

CITY of ALBUQUERQUE

TWENTY THIRD COUNCIL

COUNCIL BILL NO. O-18-19 ENACTMENT NO. _____

SPONSORED BY: Diane G. Gibson and Ken Sanchez

1 ORDINANCE

2 APPROVING A PROJECT INVOLVING ALBUQUERQUE INVESTORS, LLC AND
3 TOPGOLF USA ALBUQUERQUE, LLC PURSUANT TO THE LOCAL ECONOMIC
4 DEVELOPMENT ACT AND THE LOCAL ECONOMIC DEVELOPMENT ACT
5 PLAN ORDINANCE TO SUPPORT THE CONSTRUCTION OF A SPORTS
6 ENTERTAINMENT AND RESTAURANT SERVICES FACILITY TO BE LOCATED
7 ON A 14-ACRE IN-FILL SITE AND RELATED IMPROVEMENTS; AUTHORIZING
8 THE EXECUTION OF A PROJECT PARTICIPATION AGREEMENT AND OTHER
9 DOCUMENTS IN CONNECTION WITH THE PROJECT; MAKING CERTAIN
10 DETERMINATIONS AND FINDINGS RELATING TO THE PROJECT; RATIFYING
11 CERTAIN ACTIONS TAKEN PREVIOUSLY; WAIVING ANY CONFLICTS
12 BETWEEN THIS ORDINANCE AND THE LOCAL ECONOMIC DEVELOPMENT
13 ACT PLAN ORDINANCE; AND REPEALING ALL ACTIONS INCONSISTENT
14 WITH THIS ORDINANCE.

15 WHEREAS, the City of Albuquerque (the "City") is a legally and regularly
16 created, established, organized, and existing municipal corporation of the
17 State of New Mexico (the "State"); and

18 WHEREAS, pursuant to NMSA 1978, Sections 5-10-1 through 5-10-13 (1993,
19 as amended) (collectively the "Act"), the City is authorized to provide
20 economic development assistance to eligible entities for certain projects
21 located within the corporate limits of the municipality; and

22 WHEREAS, pursuant to the Act, the City has adopted the Local Economic
23 Development Act Plan Ordinance approving an economic development plan
24 for the City and authorizing the City to assist economic development projects
25 in any legally permissible manner, subject to the terms of the Local Economic
26 Development Act Plan Ordinance; and

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1 WHEREAS, the Local Economic Development Act Plan Ordinance provides
2 that the City has considerable flexibility in determining the benefits that may
3 accrue to the City from an economic development project and may consider
4 both the qualitative and quantitative impacts of a proposal described in an
5 application; and

6 WHEREAS, pursuant to the Local Economic Development Act Plan
7 Ordinance, Albuquerque Investors, LLC, a Kansas limited liability company
8 (the "Company") and TopGolf USA Albuquerque, LLC a Delaware limited
9 liability company (the "Qualifying Entity" and together with the Company are
10 collectively the "Applicants") have submitted to City's Economic Development
11 Staff and the Council and the Albuquerque Development Commission (the
12 "Commission") an application (the "Application") requesting certain economic
13 development assistance consisting of payment for a portion of the
14 construction costs associated with site and facility development necessary for
15 locating a sports entertainment and restaurant services facility to be operated
16 by the Qualifying Entity, which will be located on an approximately 14 acre in-
17 fill site in the City, in exchange for the creation of jobs and the expansion of
18 the tax base in the City (the "Project"); and

19 WHEREAS, the Project will be located on real property owned by the
20 Company and leased to the Qualifying Entity pursuant to a twenty-year lease
21 agreement between the Company and the Qualifying Entity; and

22 WHEREAS, the Act and the Local Economic Development Act Plan
23 Ordinance require that the City, the Qualifying Entity and the Company enter
24 into a project participation agreement meeting the requirements of the Act and
25 the Local Economic Development Act Plan Ordinance; and

26 WHEREAS, Council staff has worked with the Company and the Qualifying
27 Entity to prepare, and has negotiated the terms of, a project participation
28 agreement and related exhibits that will govern the relationship between the
29 City, the Qualifying Entity and the Company with respect to the Project
30 (collectively the "Agreement"); and

