

RESOLUTION HR2019-__

RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE HOUSING AUTHORITY OF THE CITY OF NAPA, STATE OF CALIFORNIA, TO FACILITATE THE FINANCING OF THE ACQUISITION AND REHABILITATION OF THE CHARTER OAKS APARTMENTS BY AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE: (1) A RELEASE AND TERMINATION OF DEFERRED LOAN REGULATORY AGREEMENT WITH CHARTER OAKS ASSOCIATES TERMINATING THE 2001 DEFERRED LOAN REGULATORY AGREEMENT, AND (2) A TERMINATION AGREEMENT WITH CHARTER OAKS ASSOCIATES AND JPMORGAN CHASE BANK, N.A. TERMINATING THE 2001 BOND REGULATORY AGREEMENT RELATING TO CHARTER OAKS APARTMENTS

WHEREAS, on July 13, 2001, the Housing Authority of the City of Napa (the "Housing Authority") issued \$4,215,000 principal amount of Multifamily Housing Revenue Bonds (Charter Oaks Apartments) 2001 Series A (the "2001 Bonds") pursuant to an Indenture of Trust, dated as of July 1, 2001 (the "Indenture"), between the Housing Authority and Washington Mutual Bank, FA, as bondowner representative (the "Original Bondowner Representative"), and loaned the proceeds of the 2001 Bonds (the "Loan") to Charter Oaks Associates, a California limited partnership (the "Borrower") to provide financing for Charter Oaks Apartments, a 75-unit affordable apartment complex (the "Project") located at 3017 Browns Valley Road in the City of Napa (the "City"); and

WHEREAS, at the time of the issuance of the 2001 Bonds, the Borrower, the Original Bondowner Representative and the Housing Authority entered into a Regulatory Agreement and Declaration of Restrictive Covenants, dated as of July 1, 2001 (the "2001 Bond Regulatory Agreement"), which 2001 Bond Regulatory Agreement places various restrictions on the operation of the Project required under California and federal tax law applicable to the 2001 Bonds; and

WHEREAS, on July 1, 2001, the Housing Authority and the Borrower entered into a Deferred Loan Agreement ("2001 Loan Agreement") pursuant to which the Housing Authority loaned \$237,500 to the Borrower for the Project ("Housing Authority Loan"); and

WHEREAS, in connection with the 2001 Loan Agreement, the Housing Authority and the Borrower entered into that certain Deferred Loan Regulatory Agreement, dated July 1, 2001 ("2001 Loan Regulatory Agreement"), which was recorded against the Project and requires that all 75 units in the Project be occupied, or made available for occupancy, by low income households until June 30, 2026; and

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WHEREAS, both the 2001 Bonds and the Housing Authority Loan have been repaid and the Indenture, the Loan Agreement (as defined in the Indenture) pursuant to which the Loan was made, and the 2001 Loan Agreement are no longer outstanding; and

WHEREAS, the Borrower is selling the Project to Charter Oaks Apartments II, LP, a California limited partnership (the "Buyer"), and in order to provide funds for the acquisition and rehabilitation of the Project, the California Statewide Communities Development Authority ("CSCDA") is borrowing funds from Citibank, N.A. ("Citibank"), and is delivering to Citibank its Multifamily Housing Revenue Construction/Permanent Note (Charter Oaks Apartments), 2019 Series Q-1 and its Multifamily Housing Revenue Construction Note (Charter Oaks Apartments), 2019 Series Q-2 (collectively, the "Notes"), along with its Multifamily Housing Revenue Bonds (Charter Oaks Apartments) 2019 Subordinate Series Q-S (the "2019 Bonds") to evidence the borrowing, and CSCDA will be loaning the proceeds of the Notes and the 2019 Bonds to the Buyer; and

WHEREAS, incident to the delivery of the Notes and the 2019 Bonds, CSCDA and the Buyer will be entering into a new Regulatory Agreement and Declaration of Restrictive Covenants (the "2019 Regulatory Agreement"), which will place restrictions on the operations of the Project that are at least as restrictive, and for a term at least as long, as the restrictions in the 2001 Bond Regulatory Agreement and 2001 Loan Regulatory Agreement; and

