

**AGENDA
SPECIAL MEETING
JENKS ECONOMIC DEVELOPMENT AUTHORITY
TUESDAY, OCTOBER 17, 2023, 6:00 P.M.
JENKS CITY HALL, 211 NORTH ELM**

If you require special accommodations pursuant to the Americans with Disabilities Act, please notify the City Clerk's Office at (918)299-5883 or email agendas@jenksok.org.

CALL TO ORDER

ROLL CALL

BUSINESS

Official action can only be taken on items which appear on the agenda. The Jenks Economic Development Authority may adopt, approve, ratify, deny, defer, recommend, amend, strike, or continue any agenda item.

1. Consideration and appropriate action relating to a request for approval of the Consent Agenda. (All matters listed under "Consent" are considered by the Authority to be routine and will be enacted by one motion. Any Trustee may, however, remove an item from the Consent Agenda by request. A motion to adopt the Consent Agenda is non-debatable.)
 - A. Approve minutes of the special meeting held on August 01, 2023 pg. 2
 - B. Approve Disposition and Economic Development Agreement between the City of Jenks, the Jenks Economic Development Authority, and High 5 pg. 4
2. Consideration and appropriate action related to items removed from the Consent Agenda

OTHER BUSINESS

ADJOURNMENT

**MINUTES
SPECIAL MEETING
JENKS ECONOMIC DEVELOPMENT AUTHORITY
TUESDAY, AUGUST 01, 2023, 6:00 P.M.
JENKS CITY HALL, 211 NORTH ELM**

The Agenda for the Jenks Economic Development Authority was posted on the City's website at 4:56 p.m. on July 28, 2023. The meeting was called to order at 7:02 p.m. on the above date by Chair Cory Box. A roll call vote of members was taken as follows.

Kevin Short	Present
Donna Ogez	Absent
Jere Schelling	Present
Craig Murray	Absent
Rodney Cline	Present
Chair Cory Box	Present

Business

Official action can only be taken on items which appear on the agenda. The Jenks Economic Development Authority may adopt, approve, ratify, deny, defer, recommend, amend, strike, or continue any agenda item.

1. Approve Minutes of the special meeting held on July 18, 2023

Kevin Short made a motion to approve Item 1. Rodney Cline seconded the motion. A roll call vote of members was taken as follows:

Kevin Short	Yes
Jere Schelling	Yes
Rodney Cline	Yes
Mayor Cory Box	Yes

Motion carried.

2. Potential Executive Session for purposes of conferring on matters pertaining to economic development, including the transfer of property or the creation of a proposal to entice a business to locate within the City of Jenks where public disclosure of the matter discussed would interfere with the development of products or services or would violate the confidentiality of the business 25 O.S. §307(C)(11) (incentive for Outsiders Bar and Grill)

Kevin Short made a motion to enter Executive Session. Rodney Cline seconded the motion. A roll call vote of members was taken as follows:

Kevin Short	Yes
Jere Schelling	Yes
Rodney Cline	Yes
Mayor Cory Box	Yes

Motion carried. *The Authority entered Executive Session at 7:03 p.m. and returned at 7:16 p.m. No other business was discussed.*

3. Resolution 2023-03, a Resolution approving terms of a loan to Outsiders Bar and Grill subject to and conditioned upon satisfactory due diligence and application completion. [Nowlin] City Manager Christopher Shrout introduced Item 3. Charlotte Montgomery (10612 S Fir Ave) addressed the Authority with questions about the resolution. Christopher Shrout and City Attorney Teresa Nowlin answered those questions and questions from the Authority. Kevin Short made a motion to approve Item 3. Jere Schelling seconded the motion. A roll call vote of members was taken as follows:

Kevin Short	Yes
Jere Schelling	Yes
Rodney Cline	Yes
Mayor Cory Box	Yes

Motion carried.

Adjournment. The Jenks Economic Development Authority meeting adjourned at 7:36 a.m.

Cory Box, **CHAIR**

CITY CLERK



CITY OF JENKS

211 NORTH ELM STREET • P.O. BOX 2007

JENKS, OKLAHOMA 74037-2007

PHONE (918) 299-5883 • FAX (918) 299-4489

To: City Councilmembers/JEDA Trustees

Cc: Chris Shrout, City Manager

From: Teresa Nowlin, City Attorney

Date: October 12, 2023

Re: Disposition and Economic Development Agreement with High 5

This Economic Development Agreement is between the City, JEDA and High 5. High 5 proposes to invest at least \$19 million to construct a High 5 Entertainment location which will be a two story, 43,250 square foot entertainment facility to include 24 bowling lanes, an arcade, food, beverage, mini golf, laser tag, escape rooms, virtual reality, and private event space for over 100 people (the “**Project**”) on a 3.52 acre parcel of property located on the Aquarium campus (see attached Aerial view of property). The parcel owned by the City and leased to the JAA and is valued at \$2,430,000.00 according to an appraisal.

As an economic development incentive, the City will provide the land at \$0 and JEDA will invest \$1,250,000 in the Project. The value of the land plus the \$1,250,000 is treated as the City’s contribution to the project totaling approximately \$3,680,000.00. The City/JEDA will be repaid a return as if they were an equity investor. JEDA will receive a 9% per annum preferred simple non-compounding interest return until 150% of the principal amount is repaid. Then JEDA will also receive an annual payment of the distributable amount of cash generated by the Project of approximately 15% (depending on the total cost of the project).

To secure the City’s and JEDA’s investment, there will be a reversionary clause in the deed in the event the project is not constructed in the time set forth in the Agreement. Also High 5 will provide a personal guarantee from its holding company.

The Agreement provides that the Project must be completed by December 2025 though High 5 intends to be completed earlier.

Conditions precedent: Before City has any obligation to convey title to the Property to High 5 or to transfer funds, each of these conditions has to be met:

1. site plan approval under SUP (which includes JAA and OAF);
2. A shared parking agreement must be executed between High 5, City and JAA;
3. Surplus property resolution approved by City;
4. JAA must approve an amendment/release of lease for the property
5. Receipt of guaranty agreement(s)

Staff recommends approval.



LAND TRACT
AERIAL AND FRONT VIEWS

Aerial and Front Views

AERIAL VIEW



FRONT VIEW



DISPOSITION AND ECONOMIC DEVELOPMENT AGREEMENT

BETWEEN THE

CITY OF JENKS

AND

HIGH 5

DISPOSITION AND ECONOMIC DEVELOPMENT AGREEMENT

THIS DISPOSITION AND ECONOMIC DEVELOPMENT AGREEMENT (this “**Agreement**”) is made this ____ day of _____, 2023 (the “**Effective Date**”), by and between the **City of Jenks** (“**City**”); the **Jenks Economic Development Authority (JEDA)**; and HD5 Entertainment, LLC, a Texas limited liability company and/or assigns (“**Developer**”); and High Five Entertainment, LLC, a Texas limited liability company and/or assigns (“**Operator**”). Developer and Operator may be individually referred to hereinafter as “**High 5**”. City, JEDA, Developer, and Operator shall be individually referred to hereinafter as a “**Party**,” and collectively as the “**Parties**”.

