

## ECONOMIC DEVELOPMENT AGREEMENT

### HD5 ENTERTAINMENT, LLC, and HIGH FIVE ENTERTAINMENT, LLC

This Economic Development Agreement ("Agreement") is made and presented by and between the City of Mansfield, a Texas home-rule municipal corporation (the "City"), the Mansfield Economic Development Corporation ("MEDC"), a nonprofit Corporation organized under Title 12, Subtitle C1, of the Texas Local Government Code, the Board of Directors (the "Board") of Reinvestment Zone Number Four in the City of Mansfield, Texas, HD5 Entertainment, LLC, a Texas limited liability company and/or assigns ("Company"), and High Five Entertainment, LLC, a Texas limited liability company and/or assigns ("Operator"). City, MEDC, Board, Company, and Operator may sometimes hereafter be referred to individually as a "party" or collectively as the "parties."

#### RECITALS:

**WHEREAS**, the City created Reinvestment Zone Number Four, City of Mansfield, Texas (the "Zone") by Ordinance 2285-22 on December 12, 2022, pursuant to Chapter 311, Texas Tax Code, as amended (the "TIRZ Act"); and

**WHEREAS**, the City owns undeveloped land located in the Zone, which is identified as Parcel 1 and Parcel 2 and is generally depicted on the attached Exhibit A (the "Property"); and

**WHEREAS**, the Company has applied for an economic development incentive to purchase and develop approximately 10 acres of the Property in accordance with the City's and MEDC's economic development program; and

**WHEREAS**, the City and MEDC are authorized by Article III, Section 52-a of the Texas Constitution and Chapters 380 and 501 of the Texas Local Gov't Code to provide economic development grants and incentives to promote state and local economic development and to stimulate business and commercial activity in the City; and

**WHEREAS**, pursuant to the Contract of Sale (as defined below) and this Agreement, the City desires to convey to the Company fee title to a portion (approximately 10-acres, subject to the approval of Exhibit A by the City Council) of the Property as authorized by Texas Tax Code Ch. 311 and Texas Local Gov't Code Ch. 253, and Company agrees to develop the Property, and Operator will operate and maintain the Property in accordance with this Agreement; and

**WHEREAS**, City, Board, and MEDC desire for Company to design and build, and for Operator to maintain and operate an Entertainment and Live Concert building ("Building") within the Property, in accordance with the project and finance plan for the Zone, or the Board's approval of any amendments to the project and finance plan for the Zone (the "Project").

**WHEREAS**, on the first and second floors of the Building, at Company's expense, Company will design, build, finish out, and Operator will maintain and operate, an entertainment

center and consisting of approximately 45,000 square feet of indoor entertainment venue space with a restaurant, bowling lanes, a 50,000 square foot outdoor miniature golf course, and other planned entertainment center amenities, including, but not limited to, laser tag, duckpin bowling, virtual reality systems, axe throwing, arcade gaming, and escape rooms (collectively the “**Project Entertainment Floors**”); and

**WHEREAS**, on the third floor and above of the Building, as a future phase of development of the Building, under a future amendment to this Agreement and at City’s, Board’s, or MEDC’s expense, Company intends to design, build, and finish out, and Operator will maintain approximately 30,000 square feet of live outdoor concert venue space, connected to City’s conference center as designated and amended by the Project (collectively the “**Project Mansfield Live Floors**”); and

**WHEREAS**, in accordance with Section 311.010(h) of the Act, the City Council of City and the Board, as necessary or convenient to implement the adopted project and finance plan, and achieve its purposes, may establish and provide for the administration of one or more programs for the public purposes of developing and diversifying the economy of the Zone, eliminating unemployment and underemployment in the Zone, and developing or expanding transportation, business, and commercial activity in the Zone, including programs to make grants and loans from the TIRZ Fund of the Zone; and

**WHEREAS**, by approval of the City Council, the Board has all the powers of a municipality under Chapter 380, Texas Local Gov’t Code; and

**WHEREAS**, in accordance with the adopted project and finance plan, the City, MEDC, and Board find that conveyance of the Property to the Company under this Agreement is advisable to implement the project and finance plan for the Zone, and is in compliance with the Tax Increment Financing Act, Chapter 311, Texas Tax Code, and authorized by Chapter 253, Texas Local Gov’t Code, and will be made in furtherance of economic development programs authorized under Chapter 380, Texas Local Gov’t Code, and is a Project that will generate ad valorem and sales tax revenue and encourage the regeneration of public funds; and

**WHEREAS**, the Board finds that development of the Property and payments, if any, from the TIRZ Fund to Company will serve the public purposes of: (i) developing and diversifying the economy of the Zone and the state; (ii) eliminating unemployment and underemployment in the state and Zone; (iii) developing and expanding commerce in the state; (iv) stimulating business and commerce within the Zone; and (v) promoting development and redevelopment within the Zone; and

