

ORDINANCE NO. 2024-__

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS APPROVING AN AMENDMENT TO THE PROJECT PLAN AND REINVESTMENT ZONE FINANCING PLAN FOR THE REINVESTMENT ZONE NUMBER ONE, CITY OF NEW BRAUNFELS, TEXAS; AND OTHER MATTERS IN CONNECTION THEREWITH.

WHEREAS, the City Council (the "Council") of the City of New Braunfels, Texas (the "City") adopted Ordinance No. 2007-45 on May 29, 2007, which designated Reinvestment Zone Number One, City of New Braunfels, Texas (the "Zone") pursuant to Section 311.005(a) of the Tax Increment Finance Act, Texas Tax Code, Chapter 311, as amended (the "Act"); and

WHEREAS, the Board of Directors of the Zone (the "Zone Board") prepared and adopted a Project Plan and Reinvestment Zone Financing Plan (the "Project and Financing Plan") for the Zone in Reinvestment Zone Number One Resolution 2007-R01 pursuant to Section 311.011 of the Act; and

WHEREAS, the Council adopted Ordinance No. 2007-59 on July 9, 2007, which approved the Project and Financing Plan for the Zone pursuant to Section 311.011(d) of the Act; and

WHEREAS, the Council adopted Ordinance No. 2010-85 on November 22, 2010, which enlarged the boundaries of the Zone by approximately 18 acres and approved an amendment to the Project and Financing Plan for the Zone adopted to reflect the addition of such land and the amendment of certain exhibits in connection therewith; and

WHEREAS, the Council adopted Ordinance No. 2019-10 on January 28, 2019, which enlarged the boundaries of the Zone by approximately 4.5 acres for the purpose of constructing the City's fire station and fire training facility thereon and approved an Amended Project Plan and Reinvestment Zone Financing Plan for the Zone to reflect the addition of such land and include the Phase II Project Improvements and estimates of the Phase II Project Costs with an aggregate reimbursement to A-L 95 Creekside Town Center, L.P., a Texas limited partnership (the "Developer") from lawfully available Zone revenues held within the Phase II Tax Increment Fund in an amount not to exceed \$3,500,000 (the "Phase II Project") pursuant to the Amendment to Economic Development Agreement by and between the City and the Developer entered into on February 11, 2019 (the "Amendment to Economic Development Agreement"); and

WHEREAS, the Council adopted Ordinance No. 20-533 on August 10, 2020, which enlarged the boundaries of the Zone by approximately 35.452 acres for the purpose of constructing the City's fire station and fire training facility thereon after determining such site was more appropriately suited for those purposes and approved an Amended Project Plan and Reinvestment Zone Financing Plan for the Zone to reflect the addition of such land and include the anticipated costs and estimates associated with the relocation of the City's fire station and fire training facility and other related facilities; and

WHEREAS, the Council adopted Ordinance No. 2021-53 on June 28, 2021, which modified the City's sales and use tax contribution collected within the Zone from $\frac{1}{2}$ of 1% to $\frac{3}{8}$ of 1% (which included 100% of the New Braunfels Economic Development Corporation sales tax contribution within the Zone), approved an Amended Project Plan and Reinvestment Zone Financing Plan for the Zone to reflect the same, and approved an amendment to the Economic Development Agreement executed by and between the City and the Developer (the "Second Amendment to Development Agreement"); and

WHEREAS, the Council adopted Ordinance No. 2023-05 on February 27, 2023, which approved an amendment to the Project and Financing Plan to: (i) add approximately 130.47 acres to the Zone and remove approximately 8.07 acres of land owned by the City from the Zone pursuant to Section 311.007 of the Act; and (ii) include the anticipated projects and project cost estimates associated with certain public improvements to be constructed within the Zone and all related facilities as set forth and further described in the amended Project and Financing; and

WHEREAS, the Developer desires to invest approximately Eighteen Million and No/100 Dollars (\$18,000,000.00) cumulatively into land and construction costs for a facility of approximately 34,000 square feet, including machinery and equipment, furniture, fixtures and equipment and all associated infrastructure in connection with the construction of a Topgolf sports entertainment facility (hereinafter referred to as the "Top Golf Project"), all to be located within the Zone; and

WHEREAS, pursuant to Section 311.010(b) and Section 311.010(h) of the Act, the Zone Board desires to reimburse the Developer for certain public improvement costs related to the Top Golf Project from funds held in the Tax Increment Fund in the amount not to exceed One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000.00) on a reimbursement basis consistent with the conditions and limitations set forth in the Reimbursement Agreement (defined herein) and to provide for the efficient and effective implementation of certain aspects of the Project and Financing Plan; and

WHEREAS, Topgolf USA NBR, LLC, a Delaware limited liability company (the "Company") will provide for the efficient and effective implementation of certain aspects of the Project and Financing Plan, and the Zone Board desires to make a grant to the Company for the public purposes authorized pursuant to Section 311.010(h) of the Act related to the Top Golf Project from funds held in the Tax Increment Fund in the amount not to exceed One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000.00) consistent with the conditions and limitations set forth in the Incentive Agreement (defined herein); and

WHEREAS, pursuant to Section 311.011(e) of the Act, the Zone Board at any time may adopt an amendment to the Project and Financing Plan consistent with the requirements and limitations of the Act, which shall take effect upon approval by the Council in accordance with Section 311.011(e) of the Act; and

