

USE AGREEMENT

THIS USE AGREEMENT (the "Agreement") is made this date _____, by and between **THE NAPLES CONCERT BAND** (the "**Band**"), a Florida non-profit organization, and **THE CITY OF NAPLES**, a Florida municipal corporation (the "**City**").

WHEREAS, for over 37 years the Band has provided and continues to provide free concerts in Cambier Park for the cultural enrichment of greater Naples, Collier County residents and visitors; and

WHEREAS, the Band has made a considerable contribution in the planning and raising of over one-half the funds for the construction of the original band shell in Cambier Park in 1987; and

WHEREAS, the Band additionally was instrumental in the design and construction of the renovated Cambier Park Band Shell in 2001, having raised over \$400,000 for the project; and

WHEREAS, the Band has been recognized as a Cultural Institution by the City of Naples with the Cambier Park Bandshell as its cultural footprint, together with a long history of cultural contribution to this community; and

WHEREAS, the City has agreed to grant the Band a license to use space in the Cambier Band Shell for a five (5) 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:** For purposes of this Agreement, the term "Premises" shall mean the Cambier Park Bandshell, which is located at 755 8th Ave. South, Naples, Florida 34102.
3. **Term:** The term of this Agreement shall be for Five (5) years (the "Term"). The Term shall commence on **APRIL 1, 2009** and shall expire on **MARCH 31, 2014** (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 shall be jointly reviewed by the City and the Band during the final quarter of this Agreement and future recommendations of terms and conditions will be considered.
4. **License Fee:** There shall be no license fees due under this Agreement.
5. **Use:** The Band will be entitled to use of the Premises at no cost to the Band. The Band shall have first choice of the dates over other users of the Premises with the exception of the Naples National Two Day Art Show who shall have the use for one weekend each concert season. Such use shall consist of eight (8) concert dates from October 1st through April 30th. Such dates shall be selected by the Band by December 31st of the previous year. Additional concert dates may be requested by the Band and allocated at the discretion of the City.
6. **Sponsorship:** The Band will be allowed to provide sole sponsorship for its corporate sponsors at each concert.

USE AGREEMENT

7. **Music Purchase:** The City will provide \$500.00 annually to the Band for reimbursement of music purchases.
8. **Provisions:** The Band will be provided keys to the Premises and will be provided a storage room for exclusive use by the Band for equipment. The Band will be responsible for all assigned keys.
9. **Equipment Usage:** The Band will be allowed continued usage of property owned by the City, including, musician's chairs, music stands and related property stored in the Premises. Said equipment will continue to be maintained and replaced as needed by the City upon notification by the Band of deficiencies.
10. **Banners/Displays:** The City shall provide space to the Band to advertise in Cambier Park starting on the Monday prior to the concert.
11. **Responsibility of the Naples Concert Band:** Provide set-up and teardown of risers, chairs, etc., for each concert. Provide programs to the audience at each concert. Provide sound system and sound technician for each concert. Regularly apprise the City of deficiencies in the facility being provided such as damages to and losses of risers, stands, chairs, lighting, etc., with the expectation of correction. The Band will maintain a walkway in assigned storage area(s) as required by the City Fire Department. Conduct its own fundraising. Locate business sponsors for each concert.
12. **Alterations and Improvements:** The Band shall not alter, improve or change the Premises, including existing signage, without the written consent of the City.
13. **Termination:** In the event the Band misuses the Premises, then the City may terminate this AGREEMENT by delivering one (1) month written notice of the same to the Band without liability to the City. However, the Band will be allowed to honor their scheduled performance commitments through the end of current October – April season.
14. **Assignment:** The Band shall not assign, sublet, or permit the Premises to be used by others.
15. **Indemnification:** The Band shall indemnify, defend, save, and hold harmless the City, the City's 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 Band arising out of or incidental to the Band use of the Premises, or the failure of the Band to perform any duties under this Agreement.
16. **Notices and Address Record:** All notices required or made pursuant to this Agreement to be given by the Band 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

USE AGREEMENT

Naples, Florida 34102

- 17. **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.
- 18. **Insurance:** The Band shall pay for and provide Liability and Property Damage insurance in an amount of at least \$1.0 million per occurrence. In all policies, the City shall be included as an additional named insured.

IN WITNESS WHEREOF, the parties hereto have executed this Use Agreement on the day first written above.

NAPLES CONCERT BAND:
A Florida non-profit organization

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