

# AGREEMENT

This Agreement (the "Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2010, between the City of Naples (the "City"), whose address is 735 Eighth Street, Naples, Florida 34102, and the Fifth Avenue South Business Improvement District Corporation, Inc. (the "5<sup>th</sup> Ave BID Corporation"), a Florida not-for-profit corporation, whose address is 821 Fifth Avenue South, Suite 201, Naples, Florida, 34012, 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 5<sup>th</sup> 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 1<sup>st</sup> day of January, 2011 (the "Commencement Date") and ending on the 31<sup>st</sup> day of December, 2020 (the "Termination Date");
- 1.2 The term of the Agreement shall be automatically extended 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") in accordance with the provisions of the Resolution by which the District was created.

## 2. CONSIDERATION

- 2.1 In consideration of the mutual obligations and benefits set forth herein, the 5<sup>th</sup> Ave BID Corporation commits to utilize all funds provided to the 5<sup>th</sup> Ave BID Corporation by the District for business improvements as set forth in Chapter 170 Section 170.01 (3), i.e., "to stabilize and improve commercial property through promotion, management, marketing, administrative, and other similar activities...".

## 3. COVENANTS

- 3.1 The 5<sup>th</sup> Ave BID Corporation herein covenants that it has been established as a not-for-profit corporation validly formed under Section 501 (c)(3) of the Internal Revenue Code and that it shall maintain such status during the life of this Agreement;
- 3.2 The 5<sup>th</sup> Ave BID Corporation shall be governed by a Board of Directors consisting of seven (7) members, four (4) of whom shall be owners of property subject to special assessment within the District, or the authorized designees thereof, and three (3) of whom shall be merchants having businesses or offices within the District;
- 3.3 The 5<sup>th</sup> Ave BID Corporation shall present an Annual Report to the City Manager of the City of Naples within ninety (90) days of the District's year end. The Annual Report shall include a review of the past year's budget and expenditures, the activities, including promotions, advertising, events and other activities conducted by the 5<sup>th</sup> 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;

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 5<sup>th</sup> Ave BID Corporation shall be transferred to the 5<sup>th</sup> Ave BID District within thirty (30) days of the receipt thereof by the City;
- 4.2 All funds transferred to the 5<sup>th</sup> Ave BID Corporation shall be utilized for business improvements as set forth in Chapter 170 Section 170.01 (3), i.e., “to stabilize and improve commercial property through promotion, management, marketing, administrative, and other similar activities...” and for no other purpose.

5. INSURANCE

- 5.1 The 5<sup>th</sup> Ave BID Corporation shall obtain and maintain in force throughout the term of this Agreement Public Liability and Property Damage Insurance covering the activities of the 5<sup>th</sup> Ave BID Corporation, including events and promotions conducted and any property owned thereby. Said coverage shall meet the reasonable requirements of the City;
- 5.2 The 5<sup>th</sup> Ave BID Corporation shall obtain and maintain in force Director’s Errors and Omissions Insurance coverage in amounts appropriate to the scope of the 5<sup>th</sup> Ave BID Corporation’s budget and activities;

6. ASSIGNMENT

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

7. AMENDMENT

- 7.1 All amendments to this Agreement must be in writing, approved by both the City Council and the 5<sup>th</sup> 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;

8. DEFAULT

- 8.1 A default shall occur when one of the following occurs and remains uncured in accordance with paragraph 8.3 hereof (a “Condition of Default”):
- a. The 5<sup>th</sup> Ave BID Corporation negligently violates any of the terms of this Agreement and fails to cure the violation within the time periods described in paragraph 8.3 below;
  - b. The 5<sup>th</sup> Ave BID Corporation willfully or wantonly violates any of the terms of this Agreement.
- 8.2 Written notice of the occurrence of a Condition of Default shall be provided by the City to the 5<sup>th</sup> Ave BID Corporation at 821 Fifth Avenue South, Suite 201, Naples,

Florida 34102 via Certified Mail, return receipt requested;

- 8.3 The 5<sup>th</sup> 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 8.2 hereof;
- 8.4 Upon the occurrence of an uncured event of Default, the City shall have the right to cancel this Agreement.

9. GENERAL PROVISIONS

- 9.1 The captions and headings in this Agreement are for information only and are not substantive;
- 9.2 This Agreement constitutes the complete agreement between the parties and no modification shall be binding unless in writing and executed by the parties;
- 9.3 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 binding arbitration according to the rules of the American Arbitration Association;
- 9.4 Either the City or the 5<sup>th</sup> Ave BID Corporation shall be entitled to recover reasonable legal costs and attorney fees incurred in connection with enforcement of any covenant, term, or condition of the Agreement.

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

CITY of NAPLES

By: \_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

The FIFTH AVENUE SOUTH BUSINESS  
IMPROVEMENT DISTRICT  
CORPORATION, Inc.

By: \_\_\_\_\_  
President

Witnesses:

\_\_\_\_\_  
\_\_\_\_\_