RECITALS:

(a) JEDA is an Oklahoma Title 60 public trust with the City of Jenks as its beneficiary. JEDA’s trust purposes include “the support and promotion of economic development and commerce . . . within the geographic limits of the City.”

(b) The City has undertaken a program for the economic development and rehabilitation of riverfront Jenks, Oklahoma, including engaging a consultant to prepare a concept and master plan and engaging in strategic planning focused upon the riverfront area.

(c) In order to accelerate achievement of the City’s economic development objectives and the strategic plan, the City has engaged in efforts to recruit entertainment and dining establishments that would complement the Oklahoma Aquarium for the parcels that are a part of the Aquarium campus and have previously been approved as appropriate for commercial development and specifically for the subject property which is more specifically described on **Attachment A** (the “**Property**”).

(d) Developer proposes invest at least \$19 million to construct a High 5 Entertainment location a two story, 43,250 square foot entertainment facility to include 24 bowling lanes, an arcade, food, beverage, mini golf, laser tag, virtual reality, and private event space for over 100 people (the “**Project**”) on the Property.

(e) The Project is anticipated to create at least 30 new full time jobs, 70 new part time jobs.

(f) The City and JEDA find that the Project and its subsequent operations are reasonably expected to provide direct economic benefits within the City through increasing City sales tax receipts, increasing *ad valorem* tax revenues derived by the City, Tulsa County, the Jenks Public School District, and other local and governmental entities.

(g) The City and JEDA find that the Project provides an entertainment use complimentary to the Oklahoma Aquarium and will help draw visitors to the Aquarium.

(h) The City and JEDA further find that ample consideration is provided to the City and JEDA through the repayment of the development project assistance under this Agreement.

(i) The primary purposes of this Agreement are to establish the terms under which City will convey the Property to Developer, to obligate Developer (or an affiliated entity) to complete the Project, and for City to provide for any public assistance necessary to accomplish those purposes.

TERMS AND CONDITIONS:

The Parties do hereby covenant and agree as follows:

1. General Scope of Development; Consideration.

(a) Scope of the Project. The Project will be located upon the Property and will be developed in a manner that meets all applicable city, state, and federal laws, rules, and regulations. The Project will be developed in a single phase and will consist of an investment by Developer of at least Nineteen Million Dollars (\$19,000,000.00) towards construction costs, in any event as determined by a development budget submitted by Developer and consented to in writing by City, which consent shall not be unreasonably withheld, conditioned or delayed. The Developer upon request by the City provide receipt, invoices and other documentation as reasonably requested by the City to document compliance with the capitol investment requirement.

(b) The Developer shall construct and the Project shall contain the following:

(i) At least 43,000 dedicated square feet of combined restaurant, bar, and entertainment, sales-tax generating space with an intent to increase local sales tax which shall include (but is not limited to):

- (1) 24 standard and duckpin bowling lanes,
- (2) an arcade,
- (3) escape rooms,
- (4) outdoor mini golf,
- (5) laser tag,
- (6) virtual reality,
- (7) private event space for over 100 people.

(c) Additional Requirements and Standards for the Project. All construction work will be completed pursuant to design documents to be submitted to appropriate regulatory authorities pursuant to applicable law. It is anticipated that the Project will be operational for at least ten (10) years. To ensure the Project is completed, City agrees to contribute development financing assistance, on terms and conditions more particularly described in Section 5 of this Agreement.

(d) Other Developer Obligations.

(i) Developer shall provide 146 on-site parking spaces and will negotiate, by way of a separate shared parking agreement, an additional 123 needed parking spaces. This formal parking agreement approved by City Council and Jenks Aquarium Authority will be required, with data provided from the Parking Study as detailed in Sec. 16-6-1. Off-Street Parking and Loading. (F) The final shared parking agreement will be included as a future Addendum to this Agreement. (“Parking Agreement Addendum”)

(ii) Cross-marketing opportunities: Operator shall meet with Oklahoma Aquarium and Jenks Chamber of Commerce marketing representatives and potentially representatives of other Aquarium campus businesses at least twice annually to discuss cross-marketing opportunities and promotion of the area. A report should be provided to the Jenks City Manager after each meeting.

(1) Operator will offer discounts and benefits to Aquarium members to promote Aquarium membership purchases and to increase frequency of attendance.

(iii) Operator or its related entities operating the Project shall permit the City and its designated affiliates to host up to four (4) events for up to 175 people annually for the duration of this agreement. For these events, the event space at the Property will be offered at no charge to the City, and favorable pricing for food and attractions will be negotiated between City and Operator for these events.

(e) Property Subject to Development. Developer will have the exclusive rights to develop the Property in accordance with the terms and conditions of this Agreement. The Property is currently owned by City and is to be conveyed by City to Developer in accordance with the terms and conditions set forth in this Agreement.

(f) Sale; Purchase Price. Subject to all the terms, covenants, and conditions of this Agreement, City will sell, transfer, and convey the Property to Developer for the sum of zero dollars (\$0.00). Additionally, Developer will perform or cause to be performed its obligations with respect to the Property in accordance with the terms and conditions of this Agreement. The monetary consideration and Developer’s performance of its obligations are hereafter called the “**Purchase Price**,” whether paid or performed.

(g) Relationship of the Parties. The undertaking of this Agreement is a complex process that will require the mutual cooperation of the Parties and their timely actions on matters that are appropriate or necessary to implement this Agreement. The Parties will use their best commercial efforts and good faith to perform and assist each other in performing their respective obligations in accordance with this Agreement. This Agreement specifically does not create any partnership, joint venture or agency relationship between the Parties, nor render any Party liable for any of the debts or obligations of any other Party.

2. Conveyance of Property.

(a) Declaring Property Surplus: After execution of this Agreement, the City Council of the City of Jenks will declare the Property surplus.