**WHEREAS**, MEDC has determined that the MEDC Grants (as defined below) and other Chapter 380 Program Grants to be made hereunder are necessary to promote new or expanded business development, and the Project constitutes an eligible project under Texas law and is authorized by the Sales and Use Tax Special Election on May 6, 2023 (Proposition “A”); and

**WHEREAS**, MEDC has determined that making the MEDC Grants, other Chapter 380 Program Grants, and any related maintenance and operating expenditures in this Agreement is

authorized by Proposition "A", and applicable law, and will further the objectives of MEDC, will benefit City and City's inhabitants, and will promote local economic development and stimulate business and commercial activity in the City; and

**WHEREAS**, the MEDC also desires to provide the MEDC Grant, and the City and MEDC desire to provide other Chapter 380 Program Grants, as defined or further described in this Agreement, to the Company pursuant to Chapter 380 of the Texas Local Government Code in consideration of the Company bringing the Project to the City; and

**WHEREAS**, the City, Board, and MEDC have concluded and hereby find that this Agreement promotes economic development in the City, and, as such, meets the requirements of Article III, Section 52-a of the Texas Constitution, by assisting in the development and diversification of the economy of the State of Texas and City, by eliminating unemployment or underemployment in the State of Texas and City, and will enhance business and commercial activity within the State of Texas and City.

**NOW THEREFORE**, in consideration of the recitals above, and the mutual covenants and promises contained herein, and for other good and valuable consideration the sufficiency and receipt of which are hereby acknowledged, the parties agree as follows:

## **ARTICLE 1 DEFINITIONS**

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the terms defined in this Article have the meanings assigned to them in the Recitals or this Article, and all such terms include the plural as well as the singular.

"Affiliate" of Company means any other person directly controlling, or directly controlled by or under direct common control with the Company. As used in this definition, the term "control," "controlling" or "controlled by" shall mean the possession, directly, of the power either to (a) vote fifty percent (50%) or more of the securities or interests having ordinary voting power for the election of directors (or other comparable controlling body) of the Company, or (b) direct or cause the direction of management or policies of the Company, whether through the ownership of voting securities or interests, by contract or otherwise, excluding in each case, any lender of the Company or any affiliate of such lender.

"Approved Plans" means the plans and specifications relating to the design and construction of the Project, inclusive of any change orders thereto, which are in compliance with all City rules and regulations, and approved by the City Council.

"Building Final" means the approval of the final inspection issued by the City certifying the Building's compliance with applicable building codes and other laws, and indicating it to be in condition suitable for further construction of interior finish-out for Company, Operator, or for its tenant(s).

“Capital Investment” shall mean Company’s capitalized costs for the design and construction of the Project Entertainment Floors (inclusive of all hard and soft costs). Capital Investment does not include the cost of the Project Mansfield Live Floors, land, or rights-of-way.

“Captured Appraised Value” means the total appraised value of all real property taxable by the City and located in the Zone for the calendar year less the Tax Increment Base.

“Certificate of Occupancy” means the document issued by the City certifying that the Building is in compliance with applicable building codes and other laws, and indicating it to be in a condition suitable for occupation.

“City” means the City of Mansfield, Texas.

“MEDC Grant” has the meaning set forth in Section 5.2 of this Agreement.

“Commencement of Construction” shall mean (i) the plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for construction of the Project; and (ii) all necessary permits for the construction of Project have been issued by the applicable governmental authorities.

“Contract of Sale” means the contract of sale to be provided by the City and executed by the parties as provided in Section 3.1 below and after finalization of Exhibit A, which is subject to approval by the City Council.

“Director” means the City’s Economic Development Director or his authorized designee.

“Effective Date” means the date this Agreement is fully executed by the parties.

“Event of Bankruptcy or Insolvency” means the dissolution or termination of a party’s existence as a going business, insolvency, appointment of receiver for any part of such party’s property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against such party and such proceeding is not dismissed within ninety (90) days after the filing thereof.

