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FLORIDA PROFIT/NON PROFIT CORPORATION
Fifth Avenue South Business Improvement District, Inc.

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**ARTICLES OF INCORPORATION
OF
FIFTH AVENUE SOUTH BUSINESS IMPROVEMENT DISTRICT, INC.
(A Florida Corporation Not-For-Profit)**

1. **Name.** The name of the corporation is FIFTH AVENUE SOUTH BUSINESS IMPROVEMENT DISTRICT, INC. (the "Corporation").
2. **Principal Address.** The street address of the Corporation's principal office is as follows:

c/o John M. Passidomo, Esq.	Cheffy Passidomo, P.A. 821 5th Avenue South Naples, Florida 34102
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3. **Not-for-profit Corporation.** The Corporation has been formed for not-for-profit purposes and shall not have or issue shares of stock or make distributions.
4. **Exempt Nature of Activities and Purposes.** The Corporation is organized and shall be operated exclusively for the charitable purpose of fostering the stabilization and improvement of the retail business special assessment district known as the "Fifth Avenue South Business Improvement District Assessment Area" that is located in the City of Naples, Florida, hereinafter the "District," through promotion, management, marketing, and other similar services in the District, within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986, as the same may be amended from time to time and the corresponding provisions of any future United States Internal Revenue law (the "Code") (the "Corporation's 501(c)(3) Exempt Purposes").

The nature of the Corporation's activities shall be to undertake or support, directly or indirectly, such projects, programs, services, and activities, at such times and in such places, as the board of directors of the Corporation (the "Board") determines are appropriate to carry out, promote, or further the Corporation's 501(c)(3) Exempt Purposes. It is intended that the Corporation shall be exempt from federal income tax under section 501(a) of the Code as an organization described in section 501(c)(3) of the Code, and that it shall qualify as an organization transfers to which are deductible for federal income, gift, and estate tax purposes by residents and citizens of the United States of America (a "Qualified Charitable Organization").

5. **Members.** The Corporation shall have one class of members (the "Members"). A Member of the Corporation shall be an individual, partnership, corporation, limited liability company, association or other legal entity shown in the records of the

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Property Appraiser of Collier County, Florida, as provided to the City of Naples, Florida (the "City") from time to time, as the owner of a parcel of real property that is located in the District and subject to special assessment in accordance with City of Naples, Florida Resolution No.10-12820. The Members shall have those rights and privileges conferred upon the Members by these Articles of Incorporation or the Bylaws of the Corporation from time to time in effect.

6. **Membership Rights.** The Members shall have those rights and privileges required by law to be accorded to members, and those rights and privileges conferred upon the Members by these Articles of Incorporation or the Bylaws of the Corporation from time to time in effect. The rights of the Members shall include, after the initial Board of Directors is elected by the incorporator, the exclusive right to vote for the election of Directors.
7. **Registered Agent.** The street address of the Corporation's registered office and the name of its registered agent at that address are as follows:

Agent	Business Address
John M. Passidomo, Esq.	Cheffy Passidomo, P.A. 821 5th Avenue South Naples, Florida 34102

8. **Incorporator.** The name and address of the Corporation's sole incorporator is John M. Passidomo, Esq., Cheffy Passidomo, P.A., 821 5th Avenue South, Naples, Florida 34102.
9. **Board of Directors.** All corporate powers shall be exercised by or under the authority of, and the activities, property, and affairs of the Corporation shall be managed by or under the direction of, the Board, subject to the limitations set forth in these Articles of Incorporation and in accordance with the Bylaws of the Corporation from time to time in effect. The initial Board shall consist of seven (7) individuals to be elected by the incorporator, each to serve as a director until the first annual meeting of the Members, and until his or her successor is elected and qualifies or until his or her sooner death, resignation or removal. Thereafter, the Members shall elect the Directors, as provided in the Article of these Articles of Incorporation entitled "Membership Rights."
10. **Officers.** The officers and their manner of election shall be as provided in the Bylaws of the Corporation.
11. **Board's Authority.** Subject to the restrictions and limitations of the Article of these Articles of Incorporation entitled "Prohibitions" and the condition that no power or discretion shall be exercised by the Board in any manner or for any purpose that is not consistent with the Corporation's 501(c)(3) Exempt Purposes,