(b) Form of Deed; Other Closing Deliverables. Upon satisfaction of the items in Section 4 of this Agreement and the surplus declaration referenced above, City will convey to Developer good, valid, and marketable title to the Property in fee simple by special warranty deed (the “**Deed**”) in substantially the form of the special warranty deed depicted in the attached **Attachment B**. The Deed will contain a reversionary clause providing that if the Project isn’t constructed and open for business by December 31, 2025, absent any events of Force Majeure or for any City licenses, permits, or other City requirements that are delayed beyond the control of the Developer, the Property will revert to the City of Jenks. At or before Closing, the Parties shall take such actions and deliver to the other such other instruments, items, and documents as are necessary to carry out the purposes and intent of this Agreement, including such affidavits, certificates, or other documents as may be reasonably required by a mutually acceptable title company to close the transactions contemplated by this Agreement, or to issue the Title Policy to Developer.

(c) Time and Place for Delivery of Deed. City will deliver the Deed and possession of the Property to Developer on a date and time mutually agreed upon by the Parties (the “**Closing**”), provided the conditions precedent set forth in Section 4 of this Agreement have been satisfied. The conveyance will be delivered at the principal office of the title company or such other offices as may be mutually agreed to by the Parties, and Developer (or designee) will accept such conveyance and pay to City at such time and place the monetary portion of the Purchase Price for the Property, and Developer shall perform its obligations in accordance with the terms of this Agreement.

(d) Apportionment of Property Taxes. The portion of taxes, if any, assessed on the Property through the Closing Date (based on the actual number of days elapsed in the current year through Closing Date, assuming the Closing occurs at 12:01 a.m. on the Closing Date) will be borne by City. Developer shall only be responsible for the payment of ad valorem taxes assessed on the Property after the Closing Date.

(e) Recordation of Deed; Closing Costs. Developer will promptly file the Deed for recordation among the land records of Tulsa County, Oklahoma. Developer will pay all costs required by law directly related to recording the Deed, including recording fees and documentary stamp taxes (if any). In addition, Developer will pay: (a) the costs of obtaining any written commitments obligating the title company to issue the Title Policy on satisfaction of the requirements set forth in the commitment, including all title examination costs of the title company; (b) the premium for the Title Policy; (c) if desired or requested by Developer, the cost of an ALTA survey of the Property prepared by a registered land surveyor showing, at a minimum, the boundaries of the Property, the exact legal description thereof, the north direction, the location of all improvements, existing easements, the location and extent of any encroachments upon or by the Property, all utility service lines shown at the perimeter of the Property, and the total acres within the Property; (d) the title company’s fees for closing the transaction contemplated by this Agreement; and (e) Developer’s accounting, legal, and other expenses associated with the transactions contemplated by this Agreement, whether or not such transactions are consummated. Notwithstanding the foregoing, City shall bear all of its costs and expenses associated with consummating the transactions contemplated herein.

(f) Title Evidence. It is understood and agreed that Developer may purchase title insurance at Developer's option and expense, and City will cause the Title Developer to provide (i) a title insurance commitment (the "**Title Commitment**") agreeing to issue to Developer an ATLA's Form B Owner's Policy of Title Insurance in a coverage amount as Developer may designate (the "**Title Policy**"), insuring marketable title in Developer in fee simple, subject only to standard print exceptions and such other title exceptions as have previously been approved in writing by Developer; and (ii) all copies of documents underlying the exceptions contained in the Title Commitment. Developer shall have thirty (30) days after the receipt of the Title Commitment, exception documents, and Survey, within which to notify City in writing of any objections Developer has to any matters appearing or referred to in the Title Commitment or Survey. Any exceptions contained in the Title Commitments or Survey to which Developer does not object in writing during such thirty (30) day period will be deemed to be permitted title exceptions to City's title. With regard to items to which Developer does so object during such thirty (30) day period, City will have seven (7) days to cure such objections ("**Title Cure Period**"). If City is unable to cure such objections or is unwilling to otherwise cure such objections, City will so notify Developer in writing prior to expiration of the Title Cure Period, in which event Developer, at its option, and as its exclusive remedy, may (a) waive its objections and purchase the Property without reduction of the Purchase Price or (b) terminate this Agreement. If Developer so terminates this Agreement, then notwithstanding anything herein to the contrary, neither Party will have any further obligations hereunder, except as otherwise expressly provided in this Agreement.

(g) Property Access. Prior to the Closing contemplated by this Agreement, Developer will have access to the Property to conduct such physical and environmental inspections as it deems necessary or appropriate.

(h) Limitations; Indemnity. Developer will exercise commercially reasonable care and prudence in performing inspections of the Property. If Closing does not occur, Developer, at Developer's expense, will restore the Property to the condition in which it existed immediately preceding any exercise by Developer of a right to inspect the Property. Developer will indemnify, defend, and hold harmless City from all claims, liens, actions, suits, proceedings, costs, expenses, damages, and other liabilities, including, without implied limitation, reasonable attorneys' fees and litigation expenses incurred by City arising out of Developer's exercise of any right to inspect the Property; provided, however, the foregoing shall not apply to any such liabilities arising from the negligence of City.

(i) Survey; Environmental Reports. The City has provided Developer with a copy of all surveys (the "**Survey**") and environmental reports pertaining to the Property which are in City's possession, custody or control and City has no knowledge of any other Surveys or environmental reports.

3. **Project Timelines.**

Developer shall use commercially reasonable efforts to ensure construction work related to the Project shall be commenced within six (6) months of execution of this agreement. For purposes of this Agreement, "**Completion Date**" means the date on which the City issues a final certificate of occupancy for the building and improvements after all construction work has been

completed (the “**Certificate of Occupancy**”). The Completion Date shall, subject to events of Force Majeure or for any City licenses, permits, or other City requirements that are delayed beyond the control of the Developer, be on or before December 31, 2025.

4. Conditions Precedent to Closing.

(a) Generally. Before City has any obligation to convey title to the Property to Developer, each of the conditions precedent in this Section 4 must have been performed to City’s reasonable satisfaction and within the timeframes established below. Notwithstanding any other provision of this Section 4, City will use its best efforts (i) to complete each review within thirty (30) days after receipt of the applicable documents and materials, (ii) to promptly schedule a meeting with Developer or give prompt written notice of any objections by staff, and (iii) to issue City’s or forward the City’s approval, rejection, or further requirements immediately following any decisive actions taken by the City through its designated boards, commissions, or city council.

(b) Approval of Site Plan and Design Documents. City will acknowledge Developer’s submission of, and City’s receipt of a formal Site Plan including Design Documents—consisting of layouts, renderings, plans, specifications, drawings, and other documents that fix or describe the size and character of the Project to be construed as to structural, materials, colors, and other such essentials as may be determined to be appropriate or necessary under the City’s zoning regulations—and City will promptly review and approve the Design Documents for the Project in accordance with the City’s prescribed practices and procedures existing as of the date hereof. Developer shall allow the City to approve the architectural layout and interior and exterior design of the Facility prior to construction.