“Force Majeure” means any act that (i) materially and adversely affects the affected party’s ability to perform the relevant obligations under this Agreement or delays such affected party’s ability to do so, (ii) is beyond the reasonable control of the affected party, (iii) is not due to the affected party’s fault or negligence, and (iv) could not be avoided, by the party who suffers it, by the exercise of commercially reasonable efforts. “Force Majeure” shall include: (a) natural phenomena, such as storms, floods, lightning and earthquakes; (b) wars, civil disturbances, revolts, insurrections, terrorism, sabotage and threats of sabotage or terrorism; (c) transportation disasters, whether by ocean, rail, land or air; (d) strikes or other labor disputes that are not due to the breach of any labor agreement by the affected party; (e) fires; (f) epidemics or pandemics where shut-down of residential construction or the manufacturing of supplies relating thereto has been ordered by a governmental authority; and (g) actions or omissions of a governmental authority (including the actions of the City in its capacity as a governmental authority) that were not voluntarily induced

or promoted by the affected party, or brought about by the breach of its obligations under this Agreement or any applicable law or failure to comply with City regulations; provided, however, that under no circumstances shall Force Majeure include any of the following events: (g) economic hardship; (h) changes in market condition; (i) any strike or labor dispute involving the employees of the Company or any Affiliate of the Company, other than industry or nationwide strikes or labor disputes; (j) during construction, weather conditions which could reasonably be anticipated by experienced contractors operating the relevant location; (k) the occurrence of any manpower, material or equipment shortages except as set forth in (f) above; or (l) any delay, default or failure (financial or otherwise) of the general contractor or any subcontractor, vendor or supplier of the Company, or any construction contracts for the Project.

“General Fund Sales Tax Revenues” means the amount of the unrestricted municipal sales and use tax revenues solely attributable to the Project and collected by the Texas Comptroller of Public Accounts from the sales of goods and services resulting in tax revenues remitted to and actually received by the City.

“Impositions” mean all taxes, assessments, use and occupancy taxes, charges, excises, license and permit fees, and other charges by public or governmental authority, general and special, ordinary and extraordinary, foreseen and unforeseen, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on Company or the Property, or any property or any business owned by Company or within the City.

“Tax Increment” means the total amount of property taxes levied and collected by the City for a calendar year on the Captured Appraised Value of real property taxable by the City and located in the Zone.

“Tax Year” shall have the meaning assigned to such term in Section 1.04 of the Texas Tax Code (i.e., the calendar year).

“Tax Increment Base” means the total appraised value of all real property taxable by the City and located in the Zone for the calendar year in which the Zone was designated by the City.

“Taxable Value” shall mean the appraised value of the Project Entertainment Floors as certified by the Tarrant Appraisal District, or its successor, for a given Tax Year.

“TIRZ Fund” means the funds deposited by the City in the Tax Increment fund for the Zone.

“Term” means the term of this Agreement as described in Article 2 of this Agreement.

## **ARTICLE 2 TERM**

The term of this Agreement shall commence on the Effective Date and shall continue until the parties have fully satisfied all terms and conditions of this Agreement unless sooner terminated as provided herein.

### ARTICLE 3 COMPANY OBLIGATIONS

3.1 Contract of Sale. Within thirty (30) days of the Effective Date, plus any days required by City to prepare the Property for development by Company, such as zoning, subdividing, platting, amending the project and finance plan for the Zone, and items identified in Section 5.4 of this Agreement, Company must execute the Contract of Sale and any exhibits of the Contract of Sale requiring Company's execution.

3.2 Compliance with Laws. Construction of the Project must be done in accordance with the Approved Plans and all applicable federal, state and local laws, codes, and regulations. Company agrees that before platting the Property, it will file applications with the City requesting (i) rezoning of the Property to Planned Development District (PD) ("Zoning District") and (ii) approval of concept and site plans and any other requirements of the Zoning District.

3.3 Regulations Regarding Building Products, Materials, or Methods. The parties find that the Property constitutes an area of architectural importance and significance and the City Council of City hereby designates it as an area of architectural importance and significance for purposes of Chapter 3000 of the Texas Gov't Code (the "Code"). In consideration for the mutual covenants and conditions contained herein and pursuant to §3000.002(d) of the Code, Company voluntarily consents to the application of all City rules, charter provisions, ordinances, orders, building codes, and other regulations existing as of the Effective Date, including the Approved Plans and the Zoning District (collectively the "Regulations") that govern the use or installation of a building product or material in the construction, renovation, maintenance, or other alteration of a residential or commercial building on the Property, regardless of whether a different building product or material is approved for use by a national model code published within the last three code cycles that applies to the construction, renovation, maintenance, or other alteration of the building. In addition, Company voluntarily consents to the application of the Regulations that establish a standard for a building product, material, or aesthetic method in construction, renovation, maintenance, or other alteration of a residential or commercial building, regardless of whether the standard is more stringent than a standard for the product, material, or aesthetic method under a national model code published within the last three code cycles that applies to the construction, renovation, maintenance, or other alteration of the building. The parties agree that: (a) the City will not issue any permits for the Property in violation of this section; (b) the covenants contained within this section constitute a material term of this Agreement; (c) Company's voluntary consent to the application of the Regulations to the Property, as described in this section, constitutes a material inducement for the City and Board to authorize the payments to Company described herein; (d) the covenants contained herein shall run with the land and shall bind Company and all successors and assigns; and (e) this section shall survive termination or expiration of this Agreement.

