



FRUITA COLORADO

FRUITA HOUSING AUTHORITY MEETING

Fruita Civic Center

Tuesday, August 15, 2023 at 5:30 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. 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 June 20, 2023 Fruita Housing Authority meeting

3. AGENDA - ADOPT/AMEND

4. PUBLIC HEARINGS

A. Resolution FHA 2023-05 – A Resolution Amending the 2023 Fruita Housing Authority Budget with a Supplemental Appropriations of Funds for the Reimbursement of Legal Expenses related to the Fruita Mews Development - *Fruita Housing Authority Executive Director Mike Bennett*

B. Resolution FHA 2023-06 - A Resolution of the Board of Commissioners of the Fruita Housing Authority Authorizing the Executive Director to Sign all documents necessary for acceptance of the Grant received from the CHFA Capital Magnet Fund Program and making a loan of the proceeds of the Grant to the IndiBuild Fruita Limited Liability Limited Partnership - *Special Counsel Dee Wisor*

5. OTHER AGENDA ITEMS

6. ADJOURN

**FRUITA HOUSING AUTHORITY MEETING
JUNE 20, 2023
6:00 P.M.**

Present: Chairman Joel Kincaid
Vice-Chairman Matthew Breman
Commissioner Jeannine Purser
Commissioner James Williams
Commissioner Ken Kreie
Commissioner Amy Miller
Commissioner Aaron Hancey

Excused Absent: (None)

**Housing Authority
and City staff present:** Executive Director Mike Bennett
Executive Director Designee Shannon Vassen
Treasurer Director Margaret Sell
Secretary Deb Woods
Communications and Engagement Specialist Ciara DePinto
Housing Authority Attorney Mary Elizabeth Geiger

Also present: Special Counsel to the Fruita Housing Authority Dee Wisor
with Butler Snow

1. CALL TO ORDER AND ROLL CALL

The fourth meeting of the Fruita Housing Authority was called to order by Chairman Joel Kincaid at 6:00 p.m. The meeting was held in person only.

2. AGENDA – ADOPT/AMEND

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

3. CONSENT 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**

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

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 C.R.S. SECTION 24-6-402(4)(B) REGARDING THE SPECIAL LIMITED PARTNERSHIP ADDENDUM FOR THE INDIBUILD FRUITA LLLP**
- **COMMISSIONER PURSER MOVED TO CONVENE IN EXECUTIVE SESSION FOR A CONFERENCE WITH THE HOUSING AUTHORITY ATTORNEY AND HOUSING AUTHORITY SPECIAL COUNSEL TO RECEIVE LEGAL ADVICE PURSUANT TO C.R.S. SECTION 24-6-402(4)(B) REGARDING THE SPECIAL LIMITED PARTNERSHIP ADDENDUM FOR THE INDIBUILD FRUITA LLLP. COMMISSIONER MILLER SECONDED THE MOTION. THE MOTION PASSED WITH SIX YES VOTES.**

The Fruita Housing Authority convened in Executive Session at 6:17 p.m.

The Fruita Housing Authority reconvened the regular meeting at 6:25 p.m.

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 AN ADDENDUM TO THE AMENDED AND RESTATED AGREEMENT OF LIMITED LIABILITY PARTNERSHIP – DEE WISOR, SPECIAL COUNSEL TO FHA**

Special Counsel to the Fruita Housing Authority Dee Wisor with the law firm of Butler Snow provided staff's presentation to the Fruita Housing Authority Board of Commissioners. Mr. Wisor explained that Resolution FHA 2023-04 was regarding the Fruita Mews project, which is proposed as 50 units, 44 of which will be at Low Income Housing Tax Credit (LIHTC) rates and six of which will be at higher income restrictions, but less than 100% of Average Median Income (AMI).

The goal of the Resolution is to have the Fruita Housing Authority become a Special Limited Partner in the partnership that will develop and own the Fruita Mews project. The purpose of that is because there is a state statute that says, "When a Housing Authority has an ownership interest in the development, it carries with it exemption from taxation for two types of taxes: 1) property

tax (as long as the Housing Authority is a part of the project) consisting of not only the City's property taxes, but also the property tax of the other overlapping taxing entities, and 2) the sales and use tax exemption for the construction of the project and not just the City's taxes, but other taxing entities who would normally collect sales and use tax on the project.

Mr. Wisor continued that the Fruita Housing Authority was to become a Special Limited Partner at a .01% interest, which he agreed sounded pretty low, but is actually quite common in these transactions and is sufficient to provide for the tax exemption.

Mr. Wisor explained that the Addendum provides the following:

- That the partnership will reimburse the Housing Authority and the City of Fruita for any out-of-pocket costs or administrative expenses associated with the project. Mr. Wisor said mainly, those would be his and Mary Elizabeth Geiger's fees for legal work.
- The partnership is also agreeing to pay an annual fee to the Housing Authority of \$5,000 as was discussed with the Housing Authority Commissioners at a previous meeting.
- IndiBuild has offered (and Mr. Wisor thinks the Housing Authority should accept) the right of the Housing Authority to have a right of first refusal should they get an offer from a third party to buy the project.
- The terms under which the sale price would be determined.
- An offer to the Housing Authority a purchase option that could be exercised at any time, although that's likely a more expensive purchase option, at least early on, because it would most likely get to be a fair market value of the project.
- That the Housing Authority, its Commissioners, staff and other consultants to the Authority would not have any liability for acting under the Addendum except in the case of fraud, intentional misconduct or gross negligence.
- That the partnership will make certain financial reports to the Housing Authority on a quarterly basis and these would include the unaudited Financial Statements as well as a Rent Roll and on an annual basis, would include things like audited Financials, tax returns, Operating Budget and tax documents like a K-1.
- In the final year of the compliance period (15 years under LIHTC rules), an evaluation of whether the property tax exemption remains necessary for the project to be financially viable and if it's needed for an additional period of time, there's a three-year annual evaluation to make that determination.

Mr. Wisor suggested that the Resolution be modified to allow insubstantial changes to the document with the consent of the Executive Director and Attorney Mary Elizabeth Geiger or himself. He clarified that the essential terms above shouldn't change, but since IndiBuild hasn't closed yet, it was very possible that there will be some minor changes.

Commissioner Miller asked who will be holding IndiBuild in compliance during the 15-year compliance period. Mr. Wisor responded that there are several entities that are going to be concerned about compliance: the tax credit investor really wants to make sure that they are getting the tax credits, the IRS might say they can't get the tax credits if the project is not in compliance, and CHFA and the Division of Housing will also care about it a lot. There will be a land use restriction agreement between CHFA and the Partnership that will get recorded against the project that will set forth the (unintelligible) limitations.

Chairman Joel Kincaid opened the public hearing for public comment. Hearing none, he closed the public hearing and brought the matter back before the Fruita Housing Authority Commissioners.

- **COMMISSIONER KREIE MOVED TO ADOPT RESOLUTION FHA 2023-04 – AUTHORIZING THE EXECUTIVE DIRECTOR TO SIGN AN ADDENDUM TO THE AMENDED AND RESTATED AGREEMENT OF LIMITED LIABILITY PARTNERSHIP WITH AN AMENDMENT TO SECTION 1 OF THE ADDENDUM TO STATE AS FOLLOWS: THAT THE FRUITA HOUSING AUTHORITY HEREBY AUTHORIZES THE EXECUTIVE DIRECTOR TO EXECUTE THE SLP ADDENDUM INSUBSTANTIALLY THE FORM WHICH IS ATTACHED HERETO WITH ONLY SUCH CHANGES AS ARE NOT INCONSISTENT WITH THE ESSENTIAL TERMS OF THE FORM AS SUCH CHANGES MAY BE APPROVED BY THE EXECUTIVE DIRECTOR SPECIAL COUNSEL TO THE AUTHORITY AND AUTHORITY ATTORNEY. COMMISSIONER MILLER SECONDED THE MOTION. THE MOTION PASSED WITH SIX YES VOTES.**

6. ADJOURN

With no further business to come before the Fruita Housing Authority, the meeting was adjourned at 6:34 p.m.

Respectfully submitted,

Debra Woods
Secretary
Fruita Housing Authority



FRUITA COLORADO

AGENDA ITEM COVER SHEET

TO: FRUITA HOUSING AUTHORITY

FROM: MIKE BENNETT, FRUITA HOUSING AUTHORITY EXECUTIVE DIRECTOR

DATE: AUGUST 15, 2023

AGENDA TEXT: Resolution FHA 2023-05 – A Resolution Amending the 2023 Fruita Housing Authority Budget with a Supplemental Appropriations of Funds for the Reimbursement of Legal Expenses related to the Fruita Mews Development.

BACKGROUND

This is a request to amend the 2023 Fruita Housing Authority Budget to provide supplemental appropriations of funds for legal expenses related to the Fruita Mews Development. Per the Special Limited Partnership Addendum between the Fruita Housing Authority and IndiBuild LLC, the developer for the project, the Housing Authority can receive reimbursement for legal expenses up to \$50,000 for the project. The Fruita Housing Authority has incurred costs related to the Fruita Mews Development, and this budget amendment will allow those costs to be reimbursed.

FISCAL IMPACT

This budget amendment allows for the Fruita Housing Authority to be reimbursed for legal fees incurred for work on the Fruita Mews Development, which will have a positive fiscal impact for the Housing Authority. .

OPTIONS AVAILABLE TO THE COMMISSION

1. Approve Resolution FHA 2023-05 and Amend the 2023 Fruita Housing Authority Budget with a Supplemental Appropriations of Funds for the Reimbursement of Legal Fees.
2. Advise staff to revise the budget amendment.

RECOMMENDATION

It is the recommendation of staff that the Fruita Housing Authority move to:

ADOPT RESOLUTION FHA 2023-05 AMENDING THE 2023 FRUITA HOUSING AUTHORITY BUDGET WITH A SUPPLEMENTAL APPROPRIATION OF FUNDS

**FOR THE REIMBURSEMENT OF LEGAL EXPENSES RELATED TO THE FRUITA
MEWS DEVELOPMENT.**

RESOLUTION FHA 2023-05

**A RESOLUTION OF THE BOARD OF COMMISSIONERS
OF THE FRUITA HOUSING AUTHORITY AMENDING
THE 2023 BUDGET WITH SUPPLEMENTAL
APPROPRIATIONS OF FUNDS FOR LEGAL FEES
RELATED TO THE FRUITA MEWS DEVELOPMENT.**

WHEREAS, the Fruita Housing Authority and IndiBuild LLC (“IndiBuild”) have agreed to a special limited partnership in the Fruita Mews Project, and

WHEREAS, in the Special Limited Partnership Addendum between the Fruita Housing Authority and IndiBuild, IndiBuild has agreed to reimburse the Housing Authority for legal expenses related to the Fruita Mews Project up to \$50,000, and

WHEREAS, the Fruita Housing Authority has incurred legal costs related to the Fruita Mews Development and will be seeking reimbursement of those costs, and

WHEREAS, the Executive Director of the Fruita Housing Authority certifies there are sufficient funds available for the supplemental appropriations as noted below.

NOW, THEREFORE, BE IT RESOLVED BY THE FRUITA HOUSING AUTHORITY AS FOLLOWS:

Section 1: That the 2023 appropriation for the Fruita Housing Authority is hereby increased by \$50,000 from \$15,100 to \$65,100 from the following sources for the following uses:

<u>Source of Funds</u>	
Developer Contribution	<u>\$50,000</u>
	\$50,000
 <u>Use of Funds</u>	
Legal Fees	<u>\$50,000</u>
	\$50,000

ADOPTED this 15th day of August, 2023.

FRUITA HOUSING AUTHORITY

Chair

ATTEST:

Board Secretary



FRUITA

COLORADO

AGENDA ITEM COVER SHEET

TO: FRUITA HOUSING AUTHORITY

FROM: MIKE BENNETT, FRUITA HOUSING AUTHORITY EXECUTIVE DIRECTOR
DEE WISOR, SPECIAL COUNSEL TO THE FRUITA HOUSING AUTHORITY

DATE: AUGUST 15, 2023

AGENDA TEXT: Resolution FHA 2023-06 - A Resolution of the Board of Commissioners of the Fruita Housing Authority Authorizing the Executive Director to Sign all documents necessary for acceptance of the Grant received from the CHFA Capital Magnet Fund Program and making a loan of the proceeds of the Grant to the IndiBuild Fruita Limited Liability Limited Partnership.

BACKGROUND

The Fruita Housing Authority is in the process of being awarded a grant from the Colorado Housing and Finance Authority, a body corporate and political subdivision of the State of Colorado (“CHFA”), for \$170,000 of funds from the Capital Magnet Fund program (“CMF Funds”) pursuant to a Capital Magnet Funds Subgrant Agreement (“Grant Agreement”). The Fruita Housing Authority needs to execute this Grant Agreement in order for the funds to be awarded. The Fruita Housing Authority will loan the CMF Funds to the IndiBuild Fruita LLLP for use in the construction and operation of the Project under the terms and conditions of the Grant Agreement. Therefore, the Fruita Housing Authority needs to execute various loan documents to memorialize the loan.

IndiBuild Fruita LLLP shall be responsible for, and indemnify the Fruita Housing Authority against, all the Fruita Housing Authority’s obligations, responsibilities, or duties under the Grant Agreement including, without limitation, compliance with all affordability, financial management, environmental review, labor standards, civil rights, recordkeeping, and reporting requirements, the applicable requirements set forth in the CMF Agreement (as defined in the Grant Agreement), and the applicable regulations set forth in 12 C.F.R. Part 1807.

The FHA, if approved will sign, and execute the following documents: the Subgrant Agreement, Loan Agreement, Subordination Agreement, Subordination of the Deed of Trust, and Restrictive Covenant Agreement. The Partnership will execute the following packet attachments: Deed of Trust, and Promissory Note.

The proposed Resolution allows the Executive Director, special counsel and counsel for the FHA to modify nonsubstantive terms, if necessary, in the grant and loan documents without having to come back to the Board for approval.

FISCAL IMPACT

The FHA will not be responsible for any obligations, responsibilities, or duties under the Grant Agreement including, without limitation, compliance with all affordability, financial management, environmental review, labor standards, civil rights, recordkeeping, and reporting requirements. The Grant Funds will be immediately passed through the FHA to IndiBuild Fruita LLLLP.

OPTIONS AVAILABLE TO THE COMMISSION

1. Approve Resolution FHA 2023-06 - A Resolution of the Board of Commissioners of the Fruita Housing Authority Authorizing the Executive Director to Sign all documents necessary for acceptance of the Grant received from the CHFA Capital Magnet Fund Program and making a loan of the proceeds of the Grant to the IndiBuild Fruita Limited Liability Limited Partnership.
2. Advise staff to make modifications to Resolution 2023-06
3. Deny Resolution FHA 2023-06 - A Resolution of the Board of Commissioners of the Fruita Housing Authority Authorizing the Executive Director to Sign all documents necessary for acceptance of the Grant received from the CHFA Capital Magnet Fund Program and making a loan of the proceeds of the Grant to the IndiBuild Fruita Limited Liability Limited Partnership.

RECOMMENDATION

It is the recommendation of staff that the Fruita Housing Authority move to:

ADOPT RESOLUTION FHA 2023-06 A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE FRUITA HOUSING AUTHORITY AUTHORIZING THE EXECUTIVE DIRECTOR TO SIGN ALL DOCUMENTS NECESSARY FOR ACCEPTANCE OF THE GRANT RECEIVED FROM THE CHFA CAPITAL MAGNET FUND PROGRAM AND MAKING A LOAN OF THE PROCEEDS OF THE GRANT TO THE INDIBUILD FRUITA LIMITED LIABILITY LIMITED PARTNERSHIP.