(c) Site Plan. The Oklahoma Aquarium Foundation must approve the final site plan as approved by City staff as required by SUP 43.

(d) Shared Parking Agreement. A Shared Parking Agreement will be negotiated and executed with the Jenks Aquarium Authority and any other necessary party as detailed in a future Addendum to this Agreement. ("Parking Agreement Addendum")

(e) Release of the Property from the JAA lease. An amendment to the JAA lease must be approved by the JAA and the City.

(f) Surplus Resolution: City Council has declared the Property surplus.

(g) Receipt of Executed Guaranty Agreements in the form prescribed in Attachment C.

5. Assistance in Development Financing.

(a) Development Assistance Financing.

(i) JEDA will provide to Developer \$1,250,000.00 payable in two equal installments. The first installment will be paid within thirty (30) days of satisfaction of all conditions precedent as stated in Section 4 herein and receipt of all requisite personal guarantees referenced in this section. The second installment will be paid within fourteen (14) days of issuance of the following the commencement of construction.

(ii) The City's contribution of the Property valued at \$2,430,000.00 is likewise regarded as development assistance financing for the purposes of this Agreement in said amount. This amount is to be verified by the Developer debt lender appraisal and is subject to change based on the appraisal.

(iii) Thus, the City's total contribution of Development Assistance Financing is expected to equal \$3,680,000.00 under this Agreement.

(b) Preferred return: A 9% per annum preferred simple non-compounding interest return shall accrue and be paid by Operator on the unreturned Development Assistance Financing amount which all be paid in cash to JEDA annually. The payments will continue to accrue until 150% of the principal amount of the Development Assistance Financing is returned. Payment shall commence 12 months after Certificate of Occupancy is issued to Operator by City. To the extent authorized by law, any repayment obligation required by the City of the Preferred Return must be subordinate to the liens securing the Developer's lender loans. The Preferred Return can accrue (carry forward) unpaid without default to the Developer or Operator; provided, however, that in addition to the terms and conditions of this Agreement, any repayment owed to the City shall be considered a payment obligation by Developer of this Agreement.

(c) Additionally, Operator will designate a distributable amount of cash to JEDA and Operator investors and affiliates annually, and JEDA is entitled to receive an annual payment of this distributable amount of cash. The amount of the distribution specific to JEDA will be commensurate with JEDA's Development Assistance Financing against the total fee simple cost of the Project ("Distributable Share"). By way of example, if the total fee simple cost of the Project is \$24,533,333, then JEDA's Distributable Share of Operator's distributable amount of cash shall equal fifteen percent (15%).

(d) If Project is sold, JEDA is entitled to receive its Distributable Share of net proceeds from the sale along with other investors.

(e) Personal Guarantees: Developer shall provide to JEDA guaranty agreement in the form attached hereto as Exhibit C from High Five Up Top, LLC, a holding company of Operator and Developer.

6. Restrictions Affecting Property.

(a) Restrictions on Use. The Developer agrees for itself, and its successors and assigns, and the Deed shall contain covenants to the effect that:

(i) The use of the Property shall be controlled by applicable zoning.

(ii) Neither the owner, the assigns, nor any successor(s) in interest shall discriminate upon the basis of race, color, religion, gender, sexual orientation, creed, or national origin in the sale, lease, or rental, use or occupancy of the Property or any improvements erected or to be erected thereon, or any part thereof.

(b) Covenants; Binding Upon Successors in Interest; Period of Duration. It is intended and agreed, and the Deed shall expressly provide, that the covenants provided in Section 6(a) shall be covenants running with the land and shall be binding, for the benefit of, and enforceable by, City, its successors and assigns, the City and any successor in interest to the Property, against the Developer, its successors and assigns, and every successor in interest to the Property.

7. Termination and Survival.

(a) Termination Date. Unless earlier terminated pursuant to provisions of this Agreement, this Agreement shall terminate as of the date that both of the following conditions have been met (such date being the “**Termination Date**”:

(i) The entire development assistance financing has been repaid to Developer in the manner set forth in Section 5 of the Agreement.

(ii) Developer has paid to JEDA all amounts owed under Section 5 herein.

(b) Survival. The following provisions survive the termination of this Agreement:

(i) The requirements from Section 1(b) the Project will be operational for at least twenty (20) years and that a material portion of such sales tax generating space shall have the appearance of “open for business” at all times during normal business hours, regardless of occupancy.

(ii) Sections 8(e), 13 and 15 of this Agreement.

(iii) Section 5(b) – Preferred Return payments by Operator to JEDA will continue so long as Operator remains as Operator at Property.

8. Transfer Restrictions.

(a) For a period that this Agreement is in place (Effective Date through Termination Date), Developer represents and agrees for itself, its successors and assigns, that except as by way of security for, and only for the purpose of obtaining financing necessary to enable the Developer or any successor in interest to the Project, or any part thereof, to perform its obligations with respect to the construction or operation of the Project under this Agreement, the Developer is prohibited from assigning the Property or any part thereof or interest therein, to another entity which would give such entity “control” of the Property (excluding ordinary course leasing, development easements, or other routine operational grants), without obtaining the prior

written approval of City, not to be unreasonably withheld, delayed or conditioned. Any assignment of the Property during Developer's eligibility to receive development financing pursuant to Section 5 will require the Developer to assign and the transferee to assume all Project documents relevant to sustaining the Project as a going concern. Notwithstanding the foregoing, City approval shall not be required for, and any transfer restrictions described herein shall not apply to, assignments within or among (a) the ownership structure of any tax credit investor, member, manager, limited partner or general partners of the Developer, and/or a transfer of any limited partner interest owned by tax credit investor, or (b) any Affiliates of Developer. For the purposes of this Agreement, "**Affiliate**" means, with respect to any person or entity, any person or entity that directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, such first person or entity (for the purposes of this definition, "control," including, with correlative meanings, the terms "controlling," "controlled by," and "under common control with," as used with respect to any person or entity, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person or entity, whether through the ownership of voting securities, by agreement, or otherwise).

(b) City will be entitled to require, except as otherwise provided in this Agreement, as conditions to any such approval that: (i) the Developer will provide adequate assurances that the transferee has the capacity to carry out the Project; and (ii) any proposed transferee, by instrument in writing satisfactory to City and in form recordable among the Tulsa County land records, will, for itself and its successors and assigns, and expressly for the benefit of City, have expressly assumed all of the obligations on the Developer under this Agreement and agreed to be subject to all of the conditions and restrictions to which the Developer is subject.