WHEREAS, on June 14, 2024, the Zone Board adopted an amendment to the Project and Financing Plan to increase the total estimated project costs related to public works or public improvements to be financed by the Zone, all as set forth and further described in the amendment to Project and Financing Plan (the "Amendment to Project and Financing Plan") attached hereto as Exhibit A and recommended that the City approve the Amendment to Project and Financing Plan; and

WHEREAS, the City desires to approve the Amendment to Project and Financing Plan pursuant to Section 311.011(e) of the Act attached as Exhibit A; and

WHEREAS, pursuant to the Act, the City must approve the Amendment to Project and Financing Plan by ordinance; and

WHEREAS, notice of a public hearing to be held on June 24, 2024, was duly published in the *New Braunfels Herald-Zeitung* in its issue dated June 15, 2024, in compliance with Section 311.003(e) of the Act; and

WHEREAS, a public hearing was held on June 24, 2024, at 6:00 p.m. in City Hall, New Braunfels, Texas (the "Hearing") to consider the Amendment to Project and Financing Plan at which time the City provided a reasonable opportunity for protest in accordance with Section 311.003(d) of the Act; and

WHEREAS, on June 14, 2024, pursuant to Section 311.010(b) and Section 311.010(h) of the Act and in connection with the Topgolf Project and the Amendment to Project and Financing Plan, the Zone Board approved the execution of a Reimbursement Agreement, subject to approval by the City Council, in the substantially final form attached hereto as Exhibit B, to be entered into by and between the Zone Board and the Developer (the "Reimbursement Agreement") to reimburse the Developer for certain public improvement costs in an amount not to exceed One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000.00) from funds held in the Tax Increment Fund, on a reimbursement basis consistent with the terms set forth in the Reimbursement Agreement, and to provide for the efficient and effective implementation of certain aspects of the Project and Financing Plan; and

WHEREAS, on June 14, 2024, pursuant to Section 311.010(h) of the Act and in connection with the Topgolf Project and the Amendment to Project and Financing Plan, the Zone Board approved the execution of an Incentive Agreement, subject to approval by the City Council, in the substantially final form attached hereto as Exhibit C, to be entered into by and between the Zone Board and the Company (the "Incentive Agreement") to make a grant to the Company for the public purposes authorized pursuant to Section 311.010(h) of the Act in an amount not to exceed One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000.00) from funds held in the Tax Increment Fund, consistent with the terms set forth in the Incentive Agreement; and

WHEREAS, the Council hereby finds and determines that the adoption of this Ordinance is in the best interests of the citizens of New Braunfels, Texas; and

WHEREAS, it is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and public notice of the time, place and purpose of said meeting was given, all as required by Chapter 551, Texas Government Code.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS:

SECTION 1. The City, after conducting the Hearing and having heard such evidence and testimony, has made the following findings and determinations based upon the testimony presented:

- (a) That the Hearing on the proposed Amendment to Project and Financing Plan has been properly called, held and conducted and that notices of the Hearing have been published at least seven (7) days before the Hearing in a newspaper of general circulation in the City.
- (b) The Project and Financing Plan should be amended to increase the total estimated project costs related to public works or public improvements to be financed by the Zone, all as set forth and further described in the Amendment to Project and Financing Plan attached as Exhibit A.

SECTION 2. The Project and Financing Plan is hereby amended to increase the total estimated project costs related to public works or public improvements to be financed by the Zone, all as set forth and further described in the Amendment to Project and Financing Plan attached as Exhibit A.

SECTION 3. The Council hereby approves the Amendment to Project and Financing Plan attached as Exhibit A.

SECTION 4. The officers of the City are authorized to take any and all action necessary to carry out and consummate the transactions described in or contemplated by the documents approved hereby or otherwise to give effect to the actions authorized hereby and the intent hereof.

SECTION 5. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Ordinance for all purposes and are adopted as a part of the judgment and findings of the Council.

SECTION 6. All ordinances and resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters resolved herein.

SECTION 7. This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 8. If any provision of this Ordinance or the application thereof to any circumstance shall be held to be invalid, the remainder of this Ordinance and the application thereof to other circumstances shall nevertheless be valid, as if such invalid provision had never appeared herein, and this governing body hereby declares that this Ordinance would have been enacted without such invalid provision.

SECTION 9. It is officially found, determined, and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Ordinance, was given, all as required by Chapter 551, as amended, Texas Government Code.

SECTION 10. This Ordinance shall be in force and effect from and after its final passage and it is so ordained.

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FIRST READING on the __ day of June, 2024.

SECOND AND FINAL READING, PASSED, AND ADOPTED on the __ day of _____, 2024.

