

PARTNER AGREEMENT

THIS PARTNER AGREEMENT (hereinafter referred to as the “Agreement”), entered into this ____ day of _____, 2022, by and between the CITY OF VENICE, a municipality duly enacted under the laws of the State of Florida, whose address is 401 W. Venice Ave., Venice, Florida 34285 (hereinafter referred to as “City”), and HABITAT FOR HUMANITY OF SOUTH SARASOTA COUNTY, INC., a Florida not-for-profit corporation, whose address is 280 Alligator Drive, Venice, Florida, 34293-5701 (hereinafter referred to as “Partner”). These entities are referred to collectively herein as “the parties.”

W I T N E S S E T H

WHEREAS, Partner is a not-for-profit whose mission is to build or renovate safe, decent, affordable, energy efficient homes for those in need in south Sarasota County; and

WHEREAS, on May 27, 2014, the City donated Partner an approximately two-acre parcel of land (“Parcel”) located at 749 Knights Trail Road, Venice, Florida 34275 with a restriction that required the development of affordable housing within a time certain or the Parcel could revert to the City;

WHEREAS, Partner has been unable to make use of the Parcel as intended due to various factors, including the contingent property owner not yet providing the utility access, stormwater retention facilities, and parking that would make Partner’s use of the Parcel for affordable housing realistic;

WHEREAS, Partner desires to sell the Parcel and utilize the proceeds towards constructing, developing or acquiring property for affordable housing within the jurisdictional boundaries of the City of Venice (hereinafter referred to as the “Partner Project”); and

WHEREAS, City desires to support the Partner Project by agreeing to release the affordable housing restriction in exchange for the City holding the Parcel sale proceeds for use by Partner under the conditions set forth herein; and

WHEREAS, the Partner Project will benefit the City as it will provide housing for qualifying families that could not otherwise afford to live in Sarasota County given rapidly increasing costs due to market conditions; and

WHEREAS, the City and Partner desire to hereby memorialize their agreement regarding the sale of the Parcel and funding for the Partner Project.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the sufficiency of which is hereby acknowledged, the City and Partner agree as follows:

1. Recitals. The above recitals are true and correct and incorporated into the substantive body of this Agreement as if set forth therein.
2. Release of Restriction and Rezoning of Parcel. The City shall execute the necessary documents to release the affordable housing restriction, which shall be held in escrow until the closing of a sale of the Parcel. The City also agrees to initiate the rezoning process for the Parcel from Government Use to Multifamily Residential within 60 days of the execution of this Agreement.
3. Parcel Sale Proceeds. The City shall receive and hold the net proceeds of the sale of the Parcel (being anything of value received by the Partner for the conveyance of the Parcel) in a separate, restricted, interest-bearing account subject to the terms of use herein. Said net proceeds together with all accrued interest thereon shall hereinafter be collectively referred to the "Sales Proceeds".

4. Partner Project. In furtherance of the Partner Project, Partner shall, within 7 years from the date of closing on the sale of the Parcel, present to and obtain the approval of the Venice City Council for a housing plan for the construction or redevelopment of one or more units in Venice or for the purchase of land for such use in Venice which furthers the goals of the Partner Project. The Partner's Project plan will not be unreasonably denied by the City Council.

5. Release of Funds. The City shall release the Sale Proceeds to Partner no later than thirty (30) days of the City's receipt of a written request from the Partner for all or a portion of the Partner Project that has been approved by the City Council. Partner shall be required to complete a City ACH Enrollment Form as the City shall make payments of the Sale Proceeds via the City's ACH Vendor Payment System. Unless otherwise agreed to by the parties, Partner shall provide verification to the City within ninety (90) days of receipt of any Sale Proceeds that the Sale Proceeds have been expended as approved by the City Council.

6. Forfeiture of Sale Proceeds. To the extent Partner has not received approval for the Partner Project and expended the Sale Proceeds within 7 years from the date of closing on the sale of the Parcel, the remaining Sale Proceeds shall be forfeited to the general fund of the City with no restriction on use. The timeframe on the use of Sale Proceeds may be extended upon the written request of Partner and the written consent of the City.

7. Audit. Partner shall maintain and keep books and records as are reasonably necessary to audit, track and verify all expenditures of the Sale Proceeds under this Agreement. The Partner shall retain and maintain such books and records for at least five (5) years after the termination of this Agreement, or until all outstanding audits are closed, whichever is later. The City shall have the right to independently examine, audit, inspect and transcribe the books and

records of the Partner related to this Agreement. Any and all such records shall be made available for review by the City during normal business hours on reasonable notice to the Partner.

8. Notice. Any notices which may be permitted or required hereunder shall be in writing and shall be deemed to have been duly given as of (i) the date and time the same are personally delivered at the address set forth below, (ii) on the same day if sent between 8:00 A.M. and 6:00 P.M. on Monday through Friday via e-mail or facsimile transmission to the respective e-mail addresses or facsimile numbers set forth below, (iii) within three (3) days after depositing with the United States Postal Service, postage prepaid by registered or certified mail, return receipt requested, or (iv) within one (1) day after depositing with Federal Express or other overnight delivery service from which a receipt or written confirmation may be obtained, and addressed as follows:

To the City at the following address:

Ed Lavalley, City Manager
City of Venice
401 W. Venice Ave.
Venice, Florida 34285
Phone: (941) 486-2626
Fax: (941) 480-3031
Email: elavalley@venicefl.gov

To the Partner at the following address:

Name, Position
Habitat for Humanity of South Sarasota, Inc.
Address

Phone:
Fax:
Email:

or to such other address as either party hereto shall from time to time designate to the other party by notice in writing as herein provided.

