

_____ [Space above This Line for Recording Data] _____

DEFERRED PAYMENT AGREEMENT

THIS DEFERRED PAYMENT AGREEMENT (FOR TWENTY YEAR DEFERRAL) (hereinafter referred to as "Agreement") is entered into between _____ (the "Owner") and the City of Naples, Florida, a municipal corporation (the "City"), this _____ day of _____, 20_____.

WHEREAS, City Resolution No. 2018-14223 adopted on October 17, 2018 created the Gulf Acres/Rosemary Heights Assessment Area and levied a non-ad valorem assessment, sometimes referred to as a special assessment (the "Assessment"), upon parcels therein in order to finance construction of sanitary sewer collection system improvements and wastewater treatment capacity improvements; and

WHEREAS, such Resolution authorized an extraordinary alternative payment opportunity for owner(s) of property subject to the Assessment, including the Owner, pursuant to which payment of the Assessment may be deferred for a period of twenty years or until sale or transfer of the affected property, by entering into this Deferred Payment Agreement with the City, which shall be executed with the same formality as a deed and recorded in the Official Records of Collier County, Florida; and

WHEREAS, the Assessment shall be deemed prepaid for the purposes of administering the non-ad valorem assessment roll for the assessment area in which the affected property is located, and the lien and obligation to pay the amount described in Article III hereof shall be transferred to an alternative and consensual special assessment equal in rank and dignity with the liens of all state, county, district or municipal taxes and other non-ad valorem assessments, and when due shall be superior to all other liens, title and claims, including any mortgage, until paid.

NOW, THEREFORE, in consideration of the mutual promises, covenants representations and agreements contained herein, together with Ten Dollars (\$10.00) and other good and valuable consideration exchanged between the parties, the parties to this Agreement do undertake, promise and agree for themselves, their successors and assigns as follows:

**ARTICLE I
DEFINITIONS AND CONSTRUCTION**

SECTION 1.01. DEFINITIONS. Terms not otherwise defined herein shall have the meanings set forth in City Resolution No. 2018-14224 and the City of Naples, Florida, City Code of Ordinances, as amended (the "City Code"), together with all resolutions, regulations and policies under which the City, now and in the future, funds, performs, plans, reviews, inspects, tests, extends, finances and provides wastewater utility services and facilities.

SECTION 1.02. CONSTRUCTION AND INTERPRETATION.

(A) Words that indicate a singular number shall include the plural in each case and vice versa, and words that import a person shall include firms and corporations.

(B) The terms "herein", "hereunder", "hereby", "hereof", and any similar terms, shall refer to this Agreement; the term "heretofore" shall mean before the date of execution of this Agreement; and the term "hereafter" shall mean on or after the initial date of execution of this Agreement.

(C) Words that reference only one gender shall include all genders.

(D) This Agreement does not and shall not be construed to relieve the Owner or any other person or entity from any obligation to address any permit, condition, term, approval, requirement, or restriction and shall not relieve the Owner or any other person or entity of the obligation to comply with any law, ordinance, rule, or regulation governing said permitting requirements, conditions, terms, approvals, requirements, or restrictions.

(E) This Agreement is not and shall not be construed as a Development Agreement pursuant to the Florida Local Government Development Agreement Act, Sections 163.3220 and 163.3243, Florida Statutes, or its successor in function.

(F) This Agreement constitutes and acknowledges all notice to connect to the Utility System, including any notice otherwise required by Section 381.00655, Florida Statutes, its successor in function or the City Code.

(G) This Agreement shall be construed as consistent with the City Code.

(H) This Agreement shall not be construed as a restriction on the City's power to legislate under its police power or the contracting or bartering away of its police power.

(I) This Agreement shall be construed as resulting from joint negotiation and authorship. No part of this Agreement shall be construed as the sole product of any of the parties hereto.

SECTION 1.03. INCORPORATION. The findings, recitals and acknowledgements contained herein are true, correct, and are incorporated in this Agreement.