CITY OF NEW BRAUNFELS

Neal Linnartz, Mayor

ATTEST:

Gayle Wilkinson, City Secretary
(City Seal)

APPROVED AS TO FORM:

Valeria Acevedo, City Attorney

EXHIBIT A

[Amendment to Project and Financing Plan]

**Amendment to Project Plan & Reinvestment Zone Financing Plan
Tax Increment Reinvestment Zone No.1
City of New Braunfels, Texas**

Amendment to Project Plan and Reinvestment Zone Financing Plan

1. Summary of Amendment

2. Exhibits

Summary of Prior Amendments

The City Council (the "Council") of the City of New Braunfels, Texas (the "City") adopted Ordinance No. 2007-45 on May 29, 2007, which designated Reinvestment Zone Number One, City of New Braunfels, Texas (the "TIRZ") pursuant to Section 311.005(a) of the Tax Increment Finance Act, Texas Tax Code, Chapter 311, as amended (the "Act"). The Board of Directors of the TIRZ (the "TIRZ Board") prepared and adopted a Project Plan and Reinvestment Zone Financing Plan (the "Project and Financing Plan") for the TIRZ in Reinvestment Zone Number One Resolution 2007-R01 pursuant to Section 311.011 of the Act. The Council adopted Ordinance No. 2007-59 on July 9, 2007, which gave effect to the Project and Financing Plan pursuant to Section 311.011(d) of the Act. Thereafter, the Council adopted Ordinance No. 2010-85 on November 22, 2010, which enlarged the boundaries of the TIRZ by approximately 18 acres and approved an Amended Project Plan and Reinvestment Zone Financing Plan for the TIRZ adopted to reflect the addition of such land and the amendment of certain exhibits in connection therewith. The Council adopted Ordinance No. 2019-10 on January 28, 2019, which enlarged the boundaries of the TIRZ by approximately 4.5 acres for the purpose of constructing the City's fire station and fire training facility thereon and approved an Amended Project Plan and Reinvestment Zone Financing Plan for the TIRZ to reflect the addition of such land and include the Phase II Project Improvements and estimates of the Phase II Project Costs pursuant to the Amendment to Economic Development Agreement by and between the City and A-L 95 Creekside Town Center, L.P., a Texas limited partnership (the "Developer"), entered into on February 11, 2019 (the "Amendment to Economic Development Agreement"). The Council adopted Ordinance No. 20-533 on August 10, 2020, which enlarged the boundaries of the TIRZ by approximately 35.452 acres for the purpose of constructing the City's fire station and fire training facility thereon and approved an Amended Project Plan and Reinvestment Zone Financing Plan for the Zone to reflect the addition of such land and include the anticipated costs and estimates associated with the relocation of the City's fire station and fire training facility and other related facilities. The Council adopted Ordinance No. 2021-53 on June 28, 2021, which modified the City's sales and use tax contribution collected within the TIRZ from $\frac{1}{2}$ of 1% to $\frac{3}{8}$ of 1% (which included 100% of the New Braunfels Economic Development Corporation sales tax contribution within the TIRZ), and approved an Amended Project Plan and Reinvestment Zone Financing Plan for the TIRZ to reflect City's adjusted sales and use tax contribution and supplement certain exhibits to the Project and Financing Plan to associated with such adjustment, including, but not limited to, the TIRZ increment revenue and project sales tax revenue within the TIRZ. The Council adopted Ordinance No. 2023-05 on February 13, 2023 the to add approximately 130.47 acres of land to the TIRZ for certain transportation and park and recreational public improvements benefiting the TIRZ to be constructed thereon. The amendment additionally removed approximately 5.58 acres owned by the City from the boundaries of the TIRZ. The total TIRZ acreage after the described change in boundaries is approximately 680.20 acres.

Summary of Amendment

Pursuant to Section 311.011(e) of the Act, an Amendment to the Project Plan and Reinvestment Zone Financing Plan (the "Amendment to Project and Financing Plan") was adopted and approved by the City on [____], 2024 to increase the total estimated project costs related to public works or public improvements to be financed by the TIRZ as depicted on the attached **Exhibit A**. The Amendment to Project and Financing Plan includes the anticipated projects and estimated project costs associated with the construction of certain public works and public improvements by the Developer, and include, but are not limited to, the design and construction of the public improvements depicted on the attached **Exhibit A**.

In connection with the Amendment to the Project and Financing Plan, the exhibits attached hereto shall be incorporated into and supplement the Project and Financing Plan. Except as amended by the revised exhibits attached hereto, the Project Plan and Reinvestment Zone Financing Plan for the TIRZ remains unchanged and in full force and effect.

EXHIBIT A

[Supplements Project Overview and Costs on Page 6]

Proposed Distribution of Public Improvement Costs

<u>Infrastructure Projects</u>	<u>Cost Estimate</u>
Water Improvements	\$277,950
Sewer Improvements	\$192,250
Drainage	\$489,785
Power Conduits	\$150,000
General Conditions	\$285,000
 Total	 \$1,394,985