(c) City and Developer acknowledge and agree that in connection with financing the Project, Developer may, but is not obligated to, assign this Agreement, the Property, the Project and/or the Developer to one or more third party entities for purposes of financing and developing the Project (any such entity being a "**JV Entity**"). Developer is permitted to assign or transfer this Agreement, the Property, the Project or ownership of Developer to a JV Entity. Notwithstanding any term of this Agreement to the contrary, the following shall not constitute a transfer or assignment pursuant to this Agreement: (i) the transfer of equity interests among the equity owners of the JV Entity or its successors or assigns, (ii) admission of a new member in the Developer or the JV Entity, and (iii) the exercise by any member or partner of the JV Entity of its right to remove the Developer or its Affiliate as the "Managing Member," "Manager" or similar managerial position of the JV Entity and to appoint itself as the new "Managing Member," "Manager" or similar managerial position of the JV Entity, whether or not a transfer of interest occurs in connection with any such removal.

(d) In the event Developer transfers the Property to an unaffiliated third party that is not a JV Entity or Affiliate after the Termination Date, City and Developer acknowledge that the appraised value of the Project may be re-assessed by the Assessor after such transfer for purposes of calculating property taxes thereon following the closing of such transfer. Developer shall provide written notice of such transfer to City and Assessor within ten days of closing.

9. Events of Default; Remedies.

(a) In General. Except as otherwise provided in this Agreement, in the event of a failure to keep, observe, or perform any material covenant, agreement, term or provision of this Agreement and such failure shall continue for a period of sixty (60) days after receipt by the defaulting Party of written notice thereof from the non-defaulting Party; provided, that if any such default cannot be cured or claim resolved, as the case may be, within such sixty (60) day period, and if the defaulting Party proceeds diligently to cure such default or resolve such claim, then the defaulting Party shall have a reasonable period of time extending beyond such sixty (60) day period with which to cure such default or resolve such claim. In case such action is not taken or not diligently pursued, or the default or breach shall not be cured or remedied within the time set forth in the immediately preceding sentence, the aggrieved party may take such action as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to, termination of the Agreement or institution of proceedings to compel specific performance by the party in default or breach of its obligations.

(b) Forced Delay in Performance for Events of Force Majeure. Neither City nor Developer, nor any successor in interest, shall be considered in breach of, or default in, its obligations with respect to this Agreement in the event of forced delay in the performance of such obligations due to unforeseeable causes beyond its reasonable control, including, but not restricted to, acts of God, acts of the public enemy, war, invasion, riot, insurrection, acts of the Federal Government, acts of the other Party, fires, floods, earthquakes, tornados, epidemics, pandemics (including, without limitation, COVID-19), quarantine restrictions, strikes, work stoppages, utility disruptions, freight shortages or delays, embargoes, shortages of labor or materials, and severe weather (including excessive precipitation) or delays of contractors, subcontractors or other laborers due to the foregoing causes (collectively, “**Force Majeure**”). In the event of the occurrence of any such Force Majeure, the time or times for performance of the obligations of City or of Developer shall be extended for the period of the Force Majeure as reasonably determined by party suffering the event of Force Majeure; provided, that the Party seeking the benefit of this provision shall have first notified the other Party in writing within thirty (30) days after the beginning of any such Force Majeure, and of the cause or causes thereof, and requested an extension for the period of the Force Majeure. Notwithstanding the foregoing, (a) the parties shall use commercially reasonable efforts to mitigate the effects of a Force Majeure event, and (b) an event of Force Majeure shall not excuse a party’s payment obligations hereunder.

10. Rights and Remedies Cumulative; No Waiver by Delay. The rights and remedies of the Parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative. Any delay by a Party in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights shall not operate as a waiver of such rights to so deprive it of or limit such rights in any way, and no waiver made by either Party with respect to the performance of any obligation of the other Party or any condition to its own obligations under this Agreement shall be considered a waiver of any rights of the Party making the waiver except to the extent specifically waived in writing.

11. Representations and Warranties of City. City represents and warrants to Developer as follows:

(a) City has the requisite right, power, and authority to execute and deliver this Agreement and all documents now or hereafter to be executed and delivered by City pursuant to this Agreement and to perform all of its obligations arising under this Agreement. City has duly and properly taken or obtained or caused to be taken or obtained all action necessary for City (a) to enter into and to deliver this Agreement and the Deed, and (b) to carry out the terms of this Agreement and the transaction contemplated hereunder.

(b) City's execution, delivery, and performance of this Agreement does not and will not (a) contravene any provision of any existing law or regulation, judgment, order, decree, injunction, writ, or other legal requirement of any court, administrative agency, or governmental body applicable to City or the Property; or (b) result in a breach or default under any terms, conditions, or provisions of any indenture, mortgage, note, bond, agreement, guaranty, or other document by which City or the Property are bound or otherwise affected. All consents and approvals of third parties and governmental authorities required in connection with the execution, delivery, and performance by City of this Agreement, and the consummation by City of the transaction contemplated by this Agreement have been obtained or will be obtained by Closing.

(c) Except as set forth herein, City has and will convey to Developer good, valid, and marketable title to the Property, free and clear of all security interests, liens, mortgages, encumbrances, pledges, claims, options, covenants, conditions, restrictions, charges and assessments of any nature whatsoever with full right and lawful authority to transfer the Property to Developer without any restrictions thereto whatsoever. No Person has any right, or option to acquire any ownership interest in the Property or Project.

(d) The Property is in compliance in all material respects with all applicable Environmental Laws and there are no conditions on the Property that would constitute a violation of the Environmental Laws, give rise to liability under the Environmental Laws, or involve the presence or release (in amounts or concentrations requiring removal or remediation) of Hazardous Materials at, on or from the Property. “**Environmental Laws**” shall mean any and all applicable local, state, and federal governmental laws, rules, regulations, ordinances, and administrative orders concerning the protection or pollution of the environment, the use, transport, release and disposal of Hazardous Substances and/or occupational health and safety in effect on the Closing Date. “**Hazardous Substances**” shall mean “hazardous wastes,” “hazardous substances,” “hazardous materials,” “toxic substances,” “pollutants,” and “contaminants” identified or classified as such in or under applicable Environmental Laws.

(e) There are no outstanding assessments or additional tax liabilities currently due against the Property.

(f) City has not received any notice of any violation of any applicable law, ordinance, including zoning ordinances, rule, regulation, or requirement of any governmental agency, body, or subdivision affecting or relating to the Property or its intended use by Developer, and no such violations exist.

(g) There is no pending or, to the knowledge of the City, threatened judicial, administrative or arbitral action, suit, proceeding (public or private), claim or demand pending or threatened against (i) the Property, or (ii) the City relating to the Property or Project.

