



FRUITA COLORADO

HOUSING AUTHORITY MEETING

Fruita Civic Center

Tuesday, June 20, 2023 at 6:00 PM

AGENDA

The link to join the join the meeting electronically will be posted prior to the meeting at <https://www.fruita.org/bc-ham/page/housing-authority-meeting-information>. You may also contact the Fruita Housing Authority at (970) 858-3663 for information to connect to the meeting. This agenda is for informational purposes only and items may be added or deleted at the discretion of the Housing Authority. An executive session may be requested for any item appearing on the agenda.

1. **CALL TO ORDER AND ROLL CALL**
2. **AGENDA - ADOPT/AMEND**
3. **CONSENT AGENDA**

These are items where all conditions or requirements have been agreed to or met prior to the time they come before the Housing Authority for final action. These items will be approved by a single motion of the Housing Authority. Members of the Housing Authority may ask that an item be removed from the consent section and fully discussed. All items not removed from the consent section will then be approved. A member of the Housing Authority may vote no on specific items without asking that they be removed from the consent section for full discussion. Any item that is removed from the consent agenda will be placed at the end of the regular agenda.

A. MINUTES - A request to approve the minutes of the April 4, 2023 Joint Fruita Housing Authority and Fruita City Council meeting

B. RESOLUTION 2023-03 - A Resolution of the Board of Commissioners of the Fruita Housing Authority Allowing for Virtual Meetings

4. **OTHER AGENDA ITEMS**

A. EXECUTIVE SESSION – A request to convene in Executive Session for a conference with the Housing Authority Attorney and Housing Authority Special Counsel to receive legal advice pursuant to CRS 24-6-402(4)(b) regarding the special limited partnership addendum for the IndiBuild Fruita LLLP

5. **PUBLIC HEARINGS**

A. RESOLUTION FHA 2023-04 - A Resolution of the Board of Commissioners of the Fruita Housing Authority authorizing the Executive Director to sign Addendum to Amended and Restated Agreement of Limited Liability Limited Partnership - *Dee Wisor, Special Counsel to FHA*

6. ADJOURN

**FRUITA HOUSING AUTHORITY AND FRUITA CITY COUNCIL
JOINT MEETING
APRIL 4, 2023
5:30 P.M.**

Present:

Chairman/Mayor Joel Kincaid
Vice-Chairman/Mayor Pro Tem Matthew Breman
Commissioner/Councilor Jeannine Purser
Commissioner/Councilor James Williams
Commissioner/Councilor Ken Kreie
Commissioner/Councilor Amy Miller
Commissioner/Councilor Aaron Hancey

Excused Absent

(None)

**Housing Authority
and City staff present:**

Executive Director/City Manager Mike Bennett
Executive Director Designee/Assistant City Manager
Shannon Vassen
Treasurer/City Clerk/Finance Director Margaret Sell
Secretary/Deputy City Clerk Deb Woods
Communications and Engagement Specialist Ciara DePinto
Housing Authority/City Council Attorney Mary Elizabeth
Geiger

Also present:

Special Counsel to the Housing Authority and City Dee
Wisor with Butler Snow
Kim Pardoe, Principal of IndiBuild, LLC
Paul Glasgow, Partner in IndiBuild, LLC
Sam Betters, Housing Authority and Development Specialist
(virtually)
Alex Gano, Attorney for Indibuild, LLC with Bryan Cave
Leighton Paisner LLP (virtually)
Members of the public (in person and virtually)

Note from Secretary/Deputy City Clerk: This meeting begins with a Fruita Housing Authority meeting. The opening of the Joint Fruita Housing Authority and Fruita City Council occurs after the Fruita Housing Authority Public Hearing Agenda item (Resolution FHA 2023-01).

CALL TO ORDER AND ROLL CALL

The third meeting of the Fruita Housing Authority was called to order by Chairman Joel Kincaid at 5:33 p.m. The meeting was held in person and virtually.

AGENDA – ADOPT/AMEND

- **COMMISSIONER KREIE MOVED TO APPROVE THE AGENDA AS PRESENTED. COMMISSIONER PURSER SECONDED THE MOTION. THE MOTION PASSED WITH SIX YES VOTES.**

CONSENT AGENDA

1. APPROVAL OF THE MINUTES OF MARCH 7, 2023

Chairman Kincaid asked if there were any requests from the public to remove any item(s) from the Consent agenda for further discussion. There were no such requests. He referred the matter to the Fruita Housing Authority.

- **COMMISSIONER HANCEY MOVED TO APPROVE THE CONSENT AGENDA AS PRESENTED. COMMISSIONER MILLER SECONDED THE MOTION. THE MOTION PASSED WITH SIX YES VOTES.**

PUBLIC HEARINGS

2. RESOLUTION FHA 2023-01 – A RESOLUTION ADOPTING A BUDGET AND APPROPRIATING SUMS OF MONEY FOR THE FRUITA HOUSING AUTHORITY FOR THE CALENDAR YEAR BEGINNING ON THE FIRST DAY OF JANUARY 2023 AND ENDING ON THE LAST DAY OF DECEMBER 2023

Executive Director designee Shannon Vassen presented the proposed draft 2023 Fruita Housing Authority Budget. He explained that as is required by government budget law, staff did present the proposed 2023 Budget to the Housing Authority at their last meeting of March 7, 2023. Since then, the Fruita City Council has appropriated \$15,100 to the Housing Authority and in order for the Authority to legally spend those dollars, it needs to adopt a Budget and appropriate the funds.

Mr. Vassen stated that there had been no changes to the Budget since it was first presented on March 7, 2023. That concluded his presentation.

Chairman Kincaid opened the public hearing. Hearing no comments from the public, he closed the public hearing and referred the matter to the Housing Authority.

- **COMMISSIONER PURSER MOVED TO ADOPT RESOLUTION FHA 2023-01 – ADOPTING A BUDGET AND APPROPRIATING SUMS OF MONEY FOR THE FRUITA HOUSING AUTHORITY BUDGET FOR THE CALENDAR YEAR BEGINNING ON THE FIRST DAY OF JANUARY 2023 AND ENDING ON THE LAST DAY OF DECEMBER 2023. COMMISSIONER MILLER SECONDED THE MOTION. THE MOTION PASSED WITH SIX YES VOTES.**

OPEN JOINT MEETING OF THE FRUITA HOUSING AUTHORITY AND FRUITA CITY COUNCIL

Chairman/Mayor Joel Kincaid opened the Joint Meeting of the Fruita Housing Authority and Fruita City Council at 5:45 p.m.

JOINT MEETING AGENDA ITEMS**3. PRESENTATION – INDIBUILD PRESENTATION TO FRUITA CITY COUNCIL AND FRUITA HOUSING AUTHORITY ON PROPOSALS REGARDING FRUITA MEWS**

Founder of IndiBuild, LLC, Kim Pardoe gave a PowerPoint presentation concerning proposals for a partnership opportunity for the Fruita Housing Authority (“FHA”) with IndiBuild and its Fruita Mews team to create, own and operate 50 workforce, affordable housing units in Fruita. Accompanying Ms. Pardoe in person was Paul Glasgow, partner in Indibuild. Present virtually were another Indibuildpartner, Sam Betters, Indibuild’s attorney Alex Gano with Bryan Cave Leighton Paisner LLP and IndiBuild’s tax credit consultant, Adam Morgan with Morgan & Associates.

Ms. Pardoe stated that the Fruita Mews will consist of 50 one-, two and three-bedroom units located within ten residential buildings and a 1,300 square foot clubhouse. She said the development will serve Fruita residents earning between \$17,000 and \$106,000 per year, which based on her prior estimates from last year is about 86% of the Fruita population.

In her presentation, Ms. Pardoe also stated the following:

- The project will be highly sustainable with the current rating that exceeds National Green Building Silver Standards.
- The property design is “pocket neighborhood” in nature and community oriented in an attempt to generate community interaction with front porches and tree lined streets.
- Community amenities include a community building with an expansive back porch overlooking a play structure, community gardens and a grassy outdoor amphitheater. She said there will also be a nature trail and a mountain bike skills loop that will eventually tie into the Grand Valley multi-modal trail as well as numerous outdoor gathering spaces.
- In the spirit of IndiBuild and Fruita’s “Live, Work and Play” mission and Safe Routes to School, the Mews will be located next to the brand-new Monument Ridge Elementary School.
- The timeline for making the Mews a reality started in late 2020 when IndiBuild identified the need for attainable housing in Fruita after reading Fruita’s brand new Comprehensive Plan, *Fruita in Motion*. IndiBuild then started the journey in full force when they honed in on Fruita’s housing needs specifically and presented to the Livability Commission in March of 2021. Ms. Pardoe said that John Rodwick, the then Chairman of the Livability Commission was eager to learn about IndiBuild’s plans and that they were met with a warm welcome by others on the Commission and even urged by Karen Leonhardt to get in front of City Council.

- After an exhaustive search for a piece of land desirable for families, IndiBuild connected with their seller, the Burnheide's through a budding relationship they had created with the Mesa County School District #51.
- After creating their Concept Plan and throughout 2021 and 2022, IndiBuild held a neighborhood meeting, went to Planning Commission and then City Council requesting a Planned Unit Development (PUD) amendment.
- In June of 2022, IndiBuild was awarded tax credit funding from the Colorado Housing and Finance Authority (CHFA) and in December of 2022, they successfully subdivided and purchased the property.
- IndiBuild has created partnerships with Family Health West and the D51 School District, the largest employers in Fruita and the county, respectively. She said both have struggled to hire and retain employees and that the partnerships provide these institutions with affirmative marketing to help them with local housing, thereby assisting them to retain employees and strengthen local economy.
- IndiBuild also has a partnership with Eureka! to provide after-school stem programming and summer recreational camps.
- IndiBuild has a new partnership with Housing Resources of Western Colorado to provide home ownership workshops and financial counseling to help residents of the Mews and the general public develop into future homeowners.
- IndiBuild's timeline for moving forward anticipates a June 1st closing date on all of its financing and an August 2024 construction completion date. They anticipate full occupancy by the end of 2024.
- IndiBuild was present to request the Fruita Housing Authority become a special limited partner in the Fruita Mews project, which will benefit IndiBuild, the new Housing Authority and the community at large.
- Their goal is to preserve and construct the Mews as originally designed while facing rampant inflationary pressure on their construction costs and rising interest rates.
- The proposed partnership will provide project sales use and property tax exemptions for IndiBuild.
- IndiBuild is also requesting from City Council a waiver or deferral of City impact fees to help finance the upfront construction costs.
- Sales and use tax savings will reduce IndiBuild's construction costs by an estimated \$400,000.

- The real estate tax abatement will save IndiBuild between \$25,000 and possibly \$50,000 per year in operating expense budget.
- In return for the above savings, IndiBuild has offered the Housing Authority an annual administrative fee of \$5,000 over their initial period of 15 years (\$92,000 for 15 years) as well as an upfront \$50,000 participation fee.
- IndiBuild is also offering the right-of-first refusal on the property and a purchase option.
- Lastly, IndiBuild has a commitment from CHFA to provide the Housing Authority with a \$150,000 Capital Magnet Fund Grant that would then be loaned into the partnership and paid back to the Housing Authority through available cash flow.

Commissioner/Councilor Kreie asked if the property tax abatement would stay with the property if it were to change hands in the future or if the property would just go to the Housing Authority. Attorney Dee Wisor with Butler Snow, the Fruita Housing Authority's Special Counsel, responded that as long as the Authority is a Special Limited Partner in the partnership and it continues to be the owner, the exemption will continue. IndiBuild attorney Alex Gano responded that if IndiBuild Fruita, LLLP continues to own the property, the property tax exemption would continue and if Ms. Pardoe sold her partnership interest or IndiBuild's investor sold its partnership interest but the property remained titled to IndiBuild, LLLP, the property tax exemption would continue. Attorney Gano explained that if IndiBuild, LLLP were to sell the property to an entirely different owner, the property tax exemption would not apply to the new title owner.

Commissioner/Councilor Kreie asked if there was a potential for the investors to be making more money off of what the Fruita Housing would be providing in terms of helping to fund the project or if the amount that they will be making is a specific amount that doesn't change. Ms. Pardoe said she kind of knows what the investors will make on the property because she was an investor for 25 years and knows how to run their model. She added that the return for investors in tax credits is on the tax credit itself and losses that are generated over 15 years, but someone would have to see their model to know what they are making.

Ms. Pardoe continued to explain that there are two levels of investors; there's a syndicator (which is what she used to be and is like a management team of investment banker-type people who structure deals) and then they usually sell it off to an investor, bank, insurance company or multi-investor fund. She said in Fruita's case, it is a bank.

