

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

This Fourth Amendment (the “Fourth 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 **18th day of March, 2026** (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, on October 1st 2025, the Parties entered into a Third Amendment to the Agreement to provide for inclusion of Village-desired enhanced architectural elements, and to provide for interim building permits; and

WHEREAS, subsequent to the Third Amendment’s adoption, the Parties have recognized that given the private ownership of the Parcel and the provisions of the Village Code, Village road impact fees of \$513,851.21 will be required to be paid at the time the construction permit is issued; and

WHEREAS, the Parties had intended that High 5 would have this obligation offset within the compensation terms, but the topic was not specifically addressed in the original Agreement; and

WHEREAS, non-Village impact fees related to public safety which are to be paid to other agencies are not affected by this Fourth Amendment; and

WHEREAS, in light of the foregoing, the Parties have agreed that the initial Agreement, as amended by the First, Second, and Third Amendments, should be amended to address this matter.

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

1. Subsection (A) of Article IV (Compensation to Village) is hereby amended as follows:

A. Compensation Definitions

1. **Allowable Expenses** shall mean cost of goods, operating expenses, repair and maintenance expenses, licensing, asset improvements, payroll expenses, marketing and promotional expenses, taxes, road impact fees of \$513,851.21 for initial construction, insurance and payments to primary mortgage holders or lessors, and any other reasonable and customary costs to own and operate an entertainment center and sports complex.
2. **Distributable Cash** shall mean cash approved by High 5 to be distributed to entities entitled to distribution of funds (including the Village under the terms of this Agreement) after all Allowable Expenses have been satisfied, and abiding by any covenants prescribed by High 5's lenders and lienholders.

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

3. All other terms and conditions of the Agreement, as amended by the First, Second, and Third Amendments, shall remain in effect and are not altered by the adoption of this Fourth Amendment.

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

Village of Estero

High Five Up Top, LLC

Steve Sarkozy, Village Manager

Scott Emley, CEO