

AGREEMENT

This Agreement (the "Agreement") is entered into this 15th day of December, 2010, between the City of Naples (the "City"), the address of which is 735 Eighth Street South, Naples, Florida 34102, and the Fifth Avenue South Business Improvement District Corporation, Inc. (the "5th Ave BID Corporation"), a Florida Not-For-Profit Corporation, the address of which is 821 Fifth Avenue South, Suite 201, Naples, Florida 34102.

WITNESS:

For and in consideration of the mutual promises contained herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the City and the 5th Ave BID Corporation agree as follows:

1. TERM

- 1.1 The term of the Agreement shall be for a period of ten (10) years, commencing at 12:01 a.m. on the 1st day of January, 2011 (the "Commencement Date") and ending on the 31st day of December, 2020 (the "Termination Date").
- 1.2 The term of the Agreement may be extended by mutual agreement for additional periods of ten (10) years, provided, however, that this Agreement shall be terminated upon termination of the Fifth Avenue South Business Improvement District (the "District") (aka "Retail Business District") in accordance with the provisions of the Resolution by which the District was created or disqualification of the 5th Ave BID Corporation to operate as a Not-For-Profit Corporation under the laws of the State of Florida or the rules and regulations of the United States Internal Revenue Service.

2. CONSIDERATION

- 2.1 In consideration of the mutual obligations and benefits set forth herein, the 5th Ave BID Corporation commits to utilize all funds provided to the 5th Ave BID Corporation by the City for business improvements as set forth in Chapter 170 Section 170.01 (3), Florida Statutes, City Resolution 10-12801, The Initial Assessment Resolution, and Resolution 10-12820, The Final Assessment Resolution, to stabilize and improve commercial property through promotion, management, marketing, administrative, and other similar activities.

3. COVENANTS

- 3.1 The 5th Ave BID Corporation herein covenants that it has been established as a Not-For-Profit Corporation validly formed under statutes, rules and regulations of the Internal Revenue Code and that it shall maintain such status during the life of this Agreement.
- 3.2 The 5th Ave BID Corporation represents that it will be governed by a Board of Directors consisting of seven (7) members, four (4) of whom shall be owners of property (three (3) shall be majority property owners and one (1) shall be a minority

property owner) subject to special assessment within the District, or the designees thereof, and three (3) of whom shall be merchants having businesses or authorized offices within the District. A majority property shall be defined as a property included in the group of properties having the largest special assessment and in the aggregate constituting fifty-one (51%) percent of the total special assessment amount. At all times at least one of the directors must be an affected property owner and is not the owner of a majority property. The Board of Directors shall be elected by the property owners within the District pursuant to the provisions of the 5th Ave BID Corporation By-laws. Changes to this structure shall be subject to City Council approval.

- 3.3 The 5th Ave BID Corporation shall present an Annual Report to the City Council of the City of Naples within ninety (90) days of the District's fiscal year end. The Annual Report shall include those annual filing documents required by the United States Internal Revenue Service, a review of the past year's budget and expenditures, the activities, including promotions, advertising, events and other activities conducted by the 5th Ave BID Corporation to achieve the objective of the District, the Budget for the subsequent year and the activities to be conducted in accordance therewith. It shall also include meaningful and measurable objectives for its operations.
- 3.4 The 5th Ave BID Corporation shall bi-annually retain and fund an independent financial audit conducted by a certified public accountant. In the year in which the audit is not conducted, the 5th Ave BID Corporation shall provide a financial review by an independent certified public accountant. The audit or financial review shall be conducted, and the City Council shall receive the reports from the independent certified public accountant within one-hundred and twenty (120) days following the end of the fiscal year of the 5th Ave BID Corporation. The audit and financial review shall provide a source and use of funds to confirm that the use of funds provided through the Fifth Avenue South Business Improvement District Assessment Area is consistent with the terms of this Agreement, the City's Resolution 10-12801, the Initial Assessment Resolution, and the City's Resolution 10-12820, the Final Assessment Resolution. The one-hundred and twenty (120) day deadline may be extended by mutual agreement of the parties.
- 3.5 The 5th Ave BID Corporation agrees to maintain adequate records and supporting documentation which concern or reflect its services hereunder for a minimum of three (3) years during the term of this Agreement, and a minimum of one (1) year from the date of termination of this Agreement. A representative of the City shall have the right to audit, inspect and copy all such records and documentation as often as they deem necessary during the term of this Agreement and for the one (1) year period from the date of termination of this Agreement.

4. SPECIAL ASSESSMENTS (Collection and Use)

- 4.1 All funds collected by the City on behalf of the District, less all expenses incurred by the City on behalf of the District regarding the collection of special assessments and the transfer of District funds to the 5th Ave BID Corporation shall be transferred to the 5th Ave BID Corporation within forty-five (45) days of the receipt thereof by the City.