Chairman/Mayor Kincaid asked what the funding gap is that IndiBuild needs to close on the loan and what other funding opportunities IndiBuild may have after partnering with the Fruita Housing Authority. Ms. Pardoe said she didn't have the numbers in front of her and that IndiBuild is still working out their financing, although they have most of it in place with four tranches from CHFA. She added that in the presentation material that she sent to the Housing Authority/City Council, there is a CHFA first mortgage, CHFA Capital Magnets second mortgage, CHFA Housing Opportunity Fund (HOF) and if the Housing Authority isn't willing to partner with IndiBuild, CHFA is willing to grant some funding to the Housing Authority. She added that on top of that, IndiBuild is currently negotiating \$5.3 million with the Colorado Division of Housing, who might

make a portion of that a loan to IndiBuild, who is working through the tax implications of that. Ms. Pardoe also said that in the numbers that were sent to the Housing Authority/City Council, the column with the Housing Authority assumes a \$200,000 gap, and that is where IndiBuild was going asking for some fee waivers (unintelligible).

Commissioner/Councilor Purser asked if IndiBuild would be able to maintain the original goal of affordable housing on their own if the Housing Authority decides not to partner with them. Ms. Pardoe responded that honestly, IndiBuild didn't know that they would need to cobble together more financing until January when they got their costs back and they were \$3.5 million over budget.

She continued that one of things that IndiBuild has always wanted to do is partner with the Fruita Housing Authority because they are really building an asset for the community and that her long-term goal is not to wait for the affordability period to burn off and make a bazillion dollars; she is here to try and create affordable housing for the community. Ms. Pardoe concluded her answer by saying that if the Housing Authority does not partner with IndiBuild, then the easiest and most likely answer would be that they would delay their closing and cobble together the \$750,000 that they would benefit by partnering with the Housing Authority.

Commissioner/Councilor Purser asked if the \$3.5 million is actually what IndiBuild needs overall to make the project go forward and Ms. Pardoe said it was and that some of it was through a design-build process where value engineering would be implemented through working with subcontractors. She noted that it was important to IndiBuild to use local subcontractors to keep the money in Mesa County.

Ms. Pardoe noted that she forgot to mention earlier that if IndiBuild doesn't partner with the Fruita Housing Authority, they found some new financing sources that have come together through all the different legislative packages, which takes a while for the state to roll out. Just most recently, IndiBuild figured out that they can apply on May 1st for a High Efficiency Electric Heating and Appliances (HEEHA) Grant with the Colorado Energy Office, who is looking to fund ten properties at \$1 million each. She added that IndiBuild will be their first applicant and that the Colorado Energy Office is very excited for them. IndiBuild said Mews will be all electric and will have heat pumps versus resistant heat, which is what the state is reaching for.

Commissioner/Councilor Miller asked who the General Contractor and Property Manager for the project would be. Ms. Pardoe said the General Contractor would be Bryan Construction and the Property Management Company would be Syringa out of Wyoming.

Commissioner/Councilor Miller asked if it would be possible for the City Council/Housing Authority to receive periodic reports about occupancy and how the compliance for that is going. Ms. Pardoe said that in a Standard Operating Procedures (SOP) Agreement, there is usually an annual or quarterly reporting requirement that goes to the partners. Attorney Gano added that usually, the owner will send all of the required reports to send to the Department of Local Affairs (DOLA) and to CHFA, so, throughout the 15-year period, IndiBuild is sending annual compliance reports to these other government entities and then the SOP basically gets copied on all of those compliance reports.

Vice-Chairman/Mayor Pro Tem Breman inquired how it would decrease construction costs but at the same time increase ongoing fixed costs if IndiBuild was asking Fruita for the dedication of

public streets. Ms. Pardoe said it decreases IndiBuild's upfront cost because it reduces Ute Water's requirement for an extra loop (unintelligible). She added that the extra cost is the difference between \$100 per month for fire monitoring versus \$450 per month. She said with just the one loop, monthly fees have to be paid per building, which would mean ten lines that have to get monitored versus one line to a private road.

Vice-Chairman/Mayor Pro Tem Breman noted that at the Council's first meeting with IndiBuild, it was presented that IndiBuild didn't think they would need anything additional from the Housing Authority, but then later there's an ask plus something else IndiBuild *may* ask for. He asked if there was anything else that's out there that IndiBuild may ask for that the Housing Authority/City Council should know about before giving any consideration. Ms. Pardoe said she didn't know what else she could possibly ask for and that she knew she was kind of asking for a lot right now. She reiterated how the Division of Housing is really behind the Mews project and really wants to see affordable housing in Fruita.

Commissioner/Councilor Kreie asked who will coordinate with the partnerships IndiBuild has built with local agencies such as Eureka! after the buildings are built. Ms. Pardoe said it would be herself (as she will still be the owner for 15 years) and that she also knows it's also necessary to stay on top of property managers.

Commissioner/Councilor Hancey asked Special Counsel Dee Wisor to speak more about the Special Limited Partnership such as what the pros and cons are, what the risks are and also what value there is in establishing such a partnership whether the Housing Authority does the tax abatements or not. Attorney Wisor stated that the reason IndiBuild is making the request for the partnership is because there is a state statute that says that if a Housing Authority has an ownership interest in an entity that owns one of these projects, the property is exempt from all property taxes and, during construction, is exempt from sales and use tax. This helps the owner's cash flow and borrowing capacity. Attorney Wisor advised that regardless of the reason for a Special Limited Partnership, a Special Limited Partner is really protected from liability and financial responsibility.

Commissioner/Councilor Hancey asked if there was zero value, then, in partnering with IndiBuild if Fruita does not allow the abatement. Attorney Wisor said he would say the only reason for the Fruita Housing Authority to become a partner is to provide for the tax abatement.

Commissioner/Councilor Kreie asked again if there were any entities who stood to make more money if the tax abatement is provided. Tax credit consultant, Adam Morgan with Morgan & Associates, responded that what the property tax abatement does is it allows more money to be borrowed to pay the costs; otherwise, additional funding must be sought to cover the shortfall.

Vice-Chairman/Mayor Pro Tem Breman asked what the deadline was the Fruita Housing Authority/City Council to make a decision. Ms. Pardoe responded that interest rates are going up every day and subcontractors need to lock in their contracts, so IndiBuild was feeling the pressure. She said the more important deadline to meet is what is called a "carry-over test" for CHFA to show that IndiBuild has spent 10% of its costs by June 30th. If that deadline is not met, CHFA will give an extension, but Ms. Pardoe said she really didn't want to have to ask them for it. Mrs. Pardoe added that December 30th would be the latest date she could ever close the deal and not lose her tax credits.

Commissioner/Councilor Williams asked Ms. Pardoe to speak a little bit more about how CHFA would be willing to grant IndiBuild more funding if the Housing Authority chose not to partner. She said the fourth tranche of funding was a \$150,000 Capital Magnet loan, but if IndiBuild did partner with the Housing Authority, that would become a grant to the Housing Authority, who would loan it to the partnership. The Authority would then be paid back over the 15 years through cash flow.

Commissioner/Councilor Williams asked Mrs. Pardoe where she is from. She responded that she is from Boston and currently lives in Boulder, Colorado. She added that she has been coming to Fruita for 20 years.

Chairman/Mayor Kincaid asked how the appraisal would be done on the property at the end of the 15-year period if the Housing Authority has the first-right-of-refusal and IndiBuild wants to sell the property.

Attorney Alex Gano spoke about how in these deals, there are customarily two purchase rights that are granted to a Housing Authority. The first one is a right-of-first refusal, where at the end of the compliance period (15 years), if Ms. Pardoe decides to sell the property, the Housing Authority has a right to buy it at a below-market price. Secondly, at the end of the 15-year compliance period, the Housing Authority has a "purchase option," so even if Ms. Pardoe doesn't want to sell the property, the Housing Authority can come in and buy the property from her. The exact terms of those would need to be agreed to by IndiBuild's investor partner, but the right-of-first refusal is usually at a below-market price while the purchase option is closer to market price.

Attorney Gano continued that the appraisal amount is usually a bit less than what is seen for a market-rate property because when it is appraised, considerations have to be made for the fact that the tenants are paying below-market rents, which somewhat depresses the value of the property.

Ms. Pardoe added that in year 15, IndiBuild will still have 25 years left on their affordability period that CHFA will record in a covenant against the property. She said when an appraisal is done, the rents are held at the level that they can be at with some kind of growth factor until the end of the Affordability Period. She continued that if it was a for-profit developer, they might jack up the rents, but if it's a Housing Authority, you just continue to maintain lower rents.

Chairman/Mayor Kincaid asked if the market rate would be negotiated in the contract. Ms. Pardoe stated that it is an Income Capitalization and that there is literally a cap on the income. She theorized that if there were only five years left on the Affordability Period, an appraiser could look at that property and say, "for five years, your return is (blank) and then after that, the rents would double and the property value would be more because they are capping an operating income that's twice as high.

Commissioner/Councilor Miller asked if the composition of floorplans and rents for the property would remain the same for the 15-year period. Ms. Pardoe responded that they would actually remain the same for 40 years. Attorney Gano representing IndiBuild said there's a formulation that it seen a lot in these Rights-of-First Refusal Agreements, which is a "debt plus tax is purchased price." He said basically, you look at what debit is remaining on the property at year 15 plus the exit taxes that have to be paid to the investor to get them out. Attorney Gano called it a complicated formulation.

Attorney Gano stated that the other alternative is a set percentage below fair market value. He added that the “debt plus taxes” formulation can be very beneficial for the Housing Authority.

Mayor Kincaid asked if that was going to be in the partnership agreement. Attorney Wisor confirmed that yes, it will be part of the Right-of-First Refusal and Purchase Option language. He asked Attorney Gano if he would have to negotiate a little bit with his equity investor on which approach to take. Attorney Gano responded that the investor is investing quite a bit of money in the project, so they are going to have to sign off on whatever IndiBuild comes up with, but those are just common formulations that his firms sees in Colorado Housing Authority deals.

Commissioner/Councilor Kreie asked if it was common for the developer to stay after the 15-year compliance period or not and Ms. Pardoe said that typically, when there is a non-profit or Housing Authority as a partner, it is customary to extend the Right-of-First-Refusal. She added that a lot of developers don’t have a non-profit or Housing Authority partnership because there’s no benefit to them and they will just hold onto the property and refinance it.

Commissioner/Councilor Kreie asked if it was likely that in 15 years, the Fruita Housing Authority would purchase the property. Ms. Pardoe responded that if the Fruita Housing Authority partners with IndiBuild, that would be her intent; to make sure that the Housing Authority has the access to that Right-of-First Refusal.

Commissioner/Councilor Hancey asked Attorney Wisor if the potential abatements from the Housing Authority, would be strictly property tax or if it would include sales tax as well. Attorney Wisor advised that one limitation in the statute is that the abatements can only be available for units which are low income. He said that unfortunately, the statute doesn’t define what is meant by low income, but he thought that IndiBuild was going to have a couple of units that are at 120% of AMI (Area Median Income).

Ms. Pardoe interrupted Attorney Wisor and stated that 120% has not been a restriction that anybody has put on IndiBuild; it is a restriction that IndiBuild put on for themselves. She noted that the rents listed in the informational materials she brought to the Council are at 85% of AMI. Attorney Wisor said his point was that there a couple of units that are 120%, so the Fruita Housing Authority/City Council may decide (unintelligible), so maybe the exemption is only 90% of the units (unintelligible).

Attorney Wisor stated that he imagined that IndiBuild’s attorney Alex Gano will eventually have a certificate or agreement for the Fruita Housing Authority to sign that says, the Housing Authority will consent to the abatement up to 90% of the units (if that is the number the Housing Authority lands on).

Commissioner/Councilor Hancey asked for confirmation that state statute limits the Housing Authority to only forgive the sales tax and the property tax is on the units that are low income. Attorney Wisor confirmed that to be correct.

Vice-Chairman/Mayor Pro Tem Breman asked for clarification that if IndiBuild calls for a cap of all units being at 120% or less, the Housing Authority can define 120% as low-income housing. Attorney Wisor confirmed this to be true and added that the Housing Authority will define low income before IndiBuild closes on their financing.

City/Housing Authority attorney Mary Elizabeth Geiger asked if Commissioner/Councilor Hancey was asking if the Housing Authority could decide to abate only property tax or only sales and use tax. Commissioner/Councilor Hancey said that that was another one of his questions. Attorney Wisor said he didn't think that is the case; the tax exemption is all of those things (sales tax and property tax). He continued that on the property tax side, it is the ability to borrow more money and on the sales and use tax side, it is a cash flow benefit to the developer, who may be able to spend the money on other construction costs.

Commissioner/Councilor Hancey asked if the CHEEHA Grant was currently considered in IndiBuild's capital stack now of missing funds. Ms. Pardoe stated that in the numbers that were sent to the City Council/Housing Authority, she thought there was a \$5.3 million line item for the State Division of Housing and the HEEHA would come out of that; it would reduce that and would be replaced by the HEEHA grant. Ms. Pardoe said she honestly doesn't know what IndiBuild will qualify for or how much they are going to get because the grant application is still being written.