3.4 Commencement of Construction. Company must achieve Commencement of Construction no later than three hundred sixty-five (365) calendar days after the Effective Date, plus any days required by City to prepare the Property for development by Company, such as zoning,

subdividing, platting, amending the project and finance plan for the Zone, and items identified in Section 5.4 of this Agreement.

3.5 Building Final and Certificate of Occupancy. No later than seven hundred and thirty (730) calendar days after the Effective Date, plus any days required by City to prepare the Property for development by Company, such as zoning, subdividing, platting, amending the project and finance plan for the Zone, and items identified in Section 5.4 of this Agreement, Company must receive a Building Final and Certificate of Occupancy for Project Entertainment Floors.

3.6 Property Maintenance. Company agrees to be responsible for the continuous and perpetual operation and maintenance of the Property in accordance with all applicable federal, state and local laws, codes, and regulations during the Term of this Agreement.

3.7 Minimum Taxable Value. The Company's Project Entertainment Floors development of the Property must result in a Taxable Value of at least fifteen million dollars (\$15,000,000) for the 2026 Tax Year and for every Tax Year thereafter during the Term of this Agreement. In the event the Taxable Value of the Project Entertainment Floors less any accumulated depreciation ("Minimum Taxable Value") falls below the minimum amount stated in the preceding sentence for any Tax Year during the Term of this Agreement, then the Company shall be subject to the default provisions of this Agreement.

3.8 Capital Investment. The minimum Capital Investment for the Project Entertainment Floors shall be \$15,000,000 as of the date the Project Entertainment Floors receives a Building Final. The Company shall, within thirty (30) days after receiving a Building Final of the Project Entertainment Floors deliver to the Director copies of invoices, bills, receipts and such other information as may be reasonably requested by City or MEDC to document compliance with the required Capital Investment for the Project Entertainment Floors.

3.9 The Company must generate a minimum of \$750,000 worth of General Fund Sales Tax Revenues in each Tax Year after receipt of the Building Final and Certificate of Occupancy during the Term of this Agreement.

#### ARTICLE 4 ANNUAL PAYMENTS

4.1 The Company shall pay to the City the initial purchase price of **TWO DOLLARS (\$2.00)** to acquire fee simple title to the Property, and the Contract of Sale shall include a provision by which the Property will automatically revert back to the City if Company fails to comply with the terms and conditions of this Agreement and **Exhibit A**, as amended and approved by the City Council.

(a) During the Term of this Agreement, if the Company fails to meet the minimum General Fund Sales Tax Revenue in section 3.9, Company shall pay the difference in actual collections of the General Sales Tax Revenue, not to exceed **FOUR-HUNDRED THOUSAND DOLLARS (\$400,000)** annually to the City, beginning on January 1, 2027, and said amount shall be due to the City on January 1<sup>st</sup> of each year thereafter for a total

period of twenty (20) years, or until the total amount of **EIGHT MILLION DOLLARS (\$8,000,000)** is paid in General Fund Sales Tax Revenues to the City.

- (b) The public purposes of the City, MEDC, and the Board shall be considered satisfied and the City will release the automatic reverter after receiving a Building Final for the Project Mansfield Live Floors and Certificate of Occupancy for the Project Entertainment Floors.
- (c) For purposes of this Agreement, the purchase price, the reverter, and the payment requirements of this Article 4 are determined to be the manner and condition the City and Board find to be advisable to implement the project and finance plan for the Zone, and shall be considered a part of the economic development program and consideration for Company's completion and compliance with the conditions and requirements of this Agreement.

## ARTICLE 5 CHAPTER 380 PROGRAM GRANTS

5.1 The total maximum amount of all MEDC Grant and other Chapter 380 Grant Payments provided in this Agreement shall not exceed **SIX MILLION TWO-HUNDRED AND FIFTY THOUSAND DOLLARS (\$6,250,000)**. In exchange for Company's Capital Investment and its completion and compliance with the conditions and requirements of this Agreement, the MEDC shall make the following MEDC Grant and other Chapter 380 Grant Payments to Company:

5.2 MEDC Grant. Within thirty days (30) of the signing of this agreement, the MEDC will pay Company a grant of **ONE MILLION DOLLARS (\$1,000,000)** ("MEDC Design Grant"), and within thirty (30) days of Company's Commencement of Construction of the Project, the MEDC will pay Company a grant in the amount of **FIVE MILLION DOLLARS (\$5,000,000)** ("MEDC Project Entertainment Floors Construction Grant"). Together, the MEDC Design Grant and the MEDC Project Entertainment Floors Construction Grant shall collectively be referred to as the "MEDC Grant". To the extent authorized by law, any repayment obligation required by the MEDC of the MEDC Grant must be subordinate to the liens securing the Company's lender loans. The MEDC Grant may not be repaid at a faster rate than the primary lender's loan and the MEDC Grant can accrue (carry forward) unpaid until such time as the primary lender's loan is repaid; provided, however, that in addition to the terms and conditions of this Agreement, any repayment owed to the City or MEDC shall be considered a payment obligation of this Agreement. The MEDC Grant can accrue (carry forward) unpaid.

