

**THIRD AMENDMENT TO
INTERLOCAL GOVERNMENT AGREEMENT**

This Agreement, is made and entered into this ____ day of _____, 2003, by and between the City of Naples, Florida, a municipal corporation (“City”), and Collier County, a political subdivision of the State of Florida (“County”), pursuant to the authority set forth in Sections 125.01, 163.01, 163.3171(1), 163.3171(3) and 166.021, Florida Statutes (2002), for the purpose of amending the Second Amendment to Interlocal Government Agreement between the City and County regarding the Hamilton Harbor marina project.

Recitals:

A. On April 13, 1999, the City and County entered into the Interlocal Government Agreement, recorded in the Public Records of Collier County at Official Record 2582, Page 2615 (“IGA”).

B. On June 2, 1999, pursuant to the IGA, the City adopted Resolution 99-8540, Ordinance 99-8544 and Ordinance 99-8545, consisting of a small scale comprehensive plan amendment for a portion of the property, a rezoning (to “planned development”) and DSEI approval for the entire Hamilton Harbor marina project, the legal description of which is attached hereto and incorporated by reference herein as **Exhibit 1** (“the Subject Property”).

C. On June 22, 1999, the City and County amended Paragraphs 5 and 6 of the IGA, by formal written agreement recorded in the Public Records of Collier County at Official Record 2582, Page 2624 (“the First Amendment”).

D. On September 28, 1999, pursuant to the existing IGA, as amended, the County

adopted Ordinance No. 99-68, which rezoned that portion of the Subject Property lying within the County (approximately 21± acres) to “planned unit development” in accordance with the City’s PD Zoning Ordinance No. 99-8545. Through Ordinance No. 99-68, the County also adopted and ratified the City’s PD Zoning Ordinance No. 99-8545 as the land use, development and other standards applicable to that portion of the Subject Property lying within the County.

E. On April 5, 2000, the City repealed the approvals listed in Paragraph B above.

F. As a result of the City’s repeal of the approvals, the owners/developers of the Subject Property initiated litigation with the City.

G. On October 11, 2002, in an effort to resolve the litigation, the City and the owners/developers of the Subject Property entered into a Conditional Settlement Agreement, whereby the City agreed to review development applications for a revised Hamilton Harbor marina project, consistent with certain “Revised Project Parameters.” The Conditional Settlement Agreement required submission to the City of certain development petitions, including a Development of Significant Environmental Impact (“DSEI”), a General Development Site Plan (“GDSP”), a Conditional Use application, and a rezoning application (collectively, “the Revised Project Approvals”).

H. Paragraph 5 of the Conditional Settlement Agreement required an amendment to the IGA, as amended, so as to allow for the Revised Project Approvals as set forth in the Conditional Settlement Agreement. The City and County satisfied Paragraph 5 of the Conditional Settlement Agreement by executing the Second Amendment to the IGA, dated December 3, 2002, a copy of which is recorded in the Public Records of Collier County at Official Record 3193, Page 2678 (“Second Amendment”).

I. At the City Council's consideration and approval of the Second Amendment on December 4, 2002, the City Council requested technical amendments be made to Paragraph 7 and Exhibit 3.

J. On March 5, 2003, the City granted certain development approvals for the revised Hamilton Harbor marina project – namely, (i) a rezone from “C” Conservation to “TC” Transitional Conservation (Ordinance 03-9975), (ii) a rezone from “C” Conservation and “TC” Conservation to “PD” Planned Development (Ordinance 03-9977); (iii) approval of a development of significant environmental impact (Resolution 03-9974); (iv) approval of a conditional use (Resolution 03-9976); (v) approval of a residential impact statement (Resolution 03-9979); and (vi) approval of a general development and site plan (Resolution 03-9978).

K. On March 20, 2003, the City and Hamilton Harbor, Inc. executed an Amendment to the Conditional Settlement Agreement to reflect the development approvals for the revised Hamilton Harbor marina project. A copy of the Amendment to the Conditional Settlement Agreement is attached hereto as **Exhibit 2**.

