

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