Commissioner/Councilor Hancey asked why the \$5.3 million would decrease in the HEEHA instead of adding to it. Ms. Pardoe responded that the Division of Housing did not approve the \$5.3 million as a loan; they said that IndiBuild had to make it better for them to say yes to the proposed numbers. She added that \$5.23 million is actually \$107,000 per unit and the Division of Housing has never funded a property for that much, so they asked the amount to be reduced.

Commissioner/Councilor Hancey asked for confirmation that the construction costs are \$23 million and IndiBuild is saying everything else is looking pretty good except that the \$5.3 million is not 100% secured. Ms. Pardoe said the application has gone through the "First Level" of staff and that they are going to give IndiBuild a loan and she is going to pay them back. She explained that IndiBuild still has to go to the State Housing Board.

Housing Authority/City Attorney Mary Elizabeth Geiger tried to clarify by saying that IndiBuild has applied for the funding and staff is recommending approval, but IndiBuild does not have final approval. She added that if IndiBuild was awarded the HEEHA Grant, that would reduce the amount to \$4.3 million that IndiBuild would be asking for.

Ms. Pardoe stated that the \$5.3 million is going to be approved with \$4.3 million as their "EDG" gap funds and the remaining \$1.3 million will be a conduit loan to IndiBuild that they will pay back.

Sam Betters, consultant to Ms. Pardoe, said he has been working on the project since the very beginning. He stated that the \$5.3 million that is in the model that was emailed to the Housing Authority/City Council represents all of Department of Housing (DOH) funding at this point. That was the original ask and Mr. Betters said they pushed back pretty hard on that number, and that's why Ms. Pardoe and her partner, Paul Glasgow have been out looking for other sources of funding; the HEEHA dollars being the most promising of those dollars.

Mr. Betters continued that IndiBuild's was an enormous ask of the DOH and it is in IndiBuild's best interest to be able to try and reduce that ask as much as they can.

Mr. Betters stated that quite honestly, he is concerned how the DOH will view the Fruita Mews project if Fruita doesn't participate because IndiBuild has conditioned their ask on the notion that they have approached the City/Housing Authority and that IndiBuild is hoping that the Fruita

Housing Authority will become a Special Limited Partner. He said these type of projects are getting increasingly difficult to do and without the participation of local housing authorities, they are nearly impossible to do, especially in areas like Mesa County where the AMI income levels are so low.

Mr. Betters continued that the HEEHA numbers are important in order to help the DOH reduce their participation in the project. However, if those dollars don't come through, then IndiBuild is working on a plan where the Division will still be able to fund the project, but it will have to go through a more complicated system of actually providing a conduit loan to IndiBuild, who will be responsible for paying that loan back out of cash flow.

Mayor Kincaid noted that IndiBuild has an ask of the Fruita City Council concerning a waiver open space fees, transportation impact (TIF) fees, chip seal fees, etc. and asked how those are related to the partnership for funding with the Housing Authority. Mr. Better recalled how someone has asked what IndiBuild's gap would be on the project and he said the gap is fairly significant; with the DOH funding it gets narrowed by \$5 million plus and with the participation of the Fruita Housing Authority, it gets narrowed by approximately another \$800,000. Mr. Betters said that leaves IndiBuild with a \$200,000 gap, which is why IndiBuild conditioned the request to the City Council of about \$200,000 in fee waivers; it would help IndiBuild cover the remaining gap if everything else comes together.

Commissioner/Councilor Purser said that part of a partnership on a personal level requires trust. She pointed out that she wasn't on the City Council when IndiBuild presented to the City Council in the past but said she has noticed that there have been some "rocky roads" on the way here. She said she wanted to provide an opportunity for IndiBuild to speak about how trust between the Fruita Housing Authority/Council and IndiBuild could be established, what that would look like and what allows the Fruita Housing Authority/Council to trust IndiBuild with the project.

Ms. Pardoe said she has some hurt feelings, too, and that she didn't try to be disingenuous or dishonest in her CHFA narrative, but thinks it was construed that way. She said she understood why it happened and noted that she has apologized for the misunderstanding.

Ms. Pardoe continued that with CHFA, if someone mentions "Housing Authority," they say put it in; you don't have to actually have anything in writing. She said she thinks this is something she should have cleared first, but that she is all about repair, as well.

Ms. Pardoe stated that she is a collaborator and a partnership person by nature and that she desperately needs for everybody in a room to feel good, so it is important to her too, to build that trust.

Commissioner/Councilor Purser asked Ms. Pardoe to explain why she loves Fruita. Ms. Pardoe responded that she has been coming to Fruita for 20 years. She remembers riding the trails at 18 Road when there were only two or three trails and no campground, as well as Mary's and Horsethief since before she moved to Colorado. Ms. Pardoe continued that she lived in Utah for a couple of years and she and her partner found Fruita when they found Moab and have been coming to Fruita since before there was a lot going on here. Ms. Pardoe said the people in the audience could attest to her love for Fruita even though they haven't known her for 20 years. She also stated that she thought about naming her property, "Farm," but she saw that someone else has already taken it.

Commissioner/Councilor Kreie asked what the option of a loan from the Housing Authority to IndiBuild (in lieu of waiving impact fees) would look like; would the Housing Authority and IndiBuild settle in 15 years or would the Housing Authority utilize the right-of-first refusal to buy it less the amount of the loan? Ms. Pardoe responded that it would be existing debt, so when the 15-year cash flow that IndiBuild gives the Authority with the residual analysis, at the bottom, you can see the balances on those loans on assumptions such as (for example) 5% on vacancy, 3% growth on income and 3% growth on expenses. She estimated that the Mews will be fully occupied, but added that there are projections and in year 15, there's only one loan that would need to be refinanced (the \$825,000 Capital Magnet Fund loan) by the Housing Authority. Ms. Pardoe also noted that IndiBuild might still have a loan outstanding and the Authority would have to pay that off if she were to be taken out; otherwise, the Authority would just assume all the other debt with part of the assumption that it is the Housing Authority's \$150,000 loan.

Mayor Kincaid asked City Manager Mike Bennett how the waiver of the impact fees would impact the City of Fruita's budget long-term. Mr. Bennett explained that the City collects transportation impact and other impact fees (some pursuant to state statute), which allows for the money to be spent on future impacts of new development, but not on things such as maintenance. He continued that the City is trying to find funding to widen 19 Road next year at a cost of \$5 million and for which the Transportation Impact Fee alone is estimated at about \$172,200. If waived, the same amount of money that would have otherwise gone towards some of the City's street projects would be reduced in the budget.

Mr. Bennett explained that the only other road fee is a chip seal fee for road maintenance, which is estimated at a cost of approximately \$5,000, depending on whether the roads are public or if there is a portion that is private. In the original plan, staff estimated that at \$5,000, but it could be a little bit more with the dedication of public roads.

Commissioner/Councilor Miller asked if the City has ever waived impact fees in the past. Mr. Bennett explained that the City has not waived impact fees in the past, but has given credits to developers for impact fees for improvements that qualify. The amount of the credits is equivalent to the amount for which City would have spent the impact fees. Mr. Bennett added that based on state statute and Fruita's own updated Land Use Code, the City allows for the ability to waive impact fees for one purpose only, which is affordable housing.

Commissioner/Councilor Hancey asked for confirmation that IndiBuild's request of the Fruita Housing Authority/Fruita City Council is \$700,000 from sales and property tax over the life of the project and then another \$200,000-ish from the waiving of impact fees to help fill IndiBuild's gap of \$900,000. Ms. Pardoe confirmed this was the request, but noted that it was an estimate because some of the contractors might not be aware that they need to reduce their sales tax out of their bids.

Commissioner/Councilor Williams asked what happens to the partnership after the 15-year period and if the property tax kicks back in at that point or if the property tax is waived the lifetime of the property. Attorney Dee Wisor advised that as long as the Housing Authority is a Special Limited Partner, and as long as the partnership owns the building, the property tax exemption continues. He added that the only way it would change is if the partnership decided to sell the building to some other entity that neither is involved in.

Housing Authority/City Attorney Mary Elizabeth Geiger advised that if the Housing Authority exercises its right-of-first refusal or purchases the property at that time, the project would continue

to be tax exempt. She added that as long as the Housing Authority is involved in any way, either as the owner or the limited partner, the tax exemption carries on.

Commissioner/Councilor Williams asked what happens if at the end of 15 years, the Housing Authority no longer wants to be a partner. Attorney Gano explained that it would depend on the deal; for example, the Denver Housing Authority (DHA) puts in their Special Limited Partner (SLP) Agreements that they are in it for the compliance period of 15 years, but once that period is over, they have a right to look at the project's financials and if the project would do fine without the exemption, they can pull out. The DHA also reserves rights in its partnership agreements to terminate a portion of the exemption by going from 100% down to a 50% exemption. Attorney Gano advised that those are the kind of terms that can be negotiated, but he thought IndiBuild's investor is going to want to see that the property tax exemption will be in place for the whole compliance period.

Commissioner/Councilor Williams showed support for the agreement term of being able to reduce the property tax exemption if the project is generating plenty of revenue.

Attorney Gano continued with his example of the Denver Housing Authority (DHA). He said there is a little bit of a nuance in that the payment goes back to the DHA as a payment in lieu of taxes; so, they are still giving the DHA the exemption, but the money that would have been paid on property taxes instead goes as a cash payment to the DHA. Attorney Gano offered to send the Housing Authority/City Council an example of the DHA's Addendum if they would like to see it, noting that it is about 50 to 60 pages long because it is so detailed. Attorney Hancey requested that Attorney Gano send the example.

Vice-Chairman/Mayor Pro Tem Breman asked for confirmation that the payment would go to the Fruita Housing Authority and not the City of Fruita. Attorney Gano said that it would be the Housing Authority and not the City giving the property tax exemption, so it would be the Housing Authority that gets the payment in lieu of the taxes on the back end.

Commissioner/Councilor Hancey asked what the restrictions on the monies would be. Attorney Dee Wisor said the monies could be used for any affordable housing project the Housing Authority has in mind or the Housing Authority's expenses for such projects. Commissioner/Councilor Hancey said that he wanted to know whether the Housing Authority could reimburse the City of Fruita for the taxes that were forgiven over 15 years. Ms. Pardoe said she thought the payment in lieu could be made to whomever. Attorney Wisor advised that the Fruita Housing Authority is not just dealing with the City of Fruita's taxes; the exemption is for the city, county, school district, mosquito district, just to name a few and that if it all were to go back to the City of Fruita, those taxing partners would have some questions about that someday. Housing Authority/City Attorney Mary Elizabeth Geiger clarified that if, in 15 years from now, the Housing Authority has the taxes, those could be spent on other potential programs and projects that the Housing Authority has discussed. The taxes wouldn't have to go towards a Low-Income Housing Tax Credit (LIHTC) project if the Housing Authority had a downpayment assistance or ADU (Accessory Dwelling Unit) program, for example. Ms. Geiger pointed out that if the Housing Authority/City Council were to make a decision at this meeting, the decision would be concerning whether or not to become a Special Limited Partner with IndiBuild and not about the details in the agreement that would later be negotiated with them.

Councilor/Commissioner Miller asked what the breakdown would be of the units by percentages of Area Median Income (AMI) and whether they were one, two or three-bedroom units. She also wanted to know if the vacancies would be filled on a first come, first served basis. Ms. Pardoe responded that the units had not yet been assigned and that there is a very lengthy handbook in which the property managers must be heavily trained to be able to remain in compliance. She added that the first-year files will be reviewed by another agency and then by IndiBuild's Asset Management Group because it is so complicated.

Mayor Kincaid explained that the Fruita Housing Authority/City Council were going to leave the room for the upcoming Executive Session and then would return. He noted that the Fruita City Council has a regular Council meeting scheduled for 7:30 p.m.

Housing Authority/City Attorney Mary Elizabeth Geiger further explained that the Housing Authority/City Council would be returning to a public meeting after reconvening from the Executive Session.

4. JOINT EXECUTIVE SESSION – TO CONVENE IN EXECUTIVE SESSION FOR DETERMINING POSITIONS RELATIVE TO MATTERS THAT MAY BE SUBJECT TO NEGOTIATIONS; DEVELOPING STRATEGY FOR NEGOTIATIONS; AND INSTRUCTING NEGOTIATORS PURSUANT TO C.R.S. SECTION 24-6-402(4)(E) WITH REGARD TO A REQUEST FROM INDIBUILD, LLC/FRUITA MEWS AND RECEIVING LEGAL ADVICE FROM ATTORNEYS PURSUANT TO C.R.S. SECTION 24-6-402(4)(B) REGARDING THE SAME.

