is intended to abridge or adversely affect any right or obligation of Borrower and/or Governmental Entity, respectively, under the Regulatory Agreement; provided that, (A) the Regulatory Agreement may not be modified, amended, changed or altered without the prior written consent of Lender so long as the Loan is secured by the Property and (B) for so long as the Loan is secured by the Property, notwithstanding the terms of the Regulatory Agreement to the contrary, neither Borrower nor Governmental Entity will, without Lender's prior written consent, exercise or seek any right or remedy under the Regulatory Agreement or available at law or in equity which will or could result in (i) a transfer of possession of the Property or the control, operations or management thereof, (ii) collection or possession of rents or revenues from or with respect to the Property by any party other than Borrower or Lender; (iii) appointment of a receiver for the Property; (iv) application of insurance or condemnation proceeds other than as approved by Lender pursuant to the Loan Documents; (v) removal or replacement of the existing property manager of the Property; or (vi) a material adverse effect on Lender's security for the Loan.
- 8. Foreclosure by Lender.** Subject to Section 5, in the event of foreclosure, deed in lieu of foreclosure, or similar disposition of the Property by Lender, no consent will be required from Governmental Entity and Lender will have no indemnification obligations to Governmental Entity for any period during which Lender does not own or is not in possession of the Property.
- 9. Reserved.**
- 10. Miscellaneous Provisions.**

 - (a) This Agreement represents the entire understanding and agreement between the parties with regard to the matters addressed herein, and will supersede and cancel any prior agreements with regard to such matters.
 - (b) If there is any conflict or inconsistency between the terms of the Regulatory Agreement and the terms of this Agreement, then the terms of this Agreement will control.
 - (c) This Agreement will be binding upon and will inure to the benefit of the respective legal successors and permitted assigns of the parties to this Agreement, which will include with regard to the Governmental Entity any permitted successor or assign of the Governmental Entity under or pursuant to the terms of the Regulatory Agreement and, with regard to Lender, any subsequent holder of the Note. No other party will be entitled to any benefits hereunder, whether as a third-party beneficiary or otherwise.

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- (d) If any one or more of the provisions contained in this Agreement, or any application of any such provisions, is invalid, illegal, or unenforceable in any respect, the validity, legality, enforceability, and application of the remaining provisions contained in this Agreement will not in any way be affected or impaired.
- (e) Each notice, request, demand, consent, approval or other communication (collectively, “**Notices,**” and singly, a “**Notice**”) which is required or permitted to be given pursuant to this Agreement will be in writing and will be deemed to have been duly and sufficiently given if (i) personally delivered with proof of delivery (any Notice so delivered will be deemed to have been received at the time so delivered), or (ii) sent by a national overnight courier service (such as FedEx) designating earliest available delivery (any Notice so delivered will be deemed to have been received on the next Business Day following receipt by the courier), or (iii) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal Service (any Notice so sent will be deemed to have been received on the date of delivery as confirmed by the return receipt), addressed to the respective parties as follows:

If to Governmental Entity:

City of Napa
1115 Seminary Street
Napa, California 94559
Attention: Housing Manager

If to Lender:

Citibank, N.A.
388 Greenwich Street, 8th Floor
New York, New York 10013
Attention: Transaction Management Group
Deal ID No. 25443
Facsimile: (212) 723-8209

With a copy to:

Citibank, N.A.
325 East Hillcrest Drive, Suite 160
Thousand Oaks, California 91360
Attention: Operations Manager/Asset Manager
Deal ID No. 25443
Facsimile: (805) 557-0924

With a copy to:

Citibank, N.A.
c/o Berkadia Commercial Servicing Department

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323 Norristown Road, Suite 300
Ambler, Pennsylvania 19002
Attention: Client Relations Manager
Deal ID No. 25443
Facsimile: (215) 328-0305

With a copy to:
Citibank, N.A.
388 Greenwich Street
New York, New York 10013
Attention: General Counsel's Office
Deal ID No. 25443
Facsimile: (646) 291-5754

If to Borrower:

Napa Senior Apartments, L.P.
[3200 Douglas Boulevard, Suite 200
Roseville, California 95661
Attention: Darren Bobrowsky]

Any party, by Notice given pursuant to this Section, may change the person or persons and/or address or addresses, or designate an additional person or persons or an additional address or addresses, for its Notices, but Notice of a change of address will only be effective upon receipt. Neither party will refuse or reject delivery of any Notice given in accordance with this Section.

- (f) Each of the parties will, whenever and as often as they are requested to do so by the other, execute, acknowledge and deliver, or cause to be executed, acknowledged or delivered, any and all such further instruments and documents as may be reasonably necessary to carry out the intent and purpose of this Agreement, and to do any and all further acts reasonably necessary to carry out the intent and purpose of this Agreement.
- (g) This Agreement will be governed by the laws of the State in which the Property is located without giving effect to any choice of law provisions.
- (h) Each person executing this Agreement on behalf of a party hereto represents and warrants that such person is duly and validly authorized to do so on behalf of such party with full right and authority to execute this Agreement and to bind such party with respect to all of its obligations under this Agreement.
- (i) No failure or delay on the part of any party to this Agreement in exercising any right, power, or remedy under this Agreement will operate as a waiver of such right, power, or remedy, nor will any single or partial exercise of any such right, power or remedy preclude any other or further exercise of such right, power, or remedy or the exercise of any other right, power or remedy under this Agreement.

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- (j) Each party to this Agreement acknowledges that if any party fails to comply with its obligations under this Agreement, the other parties will have all rights available at law and in equity, including the right to obtain specific performance of the obligations of such defaulting party and injunctive relief.
- (k) This Agreement may be assigned at any time by Lender to any subsequent holder of the Note.
- (l) This Agreement may be amended, changed, modified, altered or terminated only by a written instrument signed by the parties to this Agreement or their successors or assigns.
- (m) This Agreement may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.
- (n) Nothing in this Agreement is intended, nor will it be construed, to in any way limit the exercise by Governmental Entity of its governmental powers (including police, regulatory and taxing powers) with respect to Borrower or the Property to the same extent as if it were not a party to this Agreement or the transactions contemplated by this Agreement.

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN THE REGULATORY AGREEMENT BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF THE MORTGAGE.

[SIGNATURE AND ACKNOWLEDGMENT PAGES FOLLOW]

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IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year above written.

GOVERNMENTAL ENTITY

CITY OF NAPA, a California charter city

By: _____

Name: _____

Title: _____

ATTEST:

Dorothy Roberts, City Clerk

Date: _____

(“Effective Date”)

COUNTERSIGNED:

Desiree Brun, City Auditor

APPROVED AS TO FORM:

Michael W. Barrett, City Attorney

EXHIBIT B

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 2018 before me, _____ (here insert name and title of the officer), personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

(Notary)

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BORROWER

NAPA SENIOR APARTMENTS, L.P., a
California limited partnership

By: USA Napa Seniors, Inc., a California
corporation, its Administrative General
Partner

By: _____

Name: Geoffrey C. Brown

Title: President

By: Napa Valley Community Housing, a
California nonprofit public benefit
corporation, its Managing General Partner

By: _____

Name: Kathleen Dreessen

Title: President and Chief Executive Officer

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WITNESS my hand and official seal.

Signature _____ (Seal)

(Notary)

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LENDER

CITIBANK, N.A.

By: _____
Name:
Title:

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Signature _____ (Seal)

(Notary)

EXHIBIT A

LEGAL DESCRIPTION

[to be inserted]