31 WHEREAS, the City will provide funds for the Project from moneys already
32 appropriated for economic development projects, other capital outlay funds,
33 and based on gross receipts tax increment received by the City as a result of

1 construction and other activities related to the Project, which increment will
2 include funds transferred to the City by the State of New Mexico; and

3 WHEREAS, the City's participation in the Project is contingent upon
4 Bernalillo County, New Mexico making approximately \$1,750,000 available for
5 the Project and, as such, Bernalillo County, New Mexico may be a party to the
6 Agreement; and

7 WHEREAS, the form of the proposed Agreement has been filed with the
8 City Clerk and presented to the Council; and

9 WHEREAS, the proposed Agreement contains the provisions required by
10 the Act and the Local Economic Development Act Plan Ordinance and, among
11 other things, that to secure the Applicants' obligations under the Agreement
12 the Company will provide additional contributions and security in the form of
13 an expanded tax base and new construction jobs, as well as additional
14 security described in the Agreement, and the Qualifying Entity will provide
15 additional contributions and security in the form of an expanded tax base and
16 new jobs, as well as additional security described in the Agreement; and

17 WHEREAS, the Application included information necessary for City staff to
18 undertake a cost-benefit analysis with respect to the Project showing that the
19 City will recoup the value of its contribution within ten (10) years; and

20 WHEREAS, the Application demonstrates the benefits that will accrue to
21 the community as a result of the donation of public resources and
22 demonstrates that the Company, by completing the Project, and the Qualifying
23 Entity will be making a substantive contribution to the community, as required
24 by the Local Economic Development Act Plan Ordinance; and

25 WHEREAS, the total amount of public money expended and the value of
26 credit pledged in each fiscal year in which money is expended by the City for
27 the Project (and any other approved projects) pursuant to the Act does not
28 and will not exceed five percent of the general fund expenditures of the City in
29 such fiscal year; and

30 WHEREAS, after having considered the Application and the Agreement, the
31 Council has concluded that the economic and other benefits of the Project to
32 the City will be substantial, that it is desirable and necessary at this time to
33 authorize the City to enter into the Agreement, and that the City's provision of

1 the assistance contemplated by the Agreement will constitute a valid public
2 purpose under the Act; and

3 WHEREAS, there has been published in The Albuquerque Journal, a
4 newspaper of general circulation in the City, public notice of the Council's
5 intention to adopt this Ordinance, which notice was published at least
6 fourteen (14) days prior to hearing and final action on this Ordinance.

7 BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF
8 ALBUQUERQUE:

9 Section 1. RATIFICATION. All actions not inconsistent with the provisions
10 of this Ordinance previously taken by the Council and the officials of the City
11 directed toward the provision of economic development assistance in
12 connection with the Project be approved and the same hereby are ratified,
13 approved and confirmed.

14 Section 2. GOALS AND OBJECTIVES. The goals and objectives of the
15 Project are, as set forth in the Agreement, to create and support an economic
16 development project that fosters, promotes and enhances local economic
17 development efforts and that provides job growth and career opportunities for
18 Albuquerque-area residents and otherwise makes a substantive contribution
19 to the community.

20 Section 3. THE PROJECT. The Project will consist of site development
21 work necessary for a sports entertainment and restaurant services facility to
22 be located on a 14-acre in-fill site to be located near the southwest corner of
23 Moñtano and I-25, including the projected employment of 123 new full-time
24 employees and 227 part-time employees at the Albuquerque facility.

25 Section 4. FINDINGS. The Council hereby declares that it has considered
26 all relevant information presented to it relating to the Project and the
27 Agreement and hereby finds and determines that the provision of economic
28 development assistance for the Project is necessary and advisable and in the
29 interest of the public and will promote the public health, safety, morals,
30 convenience, economy, and welfare of the City and its residents.

31 Section 5. AUTHORIZATION AND APPROVAL OF THE PROJECT AND THE
32 AGREEMENT; APPROPRIATION OF FUNDS. The City hereby approves the
33 Project and the Agreement, which provides, among other things, that the City

1 will administer and disburse to the Applicants, in accordance with the
2 Agreement, funds totaling \$2,666,000, in exchange for which the Company and
3 the Qualifying Entity will complete the Project as specified in the Agreement.
4 The disbursements will paid to the Applicants in compliance with the
5 Agreement and will come from the following sources:

6 (A) \$500,000 of City funds is designated within the Local Economic
7 Development Act project, activity 7538010.

