

## USE AGREEMENT

THIS USE AGREEMENT is made this 6<sup>th</sup> day of JUNE, 2007, between NAPLES GATORS INC. a Florida non-profit corporation, hereinafter referred to as "NAPLES GATORS" and the CITY OF NAPLES, a political subdivision of the State of Florida, hereinafter referred to as the "CITY".

WHEREAS, NAPLES GATORS desires the use from the CITY, the first (1<sup>st</sup>) floor of the FIELD HOUSE, PRESS BOX, STADIUM SEATING and FOOTBALL FIELDS on the Property as more particularly shown on Exhibit "A" attached hereto and incorporated herein by reference, (the "Premises"), subject to the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the above premises, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. NAPLES GATORS: Represents that it is, and for the term of this agreement shall continue to be, a Florida non-profit corporation in good standing, and tax exempt within the meaning of Florida law and the Internal Revenue Code. NAPLES GATORS will provide copies to the CITY of all current certificates, tax ID numbers, and other proof of exemption.

2. Use: The CITY hereby grants to NAPLES GATORS for the term set forth below, the Premises and the use thereof, subject to the terms and conditions contained herein. NAPLES GATORS shall use and operate the Premises for any lawful purpose as related to a youth football program. NAPLES GATORS will use the designated Main football field for authorized games **only** and outlying designated practice areas for practices pursuant to a schedule approved by the park manager or designee.

3. Use of Common Areas and Parking: NAPLES GATORS shall have the non-exclusive right to use the common areas at the Property, including without limitation, all driveways, walkways, entryways, restrooms, offices, locker rooms, offices and concession stand and other areas on the first floor of the FIELD HOUSE and PRESS BOX. Parking is limited to designated spots only. Only seven parking spaces are available behind the fieldhouse and it will up to the NAPLES GATORS board in coordination with the park manager or designee to assign who will be allowed to park in these spaces.

4. Term: The term of this Use Agreement shall commence on June 6, 2007 (the "Commencement Date"), and shall expire on June 5, 2012 (the "Term"), provided NAPLES GATORS is not in default hereunder.

5. Rent: NAPLES GATORS shall pay to the CITY as rent hereunder, without demand, the sum of Six Thousand and No/100 Dollars (\$6,000.00) per season, (approximately one half of the annual electrical bill for the Fieldhouse) payable in full no later than by the beginning of the regular season for use of the Premises.

6. Player Fees: NAPLES GATORS will provide to the park manager or designee a complete roster of all boys and girls (tackle and flag players & cheerleaders) that participate in the league, prior to the first game. Roster should include child's name, address, zip code and telephone number(s). The CITY will then bill the NAPLES GATORS for each player and cheerleader, for each week of regular and playoff season. Participant Fees are: \$1.00 per week, per child payable in full by the start of the regular season and by the end of playoff

season. Note: Fees are subject to change depending on changes to the Collier County fees and charges for athletic uses, facility uses, fees and programs.

7. Insurance Requirements:

(a) Casualty and Liability Insurance. NAPLES GATORS shall maintain in effect during the Term of this Use, at NAPLES GATORS expense, a policy of casualty and liability insurance insuring the Property against loss by fire and other casualty in the replacement cost thereof, and with liability coverage in such amounts and with such coverage as may be determined by the CITY. NAPLES GATORS shall maintain in effect during the Term of this Use a policy of general liability insurance covering acts of NAPLES GATORS its guests, coaches, employees and invitees, occurring at the Premises in an amount of not less than One Million and No/100 Dollars (\$1,000,000.00) per occurrence. The CITY shall be named as an additional insured on NAPLES GATORS liability policy.

(b) Waiver of Subrogation. To the extent obtainable, all insurance policies required hereunder shall contain waiver of subrogation clauses whereby the insurer waives all rights to recover from the CITY whether by subrogation or otherwise, for any loss paid by such insurer, unless the CITY acted with malicious intent or gross negligence.

8. Telephone Usage: NAPLES GATORS shall be responsible for the cost of installing any telephone lines deemed necessary or desirable by NAPLES GATORS and all service charges relating to such installed telephone lines.

9. Lighting and Electrical Usage: The CITY will provide NAPLES GATORS with fully operational lights on the football fields for league activities, and shall provide electricity throughout the term of this agreement.

10. Lining of the Field: The CITY will provide the materials, equipment and personnel necessary for the lining of the main field, on a regular basis, during game season.

11. Repairs and Maintenance: NAPLES GATORS shall at NAPLES GATORS sole cost and expense, maintain the assigned Premises and Property in a first class condition and state of repair. It is the NAPLES GATORS obligation to maintain and repair the Premises which shall include, but not be limited to, maintaining, repairing and replacing when appropriate all non-structural components of the Premises and Building within which the Premises are located. NAPLES GATORS will notify the park manager or designee of any major maintenance needs, damage, loss or emergency within 24 hours. The CITY will be responsible for all electric, heating, air conditioning and ventilation systems and equipment, all plumbing, piping and other mechanical systems and equipment serving the Premises or Property, all fixtures, signage, windows, plate glass, parking areas, landscaping, lawn and other components of the Premises and Property.

12. Janitorial Service: NAPLES GATORS agrees to provide janitorial service and supplies to the assigned Premises and to clean the Premises and grounds after use by NAPLES GATORS. All janitorial cleaning will be completed by NAPLES GATORS of the assigned premises by no later than Tuesday of each week.