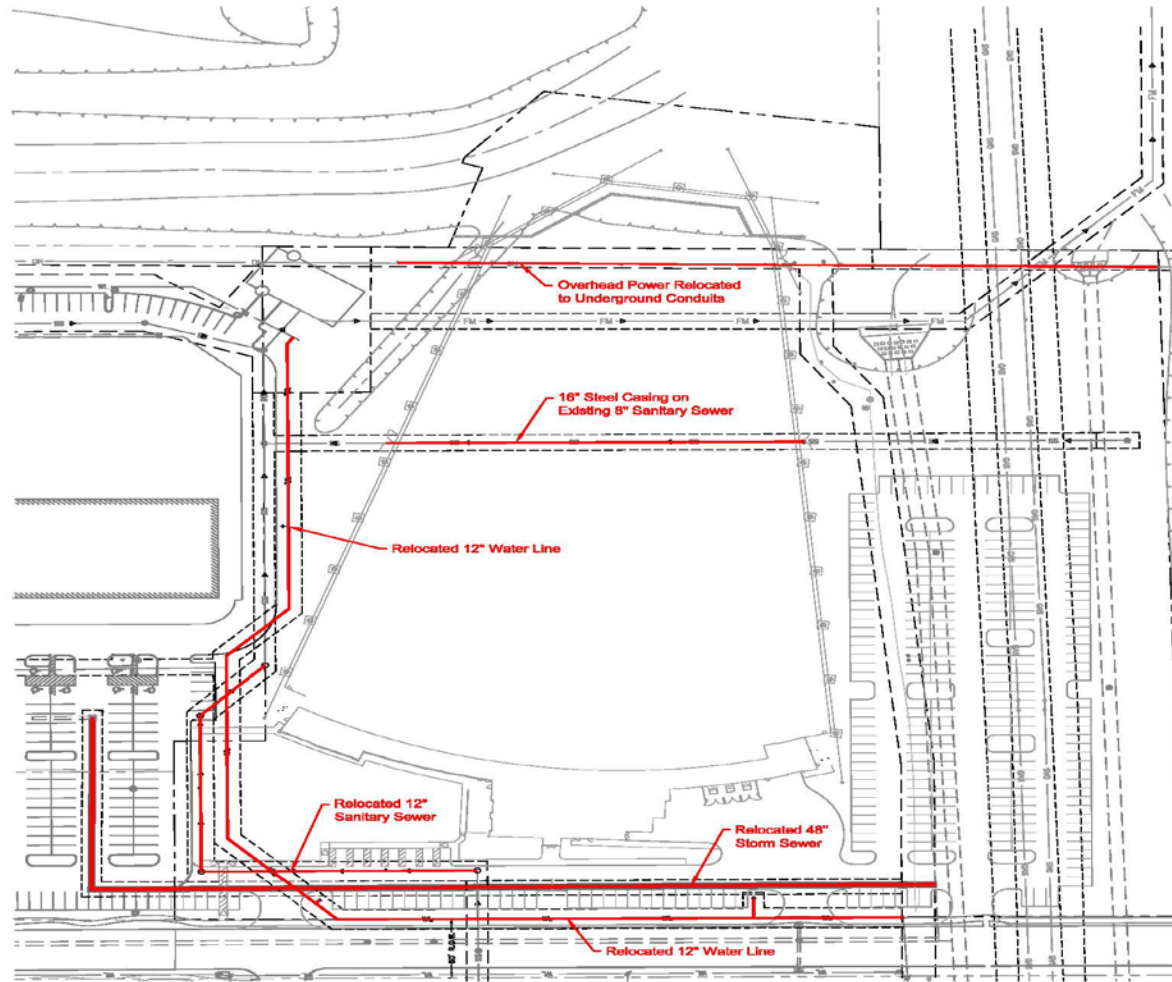
The supplement to the Proposed Distribution of Public Improvement Costs table attached hereto as **Exhibit A** is provided to show the additional public improvements and costs proposed for the TIRZ in connection with the Top Golf Project (defined herein).

Top Golf Project – The scope of this project includes the public improvements set forth in this **Exhibit A**. A-L 95 Creekside Town Center, L.P., a Texas limited partnership (the "Developer"), desires to invest approximately Eighteen Million and No/100 Dollars (\$18,000,000.00) cumulatively into land and construction costs for a facility of approximately 34,000 square feet, including machinery and equipment, furniture, fixtures and equipment and all associated infrastructure in connection with the construction of a Topgolf sports entertainment facility (hereinafter referred to as the "Top Golf Project"), all to be located within the TIRZ. Pursuant to Section 311.010(b) of the Act and in connection with this Amendment to the Project and Financing Plan, the TIRZ Board will enter into a Reimbursement Agreement with the Developer to reimburse the Developer for certain public improvement costs in an amount not to exceed One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000.00) from funds held in the Tax Increment Fund, on a reimbursement basis consistent with the terms set forth in the Reimbursement Agreement. The TIRZ Board will additionally enter into an Incentive Agreement with Topgolf USA NBR, LLC, a Delaware limited liability company (the "Company"), to make a grant to the Company for the public purposes authorized pursuant to Section 311.010(h) of the Act related to the Top Golf Project in an amount not to exceed One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000.00) from funds held in the Tax Increment Fund, consistent with the terms set forth in the Incentive Agreement. The Top Golf Project will be owned and operated by the Company.

The total estimated funding contribution from the TIRZ is \$3,000,000. Reimbursements to the Developer and grants to the Company shall be only from the Tax Increment Fund, subject to the conditions and limitations set out in the Reimbursement Agreement and the Incentive Agreement, respectively.

EXHIBIT B

[Supplements Map Showing Proposed Improvements on Page 10]



**TOP GOLF AT CREEKSIDE TOWN CENTER
UTILITY RELOCATIONS**

Top Golf Project Improvements. This map shows the location of the proposed improvements related to the Top Golf Project that may be funded through the TIRZ.

EXHIBIT B

[Reimbursement Agreement - A-L 95 Creekside Town Center, L.P.]