(h) City has timely and properly filed (or there has been timely filed on its behalf) all tax returns, if any, that are required to be filed by it (taking into account any extensions of time in which to file) pertaining to the Property and all such tax returns are correct and complete and none of them has been amended. City has timely and properly paid, collected and remitted all taxes which are due and payable (whether or not shown on its tax returns), collectible or remittable by it, on or before the date hereof pertaining to the Property, including all taxes held in trust for any Governmental Authority. There are no ongoing, pending or threatened tax audits, adjustments, assessments, reassessments, claims, actions, suits, examinations, investigations or other proceeding with or against any tax authority or with respect to taxes pertaining to the Property. No deficiency or proposed adjustment, assessment, reassessment, or claim (that has not been paid or resolved) for any amount of tax pertaining to the Property has been proposed, asserted or assessed by any governmental authority against City pertaining to the Property that has not been paid or resolved.

(i) Set forth in Schedule 11(i) is a true, complete and correct list and description of all contracts and agreements, whether written or oral, to which City is a party relating to the Property or that otherwise affect any portion of the Property (the “**Contracts**”). City has provided Developer true, correct, and current copies of the Contracts and all such Contracts are in full force and effect in accordance with their terms.

12. Indemnification and Insurance. Developer shall indemnify and hold harmless the City to the full extent of any liability arising out of or related to Developer’s obligations under this Agreement, the subject matter thereof and/or the obligations stated herein, not caused by willful misconduct, bad faith or gross negligence of the City. City shall indemnify and hold harmless the Developer to the full extent of any liability caused by City’s acts or omissions under this Agreement (including City’s breaches of this Agreement). NOTWITHSTANDING THE FOREGOING, IN NO EVENT SHALL ANY PARTY HERETO BE OBLIGATED TO INDEMNIFY FOR CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES UNLESS THE SAME ARE PAYABLE TO A THIRD PARTY.

(a) **Insurance requirements.** Prior to commencement of construction of the Project, Developer shall obtain and maintain, or shall cause its contractors to obtain and maintain, in full force and effect, policies of liability insurance equal to the total amount of all construction contracts for improvements being constructed, and comprehensive liability insurance with personal injury coverage in the amount of \$5 million and property damage coverage in the amount of \$2 million. At all times Developer will, or cause its contractors or subcontractors to, maintain statutory workers’ compensation insurance as required by Oklahoma state law.

13. Mutual Rights of Access.

(a) Developer Prior to Conveyance. Prior to transfer of possession to Developer, the City shall permit representatives of Developer to have access to any part of the real property identified herein to which the City holds the right of access, at all reasonable times, to obtain data and make various tests concerning the real property necessary to carry out this Agreement. DEVELOPER SHALL INDEMNIFY AND HOLD HARMLESS CITY TO THE FULL EXTENT OF ANY LIABILITY ARISING OUT OF OR RELATED TO DEVELOPER’S ACCESS RIGHTS HEREUNDER.

(b) Authority After Transfer of Possession. After transfer of possession of the real property identified herein to Developer, Developer shall permit representatives of the City to have reasonable access to the Property, during normal business hours of Developer, for the purposes of inspecting all work being performed in connection with construction. City shall notify Developer in writing prior to accessing the Property, and Developer shall have the right to have representatives of Developer on location at any time City or its representatives access the Property. This provision is not intended to restrict any access to which the City is otherwise authorized by law or pursuant to its police powers.

(c) No Charge. No compensation shall be payable nor shall any charge be made in any form by any party for the access provided in this Section.

14. Miscellaneous.

(a) Nondiscrimination. Developer agrees not to discriminate on the basis of race, color, religion, gender, sexual orientation or national origin in the sale, lease, or rental or in the use or occupancy of the Project or any related facilities in violation of applicable law or regulation.

(b) Notices and Demands. A notice, demand, or other communication under this Agreement by either Party to the other will be sufficiently given and delivered if dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and:

(i) In the case of Developer, such communication is addressed (or delivered personally) to Developer in care of:

HD5 Entertainment, LLC
507 N Bradley
McKinney, TX 75069
Attention: Scott Emley

Email: scott@bowlhighfive.com

with copy to (which shall not constitute notice):

Ruffner Schoenbaum Murphy Banaszak, PLLC
901 S. Mopac Expressway Building 4, Suite 290
Austin, Texas 78746
Attention: Jill G. Murphy

Operator: High Five Entertainment, LLC
1502 RR 620 SOUTH
Lakeway, TX 78734
Attention: Brad Little

(ii) In the case of City, such communication is addressed (or delivered) to the:

City of Jenks
211 North Elm
PO Box 2007
Jenks, OK 74037-2007
Attention:
City Manager

Email: cshROUT@jenksok.org

With a copy to: City Attorney, at the same address.

(iii) At such other address as the Parties may from time to time communicate in writing to each other.

(c) Conflict of Interests. No member, official, representative, or employee of City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his personal interests or the interests of any corporation, partnership, or association in which he is, directly or indirectly, interested.

(d) City Representatives Not Individually Liable. No member, official, representative, or employee of City shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by City or for any amount which may become due to Developer or successor on any obligations under the terms of the Agreement.

(e) No Brokerage Agreement. The Parties represent to each other that the sale of land pursuant to this Agreement has not involved any broker nor is any Party liable for the payment of a brokerage commission in connection with the negotiation of this Agreement or the sale of land pursuant to this Agreement. The Parties agree to indemnify and hold harmless each other from any and all liability, loss, claim, or expenses arising out of any breach of their respective representations in this Section 15(e).

(f) Right to Records and Right to Audit. Developer agrees to keep all books, accounts, and records covering all transactions relating to this Agreement. JEDA and City have the right, freedom, and access to examine such books, accounts, and records and all other documents and material in Grantee's possession or under its control with respect to the subject matter and terms of this Agreement. JEDA and City have the right to make copies of such information. All such books, accounts, and records must be kept available for at least five (5) years after the expiration of this Agreement.

(g) Applicable Law; Severability; Entire Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of Oklahoma governing agreements made and fully performed in Oklahoma. If any provisions of this Agreement shall

become invalid or unenforceable, then the remainder shall remain valid and enforceable to the fullest extent permitted by law. This Agreement sets forth the entire understanding between the Parties with respect to its subject matter, there being no terms, conditions, warranties, or representations with respect to its subject matter other than those contained herein. This Agreement shall be binding upon and shall inure to the benefit of the Parties, their respective successors and assigns.

(h) Amendments to Agreement. This Agreement may not be changed orally, but only by an agreement in writing and signed by the parties hereto.

(i) Third Parties. Except as expressly provided otherwise in this Agreement, the provisions of this Agreement are for the exclusive benefit of the Parties and not for the benefit of any other persons, as third-party beneficiaries or otherwise, and this Agreement shall not be deemed to have conferred any rights express or implied, upon any other person or entity.