5.3 Construction Materials Grant. The City or MEDC will provide a one-time Chapter 380 Grant Payment in an amount not to exceed **TWO-HUNDRED AND FIFTY THOUSAND DOLLARS (\$250,000)** of the General Fund Sales Tax Revenue attributable to materials that are physically incorporated into and made a part of the Property under a separated contract as authorized by 34 Texas Administrative Code, Section 3.291. This construction materials grant is contingent upon Company's receipt of a Building Final and Certificate of Occupancy, and any change in Texas law, or any change in rules or regulations by governmental authorities resulting



in the Property or Project no longer being defined as the location of the job site, or the location where the order for materials is placed.

5.4 Utilities, Access Road, Design, and Construction. City agrees to bring, at sole cost to the City, all necessary public utilities, including water, stormwater, and sewer, and cause or authorize all franchise utilities to bring internet, phone, gas, and power to the Property as part of the City's development of the overall development of the Zone. City also agrees, at sole cost to the City, construct an entry road ("Entry Road") from the service road of TX-360 to the Zone and adjacent to the Property, which will be ready in time for vertical construction of the Building. City will work with Company on location of the Entry Road, the location, configuration, and size of which may be subject to TxDOT approval, if applicable. City also intends, by way of a future amendment to this Agreement and subject to the annual appropriation of public funds in accordance with Texas law, to pay for any design fees, construction costs, impact fees, legal fees, and Company development fees (Company development costs are 3% of total costs of the sum of Section 5.2 and Project Mansfield Live Floors related to Project Mansfield Live Floors, including but not limited to any applicable civil design, permit fees, architectural design, landscape design and construction, utility impact fees, construction, finish out, electrical, communication and low-voltage audio/video, FF&E, plumbing, maintenance, accessibility, parking, lighting, security, waste management, insurance, and any requirements within Project Entertainment Floors that are required to support Project Mansfield Live Floors, including but not limited to additional foundation support, wall and beam structure support, increased low voltage systems and ceiling structure support, roof access extensions (such as vents for kitchen equipment or connectivity to HVAC, solar panels, or satellite dishes), enhanced elevator systems, enhanced fire and rescue access or riser room requirements, enhanced egress, and connected stair systems.

## **ARTICLE 6 TERMINATION, OFFSET, AND REPAYMENT**

- 6.1 Termination. This Agreement may be terminated upon any one or more of the following:
- (a) by mutual written agreement of the parties; or
  - (b) upon written notice by the City or MEDC, if:
    - (i) Company fails to execute the Contract of Sale; or
    - (ii) upon written notice by the City or MEDC, if the Contract of Sale is terminated or the conveyance of the Property to Company otherwise fails to close, except for an event of Force Majeure; or
  - (c) upon written notice by any party, if another party defaults or breaches any of the other terms or conditions of this Agreement and such default or breach is not cured within thirty (30) days after written notice thereof; or
  - (d) upon written notice by the City or MEDC, if Company suffers an Event of Bankruptcy or Insolvency; or

- (e) upon written notice by the City or MEDC, if any Impositions owed to City or MEDC become delinquent and such delinquency has not been cured within thirty (30) days after written notice thereof; or
- (f) upon written notice by any party if any subsequent federal or state legislation or any decision of a court of competent jurisdiction renders this Agreement invalid, illegal, or unenforceable.
- (g) Upon successful repayment of the MEDC Grant pursuant to section 5.2 and 6.3 of this Agreement

6.2 Offset. The Company shall not allow the ad valorem taxes owed to the City or MEDC on any property owned by Company and located within the City to become delinquent beyond the last day ad valorem taxes can be paid without assessment of penalty. The City or MEDC may at its option, and after delivering written notice to Company of its intent to do so, increase any amounts due and payable to the City or MEDC under this Agreement to recover any delinquent debt (including taxes) lawfully due to City or MEDC, regardless of whether or not the debt due to the City or MEDC has been reduced to judgment by a court.

