

FUNDING AGREEMENT
BETWEEN THE VENICE HOUSING AUTHORITY
AND THE CITY OF VENICE
FOR THE VENETIAN WALK II PROJECT

This Funding Agreement for the Venetian Walk II Project ("Agreement") is made and entered into as of the date of execution by and between the Venice Housing Authority, a public body corporate and politic (hereinafter referred to as the "Recipient"), and the City of Venice, a municipal corporation of the State of Florida (hereinafter referred to as the "City") (collectively the City and the Recipient shall be referred to as the "Parties").

WITNESSETH

WHEREAS, in 2017, the Recipient requested funding from the City for the Venetian Walk II Project (hereinafter referred to as the "Project"); and

WHEREAS, the Project is proposed to be located near the intersection of Grove Street North and Calle de Toro in the City of Venice, and is to include 52 units with an initial phase to serve seniors and certain units to be set aside for low-income and extremely low income residents; and

WHEREAS, on June 29, 2017, the Venice City Council approved to appropriate \$275,000 in fiscal year 2018 to the Recipient for the Project; and

WHEREAS, the Recipient subsequently requested additional funding for the Project; and

WHEREAS, on September 20, 2017, the Venice City Council approved to appropriate an additional \$275,000 for a total of \$550,000 in fiscal year 2018 to the Recipient for the Project; and

WHEREAS, the Recipient has created a subsidiary entity to serve as a co-general partner in Venetian Walk Partners II, LLLP (the "Developer"), and

WHEREAS, on October 10, 2017, the City and the Developer signed a letter agreement clarifying the terms of the funding commitment from the City to the Recipient in conjunction with the Developer's application to RFA 2017-108 SAIL Funding of Affordable Multifamily Housing Developments to be Used in Conjunction with Tax-Exempt Bonds and Non-Competitive Housing Credits; and

WHEREAS, on November 30, 2017, the City received a letter from Norstar Development USA, L.P., whose affiliate will be the other co-general partner in the Developer, to develop the Project, setting forth a formal request for the City to commit funding for the Project to enable the

Developer to submit a competitive application for 9% low-income housing tax credits citing uncertainty related to the award of funding under the 4% SAIL round (RFA 2017-108); and

WHEREAS, the November 30, 2017, letter, a copy of which is attached hereto as Exhibit “A,” further details the Project composition; and

WHEREAS, on December 12, 2017, the Venice City Council voted to commit the \$550,000 for the Project with a nine percent (9%) bond; and

WHEREAS, the Parties desire to enter into this Agreement to formalize the terms and conditions upon which the City shall provide funds to the Recipient for the Project.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the City and Recipient agree as follows:

1. The above recitals are true and correct and incorporated herein by reference.
2. The City’s funding commitment to the Recipient as provided for herein shall only apply to the Developer’s application to RFA 2017-111.
3. The Parties hereby acknowledge that the City’s funding commitment as set forth herein only applies to the Project.
4. The Parties further acknowledge that the Project shall, as set forth in Exhibit A, include the following:
 - a. Fifty-two (52) total units
 - b. Demographic served – families
 - c. Unit Mix
 - Eight (8) one-bedroom units
 - Twenty (20) two-bedroom units
 - Twenty-four (24) three-bedroom units

5. Subject to the terms and conditions of this Agreement, the City agrees that it will furnish the Recipient with the not-to-exceed amount of Five Hundred Fifty Thousand Dollars (\$550,000.00) as a grant, which grant funds shall be loaned by the Recipient to the Developer at zero percent (0%) interest for development and construction of the Project. More specifically, the Recipient shall cause the Developer to use these funds for the following uses associated with the Project: design, engineering, and the construction of public improvements as defined in 24 CFR 570.021. Proper invoices related to the Project that have been approved by the Recipient may be requested for reimbursement from the City, subject to the limitations set forth herein. Payment of

the principal amount of the loan from the Recipient to the Developer may, in the sole and absolute discretion of the Recipient in its capacity as the lender, be forgiven at maturity, provided that the set-aside requirements described in Section 6 below are maintained during the entire term of the loan. Further:

- a. Recipient, or Developer on behalf of Recipient, shall submit requests for funds to the City's Finance Department and must include documentation that the submitted invoices have been reviewed and approved by the Recipient.
- b. Documentation demonstrating that payment was made by the Developer must also be provided.

6. The documents pursuant to which the subject funds are to be loaned by the Recipient to the Developer shall include the following set-asides, which shall be applicable during the entire term of the loan:

- a. Six (6) units at 35% AMI (ELI units)
- b. Forty six (46) units at 60% AMI
- c. Zero (0) market-rate units

7. In the event that the Project is not developed by the Developer for any reason or if Developer fails to develop the Project in accordance with the Project Composition as set forth herein and in Exhibit "A," unless any proposed changes to the Project Composition are first deemed to be acceptable by the City in writing, then the City may demand and the Recipient shall refund to the City, in full, the amount furnished by the City to the Recipient for development of the Project. Any such demand shall be in writing from the City to the Recipient and Recipient shall comply with the demand for refund within thirty (30) days of receipt of the demand letter.