L. The purposes of this Third Amendment to the IGA are to make the technical amendments referenced in Paragraph I above, to clarify the provisions of Paragraph 3, and to revise Exhibit 3 to make that exhibit consistent with the development approvals granted by the City on March 5, 2003.

M. Approximately 154 acres of the Hamilton Harbor project lie within the City and approximately 21 acres lie within the County. The City and County recognize that the majority of the land comprising the Hamilton Harbor marina project, including the water access and shoreline, and most of the resources that may be impacted by the Hamilton Harbor marina project

lie within the City.

N. The City and County agree that in order to assure an orderly process, ensure consistent development standards and promote governmental efficiency, the development approval procedures for the entire Hamilton Harbor marina project, including that portion lying within the County, will be conducted by the City.

O. The City and County agree that, in an effort to coordinate the planning and review of the Hamilton Harbor project, a single set of substantive standards and building parameters should apply to the entire Hamilton Harbor marina project.

NOW, THEREFORE, in consideration of the public benefits to be realized from the coordinated planning and review of the Hamilton Harbor marina project, the City and County hereby agree as follows:

1. The foregoing Recitals are adopted and incorporated by reference as if set forth fully here.
2. The County reviewed the Conditional Settlement Agreement and the Amendment thereto, together with the Revised Project Parameters and contemplated Revised Project Approvals set forth therein, and agrees that the City shall have sole jurisdiction to process the development applications for the entire Hamilton Harbor marina project, including that portion of the project lying within the County. The City provided the County with a copy of the General Development and Site Plan Petition for the County's review and comment.
3. The County agrees that the Revised Project Parameters and the City's land development regulations shall apply to the entire Hamilton Harbor marina project, including that

portion of the project lying within the County. Notwithstanding the foregoing sentence, the endangered species protections contained within the County's Growth Management Plan and Land Development Code shall control and be applied to development occurring within that portion of the Subject Property lying within the county, including the Manatee Protection Plan and the manatee protection criteria set forth in the County's Growth Management Plan and Land Development Code as of December 3, 2002.

4. The City agrees that the Revised Project Approvals, if approved, for the entire Hamilton Harbor marina project shall not exceed the uses, heights, intensities, densities and approximate locations of facilities as set forth in **Exhibit 3**, attached hereto.

5. Upon the City's adoption of the Revised Project Approvals, if approved, the County shall ratify same and rezone that portion of the Subject Property lying within the County to "Planned Unit Development" in accordance with the Revised Project Approvals. The legal description of the portion of the Subject Property lying within the County is attached hereto as **Exhibit 4**.

6. After adoption and ratification of the Revised Project Approvals by the City and County, respectively, building and site development permits for infrastructure and vertical construction for the entire Hamilton Harbor marina project shall be subject to processing, review and approval by the City in accordance with its land development regulations.

7. The City shall have sole jurisdiction to process any proposed amendments to the Revised Project Approvals, whether or not those amendments affect or change the development occurring on property within the County. In the event the City approves any proposed amendment which exceeds the Revised Project Parameters or those standards set forth in

attached Exhibit 3, the County shall have authority to review and approve any such amendment to development orders applicable to that portion of the Subject Property located within the County.

8. This Third Amendment to the IGA shall have the effect of abrogating and replacing the IGA, as amended.

9. This Third Amendment to the IGA shall be effective for a period of twenty (20) years from the day and year first above written, and shall automatically renew for four (4) additional twenty (20) year time periods unless the City or the County gives at least sixty (60) days prior written notice to the other, prior to an automatic renewal date, that the IGA, as amended, shall not be automatically renewed and shall expire.

ATTEST:

DWIGHT BROCK, Clerk

Approved as to form and legal sufficiency:

DAVID C. WEIGEL, County Attorney

ATTEST:

TARA A. NORMAN, City Clerk

Approved as to form and legal sufficiency:

**BOARD OF COMMISSIONERS
COLLIER COUNTY, FLORIDA**

By: _____
TOM HENNING, Chairman

CITY OF NAPLES, FLORIDA

By: _____
BONNIE R. MacKENZIE, Mayor

ROBERT D. PRITT, City Attorney