- **VICE-CHAIRMAN/MAYOR PRO TEM BREMAN MOVED TO CONVENE IN EXECUTIVE SESSION FOR DETERMINING POSITIONS RELATIVE TO MATTERS THAT MAY BE SUBJECT TO NEGOTIATIONS; DEVELOPING STRATEGY FOR NEGOTIATIONS; AND INSTRUCTING NEGOTIATORS PURSUANT TO C.R.S. SECTION 24-6-402(4)(E) WITH REGARD TO A REQUEST FROM INDIBUILD, LLC/FRUITA MEWS AND RECEIVING LEGAL ADVICE FROM ATTORNEYS PURSUANT TO C.R.S. SECTION 24-6-402(4)(B) REGARDING THE SAME. COMMISSIONER/COUNCILOR PURSER SECONDED THE MOTION. THERE WERE SIX YES VOTES.**

The Fruita Housing Authority/Fruita City Council convened in Executive Session at 6:44 p.m.

RECONVENE FROM EXECUTIVE SESSION TO JOINT MEETING

The Joint meeting of the Fruita Housing Authority/Fruita City Council reconvened at 7:10 p.m.

5. RESOLUTION FHA 2023-02 – A RESOLUTION OF THE BOARD OF THE FRUITA HOUSING AUTHORITY CONCERNING BECOMING A LIMITED PARTNER IN THE OWNERS OF THE FRUITA MEWS PROJECT

Mayor Kincaid explained that although this agenda item was not a public hearing, the Housing Authority/City Council would be allowing comments from the public.

Bill Cummins, Associate Vice President of Business Development for Family Health West (FHW), reiterated FHW's support of the Mews project. He stated that FHW currently employs approximately 600 people and about 20% of FHW staff live in the Clifton area specifically because of affordable housing. Mr. Cummins encouraged the Council to support affordable housing; noting that FHW has been working with Kim Pardoe over the last year and a half. He stated that as a personal reference, he has always found Ms. Pardoe to be extremely genuine.

Jason Calunga, Housing Resources of Western Colorado's Director for Housing Counseling and Education, said that his organization cares a lot about affordable rental housing and knows that there is a big need for it in the community, especially Fruita. He expressed his support for the Mews project, saying that Housing Resources looks forward to partnering with them on educational and outreach programs at their site once it is completed.

Sue Ellen Rodwich, 220 Mica Court, said she is the Director for the Food Bank of the Rockies Western Slope Distribution Center and is also on the Executive Council for AARP Colorado. She continued that in looking at the livability of Fruita, a key part of it is accessible and affordable housing, which also affects food insecurity. Her organization partners with a lot of the supporting partners in the Mews project such as Eureka! to make sure that when families move in, they have a full pantry. She spoke about how the project will make a difference for the community because it impacts all finances.

Angela (no last name given), Sycamore Street in Fruita, said that affordable housing is very important to her, as are improvements and services. She asked the Council to really think things through and asked if there were alternatives to the \$900,000 that IndiBuild needs to fill their funding gap. She asked if the developer had considered the option of making three-bedroom units into two- or one-bedroom units in order to increase the number of units. Angela also asked if the developer could reduce the number of affordable units. She suggested that the Council find the money and spend it now rather than kicking the can down the road.

Lou Mudd, Maple Street in Fruita, stated that the rent on one of the new downtown one-bedroom studio apartments is \$1,450 per month. He said it is really tough for people who work in Fruita to live in Fruita because of the way the situation is now. Mr. Mudd said the Mews is not for welfare people to move in and trash the neighborhood; that it looks to be a very nice development. He added that there are plenty of people who want to live and work in Fruita and hopefully IndiBuild can move forward in helping that become a reality.

There were no more public comments. Chairman/Mayor Kincaid referred the matter to the Housing Authority/City Council, who had no further questions or comments.

- **COMMISSIONER/COUNCILOR PURSER MOVED TO APPROVE RESOLUTION FHA 2023-02 – DIRECTING THE EXECUTIVE DIRECTOR TO EXECUTE A LIMITED LIABILITY PARTNERSHIP AGREEMENT WITH INDIBUILD AND MAKE A DETERMINATION AS TO THE PERCENTAGE OF THE DEVELOPMENT THAT WILL QUALIFY AS LOW INCOME AS REQUIRED BY C.R.S. SECTION 29-4-227.**

Housing Authority/City Council Attorney Mary Elizabeth Geiger recommended that Commissioner/Councilor Purser's motion be amended to reflect that the Housing Authority/City Council wishes to negotiate with IndiBuild on the terms of the agreement rather entering into the agreement right now.

- **COMMISSIONER/COUNCILOR PURSER MOVED TO APPROVE RESOLUTION FHA 2023-02 – DIRECTING THE EXECUTIVE DIRECTOR TO NEGOTIATE A LIMITED LIABILITY PARTNERSHIP AGREEMENT WITH INDIBUILD AND MAKE A DETERMINATION AS TO THE PERCENTAGE OF THE DEVELOPMENT THAT WILL QUALIFY AS LOW INCOME AS REQUIRED BY C.R.S. SECTION 29-4-227 AND WORK WITH THE FRUITA HOUSING AUTHORITY ATTORNEY. COMMISSIONER/COUNCILOR KREIE SECONDED THE MOTION. THERE WERE SIX YES VOTES.**

6. INDIBUILD PROPOSAL – DISCUSSION AND POSSIBLE ACTION REGARDING REQUEST FOR WAIVER OF DEVELOPMENT IMPACT FEES AND ACCEPTANCE OF INTERNAL ROADWAY NETWORK AS PUBLIC IMPROVEMENTS

Mayor Kincaid pointed out that at this point in the meeting, it would be the Fruita City Council (not the Housing Authority) that would be posing questions or making comments on any proposals by IndiBuild.

City Attorney Mary Elizabeth Geiger suggested that since there were two requests before City Council, they should discuss or take action on them as two separate items. The Council decided to proceed with the request concerning the road first.

DISCUSSION/MOTION CONCERNING ROAD DEDICATION REQUEST

Mayor Kincaid noted that IndiBuild was asking for the dedication to the City as a public road of the project's interior loop road (instead of it being a private road) so that the City of Fruita would be responsible for the maintenance of it.

- **COUNCILOR WILLIAMS MOVED TO DIRECT CITY STAFF TO WORK WITH INDIBUILD TO ACCOMPLISH A DEDICATION OF AN INTERIOR ROAD AS A PUBLIC RIGHT-OF-WAY.**

City Attorney Geiger advised that the word "road" should be plural with an "s" on the end of it.

- **COUNCILOR WILLIAMS MOVED TO AMEND HIS PREVIOUS MOTION TO REPLACE THE WORD "ROAD" WITH THE WORD "ROADS." COUNCILOR MILLER SECONDED THE AMENDED MOTION. THERE WERE SIX YES VOTES.**

DISCUSSION/MOTION CONCERNING FEE WAIVERS REQUEST

Mayor Kincaid listed IndiBuild’s requests of fee waivers as follows:

Impact Fee Type	Amount of waiver requested
Open Space Fee	\$93,000
Transportation Impact Fee	\$172,000
Chip Seal Fees	(between) \$4,993 - \$20,927
Total	(approximately) \$270,000

Councilor Breman made the comment that right now, everyone knows the numbers are a moving target, which makes it a challenge, but that he would compel IndiBuild to complete their financing package without the waiver of the fees.

Mayor Kincaid clarified that what the City Council wanted to see was a tighter financial package before they were willing to make a decision on whether to waive the impact fees. He pointed out that the requests from IndiBuild were not something new; it was the same thing that was brought before the Council before, so at this time, the Council wanted to see a tighter financial package before they would be willing to release the funds.

Mayor Kincaid also pointed out that IndiBuild’s request for the waivers was something the Council has never done for any other developer in the past. He added that the Council still needs to have more discussion as a Council, with staff and with the City Attorney concerning how those decisions would impact Fruita’s citizens long-term. He asked that the request for waiver of impact fees be tabled until IndiBuild can give the Council a better look at what the financial package is going to look like and whether the waivers are actual necessary to make the project work.

Councilor Purser added that perhaps now because IndiBuild has a partnership with the Fruita Housing Authority, IndiBuild may be able to find the funding in other places by using the partnership as a negotiating power. She said if IndiBuild is able to come up with the funds without having the Council waive the impact fees, that would be fantastic, but if not, IndiBuild could come back to the City Council.

IndiBuild partner Sam Betters said it was gracious of the Council to provide the ability for IndiBuild to come back before them again, but added that timing is getting to be critical. He said they are trying not to lose any of their subcontractors and that the less moving parts they have to deal with, the easier it is for IndiBuild to get to a closing. Mr. Betters thanked the Council for everything they had done.

Ms. Pardoe asked what the process would be to move forward because IndiBuild has another level of staff approval at the Department of Housing (DOH) on April 11th and then it wouldn’t go to the Housing Board until April 25th. Mayor Kincaid pointed out that the decision wasn’t coming from the Housing Authority; it was an ask of the Fruita City Council.

City Manager Mike Bennett said the City Council was challenging IndiBuild to not have to ask for the waivers of impact fees considering the differences in estimates of the revenues such as property tax. He noted that the City’s Finance Director had spoken with the Mesa County Assessor’s Office (as had IndiBuild), but there are variables in the estimates that are greater than

\$200,000, so it was possible that it could land to where IndiBuild doesn't need \$200,000 from the City.

Mr. Bennett stated that he thought the City Council was saying that with the Housing Authority moving forward with the Special Limited Partnership, and the City also accepting dedication of the internal roads to be public (which also saves in expenses) that hopefully, all that combined with IndiBuild's other funding, may result in IndiBuild filling the gap of \$200,000.

Mr. Bennett added that if that was not the case, the City Council was saying that the ask would still be there and they could consider it at that time.

Ms. Pardoe asked what the process would be to figure that out and if the Council thought that IndiBuild's numbers were too high. Mr. Bennett clarified that the numbers are too low. Ms. Pardoe asked if he was referring to the real estate tax number and Mr. Bennett said he was. Ms. Pardoe said IndiBuild spent a fair bit of time on that.

Mr. Bennett stated that when IndiBuild has more finality of the numbers, they could request to go before City Council again.

Councilor Kreie requested that staff place it on an agenda.

Mr. Sam Betters stated that he didn't know that IndiBuild would be able to get finality on the property tax number, which has been difficult for everyone to try to get. He said that the value of looking at the property tax is that whatever that amount is will go towards debt coverage. Mr. Betters stated that he thinks the other numbers are easier to reconcile and that IndiBuild is very close to those numbers right now. He reiterated that he didn't think he could get more information on the property tax without going through a hearing with the Mesa County Assessor's Office and he wasn't even sure how long that would take. Ms. Pardoe said that one person at the Assessor's Office told them that affordable housing in Mesa County has to go through appeal to get a real tax number, although the latest person she spoke to did not say that. Ms. Pardoe added that that person's number came in around \$29,000 but she was guessing. Mr. Betters asked if the City had a better number they could look at.

City Attorney Mary Elizabeth Geiger responded that the City's Finance Director/City Clerk has those additional numbers and would share them with IndiBuild. She noted that the City Council's regular meeting would be starting soon, so she suggested that Ms. Pardoe follow up with the City Manager and that she (Ms. Geiger) could later speak to IndiBuild's attorney, Alex Gano.

With no further business to come before the Fruita City Council, the Joint meeting was adjourned at 7:32 p.m.

Respectfully submitted,

Debra Woods
Secretary/Deputy City Clerk
Fruita Housing Authority/City of Fruita



FRUITA COLORADO

AGENDA ITEM COVER SHEET

TO: Fruita Housing Authority Board of Commissioners

FROM: Mike Bennett, Executive Director

DATE: June 20, 2023

AGENDA TEXT: RESOLUTION 2023-03 - A Resolution of the Board of Commissioners of the Fruita Housing Authority Allowing for Virtual Meetings

BACKGROUND

The Board of Commissioners of the Fruita Housing Authority (“FHA Board”) records and broadcasts its meetings via video-conferencing and will continue to do so. The FHA Board desires to allow Commissioners, staff members, and Fruita Housing Authority counsel to participate in in-person Fruita Housing Authority meetings via video-conferencing if they are unable to attend in person. The FHA Board recognizes that there may be times when the FHA Board must meet entirely via video-conferencing, which requires the FHA Board to further clarify procedures regarding the allowance of virtual or electronic meetings for FHA Commissioners, staff, guest presenters, and counsel and, if a virtual-only meeting is deemed necessary or appropriate, virtual participation by members of the public. This resolution establishes the ability to hold virtual meetings and the policy regarding such.

Electronic Participation in an In Person Meeting. In the event a Commissioner, staff member, guest presenters and participants, or counsel is unable to meet at the day, hour, and place fixed by the rules and procedures of the Board because meeting in-person is not practical for such person(s), they may contact the FHA Clerk to be provided the means for Electronic Participation in the meeting; all members of the public and all other Commissioners, staff and counsel shall attend and participate in person.

Virtual Only Meetings. In the rare event when the FHA Board is unable to meet in person, but a meeting is necessary, such meeting shall be properly noticed pursuant to C.R.S. § 24-6-402(1)(b) with the information provided for Electronic Participation by members of the public.