(j) No Partnership Created. This Agreement specifically does not create any partnership or joint venture between the Parties, or render any Party liable for any of the debts or obligations of any other Party.

(k) Time is of the Essence. The Parties understand and agree that time is of the essence with regard to all the terms and provisions of this Agreement.

(l) Further Assurances. Each party agrees that it will, without further consideration, execute and deliver such other documents and take such other action, whether prior or subsequent to the consummation of the matters or completion of the undertakings set forth herein, as may be reasonably requested by any other party to consummate more effectively the purposes or subject matter of this Agreement.

(m) Provisions Not Merged with Deed. None of the provisions of this Agreement are intended to or shall be merged by reason of any deed transferring title to the Property from City to Developer or any successor in interest, and any such deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

(n) Construction of the Agreement. The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

(o) Counterparts. This Agreement is executed in multiple counterparts, each of which will constitute an original of this instrument.

IN WITNESS WHEREOF, City has caused this Agreement to be duly executed in its name and behalf by its Mayor and Developer have caused this Agreement to be duly executed in its name and on its behalf.

[SIGNATURE PAGES TO FOLLOW]

City: **CITY OF JENKS**

Cory Box, Mayor

ACKNOWLEDGMENT

STATE OF OKLAHOMA,)
) ss.
 COUNTY OF TULSA.)

Before me, the undersigned, a Notary Public in and for said County and State, on this _____ day of _____, 20____, personally appeared Cory Box, to me known to be the identical person who executed the foregoing instrument as the Mayor of the City of Jenks, and acknowledged to me that he executed the same as his free and voluntary act on behalf of the City of Jenks, for the uses and purposes therein set forth.

Witness my hand and official seal the day and year above written.

NOTARY PUBLIC

My Commission Number: _____
 My Commission Expires: _____

(Seal)

JEDA:**JENKS ECONOMIC DEVELOPMENT AUTHORITY**

 Cory Box, Chairperson
ACKNOWLEDGMENT

STATE OF OKLAHOMA,)
) ss.
 COUNTY OF TULSA.)

Before me, the undersigned, a Notary Public in and for said County and State, on this _____ day of _____, 20____, personally appeared Cory Box, to me known to be the identical person who executed the foregoing instrument as the Chairperson of the Jenks Economic Development Authority, and acknowledged to me that he executed the same as his free and voluntary act on behalf of the Jenks Economic Development Authority, for the uses and purposes therein set forth.

Witness my hand and official seal the day and year above written.

 NOTARY PUBLIC

My Commission Number: _____

My Commission Expires: _____

(Seal)

DEVELOPER:

Name:

Title:

ACKNOWLEDGMENT

STATE OF TEXAS,)
) ss.
COUNTY OF _____.)

Before me, the undersigned, a Notary Public in and for said County and State, on this _____ day of _____, 20____, personally appeared _____ to me known to be the identical person who executed the foregoing instrument as _____, and acknowledged to me that he executed the same as his free and voluntary act on behalf _____, LLC, for the uses and purposes therein set forth.

Witness my hand and official seal the day and year above written.

NOTARY PUBLIC

My Commission Number: _____

My Commission Expires: _____

(Seal)

OPERATOR:

Name:

Title:

ACKNOWLEDGMENT

STATE OF TEXAS,)
) ss.
COUNTY OF _____.)

Before me, the undersigned, a Notary Public in and for said County and State, on this _____ day of _____, 20____, personally appeared _____ to me known to be the identical person who executed the foregoing instrument as _____, and acknowledged to me that he executed the same as his free and voluntary act on behalf _____, LLC, for the uses and purposes therein set forth.

Witness my hand and official seal the day and year above written.

NOTARY PUBLIC

My Commission Number: _____

My Commission Expires: _____

(Seal)

**ATTACHMENT A
LEGAL DESCRIPTION**

A TRACT OF LAND THAT IS PART OF LOT ONE (1), BLOCK THREE (3), OKLAHOMA AQUARIUM CAMPUS, AN ADDITION TO THE SOUTHEAST QUARTER (SE/4) OF SECTION NINETEEN (19), TOWNSHIP EIGHTEEN (18) NORTH, RANGE THIRTEEN (13) EAST OF THE INDIAN BASE AND MERIDIAN, CITY OF JENKS, TULSA COUNTY, STATE OF OKLAHOMA, ACCORDING TO THE RECORDED PLAT THEREOF, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE SE/4 OF SAID SECTION 19;

THENCE NORTH 01°03'12" WEST ALONG THE EAST LINE THEREOF A DISTANCE OF 61.20 FEET TO THE SOUTH LINE OF SAID LOT 1 AND A POINT OF CURVATURE;

THENCE SOUTHWESTERLY ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 2614.67 FEET, AN ARC LENGTH OF 6.03 FEET, A CHORD BEARING OF SOUTH 77°32'15" WEST AND A CHORD LENGTH OF 6.03 FEET;

THENCE SOUTH 88°59'49" WEST AND CONTINUING ALONG SAID SOUTH LINE A DISTANCE OF 5.95 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 88°59'49" WEST 371.00 FEET;

THENCE NORTH 01°04'24" WEST A DISTANCE OF 420.06 FEET TO THE NORTH LINE OF SAID LOT 1;

THENCE NORTH 88°46'04" EAST ALONG SAID NORTH LINE A DISTANCE OF 220.01 FEET TO A POINT OF CURVATURE;

THENCE SOUTHEASTERLY ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 220.00 FEET, AN ARC LENGTH OF 166.19 FEET, A CHORD BEARING OF SOUTH 69°35'27" EAST AND A CHORD LENGTH OF 162.27 FEET;

THENCE SOUTH 01°04'24" EAST A DISTANCE OF 361.70 FEET TO THE POINT OF BEGINNING.

SAID TRACT OF LAND CONTAINS 153,287.6 SQ. FEET OR 3.52 ACRES.

BEARINGS ARE BASED UPON THE OKLAHOMA STATE PLANE COORDINATE SYSTEM, (3501 OK N), NORTH AMERICAN DATUM 1983 (NAD83).

ATTACHMENT B FORM OF DEED

When recorded, please return to:

Special Warranty Deed

THIS INDENTURE, made this _____ day of _____, 2023, between the **City of Jenks**, party of the first part, hereinafter called Grantor, and **HD5 Entertainment, LLC**, party of the second part, Grantee.

