

WHEN RECORDED MAIL TO:

First Bank of Wyoming,
a Division of Glacier Bank
Attn: Trace Paul
245 E. First Street
P.O. Box 907
Powell, WY 82435

SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT (this “Agreement”) is entered into as of _____, 2023, by and between **Fruita Housing Authority**, a body corporate and politic (“Junior Lender”); **First Bank of Wyoming, a Division of Glacier Bank**, its successors and assigns (“Senior Lender”); and **IndiBuild Fruita LLLP**, a Colorado limited liability limited partnership (“Borrower”).

RECITALS

A. Borrower and Senior Lender have entered or will enter into a Construction Loan Agreement dated as of July 25, 2023 (as it may be amended, restated, modified, or supplemented from time to time, the “Loan Agreement”), pursuant to which Senior Lender has agreed to extend to Borrower a loan in an original principal amount not to exceed \$13,200,000.00 (the “Loan”).

B. To secure its obligations under the Loan Agreement and the Promissory Note made by Borrower and payable to the order of Senior Lender dated July 25, 2023, in the original principal amount of up to \$13,200,000.00, Borrower entered into or will enter into, contemporaneously with their execution of this Agreement, a Deed of Trust, an Assignment of Rents, a Security Agreement, and other ancillary loan documents, each dated July 25, 2023.

C. It is a condition precedent to the obligation of Senior Lender to make the Loan in accordance with the terms of the Loan Agreement that this Agreement be executed and delivered to Senior Lender by Junior Lender.

D. Junior Lender expects to derive benefits from the making of the Loan to Borrower by Senior Lender and finds it advantageous, desirable and in Junior Lender’s best interest to comply with the requirement that Junior Lender executes this Agreement and delivers it to Senior Lender.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and in order to induce Senior Lender to enter into the Loan Agreement and to make the Loan to Borrower, Junior Lender

hereby agrees with Senior Lender for Senior Lender's benefit as follows:

1. Definitions. As used in this Agreement, the following terms shall have the meaning indicated:

“Agreement”: As defined in the introductory paragraph of this Agreement.

“Borrower”: As defined in the introductory paragraph of this Agreement.

“Junior Lender”: As defined in the introductory paragraph of this Agreement.

“Junior Debt”: All liabilities and obligations of Borrower to Junior Lender, howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising or incurred, including without limitation all obligations of Borrower to Junior Lender under the Junior Notes, and any renewals, refinancings, or replacements thereof.

“Junior Lien”: Subordinate Deed of Trust to Public Trustee, Security Agreement, Financing Statement and Fixture Filing (IndiBuild Fruita / FHA HEEHA Loan) by and between Borrower, the Trustee, and Junior Lender and describing the Real Property to secure the repayment of the indebtedness evidenced by the Junior Note and recorded after the date hereof in the real property records of Mesa County, Colorado, and any renewals, refinancings, amendments, restatements, or replacements thereof.

“Junior Note”: Promissory Note (IndiBuild Fruita / HEEHA Loan) made by Borrower and payable to the order of Junior Lender in the original principal amount of \$1,391,713.00, and any renewals, refinancings, amendments, restatements, or replacements thereof.

“Loan”: As defined in Recital A to this Agreement.

“Loan Agreement”: As defined in Recital A to this Agreement.

“Obligations”: As defined in Section 4 of this Agreement.

“Real Property”: The land described on Exhibit A to this Agreement, together with all buildings, fixtures, and improvements thereon and all water rights, rights of way, easements, rents, issues, profits, tenements, hereditaments, privileges, and appurtenances thereunto belonging.

“Senior Debt”: All obligations of Borrower to Senior Lender under the Loan Agreement and any documents or instruments entered into or delivered in connection with the Loan Agreement.

“Senior Lien”: All liens or encumbrances securing or collateralizing the Senior Debt, or any part of the Senior Debt, including without limitation, that certain Deed of Trust, that certain Assignment of Rents, that certain Security Agreement, and certain Fixture Financing

Statement(s), and other ancillary loan documents, each dated July 25, 2023, by and between Borrower, the Trustee, and Senior Lender describing the Real Property and other collateral to secure the Senior Debt, recorded July 26, 2023, under Document Nos. 3070120, 3070121, 3070122, 3070123, 3070124, and 3070125, as they may be amended, restated, modified, or supplemented from time to time pursuant to their terms.

“Senior Lender”: As defined in the introductory paragraph of this Agreement.

“Trustee”: Public Trustee for the County of Mesa, State of Colorado, whose address is 544 Rood Ave #100, Grand Junction, CO 81501.

2. Other Defined Terms. All terms used in this Agreement which are not specifically defined in this Agreement shall have the meaning assigned to them in the Loan Agreement.