APPLICABILITY TO CITY GOALS AND OBJECTIVES

The FHA Board values transparency, public participation, and efficiency in running meetings and taking care of necessary FHA business.

FINANCIAL IMPACT

The only financial impacts are already accounted for in already budgeted, ongoing subscriptions and existing equipment.

OPTIONS AVAILABLE TO THE COUNCIL

1. Adopt Resolution FHA 2023-03, a Resolution of the Board of Commissioners of the Fruita Housing Authority Allowing for Virtual Meetings.
2. Direct FHA staff and counsel to amend Resolution FHA 2023-03 for further consideration.

RECOMMENDATION

It is the recommendation of staff that the Fruita Housing Authority by motion:

ADOPT RESOLUTION 2023-03 ALLOWING FOR VIRTUAL MEETINGS

RESOLUTION FHA 2023-03

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE FRUITA HOUSING AUTHORITY ALLOWING FOR VIRTUAL MEETINGS

WHEREAS, during the COVID-19 local emergency, local governments met virtually, using video-conferencing; and

WHEREAS, the Board of Commissioners of the Fruita Housing Authority (“FHA Board”) records and broadcasts its meetings via video-conferencing and will continue to do so; and

WHEREAS, the FHA Board desires to allow Commissioners, staff members, and Fruita Housing Authority counsel to participate in in-person Fruita Housing Authority meetings via video-conferencing if they are unable to attend in person; and

WHEREAS, the FHA Board recognizes that there may be times when the FHA Board must meet entirely via video-conferencing; and

WHEREAS, the FHA Board desires to further clarify procedures regarding the allowance of virtual or electronic meetings for FHA Commissioners, staff, guest presenters and participants and counsel and, if a virtual-only meeting is deemed necessary or appropriate, virtual participation by members of the public.

NOW, THEREFORE BE IT RESOLVED by the Board of Commissioners of the Fruita Housing Authority, that:

1. Purpose. The purpose of this Policy is to specify the circumstances and means under which the Board may allow FHA Commissioners, staff, guest presenters and participants, and counsel to attend regular and special meetings by telephone or other electronic means of participation, such as video-conferencing, that is clear, uninterrupted and allows two way communication for the participating members ("Electronic Participation").

2. Statement of General Policy. The Board may conduct a regular or special meeting of the Board by Electronic Participation only in accordance with this Policy.

3. Electronic Participation in an In Person Meeting. In the event a Commissioner, staff member or counsel is unable to meet at the day, hour, and place fixed by the rules and procedures of the Board because meeting in-person is not practical for such person(s), they may contact the FHA Clerk to be provided the means for Electronic Participation in the meeting; all members of the public and all other Commissioners, staff, guest presenters and participants and counsel shall attend and participate in person.

4. Virtual Only Meetings. In the rare event when the FHA Board is unable to meet in person but a meeting is necessary, such meeting shall be properly noticed pursuant to C.R.S. § 24-6-402(1)(b) with the information provided for Electronic Participation to include the same by members of the public.

ADOPTED AND APPROVED by the Fruita Housing Authority Board of Commissioners
at a regular public meeting held on the 20th day of June, 2023.

FRUITA HOUSING AUTHORITY

Chair

ATTEST:

Board Secretary

APPROVED AS TO FORM:

Attorney



FRUITA
COLORADO

**FRUITA HOUSING AUTHORITY
AGENDA ITEM COVER SHEET**

TO: FRUITA HOUSING AUTHORITY

FROM: MIKE BENNETT, FRUITA HOUSING AUTHORITY EXECUTIVE DIRECTOR
AND HOUSING AUTHORITY ATTORNEY MARY ELIZABETH GEIGER

DATE: JUNE 20, 2023

AGENDA TEXT: EXECUTIVE SESSION – A request to convene in Executive Session for a conference with the Housing Authority Attorney and Housing Authority Special Counsel to receive legal advice pursuant to CRS 24-6-402(4)(b) regarding the special limited partnership addendum for the IndiBuild Fruita LLLP

BACKGROUND

The Housing Authority has reason to convene in Executive Session for a conference with the Housing Authority Attorney and Housing Authority Special Counsel to receive legal advice pursuant to CRS 24-6-402(4)(b) regarding the special limited partnership addendum for the IndiBuild Fruita LLLP.

FISCAL IMPACT

N/A

APPLICABILITY TO CITY GOALS AND OBJECTIVES

N/A

OPTIONS AVAILABLE TO THE COUNCIL

N/A

RECOMMENDATION

It is the recommendation of the Executive Director and Housing Authority Attorney that the Housing Authority:

- **MOVE TO CONVENE IN EXECUTIVE SESSION FOR A CONFERENCE WITH THE HOUSING AUTHORITY ATTORNEY AND HOUSING AUTHORITY SPECIAL COUNSEL TO RECEIVE LEGAL ADVICE PURSUANT TO CRS 24-6-402(4)(B) REGARDING THE SPECIAL LIMITED PARTNERSHIP ADDENDUM FOR THE INDIBUILD FRUITA LLLP**

ANNOUNCEMENT NO. 1

***ANNOUNCEMENT TO BE MADE BY CHAIRMAN
AT THE BEGINNING OF THE EXECUTIVE SESSION
(MAKE SURE THE SESSION IS BEING RECORDED;
DO NOT TURN IT OFF DURING THE EXECUTIVE SESSION
UNLESS SO ADVISED BY LEGAL COUNSEL.)***

It's June 20, 2023 and the time is _____. For the record, I am the Chairman, Joel Kincaid. As required by the Open Meetings Law, this executive session is being electronically recorded.

Also present at this executive session are the following persons:

_____.

This is an executive session with the City Attorney and special counsel for the following purposes:

- **TO CONVENE IN EXECUTIVE SESSION FOR A CONFERENCE WITH THE HOUSING AUTHORITY ATTORNEY AND HOUSING AUTHORITY SPECIAL COUNSEL TO RECEIVE LEGAL ADVICE PURSUANT TO CRS 24-6-402(4)(B) REGARDING THE SPECIAL LIMITED PARTNERSHIP ADDENDUM FOR THE INDIBUILD FRUITA LLLP**

I caution each participant to confine all discussion to the stated purpose of the executive session, and that no formal action may occur in the executive session.

If at any point in the executive session any participant believes that the discussion is going outside the proper scope of the executive session, please interrupt the discussion and make an objection.

ANNOUNCEMENT NO. 2

***ANNOUNCEMENT TO BE MADE BY THE CHAIRMAN
BEFORE CONCLUDING THE EXECUTIVE SESSION
(WHILE THE SESSION IS STILL BEING RECORDED)***

I hereby attest that this recording reflects the actual contents of the discussion at the executive session and has been made in lieu of any written minutes to satisfy the recording requirements of the Open Meetings Law.

_____ I will have the Secretary retain the recording for a 90-day period.

***OR
(if City personnel was the
subject of the session and
was not present at the session)***

_____ I will retain the tape in my possession for a 90-day period.

The time is now _____, and we now conclude the executive session and return to the open meeting.

(stop recording and return to open meeting)



FRUITA

COLORADO

AGENDA ITEM COVER SHEET

TO: FRUITA HOUSING AUTHORITY

FROM: DAN CARIS, PLANNING AND DEVELOPMENT DIRECTOR

DATE: JUNE 20, 2023

AGENDA TEXT: **RESOLUTION FHA 2023-04 A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE FRUITA HOUSING AUTHORITY AUTHORIZING THE EXECUTIVE DIRECTOR TO SIGN ADDENDUM TO AMENDED AND RESTATED AGREEMENT OF LIMITED LIABILITY LIMITED PARTNERSHIP**

BACKGROUND

At the APRIL 4, 2023, The Housing Authority Board adopted RESOLUTION FHA 2023-02 – A Resolution of the Board of Commissioners of the Fruita Housing Authority, (“FHA”) Concerning Becoming a Limited Partner in the Owners of the Fruita Mews Project. The FHA directed the Executive Director to work with Special Counsel to the FHA, Dee Wisor, and Counsel to the FHA, Mary Elizabeth Geiger, to negotiate the terms of the partnership. The requested terms have been incorporated into the Addendum and can be referenced below for consideration by the FHA.

Attached to this coversheet is the form of Addendum to the Amended and Restated Agreement of the Limited Liability Limited Partnership (the “SLP Addendum”) for the MEWS project. The main purpose of the SLP Addendum is to make the Housing Authority a *special limited partner* in the IndiBuild Fruita LLLP, a Colorado limited liability limited partnership, to exempt the project from property taxes and (during construction) sales and use taxes. This is authorized by Section 29-4-227(b), CRS. In the event IndiBuild, LLC is unable to close on its funding, the LLLP would not be created and the SLP Addendum would not be signed (it will only be signed at closing). The tax credits are released in tranches until the project is leased up so there is a “carrot” for performance to complete the project.

The following summarizes the material terms of the Addendum as it relates to the FHA:

1. The FHA will have a 0.01% interest in the limited partnership.
2. The Partnership shall reimburse the Housing Authority Limited Partner and the City of Fruita, Colorado for their legal fees and out-of-pocket administrative costs incurred in connection with the Project.
3. The partnership will pay the FHA an annual fee of \$5,000.

4. Upon execution of the Addendum there will be executed a Purchase Rights Agreement that:
 - a. Gives the FHA a right of first refusal if the partnership receives an offer from a third party to purchase the project.
 - i. The purchase price under the ROFR will equal the greater of: (A) \$100 or (B) the sum of (i) the principal amount of all outstanding indebtedness secured by the Project (including any accrued interest, prepayment penalty, or other amounts required by any mortgage lender, whether or not such amounts are due on sale); plus (ii) any amounts owed to the Investor Limited Partner; plus (iii) an amount sufficient to enable the Partnership to distribute cash to the Partners pursuant to the liquidation provisions of the Partnership Agreement equal to all federal, state, and local taxes of the Partnership and its Partners attributable to such sale.
 - b. Gives the FHA a purchase option pursuant to which at any time, the Authority may purchase the project for a price that is the greater of:
 - i. \$1.00 plus (A) the total amount of the outstanding indebtedness secured by the plus (B) an amount sufficient to enable the Partnership to distribute cash to the Partners pursuant to the liquidation provisions of the Partnership Agreement in an amount equal to all federal, state, and local taxes of the Partnership and its Partners attributable to such; or
 - ii. The fair market value of the project.
5. All of the residential units constituting the Project are or will be subject to affordability restrictions limiting occupancy to persons at or below 100% of area median income, which restrictions are or will be set forth in in the Land Use Restriction Agreement for the benefit of the Colorado Housing and Finance Authority and the Partnership Agreement.
6. The FHA and all of its past and present officers, directors, commissioners, employees, partners, agents, shareholders, members, trustees, predecessors, successors, subrogees, and attorneys (collectively, "Housing Authority Parties") will not incur or be subject to any liability for the FHA's acts or omissions in connection with the Partnership, the Project, or the performance of this Addendum except to the extent of their fraud, intentional misconduct, or gross negligence.
7. The Partnership will provide periodic financial reports to the FHA including unaudited financial reports and a rent roll every quarter and audited financial reports, tax returns, and an operating budget annually and a Form K-1 and a copy of the Partnership's federal tax returns, any state or local Partnership tax returns, and any IRS Form 8823 notification or other material documents provided to the IRS.
8. In the final year of the Compliance Period (15 years) and every three years thereafter, the General Partner shall provide financial projections of whether the Property Tax Exemption is needed to maintain the Financial Viability for an additional three-year period. If the financial projections show that the Project will achieve Financial Viability without the Property Tax Exemption, then the Housing Authority Limited Partner may withdraw from the Partnership.

“Financial Viability” means the economic condition of the Project and the using the most recent annual audited financial statements to create a three-year projection that meets a Debt Service Coverage Ratio of 1.15:1.00.

FISCAL IMPACT

It is important to note that said sale/use and property taxes would not otherwise be collected if the project were not to develop. Pursuant to C.R.S. 29-4-227, the determination by a housing authority of the percentage of the project that qualifies for the exemptions from payment of property taxes and sales and use taxes may be made on the basis of either the relative square footage or cost and is presumed valid absent manifest error.

If the FHA were to participate as a SLP, the FHA would receive the following benefits:

1. First right of refusal for purchase of the property after 15 years (details be determined)
2. Annual fee of \$5,000 (adjusted 3% annually) for total of \$92,995 over the 15-yr period.
3. Reimbursement of out-of-pocket legal expenses of the FHA estimated at \$50,000.