RESOLUTION FHA 2023-06

**A RESOLUTION OF THE BOARD OF COMMISSIONERS
OF THE FRUITA HOUSING AUTHORITY AUTHORIZING
THE EXECUTIVE DIRECTOR TO SIGN ALL
DOCUMENTS NECESSARY FOR ACCEPTANCE OF
GRANT RECEIVED FROM THE CHFA CAPITAL
MAGNET FUND PROGRAM AND MAKING A LOAN OF
THE PROCEEDS OF THE GRANT TO THE INDIBUILD
FRUITA LIMITED LIABILITY LIMITED PARTNERSHIP**

WHEREAS, the Fruita Housing Authority (“FHA”) is a special limited partner in IndiBuild Fruita LLLP, a Colorado limited liability limited partnership (the “Partnership”) developing the affordable housing project known as the Fruita Mews (the “MEWS Project”); and

WHEREAS, the FHA will be the recipient of a grant from the Colorado Housing and Finance Authority (“CHFA”) for \$170,000 of funds from the Capital Magnet Fund program (“CMF Funds”) pursuant to a Capital Magnet Funds Subgrant Agreement (“Grant Agreement”); and

WHEREAS, the FHA desires to loan the CMF Funds to the Partnership; and

WHEREAS, C.R.S. § 29-4-209(1)(d.3) authorizes the FHA to make loans; and

WHEREAS, FHA wishes to support the MEWS Project by authorizing the Executive Director to execute the Grant Agreement and all other documents necessary to effect a loan of the CMF Funds to the Partnership.

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

Section 1. The above Recitals are true and correct.

Section 2. The FHA hereby authorizes the Executive Director to execute the Grant Agreement and all documents necessary to effectuate to loan of the CMF Funds to the Partnership in substantially the forms which are attached hereto with only such changes thereto that are not inconsistent with the essential terms of the forms attached hereto as such changes may be approved by the Executive Director, Special Counsel to the Authority and Authority Attorney.

Section 3. This Resolution shall be effective as of the date of its adoption.

ADOPTED this 15th day of August, 2023.

FRUITA HOUSING AUTHORITY

Chair

ATTEST:

Board Secretary

APPROVED AS TO FORM:

Attorney

LOAN AGREEMENT
(\$170,000 FHA CMF Funds)

This Loan Agreement (“Loan Agreement”), dated as of August __, 2023 (“Effective Date”), between the FRUITA HOUSING AUTHORITY, a body corporate and politic (“Lender”), and INDIBUILD FRUITA LLLP, a Colorado limited liability limited partnership (“Borrower”).

The Borrower is the owner of certain real property located in Fruita, Colorado, legally described on the attached Exhibit A (“Property”), which the Borrower will develop and operate as a 50-unit multifamily affordable housing development (“Project”).

The Lender has received a grant from the Colorado Housing and Finance Authority, a body corporate and political subdivision of the State of Colorado (“CHFA”), for \$170,000 of funds from the Capital Magnet Fund program (“CMF Funds”) pursuant to a Capital Magnet Funds Subgrant Agreement dated on or about the date of this Loan Agreement (“Grant Agreement”). The Lender will loan the CMF Funds to the Borrower for use in the construction and operation of the Project under the terms and conditions of this Agreement.

The parties therefore agree as follows:

1. Loan. The Lender shall lend \$170,000.00 to the Borrower (“Loan”) under the terms and conditions of this Loan Agreement. The Borrower shall borrow from the Lender the total sum of \$170,000.00 to finance the development and operation of the Project under the terms and conditions of this Loan Agreement.

2. Disbursement. On the Effective Date, the Borrower shall execute and deliver this Loan Agreement to the Lender, along with a Promissory Note in the original principal amount of \$170,000.00 (“Note”), and a Deed of Trust, Security Agreement, Financing Statement and Assignment of Rents and Revenues securing the Note and encumbering the Property (“Deed of Trust,” and together with this Loan Agreement and the Note, the “Loan Documents”). Lender shall disburse all of the Loan funds to the Borrower upon the Effective Date. Final repayment of the Loan shall be due on or before July 31, 2063. The Borrower shall make payments on the Loan pursuant to the terms of the Note.

3. Affordability Requirements. The Borrower shall cause the Project to meet certain affordability requirements set forth in the CMF Agreements (defined below in Section 13) and other conditions required by the CHFA, which may include, among others, a restrictive covenant to be recorded in the public records of Mesa County.

4. Compliance with Grant Agreement. The Borrower shall be responsible for all of the Lender’s obligations, responsibilities, or duties under the Grant Agreement including, without limitation, compliance with all affordability, financial management, environmental review, labor standards, civil rights, recordkeeping, and reporting requirements, the applicable requirements set forth in the CMF Agreement (as defined in the Grant Agreement), and the applicable regulations set forth in 12 C.F.R. Part 1807.

5. Non-Recourse. The Loan is nonrecourse. Notwithstanding any provisions of this Loan Agreement, the Note, the Deed of Trust, or any other Loan Document to the contrary, neither Borrower nor its partners shall be personally liable for payment of the indebtedness evidenced by the Note, and Lender's sole recourse for payment of such indebtedness in the event of default shall be to pursue the security provided by the Deed of Trust and other instruments securing payment of the Note.

6. Events of Default. The following, subject to the notice and cure requirements below, will constitute an Event of Default under the terms of this Loan Agreement:

(a) if the Borrower fails to punctually perform its obligations under this Loan Agreement or violates the covenants contained in any of the Loan Documents in any material respect, and such failure or violation remains uncured within ninety days of the Borrower's receipt of written notice of such failure from Lender or such longer period as is reasonably necessary for the Borrower to cure such default if the Borrower commences and diligently pursues to cure;

(b) if the Borrower fails to pay any installment of principal or interest on the Note when due and such failure is not cured within thirty days of Borrower's receipt of written notice of such failure from Lender;

(c) if the Borrower makes a general assignment for the benefit of creditors, admits in writing its inability to pay its debts generally as they mature, files or has filed against it a petition in bankruptcy or a petition or answer seeking a reorganization, an arrangement with creditors, or other similar relief under federal bankruptcy laws or under any other applicable law of the United States of America or any state, consents to the appointment of a trustee or receiver, or takes any action for the purpose of effecting or consenting to any of the foregoing, and any such proceeding is not discharged, stayed, vacated or dismissed within ninety (90) days; or

(d) if an order, judgment, or decree is entered appointing, without the Borrower's consent, a trustee or receiver for the Borrower or a substantial part of its property, or approving a petition filed against the Borrower seeking a reorganization, arrangement with creditors, or other similar relief under the federal bankruptcy laws or any state, and such order, judgment, or decree is not be vacated or set aside or stayed within ninety days.

The occurrence of any of the events described in this Section 6 will be an "Event of Default." Upon the occurrence of an Event of Default, the Lender shall provide written notice, as provided in this Section 6, to the Borrower and to NEF Assignment Corporation, as nominee, an Illinois not-for-profit corporation, the investor limited partner of the Borrower ("Limited Partner") at the its address set forth in Section 12.

Notwithstanding anything to the contrary contained in the Loan Documents, if an event of default occurs, prior to exercising any remedies, Lender shall give Borrower and the Limited Partner or its assigns simultaneous written notice of default at the address set forth above. Beneficiary shall not declare a default under the Loan Documents before two years after the end of the Compliance Period (as defined in Section 42 of the Internal Revenue Code of 1986, as amended) unless the Beneficiary has received the prior written consent of the Limited Partner. The Limited Partner shall have the right, but not the obligation, to cure any default of Borrower

under any Loan Document, and Lender agrees to accept cures tendered by Limited Partner, as follows: (a) with respect to any monetary default under the Loan Documents, Lender shall notify Limited Partner in writing of such monetary default, and Limited Partner shall have thirty (30) days after the receipt of said notice of such monetary default to cure or cause to be cured such monetary default; and (b) with respect to any nonmonetary default under the Loan Documents, Lender shall notify Limited Partner in writing of such nonmonetary default, and Limited Partner shall have ninety (90) days after the receipt of such notice of such nonmonetary default to cure or cause to be cured such default, and if such default is incapable of being cured within such 90-day period, Lender shall provide additional time needed to cure such default as long as such cure was commenced within such 90-day period and is being diligently completed. Lender agrees that the Loan Documents will not be considered to be in default until the expiration of all notice and cure periods provided to Borrower and Limited Partner. Lender shall accept any cure tendered by the Limited Partner as a cure by Borrower.

7. Standstill. Notwithstanding anything to the contrary contained in the Loan Documents, until the end of the Compliance Period for all buildings located within the Property, Lender shall not: (i) exercise any other rights or remedies it may have under the Loan Documents, including but not limited to, accelerating the loan secured by the Deed of Trust, collecting rents, appointing (or seeking appointment of) a receiver or collecting or attempting to collect any default interest or foreclosing; or (ii) join with any other creditor in commencing any bankruptcy reorganization, arrangement, insolvency, or liquidation proceedings with respect to the Borrower (collectively, “Standstill Restrictions”).

8. Expense. The Borrower shall pay all direct costs, expenses, and attorney’s fees reasonably incurred by the Lender in connection with the Borrower’s breach or default of the Loan Documents, and agrees to pay reasonable loan closing costs, including the costs of title insurance required by the Lender.

9. Defense and Indemnification.

(a) Notwithstanding Sections 5 and 7, the Borrower shall defend, indemnify, and hold harmless Lender, and all of its past and present officers, directors, commissioners, employees, partners, agents, shareholders, members, trustees, predecessors, successors, subrogees, and attorneys (collectively, “Lender Parties”) against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to this Agreement, the terms and conditions of the Grant Agreement, the applicable requirements set forth in the CMF Agreement, and the applicable regulations set forth in 12 C.F.R. Part 1807 (“Claims”) unless such Claims are due to the gross negligence or willful misconduct of Lender.

(b) The Borrower’s duty to defend and indemnify each of the Lender Parties will arise when written notice of the Claim is first provided to a Lender Party regardless of whether the claimant has filed suit on the Claim. The Borrower’s duty to defend and indemnify a Lender Party will arise even if the Lender Party is the only party sued by a claimant, or claimant alleges that the Lender Party’s gross negligence or willful misconduct was the sole cause of claimant’s damages.

(c) The Borrower will defend any and all Claims that may be brought or threatened against a Lender Party and will pay on behalf of a Lender Party any expenses incurred by reason of such Claims including court costs and attorney's fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. These payments on behalf of a Lender Party will be in addition to any other legal remedies available to a Lender Party.

(d) A Lender Party shall give the Borrower a copy of any notice of a Claim. A Lender Party shall allow the Borrower thirty days after receipt of such notice to cure of any monetary default under the Loan Documents. Lender shall allow the Borrower ninety days after giving Borrower notice to cure any non-monetary default under the Loan Documents or such longer period as is reasonably necessary for the Borrower to cure if the Borrower commences and diligently pursues to cure. In addition, the Lender shall concurrently provide notice of any default to the Borrower's Limited Partner, which has the independent right to cure any default within the time periods set forth above.

10. Waiver. No waiver of any breach or default under this Agreement will be held to waive of any other or later breach or default. All remedies afforded in this Agreement are cumulative, in addition to every other remedy provided herein or by law.

11. Certification Regarding Debarment, Suspension, Eligibility, and Voluntary Exclusion.

(a) The Borrower represents and warrants that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency.

(b) The Borrower will not enter into any transaction with a person who the Borrower knows to be debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in a covered transaction unless authorized by the federal department or agency from which the transaction originated.

(c) The Borrower shall include the certification contained in Section 11(a) in any and all construction contracts related to the Project and shall require any subcontractors or consultants to comply with any and all applicable federal laws, rules, regulations, policies, procedures, or guidance concerning the federal debarment, suspension, and exclusion program.

(d) The Borrower shall immediately notify Lender in writing if at any time it learns that it has failed to disclose that it or any of its principals were excluded at the time the parties executed this Agreement or if the Borrower or any of its principals have subsequently been excluded by a federal department or agency.

(e) The representation made in this Section 11 is a material representation of fact upon which reliance was placed when this transaction was entered into.

12. Miscellaneous.

(a) This Agreement binds and inures to the benefit of the successors and assigns of the parties. Subject to the Lender's consent, which the Lender shall not unreasonably withhold, condition, or delay, the Borrower may assign the Loan and the obligations and duties of the Borrower under the Loan Documents to any purchaser of the Property and Project if the purchaser agrees to be bound to the Loan Documents.

(b) Any amendment to this Loan Agreement requires a written agreement of the parties.

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

(d) 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 Loan Agreement, whether their claims sound in contract, tort, or otherwise.

(e) This Agreement shall remain effective so long as there are sums remaining outstanding on the Note.

(f) The parties shall give all notices, consents, demands, waivers, or approvals related to this Agreement in writing delivered by (i) personal delivery, (ii) a nationally-recognized, next-day courier service, (iii) first-class certified mail, postage prepaid, or (iv) e-mail. 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 fifth 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 12(f). The parties hereby designate their addresses as follows:

If to the Borrower:

IndiBuild Fruita LLLP
4884 Briar Ridge Ct.
Boulder, CO 80301
Attention: Kim Pardoe

With a copy to:

Bryan Cave Leighton Paisner
1801 13th Street, Suite 300
Boulder, CO 80302-5386
Attn.: Paul Smith

If to the Lender:

Housing Authority of the City of Fruita, Colorado
325 East Aspen Avenue
Fruita, Colorado 81521
Attn.: Executive Director

With a copy to:

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

If to the Limited Partner:

NEF Assignment Corporation
10 South Riverside Plaza, Ste. 1700
Chicago, IL 60606
Attn: Vice President – Asset Management

(g) The Borrower consents to the personal jurisdiction of the state and federal courts located in the State of Colorado in connection with any controversy relating the Loan Documents and waives any argument that venue in such forum is not convenient. Any litigation related to the Loan Documents must be venued in either the district court of Mesa County, Colorado or in the United States District Court for the District of Colorado.

13. Subject to CMF Agreements. The Loan Documents are subject to and subordinate to the Grant Agreement, the provisions of which are hereby incorporated into this Loan Agreement. The Borrower shall comply with all obligations set forth in the CMF Agreements, including all affordability requirements, financial management, environmental review, labor standards, civil rights, recordkeeping, and reporting requirements.

14. Transfers; Amendments to the Partnership Agreement. Notwithstanding anything to the contrary contained in any Loan Document:

(a) The Limited Partner shall be permitted to remove the General Partner of Borrower for cause in accordance with the terms of the Partnership Agreement and shall be able to replace the General Partner with a general partner selected by the Limited Partner all without the consent or approval of the Lender;

(b) Limited Partner may transfer its partnership interest in Borrower in accordance with the terms of the Partnership Agreement without the consent of Lender;

(c) the General Partner of Borrower may exercise its purchase option to purchase the interest of the Limited Partner in accordance with the terms of the Partnership Agreement without the consent of Lender ((a) through (c) are each a “Permitted Transfer”);

(d) no Permitted Transfer shall cause a default under any Loan Document or shall trigger any acceleration or due on sale clause under the Loan Documents;

(e) Lender shall not receive any fee or other amounts from Borrower in connection with a Permitted Transfer; and

(f) the Partnership Agreement may be amended or modified in connection with a Permitted Transfer without the prior written consent of Lender.

[signature pages follow]

The Borrower has executed this Loan Agreement as of the Effective Date.