**TAX INCREMENT REINVESTMENT ZONE NUMBER ONE,
CITY OF NEW BRAUNFELS, TEXAS,
AND
A-L 95 CREEKSIDE TOWN CENTER, L.P.**

REIMBURSEMENT AGREEMENT

This **REIMBURSEMENT AGREEMENT** (hereinafter referred to as this "TIRZ Agreement") is made and entered into by and among the **TAX INCREMENT REINVESTMENT ZONE NUMBER ONE, CITY OF NEW BRAUNFELS, TEXAS**, (hereinafter referred to as the "TIRZ # 1"), a tax increment reinvestment zone created by the City of New Braunfels, Texas, pursuant to Chapter 311 of the Texas Tax Code, as amended, and the **A-L 95 CREEKSIDE TOWN CENTER, L.P.**, a Texas limited partnership (hereinafter referred to as the "Developer"), is made and executed on the following recitals, terms and conditions.

WHEREAS, the Developer desires to invest approximately **Eighteen Million and No/100 Dollars (\$18,000,000.00)** (hereinafter referred to as the "Investment Condition") cumulatively into land and construction costs for a facility of approximately 34,000 square feet, including machinery and equipment, furniture, fixtures and equipment and all associated infrastructure (hereinafter referred to as the "Project"), all to be located within TIRZ #1 located within the city of New Braunfels, Texas; and

WHEREAS, the Developer covenants and agrees once constructed the Project will maintain a minimum taxable assessed value of **Sixteen Million and No/100 Dollars (\$16,000,000.00)** upon completion and for at least five (5) years after Project completion; and

WHEREAS, in accordance with the provisions of the Tax Increment Financing Act, Chapter 311 of the Texas Tax Code, as amended (hereinafter referred to as the "Act"), the City Council of the City of New Braunfels, Texas, a Texas home-rule municipality (hereinafter referred to as the "City") adopted Ordinance No. 2007-45 on May 29, 2007, as amended on _____ which Ordinance, among other things, (i) created, established, and designated an area within the corporate limits of the City as "Reinvestment Zone Number One, City of New Braunfels, Texas" (the "Reinvestment Zone"), (ii) created a Board of Directors for the Reinvestment Zone, and (iii) established a tax increment fund for the Reinvestment Zone; and

WHEREAS, Section 311.010(b) of the Act provides that the Board of Directors of TIRZ # 1 (hereinafter referred to as the "Board") may enter into agreements as the Board consider necessary or convenient to implement the Project and Financing Plan and achieve its purposes; and

WHEREAS, Section 311.010(h) of the Act authorizes the Board subject to the approval of the City Council of the City, "to implement the project plan and reinvestment zone financing plan and achieve their purposes, may establish and provide for the administration of one or more programs for the public purposes of developing and diversifying the economy of the zone, eliminating unemployment and underemployment in the zone, and developing or expanding

transportation, business, and commercial activity in the zone, including programs to make grants and loans from the tax increment fund of the zone in an aggregate amount not to exceed the amount of the tax increment produced by the municipality and paid into the tax increment fund for the zone for activities that benefit the zone and stimulate business and commercial activity in the zone. For purposes of this subsection, on approval of the municipality or county, the board of directors of the zone has all the powers of a municipality under Chapter 380, Local Government Code. The approval required by this subsection may be granted in an ordinance, in the case of a zone designated by a municipality, or in an order, in the case of a zone designated by a county, approving a project plan or reinvestment zone financing plan or approving an amendment to a project plan or reinvestment zone financing plan”; and

WHEREAS, the Board has concluded and hereby finds that this TIRZ Agreement clearly promotes economic development in the City of New Braunfels, Texas, and, as such, meets the requirements of Article III, Section 52-a of the Texas Constitution and Section 311.010(b) of the Act by assisting in the development and diversification of the economy of the State of Texas and the City, by eliminating unemployment or underemployment in the State of Texas, and the City, and by the development or expansion of commerce within the State of Texas, and the City; and

WHEREAS, the Board has determined that it is in the best interest of TIRZ # 1 to contract with Developer, in order to provide for the efficient and effective implementation of certain aspects of the TIRZ # 1’s Project and Financing Plan; and

WHEREAS, TIRZ # 1 desires to reimburse Developer for certain Infrastructure Costs (as defined herein) in the amount not to exceed **One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000.00)** on a reimbursement basis consistent with this TIRZ Agreement and the Project Plan of Finance (hereinafter defined as the “Grant Amount”).

NOW, THEREFORE, for and in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, TIRZ # 1 and the Developer agree as follows:

SECTION 1. FINDINGS INCORPORATED.

The foregoing recitals are hereby incorporated into the body of this TIRZ Agreement and shall be considered part of the mutual covenants, consideration and promises that bind the parties.

SECTION 2. TERM.

This TIRZ Agreement shall be effective as of the Effective Date, and shall continue thereafter until the sooner of the following: (a) **December 31, 2032** or (b) payment of the Grant Amount to Developer, unless terminated sooner under the provisions hereof. This TIRZ Agreement shall be continued in effect for the purposes of paying Developer any monies from the TIRZ # 1 Tax Increment Fund due and payable by **December 31, 2032**.

SECTION 3. DEFINITIONS.

The following words shall have the following meanings when used in this TIRZ Agreement.