OPTIONS AVAILABLE TO THE COMMISSION

1. APPROVE/APPROVE WITH MODIFICATIONS RESOLUTION FHA 2023-04 A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE FRUITA HOUSING AUTHORITY AUTHORIZING THE EXECUTIVE DIRECTOR TO SIGN ADDENDUM TO AMENDED AND RESTATED AGREEMENT OF LIMITED LIABILITY LIMITED PARTNERSHIP
2. DENY RESOLUTION FHA 2023-04 A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE FRUITA HOUSING AUTHORITY AUTHORIZING THE EXECUTIVE DIRECTOR TO SIGN ADDENDUM TO AMENDED AND RESTATED AGREEMENT OF LIMITED LIABILITY LIMITED PARTNERSHIP

RECOMMENDATION

APPROVE RESOLUTION FHA 2023-04 A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE FRUITA HOUSING AUTHORITY AUTHORIZING THE EXECUTIVE DIRECTOR TO SIGN ADDENDUM TO AMENDED AND RESTATED AGREEMENT OF LIMITED LIABILITY LIMITED PARTNERSHIP

RESOLUTION FHA 2023-04

**A RESOLUTION OF THE BOARD OF COMMISSIONERS
OF THE FRUITA HOUSING AUTHORITY AUTHORIZING
THE EXECUTIVE DIRECTOR TO SIGN ADDENDUM TO
AMENDED AND RESTATED AGREEMENT OF LIMITED
LIABILITY LIMITED PARTNERSHIP**

WHEREAS, the Fruita Housing Authority (“FHA”) adopted Resolution FHA 2023-02 whereby the FHA committed to become a special limited partner in the affordable housing project being developed by IndiBuild LLC (“IndiBuild”) known as the Fruita Mews (the “MEWS Project”); and

WHEREAS, Resolution FHA 2023-02 directed the FHA Attorney and Executive Director to negotiate the terms of the special limited partnership agreement; and

WHEREAS, the Addendum to Amended and Restated Agreement of Limited Liability Limited Partnership – IndiBuild Fruita LLLP (“SLP Addendum”) has been approved by all parties except for the FHA; and

WHEREAS, Exhibit C and Exhibit D to the SLP Addendum specify a finding by the FHA that 100% of the square footage the MEWS Project is intended to be occupied by persons of low-income, with the FHA determining that persons earning at or below 100% of Area Median Income are persons of low income and as such the IndiBuild Fruita LLLP is pursuing exemption from property taxes under C.R.S. § 29-4-227(b) and exemption from sales and use tax under C.R.S. § 29-4-227(b); and

WHEREAS, FHA wishes to support the MEWS Project by authorizing the Executive Director to execute the SLP Addendum in order to provide the tax exemptions authorized by C.R.S. § 29-4-227.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE FRUITA HOUSING AUTHORITY:

Section 1. FHA hereby authorizes the Executive Director to execute the SLP Addendum, a copy of which is attached hereto.

Section 2. This Resolution shall be effective as of the date of its adoption.

ADOPTED this 20th day of June, 2023.

FRUITA HOUSING AUTHORITY

Chair

ATTEST:

Board Secretary

APPROVED AS TO FORM:

Attorney

Addendum to Amended and Restated Agreement of Limited Liability Limited Partnership

IndiBuild Fruita LLLP

[July] [1], 2023

TABLE OF CONTENTS

	<u>Page</u>
1. Definitions.....	1
2. Housing Authority Limited Partner Fees.....	1
3. Rights and Duties of the Housing Authority Limited Partner	1
4. Liability of Housing Authority Limited Partner and Partnership; Indemnification of Housing Authority Limited Partner	3
5. Required Consent.....	3
6. Closing Documents; Reports and Information	4
7. Financial Viability.	4
8. Withdrawal, Purchase Option, and Removal.....	5
9. Notices	6
10. Conflicts.....	6
11. No Assignment.....	6
12. Severability	7
13. Waiver.....	7
14. Governing Law	7
15. Amendments	7
EXHIBIT A.....	1
EXHIBIT B.....	2
EXHIBIT C.....	5
EXHIBIT D.....	8

Addendum to Amended and Restated Agreement of Limited Liability Limited Partnership

INDIBUILD FRUITA LLLP

This Addendum, dated effective [July 1], 2023 (“Effective Date”), is attached to, incorporated into, and forms a part of the Amended and Restated Agreement of Limited Liability Limited Partnership of INDIBUILD FRUITA LLLP, a Colorado limited partnership limited partnership (“Partnership”), dated the same date as this Addendum (“Partnership Agreement”), among INDIBUILD FRUITA GP LLC, a Colorado limited liability company (“General Partner”); NEF ASSIGNMENT CORPORATION, as nominee, an Illinois not-for-profit corporation (“Investor Limited Partner”); and HOUSING AUTHORITY OF THE CITY OF FRUITA, COLORADO, a body corporate and politic (“Housing Authority Limited Partner”).

1. Definitions. Capitalized terms used and not defined in this Addendum have the definitions given them in the Partnership Agreement.

2. Housing Authority Limited Partner Fees.

(a) The Partnership shall reimburse the Housing Authority Limited Partner and the City of Fruita, Colorado for their legal fees and out-of-pocket administrative costs incurred in connection with the Project. The Partnership shall pay such reimbursement within thirty days after receipt of any written request for such reimbursement.

(b) The Partnership shall also pay the Housing Authority Limited Partner an annual fee of \$5,000.00 (“Housing Authority Asset Management Fee”) for the Housing Authority Limited Partner’s administrative costs from Cash Flow as provided in Section 4.02(a) of the Partnership Agreement. Payments of the Housing Authority Asset Management Fee will begin on the first March 31 that is no more than three months after the first date that Project has had three consecutive months of operating revenue that exceed operating expenses. The Housing Authority Asset Management Fee will be prorated for any partial year. The Partnership shall pay the Housing Authority Asset Management Fee before March 31 each year. If the Partnership does not have sufficient Cash Flow to pay the Housing Authority Asset Management Fee in full, the Partnership may defer payment, but any unpaid Housing Authority Asset Management Fee will accrue until paid in accordance with Section 4.02(a) of the Partnership Agreement. The Partnership shall provide the Housing Authority Limited Partner with unaudited financial reports and a rent roll every quarter and audited financial reports, tax returns, and an operating budget annually.

3. Rights and Duties of the Housing Authority Limited Partner.

(a) All of the residential units constituting the Project are or will be subject to affordability restrictions limiting occupancy to persons at or below 100% of area median income, which restrictions are or will be set forth in the Land Use Restriction Agreement for the benefit of the Colorado Housing and Finance Authority (“LURA”) and the Partnership Agreement. If the Project does not comply with the affordability restrictions in the LURA and the Partnership Agreement, the Housing Authority Limited Partner may withdraw from the Partnership subject to the procedures set forth in Section 8.

(b) Upon the execution of this Addendum, the Partnership and the Housing Authority Limited Partner shall execute:

(i) the Purchase Rights Agreement in the form attached as Exhibit A (“Purchase Rights Agreement”);

(ii) a Memorandum of Purchase Rights Agreement in the form attached as Exhibit B (“Purchase Rights Memorandum”), which the Housing Authority Limited Partner may record in the Office of the Clerk and Recorder of Mesa County, Colorado;

(iii) a Housing Authority Certification Regarding Property Tax Exemption in the form attached as Exhibit C; and

(iv) a Housing Authority Certification Regarding Sales and Use Tax Exemption in the form attached as Exhibit D.

(c) The Housing Authority Limited Partner shall use commercially reasonable efforts to cooperate with the Partnership in the Partnership’s application for an exemption from special assessments and real property taxes (“Property Tax Exemption”) and an exemption from Colorado state and local sales and use taxes during construction to the extent provided under Colorado law (“Sales and Use Tax Exemption”). The Housing Authority Limited Partner shall review and may approve any applications for tax exemptions based on its participation.

(d) The Housing Authority Limited Partner represents that it is a validly existing housing authority under the laws of the State of Colorado.

(e) The Housing Authority Limited Partner and the Partnership shall work together to accomplish the following objectives related to the Project and addressing the needs of constituents of the Housing Authority Limited Partner:

(i) If the Housing Authority Limited Partner maintains a list of income-restricted projects, the Housing Authority Limited Partner shall add the Project to its list and provide this list to prospective tenants; and

(ii) a representative of the Housing Authority Limited Partner may meet with representatives of the General Partner to provide guidance on (A) operational goals and objectives, (B) strategies to expand service opportunities and improve financial performance, and (C) organizational effectiveness.

(f) Except as specifically set forth in this Addendum, the Housing Authority Limited Partner has no obligations, responsibilities, or liabilities to the Partnership or the Project. The Housing Authority Limited Partner has no liability or responsibility for any obligation of the Partnership or the General Partner or as a result of any failure of the General Partner to perform its obligations under the Partnership Agreement.

4. Liability of Housing Authority Limited Partner and Partnership; Indemnification of Housing Authority Limited Partner. Section 6.05(b) of the Partnership Agreement applies to the Housing Authority Limited Partner in the same fashion it applies to the Investor Limited Partner. In addition, the Housing Authority Limited Partner and all of its past and present officers, directors, commissioners, employees, partners, agents, shareholders, members, trustees, predecessors, successors, subrogees, and attorneys (collectively, "Housing Authority Parties") will not incur or be subject to any liability for the Housing Authority Limited Partner's acts or omissions in connection with the Partnership, the Project, or the performance of this Addendum except to the extent of their fraud, intentional misconduct, or gross negligence. Except to the extent of a Housing Authority Parties' fraud, intentional misconduct, or gross negligence, the Partnership and the General Partner shall indemnify and hold harmless each of the Housing Authority Parties against any loss, liability, claim, or damage arising from or related to (a) the acts, omissions, or conduct of the Partnership, the General Partner, or their agents; (b) the Project; or (c) the performance of this Addendum.

5. Required Consent. Except in connection with a transfer to First Bank of Wyoming, a Division of Glacier Bank, or the Colorado Housing and Finance Authority, a body corporate and political subdivision of the State of Colorado (each a "Senior Lender") in exercise of the Senior Lender's remedies under any of the loan documents securing the mortgage loan from Senior Lender to the Partnership, the Partnership must obtain the Consent of the Housing Authority Limited Partner, which shall not be unreasonably withheld, delayed, or conditioned, for any of the actions described in (a) through (f) below. Except for those consent rights of the Housing Authority Limited Partner specifically set forth in this Addendum, all other actions, approvals, rights, powers, votes, agreements, and consents, including, without limitation, all actions requiring the consent of a limited partner set forth in the Partnership Agreement, including this Addendum, will be taken solely by the Investor Limited Partner, acting singly. The Housing Authority Limited Partner does not have the power or authority to bind the Partnership or to sign any agreement or document in the name of the Partnership. Notwithstanding anything to the contrary set forth in the Partnership Agreement, as amended by this Addendum, the Housing Authority Limited Partner cannot assign, pledge, or otherwise transfer its Partnership Interest in the Partnership, in whole or in part, without the prior written consent of the General Partner and the Investor Limited Partner. If the Housing Authority Limited Partner fails to respond within thirty days from the date on which it receives the written notice of a proposed action described in (a) through (f) below, the Housing Authority Limited Partner will be deemed to have consented to the action.

(a) the transfer of either (i) control of the General Partner, (ii) a majority of the equity interests in the General Partner, or (iii) the rights and powers of the General Partner, if such transferee is not an Affiliate of the General Partner or the Investor Limited Partner;

(b) except as provided in the Partnership Agreement, the withdrawal of the General Partner from the Partnership if the General Partner is not replaced by an Affiliate of the General Partner, an Affiliate or designee of the Investor Limited Partner, or the Housing Authority Limited Partner or its designee;

(c) the admission of a successor General Partner, following the voluntary withdrawal of the General Partner if the General Partner is not replaced by an Affiliate of the General Partner, an Affiliate or designee of the Investor Limited Partner, or the Housing Authority Limited Partner or its designee;

(d) the admission of a successor General Partner (unless such entity is an Affiliate of the Investor Limited Partner) following any exercise by the Investor Limited Partner of its rights under the Partnership Agreement to remove the General Partner;

(e) any amendment or modification to the LURA; or

(f) any amendment or modification to the Partnership Agreement that would materially and adversely affect the Housing Authority Limited Partner.

If the Partnership or General Partner takes any of the actions described in paragraphs (a) through (f) above without the Consent of Housing Authority Limited Partner, then the Housing Authority Limited Partner may immediately withdraw from the Partnership in accordance with Section 8.

6. Closing Documents; Reports and Information.

(a) The General Partner shall, within ten days after the Effective Date, deliver to the Housing Authority Limited Partner copies of the following documents: (i) the Partnership Agreement (including this Addendum); (ii) the Purchase Rights Agreement; and (iii) the recorded Memorandum of Purchase Rights Agreement. Promptly upon receipt, the General Partner shall also deliver to the Housing Authority Limited Partner a recorded copy of the LURA. The Housing Authority Limited Partner may withdraw from the Partnership sixty days after providing written notice to the General Partner and the Limited Partner of the General Partner's failure to provide the documents described above if not cured within the sixty-day period. The Housing Authority Limited Partner shall accept a cure within applicable cure periods from the Investor Limited Partner on the same basis as it would from the General Partner.

