

FIRST AMENDMENT TO PUBLIC IMPROVEMENT AGREEMENT
between
VILLAGE OF ESTERO
and
HIGH FIVE UP TOP, LLC

This First Amendment (the “Amendment”) to the Public Improvement Agreement (the “Agreement”) between the **Village of Estero**, a Florida municipal corporation (the “Village”), and **High Five Up Top, LLC**, a Texas Limited Liability Corporation, to be assigned to its entities, **HD5 Entertainment, LLC**, a Texas Limited Liability Corporation authorized to conduct business in Florida and **High Five Entertainment, LLC**, a Texas Limited Liability Corporation authorized to conduct business in Florida (“collectively, “**High 5**”), with the Village and High 5 collectively referred to herein as the “**Parties**”, is made and entered into this **2nd day of April, 2025** (the “Effective Date”) as follows:

WHEREAS, on May 15th 2024, the Parties entered the Agreement, which obligated the Parties to undertake certain actions toward High 5’s construction and operation of a Recreational and Entertainment Facility (REF) on a portion of Village Property; and

WHEREAS, while the Parties initially contemplated the design and preparation of the Village’s Property and the Parcel on which the High 5 REF would be constructed would occur on a jointly-agreed timeline; but

WHEREAS, various events, including the Village’s acquisition of additional adjacent lands and subsequent redesigns of the Village Hub to compliment development of a first class sports and recreation complex with active sports facilities, passive trails and entertainment spaces; and

WHEREAS, the Village and High 5 have, during the time since the effective date of the Agreement, worked collaboratively together to ensure both are best situated for a successful launch of the REF within the overall recreation and sports complex; and

WHEREAS, in light of the initially unexpected passage of time, the Parties have agreed that certain provisions in the initial Agreement should be amended.

NOW, THEREFORE, in consideration of the foregoing exordial clauses, the Parties hereto agree to amend the Agreement as follows:

1. Exhibit “A” of the Agreement (depicting the Parcel to be conveyed to High 5) is replaced with **Exhibit “A”** to this Amendment.
2. Article I(H) of the Agreement (Obligations of High 5) is amended as follows:

In performing its obligations under this Agreement, High 5 shall comply with all applicable federal, state, and local laws, and shall ensure all applicable taxes. Fees and fines associated with the Parcel are paid. High 5 shall not engage in or provide for any form of gambling prohibited by Florida Statutes Chapter 849, including but not limited to the operation of lotteries, bookmaking, wagering, or the placement and operation of slot machines or other unlawful gambling devices.

3. The second sentence of Article II(A) of the Agreement is amended as follows:

The Parties will close on the transfer of the Parcel to High 5 on or before April 25th 2025~~July 15, 2024~~.

4. Article VIII of the Agreement is amended as follows:

High 5 shall, on or before the date the Parcel is transferred to it~~by no later than the Effective Date~~, enter into a Common Area Maintenance (CAM) agreement with the Village, and High 5 shall remain a party to the CAM agreement at all times during the Term of this Agreement. The CAM agreement shall be recorded in the official records of Lee County, Florida, on the date the deed transferring the Parcel to High 5 is recorded. Failure to remain a party to the CAM agreement as required herein shall constitute a material breach of this Agreement.

5. Notwithstanding the actual date(s) of execution by the Parties, the Effective Date of this Amendment shall be the Effective Date provided for herein.

6. All other terms and conditions of the Agreement shall remain in effect and are not altered by the adoption of this Amendment.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be duly executed.

Village of Estero

High Five Up Top, LLC

Steve Sarkozy, Village Manager

Scott Emley, CEO

Exhibit "A"

Metes and Bounds Description of Parcel to be Conveyed

A TRACT OR PARCEL OF LAND BEING A PORTION OF LOTS 15 AND 16, FLORIDA GULF LAND COMPANY'S SUBDIVISION, PLAT BOOK 1, PAGES 59, PUBLIC RECORDS OF LEE COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF SECTION 34, TOWNSHIP 46 SOUTH, RANGE 25 EAST LEE COUNTY, FLORIDA; THENCE NORTH 01°09'53" WEST ALONG THE WEST LINE OF SAID SECTION 34, FOR 877.75 FEET; THENCE DEPARTING SAID WEST LINE, NORTH 88°50'07" EAST, FOR 139.34 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL;

*THENCE NORTH 00°44'55" WEST, FOR 277.08 FEET;
THENCE NORTH 89°15'05" EAST, FOR 42.20 FEET;
THENCE NORTH 29°52'36" EAST, FOR 106.75 FEET;
THENCE NORTH 89°53'50" EAST, FOR 327.89 FEET;
THENCE SOUTH 22°06'01" EAST, FOR 31.32 FEET TO A POINT OF CURVATURE;
THENCE SOUTHEASTERLY 15.54 FEET ALONG THE ARC OF A TANGENTIAL CURVE TO THE LEFT HAVING A RADIUS OF 32.00 FEET THROUGH A CENTRAL ANGLE OF 27°49'00" AND BEING SUBTENDED BY A CHORD WHICH BEARS SOUTH 36°00'31" EAST FOR 15.38 FEET TO A POINT OF COMPOUND CURVATURE;
THENCE SOUTHEASTERLY 37.92 FEET ALONG THE ARC OF A COMPOUND CURVE TO THE LEFT HAVING A RADIUS OF 100.00 FEET THROUGH A CENTRAL ANGLE OF 21°43'40" AND BEING SUBTENDED BY A CHORD WHICH BEARS SOUTH 60°46'51" EAST FOR 37.70 FEET TO A POINT OF REVERSE CURVATURE;
THENCE SOUTHEASTERLY 30.93 FEET ALONG THE ARC OF A REVERSE CURVE TO THE RIGHT HAVING A RADIUS OF 25.00 FEET THROUGH A CENTRAL ANGLE OF 70°53'47" AND BEING SUBTENDED BY A CHORD WHICH BEARS SOUTH 36°11'48" EAST FOR 29.00 FEET;
THENCE SOUTH 00°44'54" EAST, FOR 16.52 FEET;
THENCE SOUTH 15°59'00" EAST, FOR 45.67 FEET;
THENCE SOUTH 00°44'54" EAST, FOR 261.29 FEET;
THENCE SOUTH 89°08'14" WEST, FOR 152.66 FEET;
THENCE NORTH 79°46'45" WEST, FOR 38.82 FEET;
THENCE NORTH 68°21'53" WEST, FOR 89.79 FEET;
THENCE SOUTH 89°08'09" WEST, FOR 232.41 FEET TO THE POINT OF BEGINNING OF THE PARCEL DESCRIBED HEREIN;*

CONTAINING 4.22 ACRES, MORE OR LESS.