8 (B) \$326,000 of City funds is appropriated for the Project from
9 Capital Improvement Program.

10 (C) \$1,840,000 of City funds to be paid based on an amount equal to
11 50% of the gross receipts tax revenues received by the City resulting from
12 both the Municipal Local Option Gross Receipts Taxes imposed by the City
13 and distributions to the City pursuant to NMSA 1978, Section 7-1-6.4 (2006)
14 and NMSA 1978, Section 7-1-6.46 (2013), which are attributable to the
15 development, construction and operation of the Project. There is hereby
16 appropriated for the Project, effective upon receipt of such funds, amounts
17 equal to the gross receipts taxes and distributions described in this Section
18 5(C).

19 The collection and pledge of the designated and appropriated City funds
20 under this section and the Project Participation Agreement constitute a
21 special fund and the sole and only source pledged or otherwise available for
22 the payment by the City to the Applicants of the funds totaling \$2,666,000.

23 Section 6. AUTHORIZATION OF OFFICERS; APPROVAL OF DOCUMENTS.

24 (A) The form, terms, and provisions of the Agreement in the form
25 presented to the Council with this Ordinance are in all respects approved,
26 authorized, and confirmed, and the City is authorized to enter into the
27 Agreement in substantially the form thereof, with only such changes as are
28 not inconsistent with this Ordinance or such changes as may be approved by
29 supplemental resolution of the Council.

30 (B) The Council directs the Chief Administrative Officer of the City
31 to execute and deliver the Agreement, as well as all exhibits thereto, in the
32 name and on behalf of the City within ten (10) business days of delivery of the
33 Agreement from City Council Services.

1 (C) The Mayor, Chief Administrative Officer, City Treasurer and
2 City Clerk are further authorized to execute, authenticate and deliver such
3 certifications, instruments, documents, letters and other agreements and to do
4 such other acts and things, either prior to or after the date of delivery of the
5 executed Agreement, as are necessary or appropriate to consummate the
6 transactions contemplated by the Agreement.

7 (D) City officials shall take such action as is necessary in
8 conformity with the Act, the Local Economic Development Act Plan Ordinance
9 and this Ordinance to effectuate the provisions of the Agreement and carry
10 out the transactions as contemplated by this Ordinance and the Agreement,
11 including, without limitation, the execution and delivery of any documents
12 deemed necessary or appropriate in connection therewith.

13 Section 7. SEVERABILITY. If any section, paragraph, sentence, clause,
14 word or phrase of this ordinance is for any reason held to be invalid or
15 unenforceable by any court of competent jurisdiction, such decision shall not
16 affect the validity of the remaining provisions of this ordinance. The Council
17 hereby declares that it would have passed this ordinance and each section,
18 paragraph, sentence, clause, word or phrase thereof irrespective of any
19 provisions being declared unconstitutional or otherwise invalid.

20 Section 8. REPEALER. All bylaws, ordinances, resolutions, and orders, or
21 parts thereof, inconsistent with this Ordinance are repealed by this Ordinance
22 but only to the extent of that inconsistency. To the extent, if any, that this
23 Ordinance conflicts with any provision of the Local Economic Development
24 Act Plan Ordinance, such provision is waived solely with respect to the
25 Application, the Project, the Agreement and all other related matters, and the
26 Local Economic Development Act Plan Ordinance shall remain in full force
27 and effect in connection with any other application or project to which the
28 Local Economic Development Act Plan Ordinance applies or may apply in the
29 future. This repealer shall not be construed to revive any bylaw, ordinance,
30 resolution, or order, or part thereof, previously repealed.

31 Section 9. RECORDING; AUTHENTICATION; PUBLICATION; EFFECTIVE
32 DATE. This Ordinance, immediately upon its final passage and approval, shall
33 be recorded in the ordinance book of the City, kept for that purpose, and shall

be there authenticated by the signature of the Mayor and the presiding officer of the City Council, and by the signature of the City Clerk or any Deputy City Clerk, and notice of adoption thereof shall be published once in a newspaper that maintains an office in, and is of general circulation in, the City, and shall be in full force and effect five (5) days following such publication.

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