BORROWER

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

The Lender has executed this Loan Agreement as of the Effective Date.

FRUITA HOUSING AUTHORITY, a body
corporate and politic

By: _____

Name: Michael Bennet

Its: Executive Director

EXHIBIT A

LEGAL DESCRIPTION

Lot 1, IndiBuild Minor Subdivision, according to the plat map recorded on December 29, 2022 at Rec. No. 3052639, County of Mesa, State of Colorado

CAPITAL MAGNET FUND

SUBGRANT AGREEMENT

THIS SUBGRANT AGREEMENT (“Agreement”) is made and dated as of _____, 2023 (the “Effective Date”), by and between **COLORADO HOUSING AND FINANCE AUTHORITY**, a body corporate and political subdivision of the State of Colorado (the “Subgrantor”) and **FRUITA HOUSING AUTHORITY**, a body corporate and politic, whose address is 325 E. Aspen Avenue, Fruita, Colorado 81521 (the “Subgrantee”).

RECITALS

WHEREAS, Subgrantor was the recipient of a Capital Magnet Fund (“CMF”) Award (the “CMF Award”) from Community Development Financial Institutions Fund (“Grantor”), as outlined in the Capital Magnet Fund Assistance Agreement (the “CMF Agreement”) dated effective on or about February 8, 2022; and

WHEREAS, pursuant to the CMF Agreement, the purpose of the CMF Award is the development, preservation, rehabilitation or purchase of affordable housing for primarily extremely low-income, very low-income and low-income families and economic development activities that are part of a concentrated strategy as set forth in 12 C.F.R. §1807.104; and,

WHEREAS, to effectively distribute the CMF Award, Subgrantor created the Capital Magnet Fund Program (“CMF Program”) to provide financing for affordable multi-family projects that meet the criteria as detailed in the CMF Agreement; and

WHEREAS, Subgrantee wishes to receive grant funds for a 50-unit multifamily residential rental housing facility located at 1601 K 4/10 Road, Fruita, Colorado 81521, commonly known as The Fruita Mews (the “Project”) and owned by IndiBuild Fruita LLLP, a Colorado limited liability limited partnership (“Owner”) of which Subgrantee is the Housing Authority Limited Partner; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, Subgrantee and Subgrantor agree as follows:

1. Subgrant and Purpose. Subgrantor agrees to grant and Subgrantee agrees to receive an amount up to One Hundred Seventy Thousand and no/100 dollars (\$170,000.00) pursuant to the terms provided herein (the “Subgrant”) for the Project. The Subgrant will be disbursed to the Subgrantee subject to all of the terms, provisions, conditions, covenants and agreements contained in this Agreement. As a condition of the Subgrant, Subgrantee agrees to loan the amount of the Subgrant to Owner at 0.00% interest for a term of 40 years, with the loan due and payable in full on July 31, 2063. This Agreement, and any other document evidencing or executed in connection with the Subgrant are hereinafter collectively referred to as the “Subgrant Documents.”

2. Conditions Precedent to Funding Subgrant. Prior to the advance of any Subgrant proceeds to Subgrantee, all of the following conditions shall have been satisfied, which satisfaction shall be determined by the Subgrantor in its sole discretion.

(a) Subgrantee's and Owner's satisfactory compliance with: (i) the terms and conditions of this Agreement, (ii) the applicable requirements set forth in the CMF Agreement and (iii) the applicable regulations set forth in 12 C.F.R. Part 1807 ("CMF Regulations");

(b) Closing of a CMF loan from Subgrantor to Owner in the amount of \$825,000 (the "CMF Loan") and acceptable evidence of the Subgrant loan from Subgrantee to Owner;

(c) Subgrantee's execution of a Restrictive Covenant Agreement and Owner's agreement to such Restrictive Covenant Agreement in a form and substance satisfactory to Subgrantor, which Restrictive Covenant Agreement has been recorded against the Project to run with the land for a period of no less than ten (10) years from the Effective Date;

(d) Subgrantee and Owner shall have submitted, and Subgrantor shall have approved of all the reports required under Paragraph 3(f).

Subgrantor shall not be required to disburse any portion of the Subgrant if any portion of the CMF Award allocated to the Subgrant is revoked or modified in any way.

3. Covenants and Agreements. Subgrantee and Owner each covenants and agrees with Subgrantor as follows:

(a) Use of the Subgrant proceeds is further limited as follows:

i. The Subgrant shall only be used for eligible costs as determined by Subgrantor in compliance with the CMF Agreement and CMF Regulations; and,

ii. Subgrantee shall only have the right to use the Subgrant proceeds if Subgrantee is not in default under any of the terms of this Agreement.

(b) Subgrantee and Owner shall not discriminate against any person on the basis of race, color, religion, sex, national origin, handicap, age, or veteran status, sexual preference, or any other basis prohibited by law in the operation of the Project or in connection with the employment or application for employment of any person performing any work pursuant to this Agreement or related to the performance and management of the Project.

(c) Subgrantee shall not assign or attempt to assign, directly or indirectly, any of its rights under this Agreement or under any instrument referred to herein without the prior written consent of Subgrantor.

(d) The Subgrantee and Owner shall not convey, assign all or any portion of the Project without the prior written consent of the Subgrantor.

(e) Subgrantee and Owner shall use the proceeds of the Subgrant in compliance with all applicable U.S. anti-terrorist financing and asset control laws, regulations, rules and executive orders, including, but not limited to, the USA Patriot Act of 2001 and Executive Order No. 13224.

(f) Any reports required shall be provided within ninety (90) days after the end of Subgrantee's fiscal year, including but not limited to Subgrantee shall provide Subgrantor with annual financial statements in a form acceptable to Subgrantor.

(g) Records:

i. Subgrantee and Owner shall maintain documents and records showing compliance with the terms of the Subgrant and the Restrictive Covenant Agreement.

ii. Subgrantor shall have access to such documents and records, and may audit Subgrantee or Owner.

iii. Subgrantee and Owner shall maintain its documents and records relating to this Subgrant for a period of 13 years.

4. Representations and Warranties. Subgrantee and Owner each represents and warrants to the Subgrantor as follows:

(a) There is no default on the part of Subgrantee or Owner under any agreement or document pertaining to the Project to which it is a party, and no event has occurred that with notice or the passage of time or both would constitute a default under any such document.

(b) Subgrantee and Owner each has full power to enter into and perform its obligations under this Agreement and the Subgrant Documents. The execution and delivery of this Agreement and the Subgrant Documents and the performance and observance of their terms, conditions and obligations have been duly authorized by all necessary action on the part of Subgrantee and Owner. This Agreement and the Subgrant Documents constitute, and any other agreement required hereby will constitute, when executed and delivered by the Subgrantee to the Subgrantor, valid and binding obligations of the Subgrantee and Owner enforceable in accordance with their terms.

(c) Subgrantee or Owner has not defaulted on any state or federal loan or any loan insured by the state or federal government.

(d) Subgrantee or Owner has not defaulted on any loan with Subgrantor and is not in "noncompliance" under (i) any loan program monitored by Subgrantor; or (ii) the Low-Income Housing Tax Credit or Affordable Housing Tax Credit program monitored by Subgrantor.

5. Events of Default. The occurrence of any one or more of the following events or existence of one or more of the following conditions, with respect to the Subgrantee or Owner, shall constitute an Event of Default under this Agreement:

(a) Subgrantee or Owner shall fail to perform any term, covenant or condition to be performed hereunder and such failure is not remedied within thirty (30) days, unless a longer period of time is reasonably required to cure such failure, from and after written notice from Subgrantor to Subgrantee or Owner, specifying said failure.

(b) Any representation or warranty made in writing to Subgrantor herein or in connection with the making of the Subgrant, or any certificate, statement or report made pursuant to this Agreement by Subgrantee or Owner shall prove at any time to have been incorrect in any material respect when made.

(c) This Agreement or any Subgrant Document shall at any time for any reason cease to be in full force and effect or shall be declared to be null and void, or the validity or enforceability thereof shall be contested by Subgrantee or Owner, or Subgrantee or Owner shall deny that it has any or further liability or obligation hereunder or thereunder.

(e) An Event of Default occurs under any CMF Loan document to Owner.

6. Remedies.

(a) Upon the occurrence of an Event of Default, Subgrantor may recover the amount of the Subgrant from Subgrantee and pursue all other rights and remedies provided by law or in equity.

(b) No delay or failure of Subgrantor in the exercise of any right or remedy provided for hereunder shall be deemed a waiver of the right by Subgrantor and no exercise or partial exercise or waiver of any right or remedy shall be deemed a waiver of any further exercise of such right or remedy or of any other right or remedy that Subgrantor may have. The enforcement of any rights of Subgrantor as to the Subgrant shall not affect the rights of Subgrantor to enforce repayment of the Subgrant and to recover judgment for any portion thereof remaining unpaid. The rights and remedies herein expressed are cumulative and not exclusive of any right or remedy that the Subgrantor shall otherwise have.

7. Rights of the Subgrantor. Subgrantor may assign, negotiate, pledge or otherwise hypothecate this Agreement and the other documents executed by Subgrantee in connection therewith or any of its rights and security hereunder or thereunder, in whole or in part. In case of such assignment, Subgrantee will accord full recognition thereto and hereby agrees that all rights and remedies of the Subgrantor in connection with the interests so assigned shall be enforceable against Subgrantee by the assignee thereof.

8. Term. Except for the Subgrantees obligations regarding record retention set forth in Section 3(g)(iii), the term of Subgrantee's obligations under this Agreement is ten (10) years from the Effective Date.

9. Miscellaneous Provisions.

(a) This Agreement contains the entire agreement between the parties and supersedes all prior discussions, understandings and agreements whatsoever. Neither this Agreement nor any provision hereof may be changed, waived, discharged, or terminated orally and may only be modified or amended by an instrument in writing, signed by the parties hereto.

(b) Inspections and approval of the Project impose no responsibility or liability of any nature or kind whatsoever on Subgrantor to Subgrantee, Owner and/or any third parties. The parties hereby expressly agree and acknowledge that their relationship is that of Subgrantor and Subgrantee and that no other relationship, including that of joint venture, partnership or other common enterprise is created by this Agreement or the other Subgrant Documents.

(c) All rights, powers, and remedies herein given to Subgrantor are cumulative and not alternative, and are in addition to all other statutes or rules of law. Any forbearance or delay by Subgrantor in

exercising the same shall not be deemed to be a waiver thereof and the exercise of any right or partial exercise thereof shall not preclude the further exercise thereof and the same shall continue in full force and effect until specifically waived by an instrument in writing executed by Subgrantor. All representations, warranties and covenants by Subgrantee or Owner shall survive the making of the advances of the Subgrant and the provisions hereof shall be binding upon Subgrantee or Owner, their successors and assigns and inure to the benefit of the Subgrantor, its successors and assigns.

(d) All notices shall be in writing and shall be deemed to have been sufficiently given or served when presented personally or when deposited in the United States mail, by registered or certified mail, addressed to the parties at the addresses set forth below. Such addresses may be changed by notice to the other party given in the same manner.

(e) This Agreement and all covenants, agreements, representations and warranties made herein shall survive the execution of this Agreement and shall continue in full force and effect so long as the Subgrant is outstanding and unpaid.

(f) If any provision of this Agreement is held invalid, such invalidity shall not affect other provisions of this Agreement which can be given effect without the invalid provisions and, to this end, the provisions of this Agreement are hereby declared severable.

(g) The party executing this Agreement on behalf of Subgrantee and Owner is authorized to bind the entity.

(h) This Agreement and all matters of performance relating thereto shall be governed by and construed and interpreted in accordance with the laws of the State of Colorado.

(i) This Agreement may be executed in several counterparts.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

SUBGRANTOR:

COLORADO HOUSING AND FINANCE AUTHORITY, a body corporate and political subdivision of the State of Colorado

By: _____
Jaime G. Gomez, Deputy Executive Director and Chief Operating Officer

1981 Blake Street
Denver, Colorado 80202

SUBGRANTEE:

FRUITA HOUSING AUTHORITY, a body corporate and politic

By: _____
Michael Bennett, Executive Director

Acknowledged and Agreed:

OWNER:

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, a Colorado limited liability company, its Manager

By: _____
Kimberley A. Coughlin, Sole Member

WHEN RECORDED MAIL TO:

First Bank of Wyoming,
a Division of Glacier Bank
Attn: Trace Paul
245 E. First Street
P.O. Box 907
Powell, WY 82435

SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT (this “Agreement”) is entered into as of [DATE], by and between **Fruita Housing Authority**, a body corporate and politic (“FHA” (“Junior Lender”)); **First Bank of Wyoming, a Division of Glacier Bank**, its successors and assigns (“Senior Lender”); and **IndiBuild Fruita LLLP**, a Colorado limited liability limited partnership (“Borrower”).

RECITALS

A. Borrower and Senior Lender have entered or will enter into a Construction Loan Agreement dated as of July 25, 2023, (as it may be amended, restated, modified, or supplemented from time to time, the “Loan Agreement”), pursuant to which Senior Lender has agreed to extend to Borrower a loan in an original principal amount not to exceed \$13,200,000.00 (the “Loan”).

B. To secure its obligations under the Loan Agreement and the Promissory Note made by Borrower and payable to the order of Senior Lender dated July 25, 2023, in the original principal amount of up to \$13,200,000.00, Borrower entered into or will enter into, contemporaneously with their execution of this Agreement, a Deed of Trust, an Assignment of Rents, a Security Agreement, and other ancillary loan documents, each dated July 25, 2023.

C. It is a condition precedent to the obligation of Senior Lender to make the Loan in accordance with the terms of the Loan Agreement that this Agreement be executed and delivered to Senior Lender by Junior Lender.

D. Junior Lender expects to derive benefits from the making of the Loan to Borrower by Senior Lender and finds it advantageous, desirable and in Junior Lender’s best interest to comply with the requirement that Junior Lender executes this Agreement and delivers it to Senior Lender.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and in order to induce Senior Lender to enter into the Loan Agreement and to make the Loan to Borrower, Junior Lender hereby agrees with Senior Lender for Senior Lender's benefit as follows:

1. Definitions. As used in this Agreement, the following terms shall have the meaning indicated:

“Agreement”: As defined in the introductory paragraph of this Agreement.

“Borrower”: As defined in the introductory paragraph of this Agreement.

“Junior Lender”: As defined in the introductory paragraph of this Agreement.

“Junior Debt”: All liabilities and obligations of Borrower to Junior Lender, howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising or incurred, including without limitation all obligations of Borrower to Junior Lender under the Junior Notes, and any renewals, refinancings, or replacements thereof.

“Junior Lien”: Deed of Trust, Security Agreement, Financing Statements and Assignment of Rents and Revenues (CMF Funds) by and between Borrower, the Trustee, and FHA and describing the Real Property to secure the repayment of the indebtedness evidenced by the Junior Note and recorded after the date hereof in the real property records of Mesa County, Colorado, and any renewals, refinancings, amendments, restatements, or replacements thereof.

“Junior Note”: Promissory Note – CMF Funds made by Borrower and payable to the order of FHA in the original principal amount of \$170,000.00, and any renewals, refinancings, amendments, restatements, or replacements thereof.

“Loan”: As defined in Recital A to this Agreement.

“Loan Agreement”: As defined in Recital A to this Agreement.

“Obligations”: As defined in Section 4 of this Agreement.

“Real Property”: The land described on Exhibit A to this Agreement, together with all buildings, fixtures, and improvements thereon and all water rights, rights of way, easements, rents, issues, profits, tenements, hereditaments, privileges, and appurtenances thereunto belonging.

