

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

This Second Amendment (the “Second 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 **21<sup>st</sup> day of May, 2025** (the “Effective Date”) as follows:

**WHEREAS**, on May 15<sup>th</sup> 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**, on April 2<sup>nd</sup> 2025, the Parties entered into a First Amendment to the Agreement to incorporate the final footprint of the REF, expressly prohibit gambling activities, and to extend the date on which the Parties would effectuate the transfer the Parcel to High 5; and

**WHEREAS**, subsequent to the First Amendment’s adoption, the Parties have engaged in certain additional negotiations concerning the Village’s compensation and the content of the associated Common Area Maintenance (CAM) agreement; and

**WHEREAS**, the Parties have also acknowledged the need to ensure the Village continues to have the legal authority to finalize the preparation of the High 5 Parcel to be “pad ready” after title transfers to High 5; and

**WHEREAS**, in light of these developments, the Parties have agreed that certain provisions in the initial Agreement, as amended by the First Amendment, should be amended.

**NOW, THEREFORE**, in consideration of the foregoing exordial clauses, the Parties hereto agree to amend the Agreement, as amended by the First Amendment, as follows:

1. Article II (Obligations of Village) is hereby amended by adding the following sentences to the end of subsection (B):

After the Parcel is conveyed to High 5, and during the Village’s construction activities on the Property, including development of the common areas and the

conversion of High 5's Parcel to a "pad ready" state, the Village shall have a non-exclusive temporary construction easement over, on, under, upon and across the High 5 Parcel for the purpose of constructing the common area elements, and for all site work required to make the High 5 Parcel "pad ready" for construction of the REF. This temporary construction easement shall expire at the earlier of the Village's completion of all common area elements and the making of the High 5 Parcel pad ready, or High 5's Notice of Commencement to construct the REF.

2. Article IV of the Agreement (Compensation to Village) is amended to add a new subsection (D) as follows:

**D. Development Cost Base Fee (DCBF)**

1. The High 5 DCBF is **\$706,677** annually. The DCBF has been calculated on the Village Investment set forth **Exhibit "A"** (based on an 8% return to the Village of Estero). High 5 will pay **34.6%** of the DCBF based on the prorated share of the investment calculated on parcel size per commercial occupant of the Entertainment District Site (as that term is defined in that certain CAM Agreement between the Parties effective May 26<sup>th</sup> 2025). The duration of the DCBF will be no less than the duration of the Agreement as Amended.
  2. Upon beginning operations, High 5 shall begin paying the DCBF. On or about February 1, May 1, August 1 and November 1 of each calendar year, the Village shall provide High 5 with an invoice for one quarter of the annual DCBF. This invoice may be combined with the Village's invoice for CAM fees.
  3. High 5 shall pay to Village the DCBF within thirty (30) days following High 5's receipt of such invoice.
  4. If any installment of the DCBF is not paid within fifteen (15) days after the due date, at the option of Village, a late charge not greater than ten percent (10%) of the amount due may be imposed, and all sums shall bear interest from the dates when due until paid at the highest lawful rate. The Village may bring an action at law against High 5 to pay the same.
  5. It shall be the legal right of the Village to enforce payment of the DCBF hereunder. Failure of the Village to send or deliver invoices shall not, however, relieve High 5 from its obligations hereunder.
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 June 13<sup>th</sup> 2025~~July 15, 2024~~.

4. Notwithstanding the actual date(s) of execution by the Parties, the Effective Date of this Second Amendment shall be the Effective Date provided for herein.
5. All other terms and conditions of the Agreement, as amended by the First Amendment, shall remain in effect and are not altered by the adoption of this Second Amendment.

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

**Village of Estero**

**High Five Up Top, LLC**

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**Steve Sarkozy, Village Manager**

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**Scott Emley, CEO**

## VILLAGE INVESTMENT

4