SECTION 1.04. SECTION HEADINGS. Any headings preceding the text of the several articles, sections or appendices in this Agreement and any table of contents or margin notes appended to copies hereof, shall be solely for the convenience of reference and shall neither constitute a part of this Agreement nor affect its meaning, construction or effect.

ARTICLE II REPRESENTATIONS

SECTION 2.01. OWNER REPRESENTATIONS.

(A) The Owner has all requisite power and authority to enter into and desires to perform under the terms of this Agreement.

(B) The Owner is the sole owner of record of the following described real property:

[insert legal description]

Tax Parcel Identification No. _____ (the "Subject Property").

(C) Any and all necessary action on the part of the Owner relating to the authorization of, and the Owner's execution and delivery of, this Agreement and the performance of the Owner's obligations under this Agreement, assuming due authorization, execution and delivery by the City, has been duly taken.

SECTION 2.02. CONSIDERATION FOR DEFERRED PAYMENT ALTERNATIVE.

(A) The Owner, by execution hereof:

1. irrevocably binds all record owners of the Subject Property and their successors in interest; and
2. covenants and establishes that this Agreement shall be construed in all respects as a consensual special assessment which shall be collected separate and apart from any other special assessments imposed as a result of any assessment proceedings, and which shall constitute a lien against the Subject Property equal in rank and dignity to the liens of all state, county, district or municipal taxes and other non-ad valorem assessments and, except as otherwise provided by law, such lien shall be at all times superior in dignity to all liens, titles and claims, until paid; and
3. acknowledges with specificity and certainty that the capital improvements contemplated herein confer direct special benefits to the Subject Property in excess of any amount due to the City hereunder, and that the City's use of equivalent residential connections ("ERC") for calculating the special assessment due and payable hereunder represents a fair and reasonable apportionment, in all respects, of the costs and all charges attributed to the Subject Property in association with any consensual special assessment for sanitary sewer collection system improvements or wastewater treatment capacity improvements provided for herein; and

4. acknowledges that upon entering into this Agreement, the City shall advance and fund, on behalf of the Owner, the Assessment attributable to the property of the Owner arising by virtue hereof; and

5. agrees to pay the City's attorneys' fees in the event of any dispute involving this Agreement and all costs of foreclosure, enforcement, or any execution of or under this Agreement; and

6. agrees to venue in State court in Collier County and waives trial by jury should any dispute arise.

(B) The Owner hereby acknowledges that this Agreement provides an alternative and extraordinary payment opportunity and is fundamental consideration given by the City in exchange for resolving all questions about the validity, appropriateness, and enforceability of the assessments, charges and costs associated with any sanitary sewer collection system improvements and wastewater treatment capacity improvements addressed herein and agrees that upon execution of this Agreement, any question or controversy regarding such matters shall forever be conclusively resolved.

(C) This Agreement shall not be interpreted to allow the Owner to avoid paying for a fair-share of any new growth or additional demand resulting from additions, reconstruction, or other improvements to the Subject Property which cause substantial additional demands upon the Utility System which were not considered or used in determining any special assessment or the amount due hereunder.

**ARTICLE III
DEFERRED PAYMENT**

SECTION 3.01. AGREEMENT AND ACKNOWLEDGEMENT. By execution of this Agreement, Owner hereby agrees to and acknowledges the following:

(A) Owner elects to subject the Subject Property to an alternative consensual special assessment in the principal amount of \$_____ plus interest at a rate of 3.5% compounded annually. The principal amount is the sum of \$_____ for sanitary sewer collection system improvements (___ ERCs at \$_____ per ERC) and \$_____ for wastewater treatment capacity improvements (___ ERCs at \$_____ per ERC).

(B) The principal amount, together with all accrued interest shall be due in a single payment no later than the twentieth (20th) anniversary of this Agreement.

(C) This Agreement shall be executed with the same formality as a deed and recorded in the Official Records of Collier County, Florida.

(D) The separate lien created by this Agreement on the Subject Property is an alternative and consensual special assessment equal in rank and dignity with the liens of all state, county, district or municipal taxes and other non-ad valorem assessments, and when due shall be superior to all other liens, title and claims, including any mortgage, until paid.