“Senior Debt”: All obligations of Borrower to Senior Lender under the Loan Agreement and any documents or instruments entered into or delivered in connection with the Loan Agreement.

“Senior Lien”: All liens or encumbrances securing or collateralizing the Senior Debt, or any part of the Senior Debt, including without limitation, that certain Deed of Trust, that certain Assignment of Rents, that certain Security Agreement, and certain Fixture Financing Statement(s), and other ancillary loan documents, each dated July 25, 2023, by and between Borrower, the Trustee, and Senior Lender describing the Real Property and other collateral to secure the Senior Debt, recorded _____, under Document Nos. _____, _____, _____, and _____, as they may be amended, restated, modified, or supplemented from time to time pursuant to their terms.

“Senior Lender”: As defined in the introductory paragraph of this Agreement.

“Trustee”: Public Trustee for the County of Mesa, State of Colorado, whose address is 544 Rood Ave #100, Grand Junction, CO 81501.

2. Other Defined Terms. All terms used in this Agreement which are not specifically defined in this Agreement shall have the meaning assigned to them in the Loan Agreement.

3. Lien Priority. The Senior Lien and any and all extensions, renewals, modifications, or replacements of the Senior Lien shall be and at all times remain a lien or charge on the Real Property prior and superior to the Junior Liens. Junior Lender intentionally and unconditionally waives, relinquishes, and subordinates the priority and superiority of the Junior Lien to the Senior Lien. The priorities set forth in this Section 3 are applicable irrespective of: (a) the time, manner, or method of creation, attachment or perfection of any of the liens or security interests created under or in respect of the Senior Lien; (b) the time, manner, method or order of the filing or recording of the Senior Lien and the Junior Lien or the taking of any other actions, to perfect or protect any liens or security interests in the Real Property; and (c) the rules for determining priority under any requirements of law governing or determining the relative priorities of creditors (including, without limitation, any insolvency laws).

4. Continuing Nature of Subordination. This Agreement shall be effective and may not be terminated or otherwise revoked by Junior Lender until all of Borrower’s obligations to Senior Lender related to the Loan (the “Obligations”) shall have been fully paid and discharged and all financing arrangements between Borrower and Senior Lender have been terminated. This is a continuing agreement of subordination and Senior Lender may continue, at any time and without notice to Junior Lender, to extend credit or other financial accommodations and loan monies to or for the benefit of Borrower in reliance on this Agreement.

5. Additional Agreements Between Senior Lender and Borrower. Junior Lender hereby consents and agrees to any agreement or arrangement, in which Senior Lender waives, postpones, extends, reduces, or modifies any provisions of the documents related to the Senior Debt, including any provision requiring the payment of money. Senior Lender, at any time and from time to time, may enter into such agreement or agreements with Borrower as Senior Lender may deem proper, increasing the amount of, extending the time of payment of or renewing or otherwise altering the terms of all or any of the Obligations or affecting any security underlying any or all of the Obligations, and may exchange, sell, release, surrender or otherwise deal with any

such security, without in any way thereby impairing or affecting this Agreement.

6. Subordination of Junior Debt. The payment and performance of the Junior Debt is hereby subordinated to the payment and performance of the Senior Debt in accordance with this Agreement. Prior to any Event of Default, Junior Lender may receive payment from Borrower in respect of the Junior Debt. Upon and during the continuance of any Event of Default, Junior Lender will not ask, demand, sue for, take or receive from Borrower or any other person liable for all or any part of the Senior Debt, by setoff or in any other manner, the whole or any part of the Junior Debt, or any monies which may now or hereafter be owing in respect of the Junior Debt (whether such amounts represent principal or interest, or obligations which are due or not due, direct or indirect, absolute or contingent). Junior Lender will not ask, demand, sue for, take, or receive from Borrower, or any other person liable for all or any part of the Senior Debt any security for the Junior Debt or any negotiable instrument for the Junior Debt, unless and until all of the Senior Debt shall have been fully paid and satisfied and all financing arrangements between Borrower and Senior Lender have been terminated.

7. Payments Received by Junior Lender. If Junior Lender receives any payment or distribution or security or instrument or proceeds thereof upon or with respect to the Junior Debt prior to the payment in full of the Senior Debt and termination of all financing arrangements between Borrower and Senior Lender, except as may be permitted under this Agreement, Junior Lender shall receive and hold the same in trust, as trustee, for the benefit of Senior Lender and shall forthwith deliver the same to Senior Lender in precisely the form received (except for the endorsement or assignment by Junior Lender where necessary), for application on any of the Senior Debt, due or not due and, until so delivered, the same shall be held in trust by Junior Lender as the property of Senior Lender. In the event of the failure of Junior Lender to make any endorsement or assignment to Senior Lender, Senior Lender, or any of its officers or employees, is hereby irrevocably authorized to make the same.

8. Junior Debt Owed Only to Junior Lender. Junior Lender warrants and represents that Junior Lender has not previously assigned any interest in the Junior Debt, that no other person owns an interest in the Junior Debt (whether as joint holders of Junior Debt, participants or otherwise) and that the entire Junior Debt is owing only to Junior Lender. Junior Lender further covenants that the entire Junior Debt shall continue to be owing only to Junior Lender unless it is assigned, in whole or in part, (which assignment may occur without the prior consent of Senior Lender) to a person who agrees with Senior Lender to be bound by the subordination provisions set forth herein.

9. Notice of Default. Junior Lender will deliver to Senior Lender written notice of any default under the Junior Debt.

10. Subordination of Subrogation Rights. Without limiting any other provision of this Agreement, Junior Lender agrees that if, by reason of payment by Junior Lender of real estate taxes or other monetary obligations of Borrower pursuant to the documents related to the Junior Debt or by reason of Junior Lender's exercise of any other right or remedy under the documents related to the Junior Debt, Junior Lender acquires by right of subrogation or otherwise a lien or encumbrance on the Property or the Project that, but for this Section 10, would be considered

senior to the lien or liens of any of the documents related to the Senior Debt, in that event, such lien or encumbrance of Junior Lender shall be subject and subordinate to Senior Lien and the other documents related to the Senior Debt.

11. Further Documents. Upon the demand of Senior Lender from time to time, Junior Lender shall further execute whatever instruments and/or documents are reasonably required by Senior Lender in order to evidence that the Junior Lien is subject and subordinate to the lien, terms, covenants, and conditions of the Senior Lien.

12. Waivers. Junior Lender expressly waives all notice of the acceptance by Senior Lender of this Agreement and all other notices not specifically required pursuant to the terms of this Agreement. Senior Lender shall be entitled to manage and supervise the Obligations and other financial accommodations to Borrower without regard to the existence of any rights that Junior Lender may now or hereafter have in or to any of the assets of Borrower.

13. Conflict. Each party hereto agrees that, in the event of any conflict or inconsistency between the terms or application of the documents related to the Senior Debt, the terms or application of the documents related to the Junior Debt, and the terms of this Agreement, the terms of this Agreement shall govern and control, including, but not limited to: (a) the relative priority of the security interests of Senior Lender on the one hand and Junior Lender on the other hand, in the Real Property; (b) the timing of the exercise of remedies by Senior Lender and Junior Lender under the documents related to the Senior Debt, including without limitation the Senior Lien; and (c) all other rights and obligations that Senior Lender and Junior Lender have agreed to pursuant to this Agreement.

14. Miscellaneous.

a. **Notices.** All notices and demands required or permitted to be given to or made upon any party hereto under this Agreement shall be in writing and shall be personally delivered or sent by certified mail, postage prepaid, return receipt requested, or by telecopier, and shall be deemed to be given on the day that such writing is delivered or sent to the intended recipient thereof in accordance with the provisions of this subsection. Unless otherwise specified in a notice sent or delivered in accordance with the foregoing provisions of this subsection, notices and demands in writing shall be given to or made upon the respective parties hereto at their respective addresses (or to their respective telecopier numbers) set forth below:

If to Junior Lender: Fruita Housing Authority
325 E. Aspen Avenue
Fruita, CO 81521
Attn: Executive Director

If to Senior Lender: First Bank of Wyoming,
a Division of Glacier Bank
245 E. First Street
P.O. Box 907

Powell, WY 82435
Attn: Trace Paul

b. **Successors, Assigns, Modifications.** This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties. This Agreement may be amended or modified only in writing signed by all parties hereto. No amendment, waiver, or consent shall, without the prior written consent of Senior Lender: (i) subordinate or have the effect of subordinating any Obligations to any other indebtedness or obligations of any other party; or (ii) subordinate or have the effect of subordinating the Senior Lien to any other lien or encumbrance related to any other indebtedness or obligations of any other party.

c. **Severability of Provisions.** If any provision of this Agreement shall be held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such waiver or other provision or any remaining provisions of this Agreement.

d. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

e. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

f. **Authority.** Each party hereby represents that all legal action necessary for the execution of this Agreement by such party has been duly taken and that the person(s) signing below on behalf of such party is duly authorized to execute this Agreement.

g. **Entire Agreement.** This Agreement contains the whole and only agreement between the parties with regard to the subordination of the Junior Lien to the Senior Lien and shall supersede and cancel any prior agreements as to such, or any, subordination. Junior Lender has not relied on any inducements or assurances from Senior Lender, Borrower, or anyone in executing this Agreement, other than as set forth herein.

IN WITNESS WHEREOF, the parties have executed this Agreement and this Agreement is effective as of the date first written above.

{Signature page(s) to follow}

BORROWER:

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,
a Colorado limited liability company,
its Manager

By: _____
Name: Kimberley A. Coughlin
Its: Sole Member

STATE OF COLORADO)
 :SS
County of Boulder)

This instrument was signed and sworn to before me on _____, 2023, by Kimberley A. Coughlin, Sole Member of indibuild llc, Manager of IndiBuild Fruita GP LLC, the General Partner of IndiBuild Fruita LLLP.

WITNESS my hand and official seal.

Printed Name: _____

Notary Public for the State of Colorado _____

JUNIOR LENDER:

FRUITA HOUSING AUTHORITY,
a body corporate and politic

By: _____
Name: Michael Bennett _____
Its: Executive Director

STATE OF COLORADO)
 :SS
County of Mesa)

This instrument was signed and sworn to before me on _____, 2023, by Michael Bennett as Executive Director of the Fruita Housing Authority, a body corporate and politic.

WITNESS my hand and official seal.

Printed Name: _____

Notary Public for the State of Colorado

EXHIBIT A

Legal Property Description

LOT 1, INDIBUILD MINOR SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 29, 2022 UNDER RECEPTION NO. 3052639, COUNTY OF MESA, STATE OF COLORADO.

CHFA Loan No.: 5007208

After Recording Return To:
 Colorado Housing and Finance Authority
 1981 Blake Street
 Denver, Colorado 80202-1272
 Attn: Legal Operations

SUBORDINATION OF DEED OF TRUST

This **SUBORDINATION OF DEED OF TRUST** (the “**Agreement**”) is dated as of _____, 2023, by **INDIBUILD FRUITA LLLP**, a Colorado limited liability limited partnership (“**Borrower**”), **FRUITA HOUSING AUTHORITY**, a body corporate and politic (the “**Subordinate Lender**”), and **COLORADO HOUSING AND FINANCE AUTHORITY**, a body corporate and political subdivision of the State of Colorado (the “**Senior Lender**”).

RECITALS:

A. Subordinate Lender made a loan to Borrower in the maximum aggregate amount of One Hundred Seventy Thousand and No/100 Dollars (\$170,000) (the “**Subordinate Loan**”), in connection with the property commonly known as Fruita Mews, which is more particularly described on Exhibit A, attached hereto and made a part hereof by this reference (the “**Property**”). The Subordinate Loan is evidenced by (i) that certain note in the maximum principal amount of \$170,000, made by Borrower for the benefit of Subordinate Lender (the “**Subordinate Note**”). The Subordinate Note is secured by (i) that certain Deed of Trust for the benefit of the Subordinate Lender dated _____, 2023, recorded on _____, 2023, under Reception No. _____ (the “**Subordinate Deed of Trust**”), in the real estate records of the Clerk and Recorder of Mesa County, Colorado (the “**Records**”). The Subordinate Note, Subordinate Deed of Trust and all other documents and agreements related to the Subordinate Loan are collectively referred to herein as the “**Subordinate Loan Documents**”).

B. Borrower has executed a Promissory Note payable to the Senior Lender (the “**Senior Note**”) in the original maximum principal amount of \$825,000 (the “**Senior Loan**”) upon the terms and conditions of that certain Loan Agreement dated as of _____, 2023, between Senior Lender and Borrower (“**Senior Loan Agreement**”). The Senior Note is secured by a Deed of Trust, Security Agreement, Financing Statement, Fixture Filing and Assignment of Rents and Leases executed by Borrower, dated _____, 2023, recorded on _____, 2023, under Reception No. _____, in the Records, which encumbers Borrower’s interest in the Property (the “**Senior Deed of Trust**”). The Senior Note, Senior Deed of Trust, and that certain Regulatory Agreement dated _____, 2023, recorded on _____, 2023, under Reception No. _____, in the Records (the “**Regulatory Agreement**”), and all other documents and agreements evidencing securing and/or executed in connection with the Senior Loan are collectively referred to herein as the “**Senior Loan Documents**”).

CHFA Loan No.: 5007208

C. It is a condition precedent to obtaining the Senior Loan, that the Senior Deed of Trust and Regulatory Agreement shall unconditionally be and remain at all times a lien or charge upon the Property prior and superior to the lien or charge of any other lien or encumbrance.

D. The Senior Lender is willing to make the Senior Loan to Borrower provided the Subordinate Lender will specifically and unconditionally subordinate the lien or charge of the Subordinate Deed of Trust to the lien or charge of the Senior Deed of Trust and Regulatory Agreement.

E. It is to the mutual benefit of all parties to this Agreement that the Senior Lender make such loan to Borrower; and Subordinate Lender agrees that the Senior Deed of Trust and Regulatory Agreement, when recorded, will constitute a lien or charge upon the Property, which is unconditionally prior and superior to the lien or charge of the Subordinate Deed of Trust.

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to induce the Senior Lender to make the Senior Loan to Borrower, it is hereby declared, understood and agreed as follows:

1. The Subordinate Lender hereby represents to Senior Lender that it is the current beneficiary of the Subordinate Deed of Trust and payee(s) of the Subordinate Note, and the Subordinate Lender does hereby agree that the Subordinate Loan, Subordinate Deed of Trust and the Subordinate Loan Documents, and all of the Subordinate Lender's rights thereunder, shall be in all respects subordinate, secondary, inferior and junior to the lien of the Senior Deed of Trust, Regulatory Agreement and the other Senior Loan Documents and all extensions, renewals or modifications thereof, all as executed and delivered by Borrower to the Senior Lender as security for the Senior Note.

2. For the purposes of this Agreement, the Subordinate Lender acknowledges and agrees that all disbursement of loan proceeds and other advances made by the Senior Lender pursuant to the Senior Loan Documents shall be conclusively presumed to have been disbursed in accordance therewith and for the purposes therein provided.

3. The Subordinate Lender hereby appoints the Senior Lender, or any person or entity acting upon the directions of the Senior Lender, as its attorney-in-fact for the sole and limited purpose of inserting information in this Agreement regarding the date and recording of the Subordinate Deed of Trust, Senior Deed of Trust and Regulatory Agreement.