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its qualification as a Qualified Charitable Organization, and any Valid Restrictions (as defined below) imposed on contributions to the Corporation, but without otherwise limiting the powers conferred upon the Board by law, the Board is authorized:

- (a) To pursue any lawful activity permitted or not prohibited by Chapter 170 of the Florida Statutes, as amended from time to time, or other applicable Florida law. In furtherance of this purpose, the Corporation will work toward creating a favorable environment which will increase commercial and cultural activity within the District. The Corporation will encourage a spirit of cooperation and maintenance of high standards among its constituents. The Board shall utilize all funds transferred by the City to the Corporation as set forth in Section 170.01 (3), Florida Statutes, City Resolution No. 10-12801, The Initial Assessment Resolution, and Resolution No.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.
- (b) To receive and accept gifts, legacies, grants, loans, and other contributions to the Corporation from any persons or entities, in cash or in other property acceptable to the Board, including restricted contributions made by the City, private persons or others; provided that any restrictions are consistent with the Corporation's 501(c)(3) Exempt Purposes and its qualification as a Qualified Charitable Organization and are imposed by the donor by a written instrument that is accepted by the Board by resolution or other agreement ("Valid Restrictions").
- (c) To make contracts and guarantees, incur liabilities, borrow money, and enter into, extend, renew or renegotiate leases.
- (d) To employ attorneys, accountants, investment counsel, custodians, brokers and other agents to assist in the administration of the Corporation and the Corporation's Funds and to pay reasonable compensation for such services.
- (e) To maintain and administer the Corporation's assets, including all contributions received, all income earned on those assets and contributions, and any gains therefrom (the "Corporation's Funds") and, unless otherwise specifically required, to mingle restricted contributions with other assets of the Corporation's Funds for investment purposes; provided, however, that the Corporation shall maintain sufficient records and procedures to identify and track any funds received by the Corporation from the City.
- (f) To use and apply the Corporation's Funds, make expenditures and payments therefrom, for such of the Corporation's 501(c)(3) Exempt Purposes as the Board in its sole discretion determines from time to time,

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subject to any Valid Restrictions imposed on contributions to the Corporation's Funds, in particular, the restrictions placed on funds received from the City, as further described in the preceding provisions of this Article and the next Article of these Articles of Incorporation entitled "Prohibitions."

- (g) To initiate and participate in fundraising activities or other projects that may be undertaken by the Corporation in order to further or promote the Corporation's 501(c)(3) Exempt Purposes.
- (h) To the extent a corporation organized under the Act may now or hereafter lawfully do so, to engage in or carry on any and every act or activity necessary, suitable, convenient, or proper for, in connection with, or incident to the promotion, furtherance, or accomplishment of any of the Corporation's 501(c)(3) Exempt Purposes, or designed, directly or indirectly, to promote the interests of the Corporation, and to engage in any lawful act or activity that is consistent with the Corporation's 501(c)(3) Exempt Purposes and its qualification as a Qualified Charitable Organization.

The provisions of any Agreement between the Corporation and the City regarding the disbursement of funds from the City to the Corporation, and the Corporation's undertakings regarding its disbursements of such funds (the "Agreement"), are hereby declared to be Valid Restrictions.

12. **Prohibitions.** Notwithstanding any other provision of these Articles of Incorporation, the Corporation's activities and the Board's authority shall be subject to the following restrictions and limitations:

- (a) The Corporation shall not carry on any activities not permitted to be carried on by a Qualified Charitable Organization or by Section 170.01(3), Florida Statutes.
- (b) The Corporation shall not carry on any activities not described in Section 170.01(3), Florida Statutes with any funds transferred by the City to the Corporation, as set forth in Section 170.01 (3), Florida Statutes, City Resolution No. 10-12801, The Initial Assessment Resolution, and Resolution No.10-12820, The Final Assessment Resolution.
- (c) No part of the Corporation's Funds shall inure to the benefit of or be distributable to the Corporation's Directors, officers, or any other private individual or entity, except in furtherance of the Corporation's 501(c)(3) Exempt Purposes, as payment of reasonable compensation for services

rendered, or as payment or reimbursement of reasonable expenses necessary to carrying out the Corporation's 501(c)(3) Exempt Purposes.

