

USE AGREEMENT

THIS USE AGREEMENT (the "Agreement") is made this 15th day of June, 2005, between **The FIFTH AVENUE SOUTH ASSOCIATION** (the "ASSOCIATION"), a Florida non-profit corporation, the address of which is **649 Fifth Avenue South, Naples, FL 34102** and **THE CITY OF NAPLES**, a Florida municipal corporation (the "CITY").

WITNESSETH:

WHEREAS, the **CITY** and the **ASSOCIATION** have determined that it is in their best interest to establish a use space for the **ASSOCIATION** on the Merrihue Park property; and

WHEREAS, such use would benefit the citizens of the **CITY** and the businesses along Fifth Avenue South by providing increased and easier access to information; and

WHEREAS, the **CITY** has agreed to grant the **ASSOCIATION** use of space in Merrihue Park for a Two (2) year period on the terms and conditions contained herein.

NOW, THEREFORE, based upon the mutual covenants and premises provided herein, and other valuable consideration, the parties hereby agree as follows:

1. **Recitals Incorporated:** The above recitals are true, correct and incorporated herein.
2. **Premises:** The **CITY** agrees to permit the **ASSOCIATION** to use the property located at the **CITY**-owned property referred to as Merrihue Park. Located at 528 Fifth Avenue South, legally described as the North 90 feet of the east 45 feet of Lot 3, Block A, LAKEVIEW TERRACE (the "PROPERTY"). Specific use will include one information kiosk (the "KIOSK") not to exceed 10 feet in diameter located in the area approved by the City, As Generally depicted on the drawing attached hereto as Exhibit A, and incorporated herein.
3. **Term:** The term of this AGREEMENT shall be for Two (2) years (the "Term"). The Term shall commence July 1, 2005 and shall expire on July 1, 2007 (the "Termination Date"). At the end of the Term or if terminated prior to Termination Date by either party, this Agreement shall absolutely end. The Agreement will be jointly reviewed by the **CITY** and the **ASSOCIATION** during the final quarter of this Agreement and future recommendations of terms and conditions will be recommended at that time.
4. **License Fee:** There shall be no license fees due under this Agreement.
5. **Use:** The PROPERTY shall be used solely for installation of an information KIOSK pursuant to the terms of this AGREEMENT. Alcohol is not permitted in the park, including without limitation, the storage, service or consumption thereof. Whenever not specifically stated herein, interpretation of appropriateness of any use shall be made by the City Manager. The **ASSOCIATION** shall be and hereby

is granted the right to use the PROPERTY for the following activities (the "PERMITTED ACTIVITIES"):

- a. Primary uses:
 - Installation of a manned 10 foot diameter information kiosk
 - b. Accessory uses:
 - Sale or distribution of non-alcoholic refreshments
6. **Sponsorship:** The ASSOCIATION will be allowed to provide sole sponsorship for its corporate sponsors.
 7. **Financial Obligations:** The ASSOCIATION is solely responsible for the costs associated with the installation and operating costs of the KIOSK; the CITY is not required to expend public funds to support either the capital or operation expenses of the facility. Financing will be the sole responsibility of the ASSOCIATION.
 8. **Fees and Charges:** The ASSOCIATION shall pay the CITY \$10.00 per month, plus any monthly electrical service fees, for use of the PROPERTY. The fee due to the CITY shall be paid on the FIRST day of each month. The fee is considered late if not paid by the 10th day of each month. Checks should be made payable to the City of Naples and mailed to: The Community Services Department, 280 Riverside Circle Naples, FL 34102.
 9. **Alterations and Improvements:** The ASSOCIATION shall not alter, improve or change the PROPERTY, including existing signage, without the written consent of the CITY. Such work shall be done at such time and in such manner so that the conduct of such work does not unreasonably interfere with the use and enjoyment of adjoining premises, if any, by other occupants of the Premises. The ASSOCIATION shall cause only the following to be constructed or installed: one information kiosk not to exceed 10 feet in diameter with electrical service.
 10. **Termination:** At any time during the term of this AGREEMENT, either party may terminate this AGREEMENT by delivering sixty (60) days written notice of termination to the other party without liability to the other. Upon termination, the ASSOCIATION shall be responsible for removing the KIOSK and the costs associated with the same.
 11. **Assignment:** The KIOSK shall be owned and controlled by the ASSOCIATION and shall be under its continuous management and control. The KIOSK shall be used only for PERMITTED ACTIVITIES. The use of the PROPERTY by the ASSOCIATION is nonexclusive and the CITY may allow the PROPERTY, except for the KIOSK, to be used for the benefit of the residents of and visitors to the CITY and Collier County.
 12. **Ownership:** Notwithstanding the fact that any improvements are to be constructed on land owned by the CITY, ownership of all improvements shall vest in the ASSOCIATION, as long as the AGREEMENT is in full force and effect. All buildings and equipment shall become the property of the CITY if not removed within 30 days from the termination of this AGREEMENT.

