



TO: FRUITA HOUSING AUTHORITY

FROM: DAN CARIS, PLANNING AND DEVELOPMENT DIRECTOR

DATE: JUNE 20, 2023

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

BACKGROUND

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

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

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

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

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

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

FISCAL IMPACT

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

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

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

OPTIONS AVAILABLE TO THE COMMISSION

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

RECOMMENDATION

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