4. The Subordinate Lender hereby agrees that upon the occurrence of a default by the Borrower under the terms of any of the Subordinate Loan Documents, the Subordinate Lender shall provide written notice to the Senior Lender no less than sixty (60) days prior to commencing the exercise of any remedies against Borrower and/or the Property.

5. Except as otherwise set forth below, Subordinate Lender agrees that it will not, without the prior written consent of the Senior Lender: (a) collect, enforce or receive payment upon, by setoff or in any other manner, all or any portion of the Subordinate Loan now or hereafter existing; (b) enforce or foreclose upon the Subordinate Deed of Trust or enforce or apply any other security now or hereafter existing for the Subordinate Loan; (c) commence, prosecute, or participate in any administrative, legal or equitable action against Borrower with respect to the Subordinate Loan; (d) join in any petition for bankruptcy, assignment for the benefit of creditors or creditor's agreement involving the assets of Borrower, or incur any obligation to or receive any loans, advances or gifts from Borrower with respect to the Subordinate Loan. Notwithstanding the foregoing, Borrower may make payments under the Subordinate Loan to Subordinate Lender as long as all payments under the Senior Loan Documents are current and not delinquent or in arrears, and only so long as at the time of such payment: (x) no default under the Senior Loan Documents exists and no event exists which, with the lapse of time or the giving of notice or both, would be an event of default under the Senior Loan Documents of which Subordinate Lender have received notice; and (y) such payment would not result in a violation of any of Borrower's financial covenants set forth in any of the Senior Loan Documents.

6. All necessary actions on the part of the Subordinate Lender, its officers, directors, partners, members and shareholders, as applicable, necessary for the authorization of this Agreement and the performance of all obligations of the Subordinate Lender hereunder have been taken. This Agreement constitutes the legal, valid and binding obligation of Subordinate Lender, enforceable against Subordinate Lender in accordance with its terms. The execution, delivery and performance of and compliance with this Agreement by Subordinate Lender will not (i) result in any material violation or default of any term of any of the Subordinate Lender's charters, formations or other organizational documents (such as Articles or Certificate of Incorporation, bylaws, partnership agreement, operating agreement, etc.) or (ii) violate any material applicable law, rule or regulation.

7. Subordinate Lender hereby agrees to execute such documents and/or take such further action as Senior Lender may at any time or times reasonably request in order to carry out the provisions and intent of this Agreement, including, without limitation, ratifications and confirmations of this Agreement from time to time hereafter, as and when requested by Senior Lender.

8. If any provision of this Agreement shall be invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

9. This Agreement contains the entire agreement between and among the parties hereto with respect to the subordination of the Subordinate Deed of Trust and the other Subordinate Loan Documents as to the Senior Deed of Trust, Regulatory Agreement and the other Senior Loan Documents.

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10. This Agreement and each and every covenant, agreement and other provisions hereof shall be binding upon the parties hereto and their respective successors and assigns. This Agreement shall remain effective until terminated in writing by Senior Lender. This Agreement is solely for the benefit of Subordinate Lender and Senior Lender and not for the benefit of Borrower or any other party.

11. Each party to this Agreement acknowledges that if any party fails to comply with its obligations under this Agreement, the other parties will have all rights available at law and in equity, including the right to obtain specific performance of the obligations of such defaulting party and injunctive relief.

12. This Agreement is made and executed under and in all respects will be governed and construed by the laws of the State of Colorado.

13. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which, when taken together, shall be deemed one and the same instrument.

[SIGNATURE PAGES FOLLOW]

CHFA Loan No.: 5007208

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first written.

SUBORDINATE LENDER:

FRUITA HOUSING AUTHORITY,
a body corporate and politic

By: _____
Michael Bennett, Executive Director

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me on _____, 2023, by Michael Bennett, as Executive Director of Fruita Housing Authority, a body corporate and politic.

Witness my hand and official seal.

Notary Public

[SEAL]

My Commission expires: _____

BORROWER:

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,
a Colorado limited liability company,
its Manager

By: _____
Kimberley A. Coughlin,
Sole Member

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me on _____, 2023,
by Kimberley A. Coughlin, as Sole Member of indibuild llc, a Colorado limited liability company,
as Manager of IndiBuild Fruita GP LLC, a Colorado limited liability company, as General Partner
of IndiBuild Fruita LLLP, a Colorado limited liability limited partnership.

Witness my hand and official seal.

Notary Public

[SEAL]

My Commission expires: _____

SENIOR LENDER:

COLORADO HOUSING AND FINANCE
AUTHORITY, a body corporate and political
subdivision of the State of Colorado

By: _____
Steve Johnson, Director, Community
Development

STATE OF COLORADO)
) ss.
CITY AND COUNTY OF DENVER)

The foregoing instrument was acknowledged before me on _____, 2023 by
Steve Johnson, as Director, Community Development, of Colorado Housing and Finance
Authority, a body corporate and political subdivision of the State of Colorado.

Witness my hand and official seal.

My Commission expires: _____

[SEAL]

Notary Public

CHFA Loan No.: 5007208

EXHIBIT A

LEGAL DESCRIPTION

LOT 1, INDIBUILD MINOR SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 29, 2022 UNDER RECEPTION NO. 3052639, COUNTY OF MESA, STATE OF COLORADO.

Also known as (for informational purposes only): 1601 K 4/10 Road, Fruita, CO 81521.

Colorado Housing and Finance Authority
1981 Blake Street
Denver, Colorado 80202-1272
Attention: Jocelyn Bailey, Paralegal

COLORADO HOUSING AND FINANCE AUTHORITY REGULATORY AGREEMENT

THIS **REGULATORY AGREEMENT** (this “Agreement”) is made and entered into as of August __, 2023 by and between **INDIBUILD FRUITA LLLP**, a Colorado limited liability partnership, and its successors, assigns and transferees of the Development (as hereinafter defined), jointly and severally (the “**Owner**”), whose address is 4884 Briar Ridge Court, Boulder, Colorado 80301, **FRUITA COLORADO HOUSING AUTHORITY (“FHA”)**, and the **COLORADO HOUSING AND FINANCE AUTHORITY**, a body corporate and political subdivision of the State of Colorado (the “**Authority**”) and its successors and assigns, whose address is 1981 Blake Street, Denver, Colorado 80202. This Agreement is intended to be filed and recorded in the official public records of Mesa County, Colorado, and shall constitute a restriction upon the use of the property hereinafter described subject to and in accordance with the terms contained herein.

WITNESSETH:

A. The Owner has applied to the Authority pursuant to the Authority’s Capital Magnet Fund Program (the “**Program**”) for a construction loan in the original principal amount of Eight Hundred Twenty Five Thousand and No/100 Dollars (\$825,000.00), which shall be disbursed in a series of draws, with a term of twenty-four (24) months (the “**Construction Loan**”), and a permanent loan in the original principal amount of Eight Hundred Twenty Five Thousand and No/100 Dollars (\$825,000.00) with a term of seventeen (17) years (the “**Permanent Loan**”, and together with the Construction Loan, the “**Loans**”), which will be secured by a Deed of Trust and used to finance a rental housing facility for Single Persons and Families (as defined below) of low-to moderate income persons, known as The Fruita Mews, with an address of 1601 K 4/10 Road, Fruita, Colorado 81521 (the “**Property**”), on lands in Mesa County, Colorado, described in **Exhibit A** attached hereto and by this reference made a part hereof (the “**Real Property**”); and

B. In connection with the Loans, the Authority has agreed to grant to FHA an amount of up to One Hundred Seventy Thousand and No/100 Dollars (\$170,000) (the “**Grant**”) pursuant to the terms of the Subgrant Agreement of even date herewith by and between the Authority, FHA and the Owner (the “**Subgrant Agreement**”). FHA has agreed to loan the Grant to Owner, which will be disbursed simultaneously with the Loans.

C. The Loans and the Grant are subject to the requirements of the Capital Magnet Fund Assistance Agreement and the requirements of 12 C.F.R. Part 1807 (“**CMF Regulations**”).

D. Owner was awarded a reservation of 9% federal low income housing tax credits for the Property which award will be memorialized with a Land Use Restriction Agreement between the Owner and the Authority, as the allocating agency for the tax credits; and

E. The Authority is unwilling to make the Loan unless the Owner agrees to comply with the requirements of the Program, the CMF Agreement, the CMF Regulations, and the regulations set forth herein, and the Owner is willing to execute and abide by this Agreement, as a condition of obtaining the Loan.

NOW, THEREFORE, it is hereby agreed by and between the parties hereto, their successors and assigns, as follows:

1. **Definitions**. As used in this Agreement, the following terms shall have the following respective meanings.

(a) **“Act”** means the Colorado Housing and Finance Authority Act, part 7 of article 4 of title 29 of Colorado Revised Statutes, as amended and supplemented from time to time.

(b) **“AMI”** means Area Median Income.

(c) **“Assistance Agreement”** means that certain Capital Magnet Fund Assistance Agreement between the Authority and Community Development Financial Institutions Fund dated effective on or about February 8, 2022 and all the terms and conditions contained therein.

(d) **“Code”** means the Internal Revenue Code of 1986, as amended and supplemented from time to time, and applicable proposed, temporary, and final regulations thereunder.

(e) **“CDFI”** means Community Development Financial Institutions Fund.

(f) **“C.F.R.”** or **“CFR”** means Code of Federal Regulations, as the same may be amended from time to time.

(g) **“Development”** includes the Real Property, the improvements from time to time constructed thereon, including the Property, and all other assets owned by Owner and used in connection with the operation of the Real Property and such improvements of whatsoever nature or wheresoever situate.

(h) **“Family”** means two or more persons whether or not related by blood, marriage, or adoption who live or expect to live together as a single household in the same dwelling unit.

(i) **“Financing Documents”** means all documents and instruments executed by the Owner or the Authority in connection with the Loan.

(j) “**Gross Rent**” means the rent or other occupancy charges, including a utility allowance, applicable to a residential unit.

(k) “**Guidelines**” means any rule, regulation or publication from CDFI that concerns the Capital Magnet Fund program.

(l) “**Initial Occupancy**” means for the purposes of the Program, after the Project is Placed into Service, at least ninety percent (90%) of the Development is occupied within 12 months of the Project Completion date.

(m) “**Low-to-Moderate Income Persons or Families**” means those Single Persons or Families whose incomes, determined in a manner consistent with determinations of lower income families under Section 8, do not exceed income thresholds set forth in Section 2(b), as determined by the Authority, for the area in which the Development is located, and such other Single Persons and Families who shall be determined from time to time by the Authority to be “low-income or moderate-income families” within the meaning of the Act except that, if there is more than one wage earner in the household, such income shall not exceed the aggregate of the income limit for Low-to Moderate Income Persons or Families under this Agreement for each wage earner and his or her dependents.

(n) “**Low-to-Moderate Income Unit**” means the units set aside for Low- to Moderate- Income Persons or Families, as set forth in Section 2(b).

(o) “**Mortgage**” means that certain Deed of Trust, Security Agreement, Financing Statement, Fixture Filing, and Assignment of Rents and Leases of even date herewith, by Owner in favor of Authority to secure the Loan, including any amendments, modifications and/or supplements thereto, or any other instrument securing the Loan.

(p) “**Mortgaged Property**” includes all property, real, personal, or mixed covered by the Mortgage.

(q) “**Note**” means that certain Promissory Note of even date herewith, by and between Owner, as borrower, and Authority, as holder, secured by the Mortgage, evidencing the Owner’s obligation to repay the Loan.

(r) “**Placed into Service**” means, for the purpose of this Agreement and the Program, on or before six (6) months after Project Completion is achieved when the Development is otherwise ready for occupancy as evidenced by a certificate of occupancy.

(s) “**Program Statute and Regulations**” means 12 CFR Part 1807, and any implementing regulations as each may be amended from time to time.

(t) “**Program Compliance Manual**” means the Authority’s Multifamily Program Compliance Manual, as amended from time to time.

(u) **“Project Completion”** means the date when all of the requirements set forth at 12 C.F.R. § 1807.503 for the Development have been met.

(v) **“Rules”** means the Colorado Housing and Finance Authority Community Development Lending Credit Policy, as amended and supplemented from time to time.

(w) **“Senior Lender”** means any mortgage lender of the Owner holding a lien on the Mortgaged Property senior to the Mortgage.

(x) **“Single Person”** means a person whether or not related by blood, marriage or adoption to another person who lives or expects to live in the same dwelling unit.

(y) **“State”** means the State of Colorado.

(z) **“Tax Credit Investor”** means NEF Assignment Corporation, as nominee.

2. **Occupancy.** The Owner covenants and agrees that, in connection with the ownership and operation of the Development, it will comply, and will require any subsequent purchaser of the Development to comply, with all of the following from Initial Occupancy for the longer of (a) ten (10) years from Project Completion and Initial Occupancy; (b) or the period any portion of the Loan remains outstanding:

(a) Once available for occupancy, each residential unit in the Development (other than any units approved by the Authority for occupancy by a resident manager or other necessary employee) will be rented or held available for rental to those members of the general public who qualify as a Family or a Single Person on a continuous, nontransient basis, and may not be converted to condominium or other use, at all times for ten (10) years or the period any portion of the Loan remains outstanding, whichever is longer.

(b) The Development consists of **50** residential units. At all times for the longer of (i) ten (10) years from Project Completion and Initial Occupancy or (ii) the period any portion of the Loan remains outstanding, all of the residential units will be both rent-restricted and occupied (or held vacant and available for immediately occupancy) by Low-to-Moderate-Income Persons or Families whose income level does not exceed the applicable AMI Threshold as follows:

No. of Units	AMI Threshold
4 units	30% or less of AMI
4 units	40% or less of AMI
12 units	50% or less of AMI
24 units	60% or less of AMI
6 units	100% or less of AMI

A residential unit is rent-restricted if the Gross Rent for such unit does not exceed thirty percent (30%) of the imputed income limitation applicable to such unit.

Any residential unit occupied by a Low-to-Moderate-Income Person or Family at the commencement of occupancy shall continue to be treated as an affordable unit notwithstanding an increase in the income of such individual or family above the income limitation applicable under this subsection 2(b) or a decrease in the AMI such that the income of such individual or family is above the income limitation applicable under the subsection 2(b), provided that, if such Low-to-Moderate-Income Person's or Family's income subsequently exceeds one hundred forty percent (140%) of the applicable income limit, such unit shall no longer be an affordable unit if after such determination, but prior to the next determination, any residential unit of comparable or smaller size is rented to a tenant who is not a Low-to-Moderate-Income Person or Family.

(c) Tenants in such units shall enjoy equal access to all common facilities of the Development.

(d) The income and assets of each Low-to-Moderate-Income Person or Family will be certified by a Tenant Income Certification in the form provided by the Authority. Income shall be verified by an Income Verification in the form provided by the Authority for each person who will occupy the unit, and assets will be verified in a manner satisfactory to the Authority. Income Verifications, asset verifications and Tenant Income Certifications are subject to independent investigation and verification by the Authority, and, at the Authority's request, will be submitted to the Authority. Note: When determining tenant income eligibility, the Guidelines and the Assistance Agreement have different requirements than Section 42 of the Code, which may impact tenant qualification and monitoring.

(e) All tenant leases shall be expressly subordinate to the Mortgage, and shall contain clauses, among others, wherein each individual lessee:

- (1) Certifies the accuracy of the statements made in its application and Tenant Income Certification; and
- (2) Agrees that the family income, family composition and other eligibility requirements at the time the lease is executed shall be deemed substantial and material obligations of its tenancy; that it will comply promptly with all requests for information with respect thereto from the Owner, or the Authority, and that its failure or refusal to comply with a request for information with respect thereto shall be deemed a violation of a substantial obligation of its tenancy.