3. Lien Priority. The Senior Lien and any and all extensions, renewals, modifications, or replacements of the Senior Lien shall be and at all times remain a lien or charge on the Real Property prior and superior to the Junior Liens. Junior Lender intentionally and unconditionally waives, relinquishes, and subordinates the priority and superiority of the Junior Lien to the Senior Lien. The priorities set forth in this Section 3 are applicable irrespective of: (a) the time, manner, or method of creation, attachment or perfection of any of the liens or security interests created under or in respect of the Senior Lien; (b) the time, manner, method or order of the filing or recording of the Senior Lien and the Junior Lien or the taking of any other actions, to perfect or protect any liens or security interests in the Real Property; and (c) the rules for determining priority under any requirements of law governing or determining the relative priorities of creditors (including, without limitation, any insolvency laws).

4. Continuing Nature of Subordination. This Agreement shall be effective and may not be terminated or otherwise revoked by Junior Lender until all of Borrower’s obligations to Senior Lender related to the Loan (the “Obligations”) shall have been fully paid and discharged and all financing arrangements between Borrower and Senior Lender have been terminated. This is a continuing agreement of subordination and Senior Lender may continue, at any time and without notice to Junior Lender, to extend credit or other financial accommodations and loan monies to or for the benefit of Borrower in reliance on this Agreement.

5. Additional Agreements Between Senior Lender and Borrower. Junior Lender hereby consents and agrees to any agreement or arrangement, in which Senior Lender waives, postpones, extends, reduces, or modifies any provisions of the documents related to the Senior Debt, including any provision requiring the payment of money. Senior Lender, at any time and from time to time, may enter into such agreement or agreements with Borrower as Senior Lender may deem proper, increasing the amount of, extending the time of payment of or renewing or otherwise altering the terms of all or any of the Obligations or affecting any security underlying any or all of the Obligations, and may exchange, sell, release, surrender or otherwise deal with any such security, without in any way thereby impairing or affecting this Agreement.

6. Subordination of Junior Debt. The payment and performance of the Junior Debt is hereby subordinated to the payment and performance of the Senior Debt in accordance with this

Agreement. Prior to any Event of Default, Junior Lender may receive payment from Borrower in respect of the Junior Debt. Upon and during the continuance of any Event of Default, Junior Lender will not ask, demand, sue for, take or receive from Borrower or any other person liable for all or any part of the Senior Debt, by setoff or in any other manner, the whole or any part of the Junior Debt, or any monies which may now or hereafter be owing in respect of the Junior Debt (whether such amounts represent principal or interest, or obligations which are due or not due, direct or indirect, absolute or contingent). Junior Lender will not ask, demand, sue for, take, or receive from Borrower, or any other person liable for all or any part of the Senior Debt any security for the Junior Debt or any negotiable instrument for the Junior Debt, unless and until all of the Senior Debt shall have been fully paid and satisfied and all financing arrangements between Borrower and Senior Lender have been terminated.

7. Payments Received by Junior Lender. If Junior Lender receives any payment or distribution or security or instrument or proceeds thereof upon or with respect to the Junior Debt prior to the payment in full of the Senior Debt and termination of all financing arrangements between Borrower and Senior Lender, except as may be permitted under this Agreement, Junior Lender shall receive and hold the same in trust, as trustee, for the benefit of Senior Lender and shall forthwith deliver the same to Senior Lender in precisely the form received (except for the endorsement or assignment by Junior Lender where necessary), for application on any of the Senior Debt, due or not due and, until so delivered, the same shall be held in trust by Junior Lender as the property of Senior Lender. In the event of the failure of Junior Lender to make any endorsement or assignment to Senior Lender, Senior Lender, or any of its officers or employees, is hereby irrevocably authorized to make the same.

8. Junior Debt Owed Only to Junior Lender. Junior Lender warrants and represents that Junior Lender has not previously assigned any interest in the Junior Debt, that no other person owns an interest in the Junior Debt (whether as joint holders of Junior Debt, participants or otherwise) and that the entire Junior Debt is owing only to Junior Lender. Junior Lender further covenants that the entire Junior Debt shall continue to be owing only to Junior Lender unless it is assigned, in whole or in part, (which assignment may occur without the prior consent of Senior Lender) to a person who agrees with Senior Lender to be bound by the subordination provisions set forth herein.

9. Notice of Default. Junior Lender will deliver to Senior Lender written notice of any default under the Junior Debt.

10. Subordination of Subrogation Rights. Without limiting any other provision of this Agreement, Junior Lender agrees that if, by reason of payment by Junior Lender of real estate taxes or other monetary obligations of Borrower pursuant to the documents related to the Junior Debt or by reason of Junior Lender's exercise of any other right or remedy under the documents related to the Junior Debt, Junior Lender acquires by right of subrogation or otherwise a lien or encumbrance on the Property or the Project that, but for this Section 10, would be considered senior to the lien or liens of any of the documents related to the Senior Debt, in that event, such lien or encumbrance of Junior Lender shall be subject and subordinate to Senior Lien and the other documents related to the Senior Debt.