- (d) No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate or intervene in (including the publication or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office.
 - (e) To the extent that Section 508 and the provisions of Chapter 42 of the Code are applicable to the Corporation, the Corporation shall distribute such amounts from the Corporation's Funds for each taxable year at such time and in such manner as not to become subject to the tax on undistributed income imposed by Section 4942 of the Code.
 - (f) To the extent that Section 508 and the provisions of Chapter 42 of the Code are applicable to the Corporation, the Corporation shall not (a) engage in any act of self-dealing as defined in Section 4941(d) of the Code, (b) retain any excess business holdings as defined in Section 4943(c) of the Code, (c) make any investments in such manner as to subject it to tax under Section 4944 of the Code, or (d) make any taxable expenditures as defined in Section 4945(d) of the Code.
 - (g) The Corporation shall not have and is prohibited from exercising any sovereign enforcement or regulatory powers, the power to tax, and the power of eminent domain.
13. **Distribution of Corporate Assets if the District is Abolished, Corporation Ceases to be a Qualified Charitable Organization or the Agreement is Terminated.** If (a) the District is abolished, (b) the Corporation ceases to be a not-for-profit corporation under Chapter 617, Florida Statutes, including a liquidation or dissolution pursuant to the Article of these Articles of Incorporation entitled "Liquidation or Dissolution," or a Qualified Charitable Organization, or (c) the Agreement is terminated for any reason, the Corporation's assets shall be disposed as follows: (i) the Corporation shall distribute to the City its assets that were acquired solely with funds transferred by the City to the Corporation and (ii) the City shall have the right to purchase all other assets of the Corporation for each asset's cost of acquisition. Any assets of the Corporation not distributed or sold to the City shall remain the property of the Corporation.
14. **Liquidation or Dissolution.** The Corporation may be liquidated or dissolved at any time. Subject to the immediately preceding Article and any Valid Restrictions imposed on contributions to the Corporation, upon the winding up and dissolution of the Corporation, all the Corporation's assets remaining after payment or adequate provision for the lawful debts and obligations of the Corporation and the

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expenses of its liquidation or dissolution shall be distributed (i) for such of the Corporation's 501(c)(3) Exempt Purposes (including by distribution to or for the use of one or more Qualified Charitable Organizations) and in such manner and proportions as are provided for in the plan of distribution of assets adopted by the Corporation, or (ii) to the federal government, or (iii) to a state or local government for a public purpose, or (iv) by the Circuit Court of the Judicial Circuit in which the principal office of the Corporation is then located (or any court of competent jurisdiction if the principal office of the Corporation is then located outside the State of Florida), exclusively for such of the Corporation's 501(c)(3) Exempt Purposes or to such one or more Qualified Charitable Organizations having similar purposes as the court shall determine.

15. **Indemnification and Immunity.** The Corporation shall indemnify each Director and officer, including former Directors and officers, to the fullest extent allowed by law, including but not limited to Section 617.0831 of the Act. It is intended that the Corporation be an organization the officers and Directors of which are immune from civil liability to the extent provided under Section 617.0834 of the Act and other applicable laws.
16. **Amendment.** These Articles of Incorporation may be amended at any time and from time to time as provided in the Bylaws of the Corporation in a manner and for a purpose that is consistent with the Corporation's qualification as a Qualified Charitable Organization, the Agreement and any Valid Restrictions imposed on contributions to the Corporation's Funds; provided, however, that no amendment hereto may remove these restrictions on amendment. Pursuant to the Agreement, the provisions of these Articles of Incorporation and the Bylaws regarding the election or appointment of Directors shall not be amended without the approval of the City Council of the City.

Dated at Naples, Florida, this 22 day of December 2010.

Having been named as registered agent to accept service of process for the above stated corporation at the place designated in this certificate, I am familiar with and accept the appointment as registered agent and agree to act in this capacity

By: 

John M. Passidomo, Registered Agent

I submit this document and affirm that the facts stated herein are true. I am aware that any false information submitted in a document to the Department of State constitutes a third degree felony as provided for in Section 817.155, Florida Statutes.

By: 

John M. Passidomo, Incorporator