6.3 Repayment. In the event this Agreement is terminated by the City or MEDC pursuant to Section 6.1(b)-(e), Company shall immediately refund the unpaid portion of the MEDC Grant and all other Chapter 380 Grant Payments to the City or the MEDC, as applicable, and shall pay to the City or MEDC an amount equal to the remaining annual payments, if any, due to the City or MEDC, plus interest at the rate of interest periodically announced by the Wall Street Journal as the prime or base commercial lending rate, or if the Wall Street Journal shall ever cease to exist or cease to announce a prime or base lending rate, then at the annual rate of interest from time to time announced by Citibank, N.A. (or by any other New York money center bank selected by City) as its prime or base commercial lending rate, which shall accrue from the Effective Date until paid.

## ARTICLE 7 INDEMNIFICATION

**CITY, MEDC, AND THE BOARD SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM THE ACTS OR OMISSIONS OF THE COMPANY, OPERATOR, OR THEIR CONTRACTORS PURSUANT TO THIS AGREEMENT. COMPANY AND OPERATOR HEREBY WAIVE ALL CLAIMS AGAINST CITY, MEDC, AND THE BOARD, THEIR COUNCIL, DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY REFERRED TO AS THE "CITY REPRESENTATIVES") FOR DAMAGE TO ANY PROPERTY OR INJURY TO, OR DEATH OF, ANY PERSON ARISING AT ANY TIME AND FROM ANY CAUSE (OTHER THAN THE SOLE NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL ACT OF THE CITY REPRESENTATIVES) ARISING FROM THE ACTS OR OMISSIONS OF THE COMPANY, OPERATOR, OR THEIR CONTRACTORS PURSUANT TO THIS AGREEMENT. COMPANY AND OPERATOR DO HEREBY INDEMNIFY AND SAVE**

HARMLESS THE CITY REPRESENTATIVES FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, SUITS, COSTS (INCLUDING COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION) AND ACTIONS OF ANY KIND BY REASON OF INJURY TO OR DEATH OF ANY PERSON, OR DAMAGE TO OR LOSS OF PROPERTY ARISING FROM COMPANY'S OR OPERATOR'S BREACH OF ANY OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, OR BY REASON OF ANY ACT OR OMISSION ON THE PART OF COMPANY, OPERATOR, OR THEIR OFFICERS, DIRECTORS, SERVANTS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, SUB-CONTRACTOR(S), LICENSEES, SUCCESSORS OR PERMITTED ASSIGNS IN THE PERFORMANCE OF THIS AGREEMENT (EXCEPT WHEN SUCH LIABILITY, CLAIMS, SUITS, COSTS, INJURIES, DEATHS OR DAMAGES ARISE FROM OR ARE ATTRIBUTED TO THE SOLE NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL ACT OF THE CITY REPRESENTATIVES). NOTWITHSTANDING THE FOREGOING, IN THE EVENT OF JOINT OR CONCURRENT NEGLIGENCE OF BOTH THE CITY REPRESENTATIVES, COMPANY, AND OPERATOR THE RESPONSIBILITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY REPRESENTATIVES AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS SECTION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND THEIR RESPECTIVE SUCCESSORS AND PERMITTED ASSIGNS AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. THE COMPANY'S AND OPERATOR'S OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED TO THE LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY COMPANY OR OPERATOR UNDER THIS AGREEMENT. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

## ARTICLE 8 ACCESS TO INFORMATION

Notwithstanding any other provision to the contrary in this Agreement, all information, documents, and communications relating to this Agreement may be subject to the Texas Public Information Act and any opinion of the Texas Attorney General or a court of competent jurisdiction relating to the Texas Public Information Act. In addition to the foregoing sentence, the City shall submit to the comptroller the information as required by Texas Local Gov't Code Sec. 380.004, and any other information the comptroller considers necessary to operate and update the database described by Section 403.0246, Government Code. Upon the City's or MEDC's request, Company and Operator agree to provide the City access to contract documents, invoices, receipts, records, and reports to verify Company's or Operator's compliance with this Agreement.

## ARTICLE 9 GOVERNMENTAL FUNCTIONS AND IMMUNITY

The parties hereby acknowledge and agree that the City, MEDC, and the Board are entering into this Agreement pursuant to their governmental functions and that nothing contained in this Agreement shall be construed as constituting a waiver of their police power, legislative power, or governmental immunity from suit or liability, which are expressly reserved to the extent allowed by law. The parties agree that this is not an Agreement for goods or services to the City. To the extent a Court of competent jurisdiction determines that the City's governmental immunity from suit or liability is waived in any manner, or that this Agreement is subject to the provisions of Chapter 271 of the Texas Local Gov't Code, as amended, the City's immunity from suit may be waived only as set forth in Subchapter I of Chapter 271, Texas Local Gov't Code. Further, the parties agree that this Agreement is made subject to all applicable provisions of the Texas Civil Practice and Remedies Code, including but not limited to all defenses, limitations, and exceptions to the limited waiver of immunity from liability provided in Chapter 101 and Chapter 75.

