

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

This Third Amendment (the “Third 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 **1st day of October, 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, on April 2nd 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, on May 21st 2025, the Parties entered into a Second Amendment to the Agreement to provide the Village with a construction easement over the High 5 Parcel and to establish a Development Cost Payment mechanism; and

WHEREAS, subsequent to the Second Amendment’s adoption, the Parties have engaged in certain additional negotiations concerning the Village’s payment obligations to High 5 related to the initiation of construction; and

WHEREAS, in light of these developments, the Parties have agreed that certain provisions in the initial Agreement, as amended by the First and Second Amendments, 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 and Second Amendment, as follows:

1. Subsection (D) of Article I (Obligations of High 5) is hereby amended as follows:

The REF shall be designed, constructed, and operated by High 5 in the manner set forth in its proposal to the Village (attached hereto as **Exhibit “B”**). Notwithstanding the foregoing, High 5

and the Village have agreed that, based upon feedback during the Development Order approval process, additional enhancements to the originally-proposed REF façade should be incorporated into the building design. The enhancements are estimated by High 5 to cost \$650,000. To pay for these enhancements, the Village will pay an additional \$325,000 as an additional investment. The Village will receive an 8% return on that additional investment. The 8% return paid to the Village shall be paid after debt service but ahead of the 60/40 split of NOI. High 5 will redirect \$325,000 of funds currently directed towards pickleball court covering to fund the other half of the estimated cost. Should the \$650,000 estimated cost increase or decrease, the Parties agree that the change will be incurred equally. The Village Manager is authorized to make final decisions regarding the exact façade enhancements to be included with the goal being a mutually acceptable façade aesthetic which does not disrupt the design, permitting and construction schedule.

2. A new subsection (J) of Article II of the Agreement (Obligations of Village) is created as follows:

J. Given the authority in the Florida Building Code for a Building Official to grant limited permits that allow certain construction activities to begin before all plans are finalized, including permits for foundations, after suitable documents have been submitted, the Village shall support the Village Building Official's issuance to High 5 of a limited permit for site and foundation work ahead of its receipt of its full building permit, and for purposes of subsections (E) and (F) of the Agreement only, the granting of such limited permits by the Building Official shall constitute "receiving a building permit" so as to trigger the Village's Capital Contribution payments under those subsections.

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