- 4.2 Pursuant to Article II of Resolution 10-12801, the Initial Assessment Resolution, and Resolution 10-12820, the Final Assessment Resolution, the amount to be assessed shall be proposed each year by the 5th Ave BID Corporation. The City Council shall determine, by an annual assessment resolution, the appropriate assessment amount to be imposed upon the property owners within the District, the assessment roll, and the amount of funds to be transferred to the 5th Ave BID Corporation.
- 4.3 All funds transferred to the 5th Ave BID Corporation shall be utilized for business improvements as set forth in Chapter 170 Section 170.01 (3), City Resolution 10-12801, The Initial Assessment Resolution, and Resolution 10-12820, the Final Assessment Resolution to stabilize and improve commercial property through promotion, management, marketing, administrative, and other similar activities and for no other purpose.
- 4.4 Should the District be abolished, or should the 5th Ave BID Corporation be disqualified from operation as a Not-For-Profit Corporation under the laws of the State of Florida or the rules and regulations of the United States Internal Revenue Service, or should this agreement be terminated for any reason, all property then owned by or under control of, the 5th Ave BID Corporation shall be distributed as follows: If the property has been funded by City-assessed funds, it shall become property of the City. If the property has been funded partially by both City-assessed funds and private funds, the City may pay the 5th Ave BID Corporation the portion of the funds relating to private contributions to the extent the private contributions exceed twenty percent (20%) of the funding. If it has been funded solely by private funds, it shall be offered to the City, and if refused for any reason, disposed of as private property.

5. INSURANCE

- 5.1 The 5th Ave BID Corporation shall maintain during the life of this Agreement, Worker's Compensation, Public Liability and Property Damage insurance and shall include coverage for Contractual Liability, Personal Injury, Libel, Slander, Broad Form Property Damage, to be included on an occurrence basis, and to the full extent of the Agreement to protect from damages for personal injury, including accidental death, as well as from claims for property damage, which may arise from operations under this contract, whether such operations be by the 5th Ave BID Corporation or by a subcontractor, or by anyone directly or indirectly employed by either of them. The 5th Ave BID Corporation shall obtain and maintain in force Director's Errors and Omissions Insurance coverage in amounts appropriate to the scope of the 5th Ave BID Corporation's budget and activities and shall maintain automobile liability insurance including "non-owned and hired" coverage for vehicles owned or operated by the 5th Ave BID Corporation..

The amount of such insurance shall be no less than \$1,000,000 annual aggregate for bodily injury and property damage combined per occurrence. The City of Naples shall be named as an Additional Insured on all insurance certificates.

6. INDEMNIFICATION

- 6.1 The 5th Ave BID Corporation 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 5th Ave BID Corporation, its officers, agents and/or employees.

7. ASSIGNMENT

7.1 The 5th Ave BID Corporation shall not assign this Agreement to any entity without written approval of the City Council. Any merger of the 5th Ave BID Corporation with another entity to perform the activities described herein must first be approved by the City Council before becoming valid.

8. AMENDMENT

8.1 All amendments to this Agreement must be in writing, approved by both the City Council and the 5th Ave BID Corporation, prior to taking effect. Any proposal made by one party hereto and not responded to within six (6) months of its presentation to the other shall be deemed void.

9. DEFAULT & TERMINATION

9.1 At any time during the term of this Agreement the City may terminate this Agreement:

- (1) with cause, immediately, for any default or breach involving fraud; intentional or gross misapplication of funds; misfeasance, malfeasance, gross neglect; abandonment or demonstrable inability to perform; insolvency; or bankruptcy;
- (2) with other cause, for any default or breach by delivering at least ninety (90) days written notice of proposed termination to the 5th Ave BID Corporation specify in the reason(s) and giving a specified deadline, not exceeding ninety (90) days to cure; or
- (3) without cause, by delivering at least twelve (12) months written notice of termination to the 5th Ave BID Corporation, following a public hearing and notice to property owners within the Fifth Avenue South Business Improvement District Assessment Area.

9.2 Written notice of the occurrence of a Condition of Default shall be provided by the City to the 5th Ave BID Corporation at 821 Fifth Avenue South, Suite 201, Naples, Florida 34102 via Certified Mail, return receipt requested.

9.3 The 5th Ave BID Corporation shall make a good faith effort to cure a Condition of Default within ninety (90) days of receipt of the notice prescribed in paragraph 9.2 hereof.

10. GENERAL PROVISIONS

10.1 The captions and headings in this Agreement are for information only and are not substantive.

10.2 This Agreement constitutes the complete agreement between the parties and no modification shall be binding unless in writing and executed by the parties.

10.3 In the event of any dispute, question or interpretation of this Agreement which the parties cannot resolve, said dispute shall be submitted at the request of either party to informal mediation before a single mediator, and failing agreement at mediation, to binding arbitration before a single arbitrator, according to the Florida Arbitration Code. To the extent that the parties cannot agree on a mediator or arbitrator within ten (10) days of notice of a dispute, they shall apply to the Chief Judge of the 20th Judicial Circuit to make the appointment. It is intended that mediation take no more than thirty (30) days and arbitration take no more than sixty (60) days. The parties shall share equally in the costs.