8. During the performance of this Agreement, the Recipient agrees to comply, and cause Developer to comply, with all applicable laws, rules, regulations and orders that may be applicable to Recipient's and Developer's respective activities related to construction of the Project.

9. Recipient shall cause the Developer to maintain all required records related to the Project including, but not limited to, all accounts, property records, personnel records, financial records, and all Project contracts.

10. All costs, records and accounts may be subject to audit by a representative of the City upon the effective date of this Agreement until three (3) years after final closeout of the Project. No separate records will be required to be kept by the Recipient unless otherwise required by regulatory requirements. This section will survive termination of this Agreement.

11. Other than the Recipient, the City shall not be responsible to any person, firm, or corporation for assignment of any duties or obligations in connection with this Agreement or the Project in general.

12. To the extent permitted by applicable law, Recipient shall indemnify and hold harmless the City and its agents, officers, and employees from and against any and all claims, actions, damages, fees, fines, penalties, defense costs, suits or liabilities which may arise out of any act, neglect, omission or default of the Recipient or its partners, employees, agents, or contractors arising out of or in any way connected with Recipient's performance under this Agreement or otherwise related to the Project. It is acknowledged that Recipient may obtain a back-up indemnity for these obligations from the Developer.

13. Dispute Resolution. In the event of a dispute between the City and Recipient under this Agreement, the City Manager and the Recipient's Executive Director, or their designated representatives, shall review such dispute and options for resolution. Any dispute not resolved by the representatives shall be referred to the City Manager and the Recipient's Executive Director. The decision of the City Manager and the Recipient's Executive Director regarding the dispute shall be final. In the event the City Manager and Recipient's Executive Director are unable to agree, the matter shall be referred to the respective public bodies to be resolved in a joint meeting.

14. This Agreement shall continue in effect and be binding on the Parties until the Project is completed.

15. This Agreement is solely for the benefit of the Parties, and no right or cause of action shall accrue upon or by reason hereof, to or for the benefit of any third party. Nothing in this Agreement either expressed or implied is intended or shall be construed to confer upon or give any contractor, bidder, or other vendor, or any of their officers or employees, or any other person, corporation or governmental entity other than the Parties themselves, any right, remedy, or claim under or by reason of this Agreement.

16. The Recipient may not assign this Agreement without the prior written consent of the City.

17. If any term, condition, or covenant of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall be valid and binding on each party.

18. This Agreement constitutes the sole and complete understanding between the Parties and supersedes all other contracts between them, whether oral or written with respect to

the subject matter. No amendment, change or addendum to this Agreement is enforceable unless agreed to in writing by both Parties and incorporated into this Agreement.

19. The language of this Agreement shall be construed, in all cases, according to its fair meaning and not for or against any Party hereto.

20. The exercise by either Party of any rights or remedies provided herein shall not constitute a waiver of any other rights or remedies available under this Agreement or any applicable law.

21. The Parties covenant and agree that each is duly authorized to enter into and perform this Agreement and those executing this Agreement have all requisite power and authority to bind the parties.

22. The rights and remedies of the Parties provided for under this Agreement are in addition to any other rights and remedies provided by law.

23. Any notices of default or termination shall be sufficient if sent by the parties via United States certified mail, postage paid, or via a nationally recognized delivery service, to the addresses listed below:

City's Representative:

Name: Ed Lavallee
Title: City Manager
Address: 401 W. Venice Avenue
Venice, FL 34285
Telephone: 941-486-2626
E-mail: elavallee@venicegov.com

Recipient's Representative:

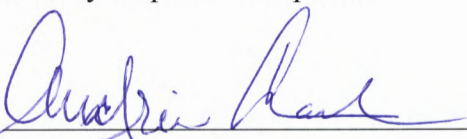
Name: Aundria Castleberry
Title: Chairperson
Address: 201 Grove Street N
Venice, FL 34285
Telephone: 941-488-3526
E-Mail: acastleberry@allfaithsfoodbank.org

Any change in representatives will be promptly communicated by the Party making the change.

[REMAINDER OF PAGE INTENTIONALLY BLANK.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date last below written.

VENICE HOUSING AUTHORITY, a
public body corporate and politic

By: 

Aundria Castleberry

Date: 11-6-18

ATTEST:

CITY OF VENICE, a municipal
corporation of the State of Florida

By: _____
Lori Stelzer, City Clerk

By: _____
John Holic, Mayor

Date: _____

Approved as to form and correctness:

By: _____
Kelly Fernandez, City Attorney