(f) The benefits of this Section 2 shall inure to, and may be enforced by the Authority and its successors, for the term of this Agreement, whether or not the Authority shall continue to be the holder of the Note or the Mortgage, and whether or not the Loan may be paid in full.

3. **Rents.**

(a) The Gross Rent charged for each unit shall not exceed the maximum limit shown for each type of unit on the rent tables published from time to time in writing by the Authority. Annual Rent on units which are intended to qualify as Low-to-Moderate-Income Units will not exceed thirty percent (30%) of the imputed income limitation applicable to such unit. A Low-to-Moderate-Income Unit which has remained vacant for more than ninety (90) days will not be deemed a Low-to-Moderate-Income Unit unless the advertised Rent for such unit does not exceed thirty percent (30%) of the imputed income limitation applicable to such unit.

(b) For purposes of paragraph (a) above, the “imputed income limitation” applicable to a unit is the applicable percentage of area median income, as most recently determined by the Authority, which would apply if the number of individuals occupying such unit were as follows:

<u>Number of Bedrooms</u>	<u>Occupancy</u>
0	1
1	1.5
2	3
3	4.5

(c) Upon prior approval of the Authority, the Owner may charge to and receive from any tenant such amounts as from time to time may be mutually agreed upon between the tenant and Owner for any facilities and/or services which may be furnished by the Owner or others to such tenant upon his request, in addition to the facilities included in the approved rental schedule.

4. **Development Cash.** All rents and other receipts of the Development shall be deposited in the name of the Development in a bank or savings and loan association whose deposits are insured by the Federal Deposit Insurance Corporation (“**FDIC**”). Such funds shall be withdrawn only in accordance with the provisions of this Agreement for expenses of the Development. Any partner, officer, employee or agent of the Owner receiving funds of the Development other than by such expense payment shall immediately deposit such funds in the Development bank account and, failing so to do in violation of this Agreement, shall hold such funds in trust. Any partner, officer, employee or agent of the Owner receiving property of the Development in violation of this Agreement shall immediately deliver such property to the Development and failing so to do shall hold such property in trust. At such time as the Owner shall have lost control and/or possession of the Development, all funds held in trust shall be delivered to the Authority or the Trustee to the extent that the mortgage indebtedness has not been satisfied.

5. **Replacement Reserve Fund.**

(a) Establishment. The Authority (or Senior Lender pursuant to the terms of Section 5(b) below) shall establish and maintain a replacement reserve fund to be funded by the Owner in the name of the Development in a bank or savings and loan association designated by the Authority (the “**Replacement Reserve Fund**”). The Authority may charge reasonable fees for maintaining deposited funds.

(b) Deposits. Concurrently with the commencement of payments of principal of and interest on the Loan (in connection with the conversion of the Loan from a construction loan to a permanent loan), Owner shall make monthly deposits in the Replacement Reserve Fund in an amount equal to \$1,250.00 per month, which amount shall be increased annually by at least the greater of (i) three percent (3%) or (ii) such higher amount as the Authority may determine is required in future years based on the condition of the property. The Authority agrees that so long as the senior mortgage made by Senior Lender for the benefit of the Owner remains outstanding, the Authority shall recognize the replacement reserve funded by Owner to be held by Senior Lender in accordance with the documents of Senior Lender as satisfying the monthly deposits into the Replacement Reserve Fund under this Section 5(b), provided such amounts equal or exceed the amounts required to be held by the Authority hereunder.

(c) Disbursement of Funds. Subject to the terms of Section 5(b) above, the Replacement Reserve Fund shall at all times be under the control of the Authority, but moneys may be disbursed to the Owner from time to time with the prior written approval of the Authority to pay or reimburse the Owner for the payment of any required repair or replacement costs which may be capitalized by the Owner in accordance with GAAP consistently applied; provided that the Owner must obtain prior written consent of the Tax Credit Investor for withdrawals from the Replacement Reserve Fund prior to requesting the Authority’s consent when the Tax Credit Investor’s consent is required under the Partnership Agreement of the Owner.

(d) Pledge and Security Interest. All such deposited funds are hereby pledged and assigned to the Authority as additional security for the Loan, and the Owner hereby grants the Authority a security interest in, all of the Owner’s right, title and interest in and to all such funds and all proceeds thereof and the account in which such funds are held. Except for an assignment and pledge of security interest to the Senior Lender, the Owner shall not, without obtaining the prior written consent of the Authority, further pledge, assign or grant any security interest in the Replacement Reserve Fund, or permit any Lien to attach thereto, or any levy to be made thereon, or any UCC Financing Statements to be filed with respect thereto, except those naming the Authority as the secured party. The Replacement Reserve Account is pledged and included as Collateral as set forth in the Deed of Trust which, among other things, is intended by the parties to be a security agreement for purposes of the UCC. If an Event of Default shall occur hereunder or under any of the Financing Documents, the Authority may apply deposited funds in the Replacement Reserve Fund in its discretion to any of the Owner's outstanding obligations hereunder or under the Financing Documents. Provided no Event of Default is continuing, all interest which accrues on the funds in the Replacement Reserve Fund shall accrue for the benefit of the Owner and shall be taxable to the Owner and shall be added to and disbursed in the same manner and under the same conditions as the principal sum on which said interest accrued. Upon

payment of all such obligations and discharge of the Note, any remaining deposited funds in the Replacement Reserve Fund shall belong and be paid over to the Owner.

6. **Operating Reserve Fund.** On or prior to the commencement of payments of principal of and interest on the Loan (in connection with the conversion of the Loan from a construction loan to a permanent loan), Owner shall establish and maintain as provided in Owner's partnership agreement an operating reserve account, with a depository approved by the Authority, in an amount equal to at least six months of operating expenses and debt service with respect to the Project.

7. **Management and Marketing.**

(a) The Owner shall provide for the management of the Development in accordance with the management plan approved by the Authority and otherwise in a manner reasonably satisfactory to the Authority. Owner shall report to the Asset Management department and Program Compliance department of the Authority any change in management of the Development within ten (10) days of the occurrence of such change.

(b) The Owner shall submit to the Authority for the Authority's approval if requested, a proposed schedule of rental rates, no less than sixty (60) days prior to the beginning of each fiscal year of the Development.

(c) Payment for services, supplies, or materials shall not exceed the amount ordinarily paid for such services, supplies, or materials in the area in which the Development is located.

(d) The books and accounts of the operations of the Development and all tenant lists, applications, and waiting lists relating to the Development shall at all times be kept separate and identifiable from any other business of the Owner which is unrelated to the Development, and shall be maintained, as required by the Authority from time to time, in a reasonable condition for proper audit and subject to examination during business hours by representatives of the Authority or its duly authorized agent.

(e) Within ninety (90) days following the end of each fiscal year of the Owner, the Owner shall furnish to the Authority the annual audited financial report based upon an examination of the books and records of the Owner, prepared and certified by a certified public accountant, or other persons acceptable to the Authority.

(f) The Owner acknowledges and agrees that the Authority shall file such annual financial statements, and Owner shall promptly provide to the Authority for filing such additional financial information and operating data and shall execute a continuing disclosure undertaking within ten (10) business days after a request is made by the Authority, as is deemed necessary for the Authority to comply with Rule 15c2-12 adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934 or as is deemed desirable by the Authority, from time to time in its sole discretion.

(g) The Owner shall deliver to the Authority annually during the term of this Agreement a Certification of Continuing Program Compliance in the form provided by the Authority.

(h) At the request of the Authority, the Owner shall furnish monthly occupancy and financial reports and shall give specific answers to questions upon which information is desired from time to time relative to the income, assets, liability, contracts, operation, and condition of the Development and the status of the Mortgage.

(i) The Owner also shall collect and submit to the Authority monthly and again on an annual basis, on a form to be provided by the Authority, such demographic and occupancy information as required by the Program Compliance Manual and as the Authority may request.

(j) The Owner shall market the Development in a manner consistent with the marketing plan approved by the Authority, including particularly, but without limitation, the affirmative fair marketing provisions thereof.

(k) If the Development includes a rental or management office, such office shall be used exclusively for the rental or management of the Development.

(l) The Owner will comply with the requirements of the Program Compliance Manual.

(m) The Owner acknowledges that the Authority will conduct an onsite review of the Property at least every three (3) years to ensure compliance with this Regulatory Agreement, the Note and all other documents executed by Owner in connection with the Loan, and that the Authority may conduct onsite reviews more frequently if required by the Program Compliance Manual or in the Authority's reasonable judgment additional onsite reviews are prudent.

(m) At no point during the Term of the Agreement shall the Owner permit the Development to be used for any of the following: (i) an emergency shelter (including shelters for disaster victims); (ii) a nursing home; (iii) a convalescent home; (iv) a student dormitory; (v) a project consisting of the operation of any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises; (vi) a project consisting of farming, as set forth in 12 C.F.R. § 1807.302(c)(2).

(n) The Project has not received any CDFI Fund awards or allocations other than this CMF Award.

(o) The owner of a rental unit cannot refuse to lease the unit to a Section 8 Program certificate or voucher holder (24 CFR part 982, Section 8 Tenant-Based Assistance: Unified Rule for Tenant-Based Assistance under the Section 8 Rental Certificate Program and the

Section 8 Rental Voucher Program) or to the holder of a comparable document evidencing participation in a HOME tenant-based rental assistance program because of the status of the prospective tenant as a holder of such certificate, voucher, or comparable HOME tenant-based assistance document.

8. **Maintenance.**

(a) The Owner shall maintain the Development, including without limitation the residential units, the grounds and all facilities and equipment appurtenant thereto, in good repair and condition satisfactory to the Authority. Subject to the rights of residential tenants, the Development shall be subject to inspection at any time during normal business hours following at least forty-eight hours written notice by the Authority, or the authorized agents thereof.

(b) The Owner shall not without the prior written consent of the Authority remodel, add to, reconstruct or demolish any part of the Development in any manner which would effect a change in the use or character of any portion of the Development.

9. **Compliance with Act, Program Statute and Regulations, Assistance Agreement and Code.** The Owner will operate the Development in accordance with (i) the applicable provisions of Section 42 of the Code, (ii) the terms of this Agreement, (iii) the Program Compliance Manual, (iv) the Assistance Agreement, (v) the CMF Regulations, and (vi) all applicable federal, State, and local statutes, rules and regulations with respect to the Development, including but not limited to the Program Statute and Regulations. In connection with the foregoing, the Owner agrees to execute and deliver such amendments and supplements to this Agreement as the Authority reasonably shall determine to be necessary to assure compliance with the Act, the Code and any other rule, regulation, law or agreement referred to herein, and shall be subject to all applicable fees for non-compliance of the foregoing, including but not limited to failure to submit required reports or respond in full to program compliance reviews.

10. **Equal Opportunity.** The Owner will comply with the provisions of any federal, State, or local law prohibiting discrimination on the grounds of race, color, religion or creed, sex, marital status, national origin, familial status or disability, sexual or gender preference, political opinion or affiliation in the rental, lease, use or occupancy of the Development or in connection with the employment or application for employment of persons for the operation or management of the Development and will comply with Title VI of the Civil Rights Act of 1964 (Public Law 88-352, 78 Stat. 241), Title VIII of the Civil Rights Act of 1968 (Public Law 90-284, 82 Stat. 73), and Executive Order 11063, and shall provide prompt written notice to the Authority of the filing of any complaints of discrimination with respect to the Development.

11. **Sale and Assignment of Development.** During the term of this Agreement, the Owner shall not sell or assign the Development, in whole or in part, without the prior written notice to and consent of the Authority, which consent shall be given promptly provided that: (i) the Owner shall not be in default hereunder; (ii) the continued operation of the Development shall comply with the provisions of this Agreement; (iii) the purchaser shall assume the obligations of the Owner under the Note and Mortgage; (iv) the purchaser or assignee shall be willing and capable of

complying with the terms and conditions of this Agreement; (v) the subsequent purchaser or assignee shall execute any document reasonably requested by the Authority with respect to assuming the obligations of the Owner under this Agreement; (vi) the Authority shall not have any reason to believe that the purchaser or assignee is incapable, financially or otherwise, of complying with, or may be unwilling to comply with, the terms of all agreements binding on such purchaser or assignee relating to the Development; and, (vii) the Owner shall pay to the Authority a transfer fee in the amount of one-half of one percent (0.50%) of the then outstanding principal balance of the Loan.

This provision is not intended to apply to any sale, transfer, assignment or other conveyance of the Development made pursuant to a foreclosure of the Mortgage or any conveyance in lieu thereof.

12. **Default.**

(a) Upon a violation of any of the provisions of this Agreement by the Owner, the Authority shall give written notice thereof to the Owner and its Tax Credit Investor, by registered or certified mail, addressed to the address set forth in the first paragraph hereof, or such other address as may subsequently, upon appropriate written notice thereof to the Authority, be designated by the Owner as its legal business address. The Owner shall have thirty (30) days after the date such notice is received to correct the violation. If the violation be such that it cannot be corrected within the applicable period, it shall nonetheless be deemed to be corrected if corrective action is instituted by the Owner within the applicable period and diligently pursued until the violation is corrected.

(b) If a violation of this Agreement is not corrected by the Owner to the satisfaction of the Authority within the time and otherwise as provided in paragraph (a) of this Section 10, without further notice the Authority may declare a default under this Agreement effective on the date of such declaration of default and upon such default the Authority may:

- (1) Declare the Note immediately due and payable and then proceed with the foreclosure of the Mortgage;
- (2) Collect all rents and charges in connection with the operation of the Development and use such collections to satisfy the Owner's obligations under this Agreement and under the Note and Mortgage and the necessary expenses of preserving the property and operating the Development;
- (3) Take possession of the Development, bring any action necessary to enforce any rights of the Owner growing out of the Development operation, and operate or cause the Development to be operated in accordance with the terms of this Agreement until such time as the Authority in its discretion determines that the Owner is again in a position to operate the Development in accordance with the terms of this Agreement and in compliance with the requirements of the Note and Mortgage;

- (4) Apply to any court, State or federal, for specific performance of this Agreement, for an injunction against any violation of this Agreement, for the appointment of a receiver to take over and operate the Development in accordance with the terms of this Agreement, or for such other relief as may be appropriate, since the injury to the Authority arising from a default under any of the terms of this Agreement would be irreparable and the amount of damage would be difficult to ascertain.

The Owner acknowledges and agrees that the Authority's remedies at law, in the event of a violation of this Agreement, would be inadequate to assure the Authority's public purpose under the Act.

(c) If the Owner refuses immediately after default to permit and facilitate the exercise of the remedies described in Section 10(b)(2) or (3) hereof by the Authority, the Authority shall be entitled to the appointment of a receiver for the Development and of the rents, issues, and profits thereof as a matter of right without regard to the solvency or insolvency of the Owner or of the then owner of the Development and without regard to the value thereof, and such receiver may be appointed by any court of competent jurisdiction upon ex parte application and without notice to the Owner -- notice being hereby expressly waived -- and all rents, issues and profits, income and revenue therefrom shall be applied by such receiver for the purposes described in Section 10(b)(2) or (3) in such order as applicant may request, according to the law and subject to the orders and directions of the court.

(d) Notwithstanding anything to the contrary contained in this Agreement, the Tax Credit Investor shall have the right, but not the obligation, to cure any default of Owner under this Agreement, and Authority agrees to accept cures tendered by Tax Credit Investor as if made by Owner.