(b) The General Partner shall deliver to the Housing Authority Limited Partner a current rent roll for the Project on a semi-annual basis, along with copies of audited financial statements that the General Partner delivers to the Investor Limited Partner under the Partnership Agreement concurrently with delivery to the Investor Limited Partner. The General Partner shall also provide the Housing Authority Limited Partner with all quarterly financial reports, annual audited financial statements, and all information necessary for the preparation of the Housing Authority Limited Partner's federal income tax return, including a Form K-1 and a copy of the Partnership's federal tax returns, any state or local Partnership tax returns, and any IRS Form 8823 notification or other material documents provided to the IRS. The General Partner shall deliver the information described in this Section 6(b) electronically to the e-mail address provided by the Housing Authority Limited Partner unless the Housing Authority Limited Partner requests delivery by a different method.

7. Financial Viability.

(a) In the final year of the Compliance Period (as defined in the Partnership Agreement) and every three years thereafter, the General Partner shall provide financial projections of whether the Property Tax Exemption is needed to maintain the Financial Viability (defined below) for an additional three-year period. If the financial projections show that the Project will achieve Financial Viability without the Property Tax Exemption, then the Housing Authority Limited Partner may withdraw from the Partnership in accordance with Section 8.

(b) “Financial Viability” means the economic condition of the Project and the Partnership (based upon the affordability restrictions in the LURA and other relevant factors) using the most recent annual audited financial statements to create a three-year projection that meets a Debt Service Coverage Ratio of 1.15:1.00.

8. Withdrawal, Purchase Option, and Removal.

(a) The Housing Authority Limited Partner shall not withdraw from the Partnership except in accordance with this Section 8(a). The Housing Authority Limited Partner may withdraw from the Partnership thirty days after providing written notice to the General Partner and the Investor Limited Partner upon the occurrence of any of the following events, after which the Purchase Rights Agreement will remain in full force:

(i) a material breach by the Partnership or the General Partner of any provisions of the Partnership Agreement or related agreements if such breach is not cured within sixty days following written notice to the Partnership;

(ii) a breach by the Partnership or the General Partner of any provisions of this Addendum, if such breach is not cured within sixty days following written notice to the Partnership;

(iii) a failure of the Partnership to comply with the affordability restrictions in the LURA or Partnership Agreement and such failure is not cured within the cure period set forth in the LURA or Partnership Agreement if the LURA or Partnership Agreement contains a cure period, or, if not, within ninety days following written notice to the Partnership;

(iv) a failure of the Partnership to maintain the Project in compliance with applicable laws, or otherwise material breaches of applicable laws where such breaches are reasonably likely to materially impede the ability of the Partnership to operate the Project, where such failure or breach is not cured within sixty days following written notice to the Partnership;

(v) the failure of the Partnership to obtain consent from the Housing Authority Limited Partner for any action requiring the Housing Authority Limited Partner’s consent under Section 5;

(vi) a change in Colorado law that no longer permits the Property Tax Exemption;

(vii) the Project will meet achieve Financial Viability as provided in Section 7; or

(viii) an event of bankruptcy with respect to the Partnership.

(b) The General Partner may purchase the Housing Authority Limited Partner’s interest in the Partnership upon the terms and conditions set forth below:

(i) Upon a material violation by the Housing Authority Limited Partner of the Partnership Agreement or this Addendum, or a change in the Housing Authority Limited Partner’s policies that disqualifies all or any portion of the Project from its Property Tax Exemption, the General Partner shall provide Notice to the Housing Authority Limited Partner. After a reasonable opportunity to cure, if the Housing Authority Limited Partner has not cured the violation, the General Partner may purchase the interest of the Housing Authority Limited Partner in the Partnership. The purchase price for the Housing Authority Limited Partner’s interest pursuant to this Section 8(b)(i) will equal \$100. Upon purchase of the Housing Authority Limited Partner’s interest, the Housing Authority Limited Partner shall execute an amendment to the Partnership Agreement to evidence its withdrawal. The removal of the Housing Authority Limited Partner pursuant to this Section 8(b)(i) will automatically terminate the Purchase Rights Agreement.

(ii) If the General Partner determines, without cause, that it desires to purchase the interests of the Housing Authority Limited Partner in the Partnership, the General Partner may purchase the interest of the Housing Authority Limited Partner. The purchase price for the Housing Authority Partner’s interest pursuant to this Section 8(b)(ii) equals \$100 plus any accrued but unpaid amounts due to the Housing Authority Limited Partner arising prior to the date of the purchase. Upon purchase of the Housing Authority Partner’s interest, the Housing Authority Limited Partner shall execute an amendment to the Partnership Agreement to evidence the Housing Authority Limited Partner’s withdrawal. The removal of the Housing Authority Limited Partner pursuant to this Section 8(b)(ii) will not terminate the Purchase Rights Agreement.

9. Notices. The Housing Authority Limited Partner shall provide copies of any notices, consents, demands, waivers, and approvals it sends to the Partnership to the General Partner and Investor Limited Partner by (i) personal delivery, (ii) a nationally-recognized, next-day courier service, or (iii) first-class certified mail, postage prepaid. A notice is deemed given on the other party’s receipt of it, or if mailed, on the earlier of the other party’s receipt of it and the third business day after its mailing. The parties may change their addresses for notice by notifying the other parties in the manner provided in this Section 9. The Partnership Agreement sets forth the notice addresses for the General Partner and Investor Limited Partner. The following is the address of the Housing Authority Limited Partner for notice purposes under this Agreement:

Fruita Housing Authority
attn: Executive Director
325 E. Aspen Ave.
Fruita, CO 81521

With a copy to:

Garfield & Hecht
910 Grand Ave., Ste. 201
Glenwood Springs, CO 81601
Attention: Mary Elizabeth Geiger

10. Conflicts. If any provision of this Addendum conflicts with any provision of the Partnership Agreement or any other document, then the provisions of this Addendum control.

11. No Assignment. No party may assign its rights or responsibilities under this Addendum without the consent of the other parties.

12. Severability. If any provision of this Addendum is held to be invalid or unenforceable, such defect will not affect other provisions or applications that can be given effect without the invalid or unenforceable provisions or applications, and to this end, the provisions and applications of this Addendum are severable.

13. Waiver. No waiver of satisfaction of a condition or non-performance of an obligation under this Addendum will be effective unless it is in writing and signed by the party granting the waiver.

14. Governing Law. The laws of the State of Colorado, without giving effect to its principles of conflicts of law, govern all adversarial proceedings brought by the parties arising out of this Addendum, whether their claims are sound in contract, tort, or otherwise.

15. Amendments. Any amendment to this Addendum requires a written agreement of the parties.

[Remainder of page intentionally blank; signatures on following page(s)]

The parties have executed this Addendum as of the date first written above.

PARTNERSHIP

IndiBuild Fruita LLLP, a Colorado limited liability limited partnership

By: IndiBuild Fruita GP LLC, a Colorado limited liability company, its General Partner

By: indibuild llc, as its Manager

By: _____
Name: Kimberley A. Coughlin
Title: Principal

GENERAL PARTNER

IndiBuild Fruita GP LLC, a Colorado limited liability company, its General Partner

By: indibuild llc, as its Manager

By: _____
Name: Kimberley A. Coughlin
Title: Principal

INVESTOR LIMITED PARTNER

NEF Assignment Corporation, as nominee, an
Illinois not-for-profit corporation

By _____
Name _____
Title _____

HOUSING AUTHORITY LIMITED PARTNER

Housing Authority of the City of Fruita, Colorado, a body
corporate and politic

By: _____
Name: Michael Bennett
Title: Executive Director

EXHIBIT A
Purchase Rights Agreement
[attached]

PURCHASE RIGHTS AGREEMENT

This Purchase Rights Agreement (“Agreement”) dated effective [July] [1], 2023, is among INDIBUILD FRUITA LLLP, a Colorado limited liability limited partnership (“Partnership”); INDIBUILD FRUITA GP LLC, a Colorado limited liability company (“General Partner”); NEF ASSIGNMENT CORPORATION, as nominee, an Illinois not-for-profit corporation (“Investor Limited Partner”); and HOUSING AUTHORITY OF THE CITY OF FRUITA, COLORADO, a body corporate and politic (“Housing Authority Limited Partner”).

The Partnership was formed to develop, finance, and operate a fifty-unit affordable housing project in Fruita, Colorado (“Project”). The Project will be subject to governmental regulatory agreements restricting occupancy to low-income housing (“Use Restrictions”).

Concurrently with the execution and delivery of this Agreement, the General Partner, Investor Limited Partner, and Housing Authority Limited Partner are entering into an Addendum to First Amended and Restated Agreement of Limited Liability Limited Partnership and (together, with the First Amended and Restated Partnership Agreement of Limited Liability Partnership, the “Partnership Agreement”).

The Partnership desires to grant the Housing Authority Limited Partner certain purchase rights with respect to the Project.

The parties therefore agree as follows:

1. Grant of Right of First Refusal and Purchase Option. The Partnership hereby grants to the Housing Authority Limited Partner a right of first refusal (“ROFR”) to purchase the Project on the terms set forth in Section 2. The Partnership also hereby grants to the Housing Authority Limited Partner an option to purchase the Project, and the General Partner and Investor Limited Partner hereby grant to the Housing Authority Limited Partner an option to purchase their interests in the Partnership (the “Option Interest”) on the terms set forth in Section 3 (“Purchase Option”). The Housing Authority Limited Partner may exercise the ROFR and the Purchase Option after the end of the Compliance Period (as defined in the Partnership Agreement), which date is referred to as the “Purchase Rights Date.” The Housing Authority Limited Partner may only exercise the ROFR and Purchase Option within one year of the Purchase Rights Date, and the ROFR and Purchase Option will automatically terminate if not exercised within the one-year period. The one-year period is referred to as the “Purchase Rights Term.” The ROFR and Purchase Option granted by this Agreement are senior and superior to any purchase rights granted to the General Partner pursuant to the Partnership Agreement.

2. ROFR.

(a) During the Purchase Rights Term, the General Partner shall notify the Housing Authority Limited Partner promptly after the Partnership receives a bona fide offer from any third party to purchase the Project that the Partnership is willing to accept (“Purchase Offer”). Within sixty days of receiving notice of the Purchase Offer, the Housing Authority Limited Partner may give notice to the Partnership that the Housing Authority Limited Partner intends to exercise the ROFR (“ROFR Notice”). The ROFR Notice must (i) indicate the Housing Authority Limited Partner intends to purchase the Project; and (ii) set forth the proposed ROFR Price (defined below).

The closing of the purchase must occur at least thirty and not more than one hundred twenty days from the date the Housing Authority Limited Partner delivers the ROFR Notice to the Partnership. To exercise the ROFR, the Housing Authority Limited Partner must agree to continue to operate the Project for low-income housing subject to restricted rents for the duration of Compliance Period and any affordability covenants recorded against the Project.

(b) The purchase price under the ROFR (“ROFR Price”) will equal the greater of: (A) \$100 or (B) the sum of (i) the principal amount of all outstanding indebtedness secured by the Project (including any accrued interest, prepayment penalty, or other amounts required by any mortgage lender, whether or not such amounts are due on sale); plus (ii) any amounts owed to the Investor Limited Partner; plus (iii) an amount sufficient to enable the Partnership to distribute cash to the Partners pursuant to the liquidation provisions of the Partnership Agreement equal to all federal, state, and local taxes of the Partnership and its Partners attributable to such sale with such taxes calculated in accordance with IRC Section 42(i)(7), assuming that each Partner has an effective combined federal, state, and local income tax rate equal to the maximum of rate in effect on the date of closing.

(c) The General Partner shall provide reasonable assistance to the Housing Authority Limited Partner to determine the ROFR Price. If the General Partner and Investor Limited Partner (if then a partner in the Partnership) disagree about the calculation of the ROFR Price proposed by the Housing Authority Limited Partner, the parties shall work in good faith with the Housing Authority Limited Partner and the Accountants (defined in the Partnership Agreement) to agree on a ROFR Price. The Housing Authority Limited Partner shall pay the ROFR Price to the Partnership at closing in cash or immediately available funds, provided that if permitted by the applicable lenders, a portion of the ROFR Price may be paid by the Housing Authority Limited Partner assuming the Partnership’s mortgages. The Housing Authority Limited Partner shall pay all costs of the purchase, including accountants’ fees, attorney’s fees, and closing costs. Upon receipt of the ROFR Price, the Partnership shall distribute the proceeds in liquidation.

3. Purchase Option.

(a) At any time during the Purchase Rights Term, the Housing Authority Limited Partner may exercise the Purchase Option by sending a written notice of its intent to exercise the Purchase Option (“Purchase Option Notice”) to: (i) the Partnership, if the Housing Authority Limited Partner intends to acquire the Project; or (ii) the General Partner and Investor Limited Partner if the Housing Authority Limited Partner intends to acquire their interests in the Partnership. Within sixty days of the Partnership’s receipt of the Purchase Option Notice, the Housing Authority Limited Partner shall deliver a draft purchase and sale agreement or partnership interest purchase agreement, which must contain terms and conditions customary for a purchase and sale agreement of multifamily real estate in Colorado, along with the Housing Authority Limited Partner’s calculation of the Option Price (defined below). To exercise the Purchase Option, the Housing Authority Limited Partner must agree to continue to operate the Project for low-income housing subject to restricted rents for the duration of Compliance Period and any affordability covenants recorded against the Project.