- (a) **Act.** The word “Act” means the Tax Increment Financing Act, Chapter 311 of the Texas Tax Code, as amended.
- (b) **Board.** The word “Board” means the Board of Directors of TIRZ # 1 authorized by Section 311.009 of the Act. For the purposes of this TIRZ Agreement, Board’s address is 550 Landa Street, New Braunfels, Texas 78130.
- (c) **City.** The word “City” means the City of New Braunfels, Comal County, Texas, a Texas home-rule municipality. For the purposes of this TIRZ Agreement, City’s address is 550 Landa Street, New Braunfels, Texas 78130.
- (d) **Developer.** The word “Developer” means the A-L 95 Creekside Town Center, L.P., a Texas limited partnership, its successors and assigns, whose corporate address for the purposes of this TIRZ Agreement is 8827 W. Sam Houston Pkwy N, Suite 200, Houston, Texas 77040.
- (e) **Effective Date.** The words “Effective Date” mean the date of the latter to execute this TIRZ Agreement by and between TIRZ # 1 and Developer.
- (f) **Event of Default.** The words “Event of Default” mean and include any of the Events of Default set forth below in the section entitled “Events of Default.”
- (g) **Grant Amount.** The words “Grant Amount” mean the aggregate total of Infrastructure Costs not to exceed **One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000.00)**. In no event shall the aggregate payments paid to the Developer pursuant to this TIRZ Agreement exceed **One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000.00)**.
- (h) **Infrastructure Costs.** The words “Infrastructure Costs” mean the total costs to construct certain infrastructure to serve the Project including water, sewer, and drainage facilities, electrical conduits and any other necessary utilities.
- (i) **Investment Condition.** The words “Investment Condition” mean the minimum investment by Developer to the Property-(including the Project) in the minimum amount of **Eighteen Million and No/100 Dollars (\$18,000,000.00)**.
- (j) **Project.** The word “Project” means the investment of a minimum \$18,000,000.00 cumulatively in (i) TopGolf branded entertainment facility of approximately 34,000 square feet, (ii) machinery and equipment, and (iii) furniture, fixtures and equipment, as depicted

in **Exhibit A** of this TIRZ Agreement, which is attached hereto and is incorporated herein for all purposes.

- (k) **Property.** The word “Property” means the TopGolf branded entertainment facility generally to be located within TIRZ # 1.
- (l) **State Comptroller.** The words “State Comptroller” mean the Office of the Texas Comptroller of Public Accounts, or any successor agency.
- (m) **Term.** The word “Term” means the term of this TIRZ Agreement as specified in Section 2 of this TIRZ Agreement.
- (n) **TIRZ Agreement.** The term “TIRZ Agreement” means this Reimbursement Agreement, together with all exhibits and schedules attached to this TIRZ Agreement from time to time, if any, authorized pursuant to Section 311.010 of the Act.
- (o) **TIRZ # 1.** The term “TIRZ # 1” means the tax increment financing reinvestment zone named Tax Increment Reinvestment Zone Number One, City of New Braunfels, Texas, created by City Ordinance No. 2007-45, approved by the City Council of the City on May 29, 2007, as amended, and as authorized by the Act.
- (p) **TIRZ # 1 Tax Increment Fund.** The term “TIRZ # 1 Tax Increment Fund” means the tax increment fund established pursuant to Section 311.014 of the Act, and Section 6 of Ordinance No. 2007-45, approved by the City Council of the City on May 29, 2007.

SECTION 4. OBLIGATIONS OF DEVELOPER.

Developer covenants and agrees while this TIRZ Agreement is in effect the Developer shall comply with the following terms and conditions:

- (a) **Project.** Developer covenants and agrees to submit to the TIRZ # 1 by **December 31, 2026**, paid invoices, paid receipts, or other paid documentation of the -Project (including Infrastructure Costs) located on the Property in the minimum amount of the Investment Condition. Further, Developer covenants and agrees the Project located on the Property shall maintain a minimum taxable value of \$16 million from **January 1, 2026**, and for 5 years following completion of the Project. Developer understands and agrees that such taxable valuation is necessary for any Grant under this TIRZ Agreement. For Developer to receive any Grant under this TIRZ Agreement, Developer must make capital investments at the Project that results in a minimum taxable assessed value on the tax rolls of the Comal County Appraisal District of at least \$16 million. Developer shall be entitled to receive a grant solely from the TIRZ # 1 Tax Increment Fund in an aggregate amount not to exceed the Grant Amount.

- (b) **Certificate of Occupancy.** Developer covenants and agrees to obtain from the City a certificate of occupancy for the Project located on the Property by **December 31, 2026**.
- (c) **Performance.** Developer agrees to perform and comply with all terms, conditions and provisions set forth in this TIRZ Agreement, and any other agreements by and between the TIRZ # 1 and Developer.

SECTION 5. OBLIGATIONS OF TIRZ # 1.

TIRZ # 1 covenants and agrees while this TIRZ Agreement is in effect TIRZ # 1 shall comply with the following terms and conditions:

- (a) **Payment of Grant Amount.** In consideration of Developer's obligations and expenditures for the Project (including Infrastructure Costs), subject to the conditions contained in this TIRZ Agreement, TIRZ # 1 covenants and agrees to pay to Developer the Grant Amount from current funds in the TIRZ # 1 Tax Increment Fund, as such funds are on deposit in the TIRZ # 1 Tax Increment Fund; provided however, that notwithstanding any other provisions to the contrary, the obligation to make Grant Amount payments to Developer as described below shall be limited to the Grant Amount. Payments made under this TIRZ Agreement shall be made solely from the TIRZ # 1 Tax Increment Fund, subject to the limitation on payments provided in this TIRZ Agreement.
- (b) **Performance.** TIRZ # 1 agrees to perform and comply with all terms, conditions and provisions set forth in this TIRZ Agreement, and any other agreements by and between TIRZ # 1 and Developer.

