

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.

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

By: _____
Kimberley A. Coughlin,
Sole Member