WHEREAS, JPMorgan Chase Bank, N.A. (the "Bondowner Representative") has succeeded to the interests of the Original Bondowner Representative, including its rights and obligations under the Indenture and under the 2001 Bond Regulatory Agreement; and

WHEREAS, CSCDA has agreed to make the Housing Authority and the owners of the 2001 Bonds third party beneficiaries of the 2019 Regulatory Agreement so that they can enforce the provisions of the 2019 Regulatory Agreement against the Buyer, all to ensure that the Project continues to be operated as if the 2001 Bond Regulatory Agreement and the 2001 Loan Regulatory Agreement remained in place; and

WHEREAS, in light of the aforementioned provisions of the 2019 Regulatory Agreement, the Buyer has requested that the Housing Authority (i) enter into a Termination Agreement with the Borrower and Bondowner Representative to terminate the 2001 Bond Regulatory Agreement ("Bond Termination Agreement") so that the Housing Authority can obtain the benefits of the 2019 Regulatory Agreement, but not have the obligation to continue to monitor the Project as is contemplated by the 2001 Bond Regulatory Agreement; and (ii) enter into a Release and Termination of Deferred Loan Regulatory Agreement with the Borrower terminating the 2001 Loan Regulatory Agreement ("Loan Termination Agreement"); and

WHEREAS, pursuant to Section 11 of the 2001 Bond Regulatory Agreement, the parties may agree to terminate the 2001 Bond Regulatory Agreement before the end of

its stated term provided that the Housing Authority and Bondowner Representative receive "...an opinion of Bond Counsel that such termination will not adversely affect the exclusion from gross income for federal income tax purposes of the interest on the [2001] Bonds or the exemption from State personal income taxation of the interest on the [2001] Bonds;" and

WHEREAS, in order to allow for the continued affordability of the Project to very low and low income tenants and to facilitate the acquisition and rehabilitation by the Buyer of the Project, the Housing Authority is amenable to entering into the Bond Termination Agreement and Loan Termination Agreement, as provided in this Resolution.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Commissioners of the Housing Authority of the City of Napa, as follows:

1. The Authority Board finds that the facts set forth in the recitals to this Resolution are true and correct, and establish the factual basis for the Authority's adoption of this Resolution.

2. The Authority Board hereby authorizes the Executive Director to execute the Bond Termination Agreement in the form on file with the Authority Deputy Secretary, together with such changes as may be approved by the Executive Director upon consultation with Bond Counsel to the Housing Authority for this matter and to execute the Loan Termination Agreement substantially in the form on file with the Authority Deputy Secretary, subject to the following conditions: (a) the payment to the Housing Authority of the amount due to it under Section 17 of the 2001 Bond Regulatory Agreement that was payable upon the prepayment in full of the 2001 Bonds, as such amount due shall be verified by the Executive Director, (b) the presentation to the Executive Director of a 2019 Regulatory Agreement that includes provisions described in the ninth recital above and is otherwise in a form acceptable to the Executive Director upon consultation with Bond Counsel, and (c) delivery to the Executive Director of the opinion of Bond Counsel referenced in the first paragraph of Section 11 of the 2001 Regulatory Agreement (and referred to in the eleventh recital above) related to the termination thereof.

3. Authority Board hereby authorizes and directs the Executive Director to execute such other agreements, documents and certificates as may be necessary to facilitate and effect the sale of the Project by the Borrower to the Buyer and the termination of the 2001 Bond Regulatory Agreement and the 2001 Loan Regulatory Agreement, all as contemplated by this Resolution; provided, however that any costs or expenses of the Housing Authority in connection therewith are paid for by the Buyer or the Borrower.

4. The Authority Board hereby designates the law firm of Quint & Thimmig LLP as Bond Counsel to assist the Housing Authority with this matter. The fees of Bond Counsel shall be paid by the Buyer or the Borrower.

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5. This Resolution shall take effect immediately upon its adoption.

I HEREBY CERTIFY that the foregoing Resolution was duly adopted by the Board of Commissioners of the Housing Authority of the City of Napa at a public meeting of said Housing Authority held on the 5th day of November 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: _____
Tiffany Carranza
Authority Deputy Secretary

Approved as to form:

Michael W. Barrett
Authority General Counsel