## **ARTICLE 10 GENERAL PROVISIONS**

10.1 Mutual Assistance. The parties shall do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out such terms and provisions.

10.2 Representations and Warranties. Company and Operator represent and warrant that they have the requisite authority to enter into this Agreement. Company and Operator represent and warrant that they will not violate any federal, state or local laws in constructing or operating the Project, and that the Project shall conform to the applicable building codes, zoning ordinances, Approved Plans, and all other ordinances and regulations of the City of Mansfield.

10.3 Section or Other Headings. Section or other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

10.4 Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the transaction contemplated herein.

10.5 Amendment. This Agreement may only be amended, altered, or revoked by written instrument signed by the parties.

10.6 Successors and Assigns.

- (a) This Agreement shall be binding on and inure to the benefit of the parties, their respective successors and assigns.
- (b) Company may assign all or part of its rights and obligations under this Agreement to a non-Affiliate only upon prior written approval of the City and MEDC. However, this Agreement may be assigned by Company to: (i) its Affiliate without consent by the City or MEDC, if Company provides to City and MEDC with at least forty-five (45) days' prior written notice thereof and such

assignee assumes in writing the obligations and liabilities of such transferring Affiliate in a form reasonably approved by City and MEDC; and (ii) to third-parties providing loans to Company as collateral for such loans; provided, however, the assignment of this Agreement as collateral shall not be construed as creating any debt of the City, MEDC, or the Board within the meaning of any constitutional or statutory provision, and the City, MEDC, and Board shall not be required to subordinate their rights or obligations under this Agreement to any financial institution, or to any other third-party providing loans to Company when mutually agreed upon by Parties pursuant to Article 5 of this Agreement.

10.7 Notice. Any notices or other communications required or permitted by this Agreement shall be in writing and delivered personally, or by messenger or a nationally recognized overnight courier service, or alternatively, shall be sent by United States certified mail, return receipt requested. The effective date of any notice shall be (i) if by personal delivery, messenger or courier service, the date of delivery of the notice, or (ii) if mailed, on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as undeliverable, as the case may be. The parties hereby designate the addresses set forth below as their respective notice addresses under this Agreement.

COMPANY:	HD5 Entertainment, LLC High Five Entertainment, LLC 1502 RR 620 SOUTH Lakeway, TX 78734 Attn: Scott Emley
OPERATOR:	High Five Entertainment, LLC 1502 RR 620 SOUTH Lakeway, TX 78734 Attn: Scott Emley
With a copy to:	Ruffner Schoenbaum Murphy Banaszak, PLLC 901 S. Mopac Expressway Building 4, Suite 290 Austin, Texas 78746 Attention: Jill G. Murphy
CITY:	City of Mansfield, Texas 1200 E. Broad Street Mansfield, Texas 76063 Attn: City Manager
With a copy to:	Taylor, Olson, Adkins, Sralla & Elam, LLP 6000 Western Place, Suite 200 Fort Worth, Texas 76107 Attn: Dean Roggia

MEDC:

Mansfield Economic Development Corp.  
301 South Main Street  
Mansfield, Texas 76063  
Attn: Director

10.8 Interpretation. Regardless of the actual drafter of this Agreement, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against any party.

10.9 Applicable Law/Venue. The substantive laws of the State of Texas (and not its conflicts of law principles) govern all matters arising out of, or relating to, this Agreement and all of the transactions it contemplates, including without limitation its validity, interpretation, construction, performance and enforcement. Mandatory and exclusive venue for any action arising out of, or relating to, this Agreement must be in a court of competent jurisdiction in Tarrant County, Texas.

10.10 Severability. In the event any provision of this Agreement is ruled illegal, invalid, or unenforceable by any court of proper jurisdiction, under present or future laws, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision that is found to be illegal, invalid, or unenforceable a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

10.11 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

10.12 No Joint Venture. The provisions of this Agreement are not intended to create, nor will they be in any way interpreted or construed to create a joint venture, partnership, or any other similar relationship between the parties.

10.13 Force Majeure. If any party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder (other than the payment of money) by reason of Force Majeure, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay, provided that the foregoing shall not be applicable to any payment obligation of any party under this Agreement.

10.14 Attorney's Fees. If either party employs an attorney or attorneys to enforce any of the provisions hereof, or to recover damages for the breach of this Agreement, the non-prevailing party in any final judgment or award agrees to pay the other party all reasonable costs, charges and expenses, including reasonable attorneys' fees and costs of court, expended or incurred in connection therewith.