SECTION 6. PAYMENT PROCEDURE.

- (a) **Payments Solely from TIRZ # 1 Tax Increment Fund.** City, Board, and Developer agree that the Grant Amount payments shall be only from the TIRZ # 1 Tax Increment Fund, subject to the conditions and limitations set out in this TIRZ Agreement, and only to the extent such funds are on deposit or to be deposited in the TIRZ # 1 Tax Increment Fund after:
 - (1) payment of any amounts pledged or required for the payment of any outstanding bonds secured by the TIRZ # 1 Tax Increment Fund, including bonds in the process of issuance and refunding bonds;
 - (2) payment of administrative costs for the administration of TIRZ # 1; and
 - (3) the Investment Condition is completed in accordance with all the conditions contained in this TIRZ Agreement.

Developer covenants and agrees to look solely to the TIRZ # 1 Tax Increment Fund, and

not to City's general funds, or other City bond funds for payment of the Grant Amount. Nothing in this TIRZ Agreement shall be construed to require City to approve payments from any source of City funds other than the TIRZ # 1 Tax Increment Fund or to require City to issue tax increment financing bonds, the issuance of such bonds being solely within the discretion of the City Council of the City. Upon the expiration of the Term of the TIRZ # 1 any portion of the Grant Amount that remains unpaid due to the lack or unavailability of TIRZ # 1 Tax Increment Funds or due to Developer's failure to meet any precondition of payment under this TIRZ Agreement, shall no longer be considered an obligation of the TIRZ # 1 Tax Increment Fund and any obligation of TIRZ # 1 to pay Developer shall automatically expire on such date; this provision, however, shall not be construed to limit or modify the obligations or covenants contained in any outstanding tax increment financing bonds which the City in its discretion may issue for the purpose of paying or reimbursing project costs or making grants. Further, any increment which has accrued during the Term of TIRZ # 1, but is collected subsequent to the date on which the Term of TIRZ # 1 expires shall be applied toward the payment of any portion of the Grant Amount that remains unpaid immediately prior to the expiration of the Term.

- (b) **Frequency and Amount of Payment.** The frequency and amount of payment to Developer under this TIRZ Agreement shall coincide with the frequency and amount of payments made by the various taxing units into the TIRZ # 1 Tax Increment Fund from fiscal year to fiscal year but no less than semi-annually. Subject to all limitation and conditions precedent contained in this TIRZ Agreement, TIRZ # 1 agrees to make Grant Amount payments to Developer within thirty (30) days after receipt of payments into the TIRZ # 1 Tax Increment Fund. However, TIRZ # 1 reserves the right, when payments come into the TIRZ # 1 Tax Increment Fund, to repay all or any portion of the Grant Amount at any given time. TIRZ # 1 will administer payments from the TIRZ # 1 Tax Increment Fund for the Grant Amount payments maintaining at all times in the TIRZ # 1 Tax Increment Fund a minimum fund balance as may be recommended by the Board and City Council of the City.
- (c) **Tax Increment Financing Bonds.** If the City issues tax increment financing bonds to pay for previous and/or future projects, City may encumber TIRZ # 1 Tax Increment Funds in support of the tax increment financing bonds and shall fully disburse from bond proceeds received, the existing unpaid Grant Amount under this TIRZ Agreement on a priority basis before allocating bond funds to any other development project. Notwithstanding anything contained in this TIRZ Agreement to the contrary, if the City issues tax increment financing bonds, and for so long as such bonds are outstanding, Developer's right of repayment shall be subject to the terms and conditions of the ordinances authorizing the issuance, and sale of such tax increment financing bonds and the City's right to maintain at all times in the TIRZ # 1 Tax Increment Fund a minimum fund balance as may be recommended by the Board and City Council of the City.
- (d) **Permissible Expenditures.** City hereby declares that the payment procedure outlined above is necessary to implement the Project and Financing Plan, and that the payment of

the Grant Amount complies with Section 311.010(b) and Section 311.010(h) of the Act.

SECTION 7. CESSATION OF ADVANCES.

If TIRZ # 1 has made any commitment to provide financial assistance to Developer, whether under this TIRZ Agreement or under any other agreement, TIRZ # 1 shall have no obligation to advance or disburse financial assistance if: (i) Developer becomes insolvent, files a petition in bankruptcy or similar proceedings, or is adjudged bankrupt; or (ii) an Event of Default occurs.

SECTION 8. EVENT OF DEFAULT.