10.4 In any dispute, each party shall be responsible for its own legal fees.

10.5 This Agreement, the Articles of Incorporation and the By-laws of the 5th Ave BID Corporation shall be posted to its website when available.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

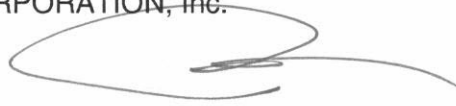
CITY of NAPLES

By: 
Mayor

Approved as to form and legality:

By: 
Robert D. Pritt, City Attorney



The FIFTH AVENUE SOUTH BUSINESS
IMPROVEMENT DISTRICT
CORPORATION, Inc.

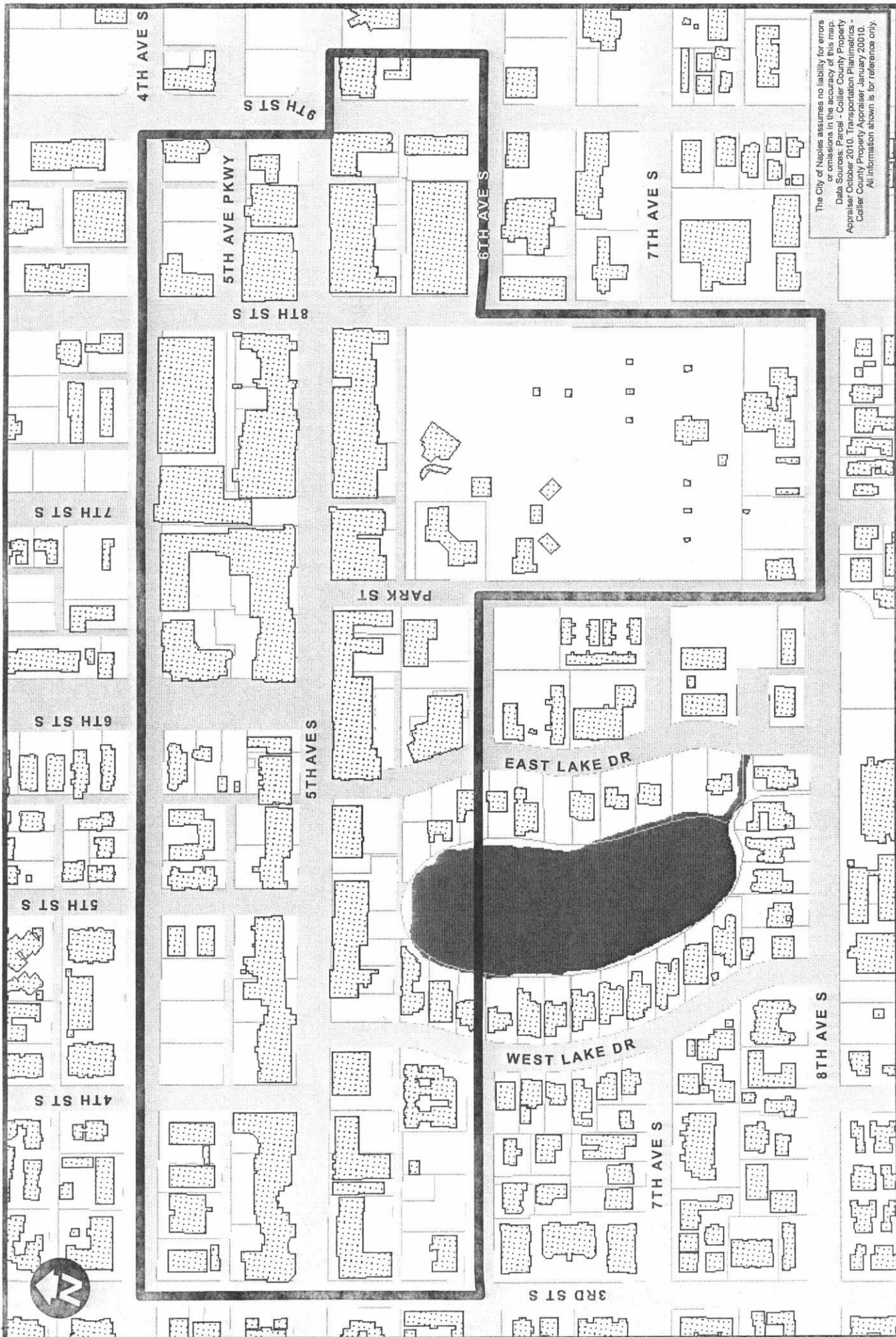
By: 
President
WALTER JAMES SMITH

Attest:


City Clerk

Witnesses:



The City of Naples assumes no liability for errors
 or omissions in the accuracy of this map.
 Data Sources: Public Works Department, City Property
 Appraiser October 2010, Transportation Department
 Callier County Property Appraiser January 2010
 All information shown is for reference only.

Legend

-  Building Footprints
-  ROW from Parcel
-  Water
-  BID Boundary
-  Parcels



**Fifth Avenue South
 Business Improvement District Area**

City of Naples, Florida

GIS DIVISION
 TECHNOLOGY SERVICES
 295 RIVERSIDE CIRCLE
 NAPLES, FLORIDA 34102

PRINTED October 2010
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