WITNESSETH: That in consideration of the sum of Zero Dollars (\$0.00) and other good and valuable consideration, receipt of which is hereby acknowledged, said party grantor does, by these presents, grant, bargain, sell and convey unto said Grantee, Acre Development Partners II, LLC, and its assigns, all of its interest in the following described real estate ("Property"), situated in the County of Tulsa, State of Oklahoma, to-wit:

See Attachment A Attached

Revenue stamps exempt per 68 O.S. § 3202 (11)

TO HAVE AND TO HOLD THE SAME, together with all and singular the tenements, hereditaments and appurtenances thereto belonging or in any wise appertaining forever.

LESS AND EXCEPT any interest in and to oil, gas and other minerals therein and thereunder previously reserved or conveyed of record and all rights, interests and estates of whatsoever nature incident to or growing out of said outstanding minerals, provided however, Grantor waives and conveys to Grantee all surface rights (including all rights of surface entry) relating to the Property, including, without limitation, any and all surface rights relating to the portion of the mineral estate retained by Grantor. Nothing herein, however, restricts or prohibits the pooling or unitization of the portion of the mineral estate retained by Grantor with land other than the Property, and SUBJECT TO easements, encumbrances, restrictions and other matters of record, and the matters set forth on Attachment A, and warrants the title to the same against any and all acts, conveyances, liens and encumbrances affecting such property made or suffered to be made or done by, through or under Grantor, but not otherwise.

And that Grantor will WARRANT AND FOREVER DEFEND the same unto the said Grantee, and its assigns, against said Grantor, or its assigns and all and every person or persons whomsoever lawfully claiming or to claim the same from any acts or liens which might have occurred during Grantor's ownership of said property.

REVERTER. In the event the Grantee has not completed the Project by December 31, 2025, as set forth in (and subject to the exceptions listed in) the Disposition and Economic Development Agreement executed by the parties on **xxxxxx**, then all right, title and interest in and to the Property shall automatically revert to the Oklahoma Aquarium Foundation. This provision is deemed to run with the land and shall be binding upon grantee's successors and assigns.

IN WITNESS WHEREOF, the said Grantor, has hereunto set its hand the above date and year.

CITY OF JENKS

By: _____
Cory Box
Mayor

STATE OF OKLAHOMA)
) ss.
County of Tulsa)

This instrument was acknowledged before me on the ____ day of _____,
2023, by Cory Box as Mayor of the City of Jenks, for the purposes therein stated.

IN WITNESS WHEREOF, I hereunto set my official signature and affixed my notarial seal the day and year
last above written.

Notary Public

My Commission Expires _____
My Commission No. _____

[SEAL]

ATTACHMENT C FORM OF GUARANTY AGREEMENT

In consideration of Jenks Economic Development Authority (the “Authority”) and the City of Jenks (“City”) providing development assistance financing in the form of economic development incentives to HD5 Entertainment, LLC, a Texas limited liability company (the “Obligor”); and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned (“Guarantor”) hereby unconditionally guarantees due payment, performance and fulfillment to the Authority of all liabilities, obligations and undertakings of Obligor to the Authority, whether direct or indirect and/or by merger absolute or contingent, due or to become due, now existing or hereafter arising or acquired, sole, joint or several, and whether consisting of obligations to pay money or to perform the Obligor's obligations to the Authority under the Disposition and Economic Development Agreement of the Obligor in favor of the Authority effective on or about _____, 2023 (the “Obligations”).

The aggregate liability of all of the undersigned hereunder shall be limited to the value of \$3,680,000.00 calculated in accordance with the methods set forth in the Disposition and Economic Development Agreement which are hereby incorporated herein.

This agreement (“Guaranty”) shall operate as a continuing and absolute guaranty and shall remain in full force and effect until receipt by the Authority of written notice of the revocation of this Guaranty or termination of the Economic Development Agreement.

Notice of the acceptance of this Guaranty and notices of transactions entered into in reliance hereof are hereby waived. The undersigned consents to any renewal, extension or postponement of the time of payment of any of the Obligations or to any other forbearance or indulgence with respect thereto and consents to any substitution, exchange, modification or release of any security therefor or the release of any of the undersigned or any other person primarily or secondarily liable on any of the Obligations, whether or not notice therefor shall be given to the undersigned, and agrees to the provisions of any instrument, security or other writing evidencing or securing any of the Obligations, and the enforcement hereof shall not be affected by the delay, neglect or failure of the Authority to take any action with respect to any security, right, obligation, endorsement, guaranty or other means of collecting the Obligations which it may at any time hold, including perfection or enforcement thereof, or by any change with respect to the Obligor in the form or manner of doing business, whether by incorporation, consolidation, merger, partnership formation or change in membership, or otherwise, it being hereby agreed that the undersigned shall be and remain bound upon this guaranty irrespective of any action, delay or omission by the Authority in dealing with the Obligor, any of the Obligations, any collateral therefor or any person at any time with respect thereto.

On any default by the Obligor, the liability of the undersigned shall be effective immediately and the undersigned waives all requirements of notice, demand, presentment or protest and any right which the undersigned might otherwise have to require the Authority first to proceed against the Obligor or against any other guarantor or any other person or first to realize on any security held by it before proceeding against the undersigned for the enforcement of this Guaranty. The undersigned shall not assert any right arising from payment or other performance hereunder, whether by set-off or counterclaim, or claim of indemnity or reimbursement, or otherwise, until the undersigned's liability hereunder shall have been discharged in full and all of the Obligations shall have been paid.

If for any reason the Obligor has no legal existence or is under no legal obligation to discharge any of the Obligations, or if any amounts included in the Obligations shall have become irrecoverable from the Obligor by operation of law or for any other reason, or if any security or other guaranty shall be found invalid, the undersigned shall nonetheless be and remain bound upon this guaranty.

This instrument, and all rights and remedies of the parties, shall be determined as to their validity, construction, effect and enforcement, and in all other respects of the same or indifferent nature, by the laws of the State of Oklahoma. No provision of this guaranty may be amended or waived except in writing signed by the Authority and City.

This Guaranty is intended to take effect as a sealed instrument, shall inure to the benefit of the Authority and its successors and assigns and shall be binding upon the undersigned and legal representatives, successors and assigns of the undersigned.

If this Guaranty is executed by two or more parties, they shall be jointly and severally liable hereunder provided that the aggregate liability of the undersigned hereunder shall be limited as set forth in the second paragraph hereof, and the word "undersigned" wherever used herein shall be construed to refer to each of such parties separately, all in the same manner and with the same effect as if each of them had signed separate instruments; in such case of revocation of this Guaranty or of the death or incapacity of any of the undersigned shall be effective only with respect to the person by whom or for whom such notice is given.

IN WITNESS WHEREOF, the undersigned have signed this Guaranty as of the _____ day of _____, 2023.

Guarantor

By:

Scott M. Emley

Managing Member

High Five Up Top, LLC (Holdings Company)