11. Further Documents. Upon the demand of Senior Lender from time to time, Junior Lender shall further execute whatever instruments and/or documents are reasonably required by Senior Lender in order to evidence that the Junior Lien is subject and subordinate to the lien, terms, covenants, and conditions of the Senior Lien.

12. Waivers. Junior Lender expressly waives all notice of the acceptance by Senior Lender of this Agreement and all other notices not specifically required pursuant to the terms of this Agreement. Senior Lender shall be entitled to manage and supervise the Obligations and other financial accommodations to Borrower without regard to the existence of any rights that Junior Lender may now or hereafter have in or to any of the assets of Borrower.

13. Conflict. Each party hereto agrees that, in the event of any conflict or inconsistency between the terms or application of the documents related to the Senior Debt, the terms or application of the documents related to the Junior Debt, and the terms of this Agreement, the terms of this Agreement shall govern and control, including, but not limited to: (a) the relative priority of the security interests of Senior Lender on the one hand and Junior Lender on the other hand, in the Real Property; (b) the timing of the exercise of remedies by Senior Lender and Junior Lender under the documents related to the Senior Debt, including without limitation the Senior Lien; and (c) all other rights and obligations that Senior Lender and Junior Lender have agreed to pursuant to this Agreement.

14. Miscellaneous.

a. **Notices.** All notices and demands required or permitted to be given to or made upon any party hereto under this Agreement shall be in writing and shall be personally delivered or sent by certified mail, postage prepaid, return receipt requested, or by telecopier, and shall be deemed to be given on the day that such writing is delivered or sent to the intended recipient thereof in accordance with the provisions of this subsection. Unless otherwise specified in a notice sent or delivered in accordance with the foregoing provisions of this subsection, notices and demands in writing shall be given to or made upon the respective parties hereto at their respective addresses (or to their respective telecopier numbers) set forth below:

If to Junior Lender: Fruita Housing Authority
325 E. Aspen Avenue
Fruita, CO 81521
Attn: Executive Director

If to Senior Lender: First Bank of Wyoming,
a Division of Glacier Bank
245 E. First Street
P.O. Box 907
Powell, WY 82435
Attn: Trace Paul

b. **Successors, Assigns, Modifications.** This Agreement shall be binding

upon and inure to the benefit of the successors and assigns of the parties. This Agreement may be amended or modified only in writing signed by all parties hereto. No amendment, waiver, or consent shall, without the prior written consent of Senior Lender: (i) subordinate or have the effect of subordinating any Obligations to any other indebtedness or obligations of any other party; or (ii) subordinate or have the effect of subordinating the Senior Lien to any other lien or encumbrance related to any other indebtedness or obligations of any other party.

c. **Severability of Provisions.** If any provision of this Agreement shall be held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such waiver or other provision or any remaining provisions of this Agreement.

d. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

e. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

f. **Authority.** Each party hereby represents that all legal action necessary for the execution of this Agreement by such party has been duly taken and that the person(s) signing below on behalf of such party is duly authorized to execute this Agreement.

g. **Entire Agreement.** This Agreement contains the whole and only agreement between the parties with regard to the subordination of the Junior Lien to the Senior Lien and shall supersede and cancel any prior agreements as to such, or any, subordination. Junior Lender has not relied on any inducements or assurances from Senior Lender, Borrower, or anyone in executing this Agreement, other than as set forth herein.

IN WITNESS WHEREOF, the parties have executed this Agreement and this Agreement is effective as of the date first written above.

{Signature page(s) to 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: _____
Name: Kimberley A. Coughlin
Its: Sole Member

STATE OF _____)
:ss
County of _____)

This instrument was signed and sworn to before me on _____, 2023, by Kimberley A. Coughlin, Sole Member of indibuild llc, Manager of IndiBuild Fruita GP LLC, the General Partner of IndiBuild Fruita LLLP.

WITNESS my hand and official seal.

Printed Name: _____
Notary Public for the State of _____

SENIOR LENDER:

**FIRST BANK OF WYOMING,
A DIVISION OF GLACIER BANK**

By: _____

Name: Trace Paul

Its: Vice President

STATE OF _____)

:ss

County of _____)

This instrument was signed and sworn to before me on _____, 2023, by Trace Paul, Vice President of First Bank of Wyoming, a Division of Glacier Bank.

WITNESS my hand and official seal.

Printed Name: _____

Notary Public for the State of _____

JUNIOR LENDER:

FRUITA HOUSING AUTHORITY,
a body corporate and politic

By: _____

Name: _____

Its: _____

STATE OF _____)

:SS

County of _____)

This instrument was signed and sworn to before me on _____, 2023, by
_____ of the Fruita Housing Authority, a body
corporate and politic.

WITNESS my hand and official seal.

Printed Name: _____

Notary Public for the State of _____

EXHIBIT A

Legal Property 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.