(E) This Agreement advances the public purpose of extending public infrastructure which directly benefits the Subject Property, and shall not be subject to any subordination to any other lien or mortgage, and is binding upon the Owner and Owner's successors and assigns.

(F) Transfer of sale of the Subject Property for other than nominal consideration shall accelerate the full amount due hereunder as of the date of transfer, and after such transfer the outstanding balance including accrued interest, shall thereafter accrue interest at the highest legal rate. Nominal consideration shall mean a transfer only requiring minimum documentary stamp taxes.

**ARTICLE IV
GENERAL PROVISIONS**

SECTION 4.01. POST EXECUTION RELATIONSHIP.

(A) From time to time after execution of this Agreement, the Owner shall, upon request of the City, execute, acknowledge and deliver, or shall cause to be executed, acknowledged and delivered, all such further acts or other

documentation for confirming or correcting any scrivener's error or otherwise reasonably fulfilling the obligations and intent of the parties under this Agreement.

(B) Upon payment in full to the City of the special assessment described herein, including accrued interest, the City agrees to record a notice that the special assessment arising hereunder has been paid in full.

SECTION 4.02. TIME IS OF THE ESSENCE. Time is of the essence in this Agreement. Time periods specified in this Agreement shall expire at midnight on the date stated. Any time period provided for herein which ends on Saturday, Sunday or a legal holiday shall extend to 5:00 p.m. on the next business day.

SECTION 4.03. APPLICABLE LAW; JURISDICTION AND VENUE; INDEMNITY PROVISION.

(A) This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

(B) The parties to this Agreement expressly consent to the jurisdiction of and agree to suit in any court of the State of Florida and further agree that venue shall lie in Collier County, Florida.

(C) Owner shall hold harmless the City with respect to any loss or damage experienced by the Owner, including attorneys' fees, as a result of its good faith performance or interpleader hereunder.

SECTION 4.04. NOTICE. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when hand delivered or mailed by registered or certified mail, postage pre-paid to the following addresses:

To City: City of Naples, Florida
Attn: City Manager
735 Eighth Street South
Naples, Florida 34102

To the Owner: At the address of the Owner relative to the Subject Property listed in the records of the Collier County Property Appraiser.

SECTION 4.05. AMENDMENTS AND WAIVERS. This Agreement can only be amended by a written amendment executed by the Owner and the City. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision of this Agreement, whether or not similar, unless otherwise expressly provided.

SECTION 4.06. SEVERABILITY. In the event that any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

SECTION 4.07. ENTIRE AGREEMENT. This Agreement is the entire agreement between the parties pertaining to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions of the agreements, understandings, negotiations and discussions of the parties, whether written or oral, and there are no warranties, representations or other agreements between the parties in connection with the subject matter hereof, except as specifically set forth herein.

IN WITNESS WHEREOF, the Owner and the City have caused this Agreement to be duly executed on the date first above written.

[Remainder of Page Intentionally left Blank – Signature Page Follows]

THIS IS A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD, SEEK THE ADVICE OF AN ATTORNEY PRIOR TO SIGNING.

Signed, sealed and delivered
In our presence:

OWNER

Witness #1

By: _____
[Name, title]

(Witness #1 printed name)

Witness #2

(Witness #2 printed name)

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me on _____, 20[____], by _____, He/she is personally known to me or has produced a driver's license as identification.

Print Name: _____
NOTARY PUBLIC
State of Florida
Commission # _____
My Commission Expires: _____

IN WITNESS WHEREOF, the Owner and the City have caused this Agreement to be duly executed on the date first above written.

CITY OF NAPLES, FLORIDA

[SEAL]

By: _____
Finance Director

ATTEST:

Approved as to Form:

City Clerk

City Attorney

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me on _____, 20[____], by _____, Finance Director of the City of Naples. He/she is personally known to me or has produced a driver's license as identification.

Print Name: _____
NOTARY PUBLIC
State of Florida
Commission # _____