

CITY of ALBUQUERQUE

TWENTY THIRD COUNCIL

COUNCIL BILL NO. F/S 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 "Developer") and TopGolf USA Albuquerque, LLC a Delaware limited
9 liability company (the "the Company" and together with the Developer are
10 collectively the "Applicants") jointly constitute a Qualifying Entity and have
11 submitted to City's Economic Development Staff and the Council and the
12 Albuquerque Development Commission (the "Commission") an application
13 (the "Application") requesting certain economic development assistance
14 consisting of payment for a portion of the construction costs associated with
15 site and facility development necessary for locating a sports entertainment
16 and restaurant services facility to be operated by the Company, which will be
17 located on an approximately 14 acre in-fill site in the City, in exchange for the
18 creation of jobs and the expansion of the tax base in the City (the "Project");
19 and

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

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

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

32 WHEREAS, the City will provide funds for the Project from moneys already
33 appropriated for economic development projects, including general funds,

1 other capital outlay funds, and based on gross receipts tax increment received
2 by the City as a result of the construction of the Project, which increment will
3 include funds transferred to the City by the State of New Mexico; and

4 WHEREAS, the Local Economic Development Act Plan Ordinance was
5 amended in November of 2017 (C/S O-17-58, E. O-2017-026) to authorize the
6 City's contribution of gross receipts tax increment received as a result of the
7 construction of an economic development project; and

8 WHEREAS, the Project represents the first use gross receipts tax
9 increment as authorized by C/S O-17-58, E. O-2017-026; and

10 WHEREAS, as authorized by C/S O-17-58, E. O-2017-026, the Agreement
11 contemplates that the City's contribution of gross receipts tax increment of
12 \$1,840,000 will be paid on a monthly basis, over a period of years pursuant to
13 the terms and limitations of the Agreement, to be used for reimbursement of
14 permitted Project expenditures that will be privately financed in advance of the
15 City's distribution of the increment; and

16 WHEREAS, notwithstanding the passage C/S O-17-58, E. O-2017-026, the
17 Local Development Act Plan Ordinance continues to require that the City
18 Council retain the ability to terminate assistance to economic development
19 projects based on certain performance metrics, however, this termination
20 provision is not feasible for increment revenues pledged toward repayment of
21 private financing of the Project, and by adoption of this ordinance the City
22 Council is waiving the termination provision;

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

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

29 WHEREAS, the proposed Agreement contains the provisions required by
30 the Act and the Local Economic Development Act Plan Ordinance and, among
31 other things, that to secure the Applicants' obligations under the Agreement
32 the Developer will provide additional contributions and security in the form of
33 an expanded tax base and new construction jobs, as well as additional

1 security described in the Agreement, and the Company will provide additional
2 contributions and security in the form of an expanded tax base and new jobs,
3 as well as additional security described in the Agreement; and

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

7 WHEREAS, the Application demonstrates the benefits that will accrue to
8 the community as a result of the donation of public resources and
9 demonstrates that the Company, by completing the Project, and the Developer
10 will be making a substantive contribution to the community, as required by the
11 Local Economic Development Act Plan Ordinance; and

12 WHEREAS, the total amount of public money expended and the value of
13 credit pledged in each fiscal year in which money is expended by the City for
14 the Project (and any other approved projects) pursuant to the Act does not
15 and will not exceed ten percent of the general fund expenditures of the City in
16 such fiscal year; and

17 WHEREAS, after having considered the Application and the Agreement, the
18 Council has concluded that the economic and other benefits of the Project to
19 the City will be substantial, that it is desirable and necessary at this time to
20 authorize the City to enter into the Agreement, and that the City's provision of
21 the assistance contemplated by the Agreement will constitute a valid public
22 purpose under the Act; and

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

27 BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF
28 ALBUQUERQUE:

29 Section 1. RATIFICATION. All actions not inconsistent with the provisions
30 of this Ordinance previously taken by the Council and the officials of the City
31 directed toward the provision of economic development assistance in
32 connection with the Project be approved and the same hereby are ratified,
33 approved and confirmed.

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

7 Section 3. THE PROJECT. The Project will consist of site development
8 work necessary for a sports entertainment and restaurant services facility to
9 be located on a 14-acre in-fill site to be located near the southwest corner of
10 Moñtano and I-25, including 132 new full-time employees in addition to part-
11 time employees at the Albuquerque facility.

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

18 Section 5. AUTHORIZATION AND APPROVAL OF THE PROJECT AND THE
19 AGREEMENT; APPROPRIATION OF FUNDS. The City hereby approves the
20 Project and the Agreement, which provides, among other things, that the City
21 will administer and disburse to the Applicants, in accordance with the
22 Agreement, funds totaling \$2,566,000, in exchange for which the Company and
23 the Developer will complete the Project as specified in the Agreement. The
24 disbursements will be paid to the Applicants in compliance with the
25 Agreement and will come from the following sources:

26 (A) \$400,000 of City funds is designated from General Fund
27 carryforward, transferred and appropriated in Capital Acquisition Fund (305).

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

30 (C) \$1,840,000 of City funds to be paid based on an amount equal to
31 50% of the gross receipts tax revenues received by the City resulting from
32 both the Municipal Local Option Gross Receipts Taxes imposed by the City
33 and distributions to the City pursuant to NMSA 1978, Section 7-1-6.4 (2006)

1 and NMSA 1978, Section 7-1-6.46 (2013), which are attributable to the
2 development, construction and operation of the Project. There is hereby
3 appropriated for the Project, effective upon receipt of such funds, amounts
4 equal to the gross receipts taxes and distributions described in this Section
5 5(C).

6 The collection and pledge of the designated and appropriated City funds
7 under this section and the Project Participation Agreement constitute a
8 special fund and the sole and only source pledged or otherwise available for
9 the payment by the City to the Applicants of the funds totaling \$2,566,000.

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

11 (A) The form, terms, and provisions of the Agreement in the form
12 presented to the Council with this Ordinance are in all respects approved,
13 authorized, and confirmed, and the City is authorized to enter into the
14 Agreement in substantially the form thereof, with only such changes as are
15 not inconsistent with this Ordinance or such changes as may be approved by
16 supplemental resolution of the Council.

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

21 (C) The Mayor, Chief Administrative Officer, City Treasurer and
22 City Clerk shall execute, authenticate and deliver such certifications,
23 instruments, documents, letters and other agreements and to do such other
24 acts and things, either prior to or after the date of delivery of the executed
25 Agreement, as are necessary or appropriate to consummate the transactions
26 contemplated by the Agreement.

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

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

8 Section 8. REPEALER. All bylaws, ordinances, resolutions, and orders, or
9 parts thereof, inconsistent with this Ordinance are repealed by this Ordinance
10 but only to the extent of that inconsistency. This repealer shall not be
11 construed to revive any bylaw, ordinance, resolution, or order, or part thereof,
12 previously repealed.

13 Section 9. RECORDING; AUTHENTICATION; PUBLICATION; EFFECTIVE
14 DATE. This Ordinance, immediately upon its final passage and approval, shall
15 be recorded in the ordinance book of the City, kept for that purpose, and shall
16 be there authenticated by the signature of the Mayor and the presiding officer
17 of the City Council, and by the signature of the City Clerk or any Deputy City
18 Clerk, and notice of adoption thereof shall be published once in a newspaper
19 that maintains an office in, and is of general circulation in, the City, and shall
20 be in full force and effect five (5) days following such publication.

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