

AGREEMENT

This Agreement is made and entered into effective the _____ day of _____, 2007 by and between Collier Park of Commerce Owners' Association, Inc., a Florida not for profit corporation (hereinafter referred to as "CPOC"); and the City of Naples, a municipal corporation of the State of Florida (hereinafter referred to as "City").

WITNESSETH:

WHEREAS, CPOC petitioned the City to cause certain properties to be annexed into the City.

WHEREAS, City has expressed concern about the state of repair of the road right-of-ways within the premises that are the subject of the annexation petition that have been dedicated to the public by virtue of the recordation of the plat of East Naples Industrial Park, recorded in Plat Book 10, Pages 114 and 115, of the Public Records of Collier County, Florida; and the recordation of the plat of East Naples Industrial Park Replat No. 1, recorded in Plat Book 17, Pages 38 and 39, of the Public Records of Collier County, Florida, which road right of ways are known as North Horseshoe Drive, East Horseshoe Drive, South Horseshoe Drive, and South Horseshoe Court (collectively, the "Public Roads").

WHEREAS, CPOC has agreed to pay up to \$175,000 of the costs and expenses of making certain repairs to said Public Roads, as further described on the specifications therefor attached hereto as Exhibit "A" and incorporated herein by virtue of this reference (the "Specifications").

WHEREAS, the parties wish to memorialize the negotiations regarding the payment of said repair expenses through the use of this Agreement.

NOW, THEREFORE, in consideration of the mutual premises contained herein, and other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto do hereby agree as follows:

1. The above captioned recitals are true and correct.
2. CPOC does hereby agree that either CPOC, or its designee, shall post a letter of credit in favor of City, drawn upon an institution reasonably acceptable to City, which shall provide in pertinent part as follows:
 - A) The face amount of said letter of credit shall be \$175,000.
 - B) Draws shall be permitted under the terms of the letter of credit.
 - C) City shall be entitled to draw upon the proceeds of said letter of credit to pay for repairs made to the Public Roads in accordance with the Specifications.
 - D) Said letter of credit shall have a term of one (1) year, and shall be automatically renewed for successive one-year periods thereafter. If for any reason the issuing institution elects to not renew the same, the issuing institution shall notify the City no less than sixty (60) days in advance of its maturity. CPOC shall, no later than thirty (30) days prior to its expiration, provide a substitute letter of credit to

replace the letter of credit then expiring. In the event CPOC should fail or refuse to do so, City shall be entitled to draw all proceeds represented by said letter of credit, without regard as to whether all of the repairs contemplated in the Specifications have been initiated or completed. In the event City should draw all of said funds, City shall refund to CPOC the difference between the costs incurred incident to making said repairs in accordance with the Specifications, and the costs thereof, as the same are incurred.

3. City shall utilize its best efforts to complete all work contemplated in said Specifications by no later than February 28, 2009. Within thirty (30) days of completion of all of said work, City shall return said letter of credit to CPOC, together with irrevocable directions authorizing the issuing institution to terminate the same, and release any and all collateral held by the issuing institution for said letter of credit. In the event that the costs of said improvements exceed \$175,000, City shall be responsible for all such excess costs.
4. This Agreement shall terminate on March 30, 2009. In the event that the City has not completed all of the improvements contemplated by the Specifications by that date, CPOC shall no longer have any obligation to pay for the same. Within ten (10) days of the expiration of this letter of credit, City shall return the letter of credit to CPOC, together with irrevocable directions to the issuing institution thereof to terminate the same, and to release any and all collateral secured thereby to CPOC, and CPOC shall have no further obligation hereunder.
5. This Agreement is being delivered and is intended to be performed in the State of Florida, and shall be construed and enforced in accordance with the laws of that state. In the event that any action is brought to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reimbursement for all reasonable attorneys' fees and costs incurred, including those incident to any appeal. The parties further agree that in the event any litigation is brought to enforce or interpret the terms of this Agreement, the exclusive forum thereof shall be the Circuit Courts of Collier County, Florida.
6. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.
7. In the event any provision of this Agreement is found to be void or unenforceable by a court of competent jurisdiction, the remaining provisions hereof shall continue to be enforceable to the same extent as if the unenforceable provision were omitted from this Agreement.
8. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
9. This Agreement is intended to be the complete and final expression of the understanding between the parties hereto, and no other representations, written or oral, other than those herein contained, have been relied upon by any party hereto in the entering into this Agreement.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement effective the date and year first referenced above.

ATTEST:

CITY OF NAPLES

City Clerk

By: _____
_____, Mayor

Date: _____

APPROVED AS TO FORM:

City Attorney

(Corporate)
COLLIER PARK OF COMMERCE
OWNERS' ASSOCIATION, INC., a
Florida not-for-profit corporation

Witness #1 (print name below)

By: _____

Witness #2 (print name below)

Name: _____

Title: _____

Date: _____