

**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.