

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 (the “**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**”).

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.

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]



**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

**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.