13. **Notification Regarding Debarment; Litigation.** The Owner agrees to notify the Authority immediately if Owner, Sponsor or any entity or principal related to Owner or Sponsor is debarred, suspended, excluded, disqualified, or declared ineligible by the U.S. Department of the Treasury or any other federal agency or department. In addition, the Owner agrees to notify the Authority immediately regarding any charge against Owner, Sponsor, or any entity or principal related to Owner or Sponsor listed in 31 C.F.R. 19.800(a).

14. **Compliance by Owner.** Notwithstanding any provision herein to the contrary, the Owner shall be responsible for monitoring and verifying compliance of the Development with this Agreement.

15. **Agreement Binding.** This Agreement and the covenants contained herein shall run with the Real Property and shall bind, and the benefits shall inure to, respectively, the Owner (including each general, special or limited partner of the Owner, each of whom the Owner hereby represents to have authorized the Owner to bind by this Agreement, and, to the extent controlled by the Owner or any of the foregoing, each person who is "related" to any of the foregoing, its heirs, legal representatives, executors, administrators, successors in office or interest, and assigns,

and all subsequent owners of the Development or any interest therein, and the Authority and its successors and assigns, for the term provided in Section 16 hereof.

16. **Term of Agreement.** This Agreement shall be in full force and effect from the date hereof to the longer of: (i) the period during which any part of the Loan remains unpaid or (ii) ten (10) years from Project Completion and Initial Occupancy (the "**Term**").

17. **Expenses.** The Owner covenants and agrees to pay all expenses, including reasonable attorneys' fees, paid or to be paid by the Authority in connection with execution or performance of the obligations of the Owner under this Agreement or the enforcement by the Authority of the provisions hereof.

18. **Indemnity.** Owner shall defend (by counsel satisfactory to the Authority), indemnify and save and hold harmless the Authority and its directors, officers, agents and employees from and against all claims, demands, actions, losses, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees and court costs) arising from or relating to: (i) the material violation of any non-monetary covenant set forth herein or in the Mortgage or the Note, to the extent that such violation is the result of its own acts or omissions or the acts or omissions of others which it has authorized or permitted in violation of the provisions hereof or of the Mortgage or Note; and (ii) the Owner's fraud or misrepresentation, whether affirmative or by intentional omission.

19. **Severability.** The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.

20. **Governing Law.** This Agreement shall be governed exclusively by and construed in accordance with the applicable laws of the State.

21. **Jurisdiction and Venue.** OWNER AGREES THAT ANY CONTROVERSY ARISING UNDER OR IN RELATION TO THIS AGREEMENT SHALL BE LITIGATED EXCLUSIVELY IN COLORADO. THE STATE AND FEDERAL COURTS AND AUTHORITIES SITTING IN THE CITY AND COUNTY OF DENVER, COLORADO, SHALL HAVE EXCLUSIVE JURISDICTION OVER ALL CONTROVERSIES WHICH SHALL ARISE UNDER OR IN RELATION TO THIS AGREEMENT. OWNER IRREVOCABLY CONSENTS TO SERVICE, JURISDICTION, AND VENUE OF SUCH COURTS FOR ANY SUCH LITIGATION AND WAIVES ANY OTHER VENUE TO WHICH IT MIGHT BE ENTITLED BY VIRTUE OF DOMICILE, HABITUAL RESIDENCE OR OTHERWISE. HOWEVER, NOTHING HEREIN IS INTENDED TO LIMIT AUTHORITY'S RIGHT TO BRING ANY SUIT, ACTION OR PROCEEDING RELATING TO MATTERS ARISING UNDER THIS AGREEMENT AGAINST OWNER OR ANY OF OWNER'S ASSETS IN ANY COURT OF ANY OTHER JURISDICTION

22. **Nonrecourse Liability.** Notwithstanding any other provision contained in this Agreement, it is agreed that the execution of the Note shall impose no personal liability on the Owner for the payment of the indebtedness evidenced thereby and, in the event of a default, the holder of the Note shall look solely to the Development and to the rents, issues and profits thereof, in satisfaction of the indebtedness evidenced by the Note and will not seek or obtain any deficiency

or personal judgment against the Owner except such judgment or decree as may be necessary to foreclose and bar the Owner's interest in the Development and all other property mortgaged, pledged, conveyed or assigned to secure payment of the Note; provided that nothing in this condition shall operate to impair any obligation of the Owner under this Agreement, and, provided further, that Owner shall remain personally liable for damages to the Authority, its successors and assigns, and the Development resulting from or with respect to (i) funds or any portion of the Development coming into its hands which, by the provisions hereof, of the Mortgage or Note, it is not entitled to retain; or (ii) the Owner's fraud or misrepresentation, whether affirmative or by intentional omission.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

OWNER:

INDIBUILD FRUITA LLLP,
a Colorado limited liability limited partnership

By: INDIBUILD FRUITA GP LLC,
a Colorado limited liability company,
its General Partner

By: INIDIBUILD LLC,
a Colorado limited liability company,
its Manager

By: _____
Kimberley A. Coughlin,
Sole Member

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me on _____, 2023,
by Kimberley A. Coughlin, as Sole Member of indibuild llc, a Colorado limited liability company,
as Manager of IndiBuild Fruita GP LLC, a Colorado limited liability company, as General Partner
of IndiBuild Fruita LLLP, a Colorado limited liability limited partnership.

Witness my hand and official seal.

Notary Public

[SEAL]

My Commission expires: _____

FHA:

FRUITA HOUSING AUTHORITY, a body
corporate and politic

By: _____
Name: Michael Bennett
Title: Executive Director

STATE OF COLORADO)
)ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me on _____, 2023,
by Michael Bennett as Executive Director of Fruita Housing Authority.

Witness my hand and official seal.

Notary Public

[SEAL]

My Commission expires: _____

THE AUTHORITY:

COLORADO HOUSING AND FINANCE
AUTHORITY, a body corporate and political
subdivision of the State of Colorado

By: _____
Jaime G. Gomez, Deputy Executive Director
and Chief Operating Officer

STATE OF COLORADO)
) ss.
CITY AND COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2023, by Jaime G. Gomez, as Deputy Executive Director and Chief Operating Officer of COLORADO HOUSING AND FINANCE AUTHORITY, a body corporate and political subdivision of the State of Colorado.

Witness my hand and official seal.

Notary Public

[SEAL]

My commission expires: _____

EXHIBIT A

LEGAL DESCRIPTION

LOT 1, INDIBUILD MINOR SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 29, 2022 UNDER RECEPTION NO. 3052639, COUNTY OF MESA, STATE OF COLORADO.

Also known as (for informational purposes only): 1601 K 4/10 Road, Fruita, CO 81521

PROMISSORY NOTE
IndiBuild Fruita / FHA CMF Loan

Principal amount: \$170,000.00

August __, 2023

INDIBUILD FRUITA LLLP, a Colorado limited liability limited partnership (“Borrower”), unconditionally promises to pay to the order of FRUITA HOUSING AUTHORITY, a body corporate and politic (“Payee”), the principal sum of \$170,000.00, or so much as Payee has advanced under this Note, together with interest at the annual rate of 1.00%, compounded annually from the date of this Note. Interest accrues daily, compounds annually, is payable in arrears at maturity, and will be calculated on the basis of a 365-day year and the actual number of days elapsed. All unpaid principal and accrued interest are due on July 31, 2063 (“Maturity Date”). However, upon a sale of the property securing the Note (“Property”) not otherwise permitted by the Deed of Trust, any unpaid principal and interest are immediately due and payable.

Notwithstanding anything in this Note to the contrary, payments of principal and interest are not required under this Note except (a) all interest and principal is due on the Maturity Date or upon sale of the Property if the sale occurs prior to the Maturity Date and such sale is not permitted by the Deed of Trust, and subject to the rights of any senior lienholders; (b) Borrower shall make annual payments of principal and accrued interest, with the first annual payment due on December 31, 2024, to the extent of available Cash Flow (as defined in Section 5.1.1 of the Amended and Restated Agreement of Limited Liability Limited Partnership of Borrower (“Partnership Agreement”)) in the order and priority set forth in Section 5.1.1 of the Partnership Agreement.

As used in this Note, the term “Senior Loan” means, collectively:

- (i) the loan in the original principal amount of up to \$13,200,000 evidenced by a Promissory Note (“First Bank Note”) payable by Borrower to First Bank of Wyoming, a Division of Glacier Bank (“First Bank”);
- (ii) a loan in the original principal amount of up to \$3,400,000 evidenced by a Promissory Note (“CHFA SIMPLE Note”) to Colorado Housing and Finance Authority, a body corporate and political subdivision of the State of Colorado (“CHFA”);
- (iii) a loan in the original principal amount of up to \$1,000,000 evidenced by a Promissory Note (“CHFA HOF Note”) to CHFA;
- (iv) a loan in the original principal amount of up to \$825,000 evidenced by a Promissory Note (“CHFA CMF Note”) to CHFA; and
- (v) a loan in the original principal amount of up to \$4,000,000 evidenced by a Promissory Note (“CDOH HDG Note”) to the State of Colorado, by and through the Department of Local Affairs, for the benefit of the Division of Housing (“CDOH”).

First Bank, CHFA, and CDOH are collectively the “Senior Lender.”

The Borrower may refinance, sell, or modify the Senior Loan without the consent of the Payee or any subsequent holder of this Note. Payee shall subordinate the Deed of Trust (defined below) securing this Note so that the deeds of trust securing loans obtained to refinance the Senior Loan continue to have priority over the Deed of Trust securing this Note, regardless of whether the refinanced, sold, or modified Senior Loan have different principal amounts, interest rates, maturities, or terms than the original Senior Loans.

Borrower shall make all payments of principal and interest on this Note to Payee at its offices at 325 E. Aspen Avenue, Fruita, Colorado 81521, or at another place as Payee may designate to Borrower in writing. Payee shall apply all payments received under this Note first to accrued interest as of the date of payment, and then to the outstanding principal balance.

Overdue principal, whether caused by acceleration or maturity or otherwise, bears interest at a rate per annum equal to five percentage points above the otherwise applicable rate from the due date until paid and Borrower shall pay any overdue principal monthly or, at the option of the holder of this Note, on demand.

Borrower may prepay this Note, either in whole or in part, at any time without premium or penalty and without the prior consent of the Payee.

Payee does not intend to charge interest at a rate in excess of the maximum rate of interest under usury and other laws. But if Borrower pays interest in excess of the maximum legal rate, Payee shall apply the excess first against any accrued and unpaid interest, and then to principal as additional cash collateral, unless such retention is not permitted by law, in which case the interest rate on this Note will be adjusted to the maximum permitted under law during the period when the interest rate would exceed the maximum legal rate.

The Borrower executes this Note in connection with, and the holder of this Note is entitled to the benefits of, a Subordinate Deed of Trust to Public Trustee, Security Agreement, Financing Statement and Fixture Filing dated the same date as this Note (together with any amendments, "Deed of Trust") given by Borrower for the benefit of Payee to secure this Note. Reference is made to the Deed of Trust for a description of the encumbered Property and the rights, remedies, and obligations of the holder of this Note.

Time is of the essence for every provision of this Note. In the event of (a) any default in any payment of principal or interest when due that Borrower does not cure within five days after the due date, or (b) any default or event of default under the provisions of the Deed of Trust that Borrower does not cure within any applicable cure periods, then, at the option of the holder, the whole outstanding principal sum of this Note plus accrued interest and all other obligations of Borrower to holder, direct or indirect, absolute or contingent, now existing or arising later, become immediately due and payable without notice or demand, subject to the rights of any senior lienholders. The holder of this Note may exercise any of the rights and remedies provided in this Note and in the Deed of Trust, as they may be amended, modified, or supplemented, and under applicable law.

If Borrower fails to pay any amount due under this Note, and Payee takes any action to collect the amount due or to exercise its rights under the Deed of Trust, or if Payee brings any suit or proceeding for the recovery or for protection of the indebtedness, or to foreclose the Deed of Trust, then Borrower shall pay on demand all reasonable costs and expenses of the suit or proceeding and any appeal including, but not limited to, the fees and disbursements of Payee's attorneys and their staff. Borrower's Limited Partner (as defined in the Partnership Agreement) or its designee may cure any default under the Note, and Payee shall accept the Limited Partner's cure as if made by the Borrower.

Notwithstanding anything to the contrary set forth in this Note, until the end of the Compliance Period (as defined in Section 42 of the Internal Revenue Code of 1986, as amended) for all buildings located within the Property, Payee will not (i) exercise any other rights or remedies it may have under this Note, including but not limited to, accelerating the loan made under the Note, collecting rents, appointing (or seeking appointment of) a receiver or collecting or attempting to collect any default interest, or (ii) join with any other creditor in commencing any bankruptcy reorganization, arrangement, insolvency or liquidation proceedings with respect to the Borrower.

Borrower hereby waives presentment, notice of dishonor, notice of acceleration, and protest. Borrower hereby assents to any extension of time with respect to any payment due under this Note, to any substitution or release of collateral, and to the addition or release of any party. No waiver of any payment or other right operates as a waiver of any other payment or right.

If any provision in this Note is held invalid, illegal, or unenforceable, all other provisions of this Note remain fully enforceable.

No delay or failure of the holder of this Note in the exercise of any right or remedy is to be deemed a waiver of such right, and no exercise of any right or remedy is to be deemed a waiver of any other right or remedy that the holder may have.

Notwithstanding any other provision contain in the Loan Documents, the Loan evidenced by this Note is a nonrecourse obligation of Borrower and its general partner.

The parties shall give all notices related to this Note in writing, by hand delivery, overnight courier, or by certified or registered mail, return receipt requested, postage prepaid, addressed as follows:

Borrower: IndiBuild Fruita LLLP
4884 Briar Ridge Ct.
Boulder, CO 80301
Attention: Kim Pardoe

With a copy to: NEF Assignment Corporation
10 South Riverside Plaza, Ste. 1700
Chicago, IL 60606
Attn: Vice President – Asset Management

Payee: At the same address to which Note payments are to be made.

Notices will be deemed effective when hand delivered, or one day after timely delivery to an overnight courier for next day delivery to Borrower (as evidenced by a receipt from the overnight courier), or three days after notice is deposited with the U.S. Postal Service.

Borrower and all signers or endorsers hereby consent to venue and jurisdiction in the District Court of Mesa County, Colorado and to service of process as permitted under Colorado law in any action to enforce this Note.

The indebtedness evidenced by this Note loan (“Subordinate Loan”), this Note, the Deed of Trust, and all documents securing or evidencing this Subordinate Loan are and shall be subject and subordinate to the right of payment in full of the Senior Loan.

Payee will not assign this Note or any interest in it without consent of Borrower and Borrower’s Limited Partner, as defined in the Partnership Agreement.

The laws of the State of Colorado govern this Note without regard to principles of conflicts of laws.

The Borrower has executed this Promissory Note as of the day and year first written above.