(b) The purchase price under the Purchase Option (“Option Price”) will be the greater of:

(i) \$1.00 plus (A) the total amount of the outstanding indebtedness secured by the Project (if the Purchase Option is exercised with respect to the Project) plus (B) an amount sufficient to enable the Partnership to distribute cash to the Partners pursuant to the liquidation provisions of the Partnership Agreement in an amount equal to all federal, state, and local taxes of the Partnership and its Partners attributable to such sale with such taxes calculated in accordance with IRC Section 42(i)(7), assuming that each Partner has an effective combined federal, state, and local income tax rate equal to the maximum of rate in effect on the date of closing; or

(ii) the Fair Market Value (defined below) of the Project or the Option Interests, as applicable. For this purpose, the Fair Market Value of the Option Interests will be determined by appraisal in a manner similar to Section 3(c). The Housing Authority Limited Partner shall pay all costs of the purchase, including appraiser’s fees, attorney’s fees, and any closing costs. If the Housing Authority Limited Partner withdraws from the Partnership or is removed, the Purchase Option will be void and of no further force or effect.

(c) The Fair Market Value of the Project will be determined as follows. The Housing Authority Limited Partner and the General Partner may select a mutually acceptable appraiser who shall determine the Fair Market Value. If the parties cannot agree upon an appraiser, the Housing Authority Limited Partner shall select an appraiser, and the General Partner shall select a second appraiser, and the two appraisers shall each prepare an appraisal. If the difference between the two appraisals is within ten percent of the lower of the two appraisals, the fair market value will be the average of the two appraisals. If the difference between the two appraisals is greater than ten percent of the lower of the two appraisals, then the two appraisers shall jointly select a third appraiser who shall also prepare an appraisal. If the two appraisers are unable jointly to select a third appraiser, the Housing Authority Limited Partner or the General Partner may, upon written notice to the other, request that the American Arbitration Association appoint a third appraiser. If the third appraisal is less than either of the first two appraisals, then Fair Market Value will be the average of the two lowest appraisals. If the third appraisal is greater than the first two, then Fair Market Value will be the average of the two highest appraisals. If the third appraisal falls between the previous two appraisals, the Fair Market Value will be the value established by the third appraisal. The Housing Authority Limited Partner and the Partnership shall share the cost equally of any appraiser jointly selected or shall pay the costs of the appraiser they each select and shall share the cost of the third appraiser equally. Any appraiser selected pursuant to this Section 3(c) must be an MAI appraiser with at least five years of experience in valuing income-restricted multifamily rental property.

4. Burdens and Benefits Run with the Land. The ROFR, Purchase Option, and the covenants in this Agreement run with the land and bind the successors and assigns of the parties from the date of this Agreement until one year after the end of the Compliance Period provided in Section 42(i)(1) of the Internal Revenue Code.

5. Subordination to Project Loans and Use Restrictions. The ROFR and Purchase Option will be subject and subordinate in all respects to all loan documents and affordability restrictions encumbering the Project, and upon any foreclosure or transfer of title by deed in lieu of foreclosure, this ROFR and Purchase Option will automatically terminate.

6. Recordation. The Housing Authority Limited Partner may record a memorandum of this Agreement in the Office of the Clerk and Recorder of Mesa County, Colorado.

7. Termination. Upon any of the events listed in Section 8(b)(i) of the Addendum, the ROFR and Purchase Option automatically terminate.

8. Miscellaneous. This Agreement shall be construed in accordance with the laws of the State of Colorado.

9. Assignment. The Housing Authority Limited Partner may assign this Agreement to a wholly-owned affiliated entity or instrumentality that is a qualified purchaser under IRC Code Section 42(i)(7).

10. Subordination. The ROFR and Purchase Option are in all cases subject and subordinate to the lien of the Deed of Trust with Security Agreement and Fixture Filing (“Deed of Trust”) and the Assignment of Leases and Rents each as assigned, modified, amended or replaced, in favor of First Bank of Wyoming, a Division of Glacier Bank or Colorado Housing and Finance Authority, a body corporate and political subdivision of the State of Colorado (“Beneficiary”) encumbering the Project, and the ROFR and Purchase Option will automatically terminate upon foreclosure of the Deed of Trust or deed in lieu of foreclosure. The loan from Beneficiary to the Partnership must be repaid in full in connection with the exercise of the ROFR or Purchase Option. Any deed in lieu of foreclosure of the Deed of Trust is not subject to the ROFR. The Beneficiary is a third-party beneficiary of this Section 10.

11. Notices. The parties shall give all notices, consents, demands, waivers, or approvals related to this Addendum in writing delivered by (i) personal delivery, (ii) a nationally-recognized, next-day courier service, or (iii) first-class certified mail, postage prepaid. A notice is deemed given on the other party’s receipt of it, or if mailed, on the earlier of the other party’s receipt of it and the third business day after its mailing. The parties may change their addresses for notice by notifying the other parties in the manner provided in this Section 11:

If to the Partnership and General Partner:

IndiBuild Fruita LLLP
c/o indibuild llc
4884 Briar Ridge Court
Boulder, CO 80301

With a copy to:

Bryan Cave Leighton Paisner LLP
1801 13th Street, Ste. 300
Boulder, CO 80302
attn.: Paul Smith

If to the Investor Limited Partner:

NEF Assignment Corporation
10 South Riverside Plaza, Ste. 1700
Chicago, IL 60606

With a copy to:

Kutak Rock LLP
1650 Farnam Street
Omaha, NE 68102-2186
Attention: Robert D. Coon, Esq.

If to Housing Authority Limited Partner:

Fruita Housing Authority
Attn.: Executive Director
325 E. Aspen Ave.
Fruita, CO 81521

With copies to:

Garfield & Hecht
910 Grand Ave., Ste. 201
Glenwood Springs, CO 81601
Attention: Mary Elizabeth Geiger

[The remainder of this page is intentionally left blank.]

The parties have executed this Purchase Rights Agreement as of the date first set forth above.

PARTNERSHIP

IndiBuild Fruita LLLP, a Colorado limited liability limited partnership

By: IndiBuild Fruita GP LLC, a Colorado limited liability company, its General Partner

By: indibuild llc, as its Manager

By: _____
Name: Kimberley A. Coughlin
Title: Principal

GENERAL PARTNER

IndiBuild Fruita GP LLC, a Colorado limited liability company

By: indibuild llc, as its Manager

By: _____
Name: Kimberley A. Coughlin
Title: Principal

INVESTOR LIMITED PARTNER

NEF Assignment Corporation, as nominee,
an Illinois not-for-profit corporation

By _____
Name _____
Title _____

HOUSING AUTHORITY LIMITED PARTNER

Housing Authority of the City of Fruita, Colorado, a body
corporate and politic

By: _____
Name: Michael Bennett
Title: Executive Director

EXHIBIT B
PURCHASE RIGHTS MEMORANDUM
[attached]

WHEN RECORDED, RETURN TO:
 Fruita Housing Authority
 325 E. Aspen Ave.
 Fruita, CO 81521
 attn: Executive Director

MEMORANDUM OF PURCHASE RIGHTS AGREEMENT

This Memorandum Purchase Rights Agreement (“Memorandum”), executed [July] [1], 2023, is between INDIBUILD FRUITA LLLP (“Grantor”) and HOUSING AUTHORITY OF THE CITY OF FRUITA, COLORADO (“Grantee”), to provide record notice of certain purchase rights.

The Grantor owns certain real property located in Fruita, Colorado, legally described on the attached Exhibit A (“Property”).

Under a Purchase Rights Agreement (“Purchase Rights Agreement”), the Grantor must provide the Grantee with written notice of bona fide third-party offers to purchase the Property, in which case the Grantee has a right to purchase the Property. Any transaction in violation of the Purchase Rights Agreement is null and void, and the Grantee may seek any remedy at law or equity to enforce its rights against Grantor or any purported purchaser of the Property. The Grantor’s rights under the Purchase Rights Agreement run with the land and inure to the benefit of Grantee’s successor and assigns for a term defined in the Purchase Rights Agreement.

The notice addresses for Grantor and Grantee are as follows:

Grantor:	IndiBuild Fruita LLLP c/o indibuild llc 4884 Briar Ridge Court Boulder, CO 80301
Grantee:	Fruita Housing Authority Attn.: Executive Director 325 E. Aspen Ave. Fruita, CO 81521

The ROFR and Purchase Option (as defined in the Purchase Rights Agreement) are subordinate to certain rights granted to the Beneficiary (as defined in the Purchase Rights Agreement) as provided in the Purchase Rights Agreement.

This Memorandum is not intended to change any of the terms of the Purchase Rights Agreement.

[Remainder of page intentionally left blank; signature pages follow.]

The parties have executed this Memorandum as of the date first set forth above.

GRANTOR:

IndiBuild Fruita LLLP, a Colorado limited liability limited partnership

By: IndiBuild Fruita GP LLC, a Colorado limited liability company, its General Partner

By: indibuild llc, as its Manager

By: _____
Name: Kimberley A. Coughlin
Title: Principal

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by Kimberley A. Coughlin, the Principal of indibuild llc, as the manager of IndiBuild Fruita GP LLC, as the General Partner of IndiBuild Fruita LLLP.

Witness my hand and official seal.

Notary Public

My commission expires _____

EXHIBIT A

Legal Description of the Property

Lot 1, IndiBuild Minor Subdivision, County of Mesa, State of Colorado

EXHIBIT C

Property Tax Exemption Certification

[attached]

HOUSING AUTHORITY CERTIFICATION REGARDING PROPERTY TAX EXEMPTION

This Housing Authority Certification Regarding Property Tax Exemption (“Certification”) is made by HOUSING AUTHORITY OF THE CITY OF FRUITA, COLORADO, a body corporate and politic (“FHA”) as of [July] [1], 2023.

IndiBuild Fruita LLLP (“Partnership”) was formed to acquire, own, develop, construct, lease, manage, and operate a multi-family residential project located in Fruita, Colorado known as The Fruita Mews (“Project”). The Partnership is governed by its First Amended and Restated Agreement of Limited Liability Limited Partnership dated as of [July] [1], 2023 (“Partnership Agreement”).

FHA is the Housing Authority Limited Partner of the Partnership. FHA is cooperating with the Partnership in the Partnership’s pursuit of exemption from property taxes under Colorado Revised Statutes, Section 29-4-227(b) (“Property Tax Exemption”).

FHA hereby certifies as to the following in connection with the Property Tax Exemption for the Partnership:

1. FHA is the Housing Authority Limited Partner of the Partnership and owns a [0.01]% interest in the Partnership.
2. One hundred percent of the square footage of the Project is intended to be occupied by persons of low-income. For the purposes of this Section 2, FHA has determined that persons earning at or below 100% of Area Median Income are persons of low income.

[signature page follows]

Housing Authority of the City of Fruita, Colorado, a body
corporate and politic

By: _____
Name: Michael Bennett
Title: Executive Director

EXHIBIT D

Sales & Use Tax Exemption Certification

[attached]

HOUSING AUTHORITY CERTIFICATION REGARDING SALES AND USE TAX EXEMPTION

This Housing Authority Certification Regarding Sales and Use Tax Exemption (“Certification”) is made by HOUSING AUTHORITY OF THE CITY OF FRUITA, COLORADO, a body corporate and politic (“FHA”) as of [July] [1], 2023.

IndiBuild Fruita LLLP (“Partnership”) was formed to acquire, own, develop, construct, lease, manage, and operate a multi-family residential project located in Fruita, Colorado known as The Fruita Mews (“Project”). The Partnership is governed by its First Amended and Restated Agreement of Limited Liability Limited Partnership dated of as [July] [1], 2023 (“Partnership Agreement”).

FHA is the Housing Authority Limited Partner of the Partnership. FHA is cooperating with the Partnership in the Partnership’s pursuit of exemption from sales and use tax under Colorado Revised Statutes, Section 29-4-227(b) (“Sales Tax Exemption”).

FHA hereby certifies as to the following in connection with the Sales Tax Exemption:

1. FHA is the Housing Authority Limited Partner of the Partnership and owns a 0.01% interest in the Partnership.
2. One hundred percent of the square footage of the Project is intended to be occupied by persons of low-income. For the purposes of this Section 2, FHA has determined that persons earning at or below 100% of Area Median Income are persons of low income.
3. The construction start date for the Project is July 1, 2023.
4. The anticipated construction completion date for the Project is October 1, 2024.

[signature page follows]

Housing Authority of the City of Fruita, Colorado, a body corporate and politic

By: _____
Name: Michael Bennett
Title: Executive Director