13. **Construction and Permitting:** All aspects of construction must be permitted through the City of Naples Community Development Department, in accordance with applicable codes. Site Plan approval, etc. The City Manager will approve site plans prior to installation or construction of the KIOSK. The **CITY** shall waive any permit fees associated with the KIOSK.
14. **Insurance:** The **ASSOCIATION** shall pay for and provide Liability and Property Damage insurance for the KIOSK in an amount of at least \$1,000,000 (1 mil) per occurrence, as well as Builder's Risk insurance during construction in an amount at least equal to the amount of the total cost of the construction of the KIOSK. In all policies, the **CITY** shall be included as an additional named insured.
15. **Indemnification:** The **ASSOCIATION** shall indemnify, defend, save, and hold harmless the **CITY**, the **CITY** officers, agents and/or employees from and against any and all losses, penalties, damages, professional fees, including reasonable attorney's fees and all costs of litigation and judgments, arising out of any willful misconduct or negligent act, error, or omission of the **ASSOCIATION** arising out of or incidental to the **ASSOCIATION** use of the **PROPERTY**, or the failure of the **ASSOCIATION** to perform any duties under this Agreement.
16. **Taxes and Assessments:** The **ASSOCIATION** hereby covenants that it is currently a non-profit corporation validly formed and operating under Section 501c(3) of the Internal Revenue Code, and that it shall maintain such status during the life of this AGREEMENT. The **ASSOCIATION** shall pay all taxes and assessments applicable to non-profit 501c(3) organizations. In the event that the non-profit status of the **ASSOCIATION** ceases, the **ASSOCIATION** shall be in default hereunder.
17. **Effective Date:** This Agreement shall take effect on the day of execution by the last party to execute this agreement.
18. **Counterparts:** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon and all of which shall together constitute one and the same instrument.
19. **Authority to Execute:** The terms of this AGREEMENT have been duly approved by the Board of the **ASSOCIATION**. A true and correct copy of the Resolution authorizing entry into this AGREEMENT, and authorizing the current **ASSOCIATION**, President, to execute this AGREEMENT, is attached hereto as Exhibit A and incorporated herein.
20. **Notices and Address Record:** All notices required or made pursuant to this Agreement to be given by the **ASSOCIATION** to the City shall be in writing and shall be delivered by hand or by United States Postal Services Department, first class mail services, postage prepaid, return receipt requested, addressed to the following:

City of Naples Community Services Department

280 Riverside Circle
Naples, Florida 34102

All notices required or made pursuant to this Agreement to be given by the City to the **ASSOCIATION** shall be made in writing and shall be delivered by hand or by United States Postal Services Department, first class mail services, postage prepaid, return receipt requested, addressed to the following:

Fifth Avenue South Association
649 Fifth Avenue South
Naples, FL 34102

IN WITNESS WHEREOF, the parties hereto have executed this **USE AGREEMENT** as of the date first above written.

FIFTH AVENUE SOUTH ASSOCIATION
A Florida not for Profit Corporation

By: _____
Print Name

Title

Signature

ATTEST:

CITY OF NAPLES, FLORIDA

By: _____
Tara A. Norman, City Clerk

By: _____
Bill Barnett, Mayor

Approved as to form and legal sufficiency:

By: _____
Robert D. Pritt, City Attorney