9. Assignment. Neither party may assign this Agreement or any portion thereof, without the prior written consent of the other party.

10. Third Parties. There shall be no third-party beneficiaries with respect to this Agreement and no right nor any cause of action shall accrue to or the benefit of any third party.

11. Governing Law and Venue. This Agreement shall be governed by and in accordance with the laws of the State of Florida. Any action or proceeding related to this Agreement shall be brought in Sarasota County, Florida.

12. Public Records. To the extent applicable, Partner agrees to comply with Florida's public records law by keeping and maintaining public records that ordinarily and necessarily would be required by the City in order to perform the services under the Agreement by doing the following: upon the request of the City's Custodian of Public Records, providing the City with copies of or access to public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed the cost provided by Florida law; by ensuring that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the term of this Agreement and following completion of the Agreement if the Partner does not transfer the records to the City; and upon completion of the Agreement by transferring, at no cost, to the City all public records in possession of the Partner or by keeping and maintaining all public records required by the City to perform the services. If the Partner transfers all public records to the City upon completion of the Agreement, the Partner shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Partner keeps and maintains public records upon completion of the Agreement, the Partner shall meet all applicable requirements for retaining public records. All records stored electronically must be

provided to the City, upon request from the City's Custodian of Public Records, in a format that is compatible with the information technology systems of the City.

IF THE PARTNER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE PARTNER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CITY'S CUSTODIAN OF PUBLIC RECORDS CITY CLERK, AT 401 WEST VENICE AVENUE, VENICE, FLORIDA 34285, KMICHAELS@VENICEFL.GOV, OR (941) 882-7390.

13. Captions. The captions in this Agreement are for convenience of reference only and do not describe the scope or intent of this Agreement or the interpretation or construction thereof.

14. No Joint Venture or Agency. Nothing contained in this Agreement or in any other document executed in connection herewith, is intended or shall be construed to establish the City as a joint venturer or partner, team member, contractor, agent, or assign of the Partner. The City and Partner, along with their respective agents and assigns shall perform all activities that are required by this Agreement as separate and independent entities and not as agents of the other party hereto. Nothing herein operates to impose any obligation, responsibility or liability upon the City with respect to the Partner Services.

15. Severability. If any sentence, phrase, section, provision or any portion thereof of this Agreement is for any reason held illegal or invalid by a court of competent jurisdiction, such part shall be deemed of no effect and shall be deemed stricken from this Agreement without affecting the full force and binding effect of the remainder of this Agreement.

16. Default Notice. The City and Partner will immediately notify each other in the event of any known, discovered, or anticipated default hereunder.

17. Non-Action or Failure to Observe Provisions. The failure of either party to promptly insist upon strict performance of any term of this Agreement shall not be deemed a waiver of any right or remedy and shall not be deemed a waiver of a subsequent default or nonperformance of such term.

18. Modification. Modification of this Agreement may only be made by written agreement of the parties hereto.

19. Defaults. Failure by either the City or Partner to comply with or perform any of the terms, conditions, covenants, agreements or obligations contained in this Agreement to be performed by each of them, respectively, shall constitute a default under this Agreement and 1) if such default is not cured or remedied within thirty (30) days after the non-defaulting party provides written notice to the defaulting party specifying with particularity the nature of such default or 2) if such default cannot be reasonably cured or remedied within such thirty (30) day period, the defaulting party fails to commence to cure or remedy the default within such thirty (30) day period and thereafter fails to diligently and expeditiously pursue such cure or remedy, the non-defaulting party, in its sole discretion, shall be entitled to exercise any and all rights and remedies available to it under this Agreement, at law and in equity. This provision shall survive termination of this Agreement.

20. No Waiver of Regulatory Authority. Nothing in this Agreement operates as a waiver of the City's regulatory authority, including, though not exclusively, with respect to the Partner Project.

21. Litigation and Attorney's Fees. In the event either party to this Agreement should bring or defend any suit to enforce or interpret any provision hereof, the predominantly prevailing party shall be entitled to reasonable attorney's fees and costs and expenses of investigation, all as

actually incurred, including, without limitation, attorney's fees, costs and expenses incurred before, during or after trial or in any appellant proceedings. The terms of this section shall survive the termination of this Agreement.

22. Indemnification. Partner hereby agrees to indemnify, release and hold the City, its agents, assigns, employees, elected and appointed officials, harmless from and against any and all claims, causes of action, liability and damages (including attorney's fees) that may arise under this Agreement, except to the extent that said claims, causes of action, liability and damages arise from the negligence of the City.

23. Effective Date. This Agreement shall be effective upon the date of full and complete execution by both parties hereto.

24. Entire Agreement. This Agreement constitutes the entire Agreement between the parties and supersedes and controls any and all prior agreements, undertakings, representations and statements.

IN WITNESS WHEREOF, City and Partner set their hands and seals hereto on the day and year first above written.

CITY OF VENICE, FLORIDA

ATTEST:

Ron Feinsod, Mayor

City Clerk

APPROVED AS TO FORM:

City Attorney

**PARTNER, HABITAT FOR HUMANITY OF
SOUTH SARASOTA COUNTY, INC.**

ATTEST:

Sammy Nolas
Secretary

Joseph J. Dalton
Print Name: JOSEPH DALTON
Its: JD