10.15 Limitation of Liability. The parties further agree that no party will be liable to any other party under this Agreement for special, consequential (including lost profits), or exemplary damages.

10.16 Undocumented Workers. Company and Operator covenant and certify that they do not and will not knowingly employ an undocumented worker as that term is defined by Section 2264.001(4) of the Texas Government Code. In accordance with Section 2264.052 of the Texas Government Code, if Company or Operator is convicted of a violation under 8 U.S.C. Section 1324a (f), Company or Operator shall repay to the City the full amount of all payments made under this Agreement, plus ten percent (10%) interest per annum from the date such payment was made until the date of full repayment. Repayment shall be paid within one hundred twenty (120) days after the date Company or Operator receives a notice of violation from the City.

10.17 City Council Approval. This Agreement is not valid unless first approved by the City Council of the City of Mansfield.

10.18 Gift to Public Servant. The City may terminate the Agreement immediately if the Company or Operator has offered or agreed to confer any benefit upon a City employee or official that the City employee or official is prohibited by law from accepting.

10.19 Texas Boycott Prohibitions. To the extent required by Texas law, Company and Operator each verify that: (1) it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, as defined in Texas Government Code § 2274.001, and that it will not during the term of this Agreement discriminate against a firearm entity or firearm trade association; (2) it does not “boycott Israel” as that term is defined in Texas Government Code § 808.001 and it will not boycott Israel during the term of this Agreement; and (3) it does not “boycott energy companies,” as those terms are defined in Texas Government Code §§ 809.001 and 2274.001, and it will not boycott energy companies during the term of this Agreement.

10.20 380 Grant Limitations. Under no circumstances shall the obligations of the City or MEDC hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision; provided, however, the City and MEDC agree during the term of this Agreement to make a good faith effort to appropriate funds to pay the grant for this Agreement. Further, City and MEDC shall not be obligated to pay any lienholder, commercial bank, lender, or similar Person or financial institution for any loan or credit agreement made by the Company or Operator. None of the obligations of City or MEDC under this Agreement shall be pledged or otherwise encumbered by the Company or Operator in favor of any lienholder, commercial bank, lender, or similar Person, or financial institution.

10.21 Full Execution Required. This Agreement will not be binding on any party unless fully executed by all parties.

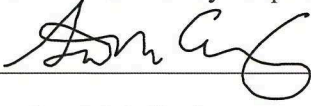
[Signatures on Following Pages]

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**HIGH FIVE ENTERTAINMENT, LLC**  
a Texas limited liability corporation

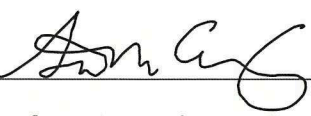
By: 

Name: Scott M. Emley

Title: President

Date: July 13, 2023

**HD5 ENTERTAINMENT, LLC**  
a Texas limited liability corporation

By: 

Name: Scott M. Emley

Title: Managing Partner

Date: July 13, 2023

**CITY OF MANSFIELD, TEXAS**

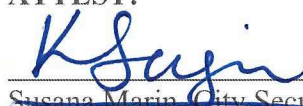


Joe Smolinski, City Manager, or designee

Date: 8/2/23

*Matt Jones for  
Assistant City  
Manager*

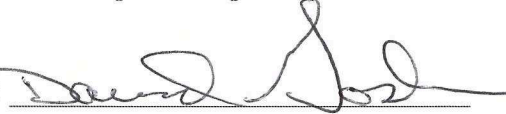
**ATTEST:**



Susana Marin, City Secretary

*Keera Seiger, Assistant City Secretary*

**MANSFIELD ECONOMIC  
DEVELOPMENT CORPORATION,**  
a Texas non-profit corporation

By: 

Name: David Godin

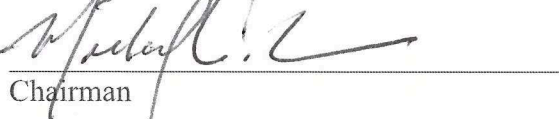
Title: President

Date: 8/1/2023

ATTEST:

  
Board Secretary

**BOARD OF DIRECTORS OF REINVESTMENT ZONE NUMBER FOUR,  
CITY OF MANSFIELD**

  
Chairman

Date: 8.14.23

## EXHIBIT A

### The Property

The Property is identified as “Parcel 1” and “Parcel 2” in the “Site Parcel Plan” below. This **Exhibit A** is subject to change as follows: The Approved Plans and the site plan for the Property will be finalized in writing by mutual agreement of the parties, subject to approval by the City Council, as an amendment to this Agreement prior to execution of a Contract of Sale and closing of the Property.

EXHIBIT A  
SITE PARCEL PLAN