13. Litter/Trash Removal: NAPLES GATORS will be responsible for all litter/trash removal and disposal in dumpster within all above stated areas of use. The CITY will supply the appropriately sized dumpster(s) during NAPLES GATORS regular season. Litter/trash removal will be completed by NAPLES GATORS by no later than Tuesday of each week.

14. Damage or Destruction: Should the Premises, or any part thereof, be damaged or destroyed by fire or other casualty during the Use Term, which damage or destruction shall interfere with NAPLES GATORS use of the Premises as determined by NAPLES GATORS and in the event the estimated time to repair such damage or destruction exceeds thirty (30) days, then NAPLES GATORS may terminate this Use Agreement effective as of the date of such damage or destruction by providing written notice to the CITY. In the event NAPLES GATORS elects not to terminate this Use, then the CITY shall promptly repair or replace such damage or destruction to the condition it existed prior to the damage or destruction, and the rental payable hereunder shall equitably abate.

15. League Requirements: NAPLES GATORS will provide to the CITY the following:

- Copies of Constitution and By Laws, Rules and Regulations, current Board of Directors, volunteers and participants.
- Sample of Participant registration form, including hold harmless agreement.
- Sample of Adult volunteer application or registration including release statement for criminal background checks and hold harmless agreement.
- Description of divisions of participants (ages and weights) for players and cheerleaders and other restrictions or requirements for tackle and flag program.
- List of fees and expected expenses of individual participants, including but not limited to registration fees, traveling expenses, required equipment or uniform accessories.
- Description of NAPLES GATORS expected schedule of events including but not limited to: practice starting dates, regular season game dates, playoffs, and tournaments.
- Request in advance for changes to any scheduled events including but not limited to practices, games and meetings.
- Updates or changes to membership including Board of Directors, coaches, any youth participants and adult volunteers.
- Provide a copy to the CITY of all press releases and other information sent to the media.

16. Leagues Fees and Charges: NAPLES GATORS will provide the CITY the following:

- Description of participant travel requirements and means of transportation including estimated weekly mileage.
- Description of spectator fees. Including (gate) entrance fees and estimated concession food and beverage prices.

17. Financial Reports: NAPLES GATORS will provide to the CITY a copy of quarterly financial statements including a Profit and Loss Statement by the 15<sup>th</sup> of the following month throughout the term of this use agreement. NAPLES GATORS will provide a copy of annual final financial report by April 1<sup>st</sup>. NAPLES GATORS will also provide a copy of annual tax return by no later than May 1<sup>st</sup>.

18. Restrictions: It is expected that there will be a Code of Conduct to be adopted by NAPLES GATORS and approved by the CITY. The Code of Conduct will provide for appropriate penalties to be administered by NAPLES GATORS for violations.

19. Coaches Training Requirements: NAPLES GATORS will provide a list of all current adult volunteers to include: Board of Directors, coaches, concession workers, referees and other volunteers. Include name, address, zip code, telephone and description of their position. NAPLES GATORS will only use volunteer coaches that are currently certified through National Youth Sports Coaches Association by CITY staff. In addition, at least one coach per team shall be certified for CPR and First Aid.

20. Concession Stand Requirements: NAPLES GATORS is responsible for obtaining and retaining all required concession license(s) and certification(s) through Collier County Health Department on an annual basis or as required.

21. Signage: NAPLES GATORS cannot display signs, banners or posters on CITY property without prior approval by the park manager or designee, and then must remove at the end of the regular football season. All signage must comply with the CITY zoning regulations per the Code of Ordinances, Sec. 106-30 through 106-40.

22. CITY Notification & Representation: NAPLES GATORS will be responsible to notify the park manager or designee of all events, meetings, practices and games. CITY representative(s) will be allowed to attend Board Meetings in order to monitor NAPLES GATORS. The Park Manager or designee(s) will serve as a liaison and information source only and will be neither a member of the Board or vote on league matters.

23. Indemnification: NAPLES GATORS shall indemnify and hold the CITY harmless from and against any and all claims, actions, damages, liability and expenses of any kind in connection with the loss of life, personal injury and/or damage to property arising from or out of NAPLES GATORS use of the Premises, or the occupancy or use thereof by NAPLES GATORS or any of its guests, employees, coaches, members, invitees, agents or employees.

24. Assignment and Subletting: NAPLES GATORS shall not assign or sublet all or any part of its rights and obligations under this Use Agreement.

25. 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.

26. Notices: All notices required hereunder shall be in writing addressed to the parties at their respective addresses set forth above or to such other address indicated by either party hereto.

27. Miscellaneous:

(a) Recitals. The recitals on the first page of this Agreement are true and correct and are incorporated herein by reference.

(b) Governing Law and Venue. This Agreement shall be construed in accordance with Florida law, and any action brought hereon shall only be brought in a court of competent jurisdiction in Collier County, Florida.

(c) Severability. If any provision herein is held to be invalid by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect and this Agreement shall be construed without such invalid provision.

(d) Entire Agreement. This Agreement contains the entire agreement of the parties regarding the subject matter hereof.

IN WITNESS WHEREOF, the parties have executed this USE AGREEMENT the day and year first above written:

**NAPLES GATORS, INC.**  
A Florida not for Profit Corporation

By: \_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

ATTEST:

**CITY OF NAPLES, FLORIDA**

By: \_\_\_\_\_ By: \_\_\_\_\_  
Tara A. Norman, City Clerk Bill Barnett, Mayor

Approved as to form and legal sufficiency:

By: \_\_\_\_\_  
Robert D. Pritt, City Attorney