BORROWER

IndiBuild Fruita LLLP, a Colorado limited liability
limited partnership

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

By: indibuild llc, a Colorado limited liability company,
as its Manager

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

**SUBORDINATE DEED OF TRUST TO PUBLIC TRUSTEE,
SECURITY AGREEMENT, FINANCING STATEMENT
AND FIXTURE FILING**

IndiBuild Fruita / FHA CMF Loan

1. Date: August __, 2023
2. Grantor: IndiBuild Fruita LLLP, a Colorado limited liability limited partnership, whose address is 4884 Briar Ridge Ct., Boulder, Colorado 80301.
3. Beneficiary: Fruita Housing Authority, a body corporate and politic, whose address is 325 E. Aspen Avenue, Fruita, Colorado 81521.
4. Trustee: The Public Trustee of Mesa County, Colorado.
5. Property: The real property located in Fruita, Colorado and described on Exhibit A, together with all buildings, improvements, fixtures, easements, landscaping features, rents, issues and profits, condemnation awards and insurance proceeds, however evidenced, and all appurtenances used in connection with the real property.
6. Obligations Secured (collectively, "Obligations"):
 - (a) All indebtedness evidenced and created by a Promissory Note from Grantor in the principal amount of \$170,000.00 ("Note"), payable to Beneficiary, which Note evidences a loan payable in accordance with the terms and provisions of the Note, and all renewals, extensions, modifications, amendments, restatements, and substitutions of the Note;
 - (b) Future advances made by Beneficiary under the Note plus interest; and
 - (c) All other indebtedness due under the Loan Agreement, Note, this Deed of Trust, or any other document, instrument, or agreement evidencing, securing, or governing the loan evidenced by the Note (the Loan Agreement, Note, this Deed of Trust, and all amendments, replacements, extensions, and renewals of these documents, together with other documents, instruments, and agreements relating to this loan are collectively referred to as the "Loan Documents").
7. Grant. As security for the Obligations, Grantor hereby grants, bargains, sells, mortgages, and conveys the Property to Trustee in trust with the power of sale for the use and benefit of Beneficiary. As additional security for the Obligations, Grantor hereby grants Beneficiary a security interest in all personal property and fixtures now or later located on or used in connection with the Property, including without limitation the personal property, fixtures, and other collateral described in Exhibit B (collectively, "Collateral"). This Deed of Trust constitutes a security agreement under Colorado's Uniform Commercial Code ("Code").

8. Grantor's Warranties. Grantor warrants title to the Property and the Collateral subject only to statutory exceptions pursuant to Section 38-30-113(5)(a), Colorado Revised Statutes. Grantor warrants the person signing this Deed of Trust on its behalf has been authorized to do so and this Deed of Trust constitutes the valid, binding, and enforceable obligation of Grantor.

9. Grantor's Covenants. Grantor shall:

(a) pay and satisfy all Obligations on or before their due date and comply with and perform all the covenants contained in the Loan Documents;

(b) pay and satisfy when due all taxes and assessments and other claims or encumbrances related to the Property and the Collateral; however, Grantor may contest taxes, assessments, and claims;

(c) obtain and maintain insurance policies in an amount equal to the full replacement cost of the Collateral and all improvements on the Property, insuring against all risk of loss, damage, destruction, theft, and any other casualty as Beneficiary may reasonably require, with policy provisions and companies as Beneficiary reasonably approves, with Beneficiary named as a loss payee and providing that any policy will not be canceled without thirty days' prior written notice from the insurer to Beneficiary;

(d) obtain and maintain comprehensive general liability insurance covering the Property and Grantor in an amount reasonably satisfactory to Beneficiary with policy provisions and companies as Beneficiary reasonably approves, with Beneficiary named as a loss payee and providing that any policy will not be canceled without thirty days' prior written notice from the insurer to Beneficiary;

(e) deliver original or certified copies of all insurance policies to Beneficiary;

(f) keep the Collateral, the Property, and any improvements on the Property in good condition and repair and not commit or suffer any material waste;

(g) not commit or suffer destruction or removal of any material part of the Property or the Collateral without the prior written consent of Beneficiary, except for any removal necessary to complete construction of the Project;

(h) comply with insurance policy provisions and all laws, ordinances, rules, and regulations of governmental authorities applicable to the Property or its use;

(i) keep the Property and the Collateral free and clear of all material liens, judgments, or other encumbrances other than the Permitted Encumbrances except those Grantor contests in good faith where adequate security has been posted; and

(j) appear in and defend any action or proceeding purporting to affect the Property or the Collateral.

10. Transfer. If Grantor leases (except for leases to residents in the ordinary course of business), sells, contracts to sell, conveys, transfers, or otherwise disposes of all or any part of either the Property, the Collateral, or both without the prior written consent of Beneficiary, Grantor shall immediately pay all Obligations at the election of the Beneficiary, subject to the rights of any senior lienholders. As a condition to its consent to transfer, Beneficiary may require the transferee to assume the Obligations and impose any other conditions.

However, the following transfers do not require the prior written consent of Beneficiary nor trigger immediate payment of the Obligations:

(a) a transfer of the Property and the Collateral to indibuild llc or its affiliates, successors, or assigns;

(b) a transfer of the interest of the Limited Partner (as defined in the Amended and Restated Agreement of Limited Liability Limited Partnership of Grantor (“Partnership Agreement”)) in the Grantor as provided in the Partnership Agreement or transfers of any interests within the Limited Partner; and

(c) removal and replacement of the General Partner (as defined in the Partnership Agreement) of the Grantor with a replacement General Partner selected by the Limited Partner as provided in the Partnership Agreement.

11. Events of Default. The occurrence of any of the following constitutes an “event of default”:

(a) Grantor fails to pay any of the Obligations when due, which failure Grantor does not cure within five days after notice from the Beneficiary;

(b) Grantor fails to perform or observe any other covenant, agreement, duty, or obligation contained in this Deed of Trust, which failure Grantor does not cure within ninety days after notice from the Beneficiary, or a longer period as Beneficiary deems necessary so long as Grantor works diligently and in good faith to cure;

(c) any warranty, representation, or statement of Grantor in this Deed of Trust, or otherwise made to Beneficiary by or on behalf of Grantor, proves to have been false in any material respect when made; or

(d) the occurrence of any default or event of default (however defined) beyond any applicable notice and cure period under the Loan Documents.

The Limited Partner or its designee may, but is not obligated to, cure any default of Grantor under any Loan Document. Any cure made or tendered by the Limited Partner is to be deemed a cure by Grantor, which Beneficiary shall accept or reject on the same basis as if made or tendered by Grantor.

12. Remedies Upon Default. Upon the occurrence of any event of default not cured within the applicable cure period, Beneficiary has the following rights and remedies, subject to any rights and remedies of any senior lienholders, which are cumulative and which Beneficiary may exercise with or without notice; separately, independently, or concurrently; more than once and in any

order; without any election of remedies to be deemed made; without affecting the right of Beneficiary to exercise any other remedy or which Beneficiary may have in law; and without regard to other remedies then, before, or after pursued or being pursued:

- (a) to declare any or all of the Obligations immediately due and payable;
- (b) to take immediate possession, management, and control of the Property;
- (c) to lease, operate, repair, and maintain the Property at the expense of Grantor, and to perform other acts as Beneficiary may deem necessary or desirable;
- (d) to collect and receive all rents, issues, and profits from the Property and to apply them to the Obligations or to repair and maintain the Property, or both;
- (e) to apply for and obtain, ex parte and without notice, the appointment of a receiver for the Property or of its rents, issues, and profits, or both, and to have a receiver appointed as a matter of right without regard to the solvency of any person or the adequacy of any security or the existence of waste; Grantor hereby waives any right to a hearing or notice of hearing prior to the appointment of a receiver, and to have sums received by receivers, after deducting and paying costs and expenses of receiverships applied to the Obligations in a manner and order as Beneficiary deems appropriate;
- (f) to foreclose this Deed of Trust through the Trustee or through the courts as the Beneficiary desires and to purchase the Property at any foreclosure sale; and
- (g) with respect to any portion of the Collateral subject to the Code, Beneficiary has the remedies of a secured party under the Code, including, without limitation, the rights to immediate and exclusive possession of the Collateral.

Upon the occurrence of any event of default, all amounts owing under the Loan Documents bear interest at the default rate provided for in the Note from the due date until paid in full.

The proceeds of any foreclosure sale will be applied (a) first, to reimburse Beneficiary for all costs and expenses of foreclosure, subject to the rights of any senior lienholders; then (b) to retire obligations secured by liens having priority over this Deed of Trust; then (c) to Beneficiary to pay the Obligations; then (d) to the owner of the Property.

The loan secured by this Deed of Trust is a nonrecourse obligation of Borrower and its general partner.

Notwithstanding anything to the contrary contained in the Loan Documents, if an event of default occurs, prior to exercising any remedies then Beneficiary shall give Grantor and the Limited Partner or its assigns simultaneous written notice of default at the address set forth in the Note. Beneficiary shall not declare a default under this Deed of Trust or the Note before two years after the end of the Compliance Period (as defined in the Partnership Agreement) unless the Beneficiary has received the prior written consent of the Limited Partner.

Notwithstanding anything to the contrary set forth in this Deed of Trust, until the end of the Compliance Period (as defined in Section 42 of the Internal Revenue Code of 1986, as amended) for all buildings located within the Property, Beneficiary will not (i) exercise any other rights or remedies it may have under this Deed of Trust, including but not limited to, accelerating the loan secured by this Deed of Trust, collecting rents, appointing (or seeking appointment of) a receiver or collecting or attempting to collect any default interest or foreclosing, or (ii) join with any other creditor in commencing any bankruptcy reorganization, arrangement, insolvency, or liquidation proceedings with respect to the Grantor.

13. Covenant of Beneficiary. Beneficiary covenants:

(a) in the event of a foreclosure of this Deed of Trust, it shall not violate any covenant made by Grantor in any Land Use Restriction Agreement or extended use agreement made in connection with Low-Income Housing Tax Credits for the Property;

(b) to allow the Senior Loans (defined below) to be refinanced beginning in the year 2024 in a principal amount up to the then-outstanding principal amount plus reasonable transaction costs (“Senior Refinance Loan”) and to subordinate this Deed of Trust to the deed of trust securing the Senior Refinance Loan; and

(c) to subordinate the lien created by this Deed of Trust and the Loan Documents to any extended low-income housing commitment (as Section 42(h)(6)(B) of the Internal Revenue Code defines that term (“Extended Use Agreement”)) recorded against the Property, provided that the Extended Use Agreement, by its terms, must terminate upon foreclosure under this Deed of Trust or upon a transfer of the Property in lieu of foreclosure in accordance with Section 42(h)(6)(E) of the Internal Revenue Code, and to subordinate the lien created by this Deed of trust to the liens further described in Section 14.

14. Subordination. The lien created by this Deed of Trust is also subordinate to the deeds of trust created to secure (each, a “Senior Loan”):

(a) the loan in the original principal amount of up to \$13,200,000 evidenced by a Promissory Note (“First Bank Note”) payable by Borrower to First Bank of Wyoming, a Division of Glacier Bank (“First Bank”);

(b) a loan in the original principal amount of up to \$3,400,000 evidenced by a Promissory Note (“CHFA SIMPLE Note”) to Colorado Housing and Finance Authority, a body corporate and political subdivision of the State of Colorado (“CHFA”);

(c) a loan in the original principal amount of up to \$1,000,000 evidenced by a Promissory Note (“CHFA HOF Note”) to CHFA;

(d) a loan in the original principal amount of up to \$825,000 evidenced by a Promissory Note (“CHFA CMF Note”) to CHFA; and

(e) a loan in the original principal amount of up to \$4,000,000 evidenced by a Promissory Note (“CDOH HDG Note”) to the State of Colorado, by and through the Department of Local Affairs, for the benefit of the Division of Housing (“CDOH”).

Grantor shall enter into a subordination agreement with respect to each Senior Loan as reasonably requested.

15. Miscellaneous.

- (a) This Deed of Trust constitutes a fixture filing.
- (b) This Deed of Trust and each of its provisions bind the heirs, personal representatives, successors, and assigns of Grantor and inure to the benefit of the Trustee, the Beneficiary, and their successors and assigns.
- (c) This Deed of Trust may be amended or modified only by an instrument in writing signed by the party charged with the amendment or waiver.
- (d) Upon production of the cancelled Note, the Trustee must release this Deed of Trust without further showing as to payment of the Obligations.
- (e) The Trustee must release parts of the Property from the lien of this Deed of Trust upon the request of Beneficiary without impairing any rights or priority Beneficiary may have in the remainder of the Property.
- (f) Failure on the Beneficiary's part to exercise its rights in the event of any one default does not constitute a waiver of its rights in any later default.
- (g) Any notice and other communication required or contemplated by this Deed of Trust must be in writing and delivered as set forth in the Note, addressed to the parties at the respective addresses set forth on page one of this Deed of Trust, or at another address as a party may designate in writing, and in the case of notices to Grantor, with a copy to the Limited Partner, NEF Assignment Corporation, 10 South Riverside Plaza, Ste. 1700, Chicago, IL 60606, Attn: Vice President – Asset Management.
- (h) Grantor hereby consents to venue and jurisdiction in the District Court of Mesa County, Colorado and to service of process as permitted under Colorado law in any action to enforce this Deed of Trust.
- (i) Time is of the essence in the Grantor's performance of its Obligations.
- (j) Notwithstanding anything to the contrary contained in any Loan Document, Beneficiary agrees to apply all insurance proceeds resulting from casualty or damage of the Project and all payments or awards resulting from a taking, for any public or quasi-public purpose by any lawful power or authority by exercise of the power of condemnation or eminent domain, toward the restoration, replacement or rebuilding of the Project, or any part thereof, as nearly as possible to its value, condition and operational character immediately prior to any such damage, destruction or taking ("Restoration"), provided sufficient funds are available from all sources to complete such Restoration. Nothing herein requires Beneficiary to provide and funding for or to take any action with respect to the Restoration other than to transfer the proceeds or award to the person who is responsible for the Restoration.

Grantor has signed this Deed of Trust on the date written 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 BOULDER)

This instrument was acknowledged before me this ____ day of August, 2023, by Kimberley A. Coughlin as Principal of indibuild llc, as Manager of IndiBuild Fruita GP LLC, as General Partner of IndiBuild Fruita LLLP.

Witness my hand and official seal.

My commission expires _____

Notary Public

Exhibit A

Legal Description

Lot 1, IndiBuild Minor Subdivision, according to the plat map recorded on December 29, 2022 at Rec. No. 3052639, County of Mesa, State of Colorado

Exhibit B**Collateral**

All of Grantor's right, title, and interest now owned or hereafter acquired in and to the following:

(a) all personal property of whatever nature now owned or later acquired by the Grantor for use at the Property, including, without limitation:

(i) all building, maintenance, service, or other equipment; all building, maintenance, or raw materials or supplies, all component parts, work in progress, and inventory; all appliances; all office equipment; all furnishings, all furniture; all fixtures at any time related to the Property; all machinery; and all tools;

(ii) all bonding, construction, development, financing, guaranty, indemnity, maintenance, management, service, supply, warranty, and other agreements, commitments, contracts, and subcontracts; all architectural, engineering, and other plans and specifications, reports, studies, and related agreements; all insurance policies and proceeds; and all bonds, to the extent these items are assignable;

(iii) all deposits, reserves, deferred payments, rebates, refunds, and returns of money or property paid to or deposited with any governmental body, agency, or authority, or any public or private utility, district, or company, insurance companies, or any other person, and all claims, causes of action, judgments, and settlements at any time arising from damage to, taking of, or any loss, impairment, or diminution in value of any of the Property or the Collateral described here or in the use of any Property or Collateral;

(iv) all of Grantor's right, title, and interest to all governmental or other approvals, permits, licenses, or grants of rights or privileges with respect to the Property, to the extent such items are assignable; and

(v) all accounts, accounts receivable, and all cash or cash investments in any bank, savings, or escrow accounts maintained by Grantor which are used for or in connection with the operation or management of the Property, including, without limitation, security deposit and working capital accounts; and

(b) all cash and noncash proceeds or products from the sale or other disposition of the Collateral described in paragraphs (a)(i) through (a)(v) above.