Each of the following shall constitute an Event of Default under this TIRZ Agreement:

- (a) **General Event of Default.** Failure of Developer or TIRZ # 1 to comply with or to perform any other term, obligation, covenant or condition contained in this TIRZ Agreement, or failure of Developer or TIRZ # 1 to comply with or to perform any other term, obligation, covenant or condition contained in any other agreement by and between Developer and TIRZ # 1 is an Event of Default.
- (b) **False Statements.** Any warranty, representation, or statement made or furnished to TIRZ # 1 by or on behalf of Developer under this TIRZ Agreement that is false or misleading in any material respect, either now or at the time made or furnished is an Event of Default.
- (c) **Insolvency.** Developer's insolvency, appointment of receiver for any part of Developer's property, any assignment for the benefit of creditors of Developer, any type of creditor workout for Developer, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Developer is an Event of Default.
- (d) **Ad Valorem Taxes.** Developer allows its ad valorem taxes owed to the City of New Braunfels, Texas, to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of such taxes and to cure such failure within thirty (30) days after written notice thereof from TIRZ # 1 and/or Comal County Central Appraisal District is an Event of Default.

SECTION 9. EFFECT OF AN EVENT OF DEFAULT.

In the event of default under Section 8 of this TIRZ Agreement, the non-defaulting party shall give written notice to the other party of any default, and the defaulting party shall have sixty (60) days to cure said default. Should said default remain uncured as of the last day of the applicable cure period, and the non-defaulting party is not otherwise in default, the non-defaulting party shall have the right to immediately terminate this TIRZ Agreement. In the event, Developer defaults and is unable or unwilling to cure said default within the prescribed time period, the amounts provided by TIRZ # 1 to Developer pursuant to Section 5 of this TIRZ Agreement shall

become immediately due and payable by Developer to TIRZ # 1.

SECTION 10. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this TIRZ Agreement:

- (a) **Amendments.** This TIRZ Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this TIRZ Agreement. No alteration of or amendment to this TIRZ Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.
- (b) **Applicable Law and Venue.** This TIRZ Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Comal County, Texas. Venue for any action arising under this TIRZ Agreement shall lie in the state district courts of Comal County, Texas.
- (c) **Assignment.** This TIRZ Agreement may not be assigned without the express written consent of the other party.
- (d) **Binding Obligation.** This TIRZ Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. TIRZ # 1 warrants and represents that the individual executing this TIRZ Agreement on behalf of TIRZ # 1 has full authority to execute this TIRZ Agreement and bind TIRZ # 1 to the same. Developer warrants and represents that the individual executing this TIRZ Agreement on Developer's behalf has full authority to execute this TIRZ Agreement and bind it to the same.
- (e) **Caption Headings.** Caption headings in this TIRZ Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of the TIRZ Agreement.
- (f) **Counterparts.** This TIRZ Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- (g) **Indemnity.** Developer agrees to indemnify the TIRZ # 1, the City, and its officials and officers (in their capacities as officials and officers), from and against any third party claims, losses, damages, causes of action, suits and liabilities arising out of any negligence of Developer in its operation of the Project; provided that Developer shall not be obligated to indemnify the TIRZ # 1 or the City for claims arising out of the willful misconduct or gross negligence of the TIRZ # 1 or City or its agents.
- (h) **No Joint Venture; No Third-Party Beneficiaries.** It is acknowledged and agreed to by the parties to this TIRZ Agreement that the terms hereof are not intended to, and shall not constitute a partnership or joint venture between the parties. Further, this TIRZ Agreement

does not establish rights in any third parties. The City, and its respective officials, officers and agents, do not assume any responsibility or liability to any third parties in connection with the development of the Project.

- (i) **Notices.** Any notice or other communication required or permitted by this TIRZ Agreement (hereinafter referred to as the “Notice”) is effective when in writing and (i) personally delivered either by facsimile (with electronic information and a mailed copy to follow) or by hand or (ii) three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified with return receipt requested, and addressed as follows:

if to TIRZ # 1: Tax Increment Reinvestment Zone Number One,
City of New Braunfels, Texas
550 Landa Street
New Braunfels, Texas 78130
Attn: City Manager

With copy to: City Attorney
550 Landa Street
New Braunfels, Texas 78130

if to Developer: A-L 95 Creekside Town Center, L.P.
8827 W. Sam Houston Pkwy N, Suite 200
Houston, Texas 77040
Attn: Austin Alvis

- (j) **No waiver of immunity.** No provision of this TIRZ Agreement shall affect or waive any sovereign or governmental immunity available to the TIRZ # 1 and City and/or its elected or appointed officials, officers, employees and agents under Federal or Texas law nor waive any defenses or remedies at law available to the TIRZ # 1 and City and/or its elected or appointed officials, officers, employees and agents under Federal or Texas law.
- (k) **Severability.** The provisions of this TIRZ Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this TIRZ Agreement is for any reason held by a court of competent jurisdiction to be contrary to law or contrary to any rule or regulation have the force and effect of the law, the remaining portions of the TIRZ Agreement shall be enforced as if the invalid provision had never been included.
- (l) **Time is of the Essence.** Time is of the essence in the performance of this TIRZ Agreement.
- (m) **Undocumented Workers Provision.** Developer certifies that the Developer does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended. If during the Term of this TIRZ Agreement, Developer is convicted of a violation under 8 U.S.C. § 1324a(f), Developer shall repay the amount of the public subsidy provided under this TIRZ Agreement plus interest, at the rate

of six percent (6%), not later than the 120th day after the date the TIRZ # 1 notifies Developer of the violation.

- (n) **Form 1295 Certificate.** The Developer agrees to comply with Texas Government Code, Section 2252.908 and in connection therewith, the Developer agrees to go online with the Texas Ethics Commission to complete a Form 1295 Certificate and further agrees to print the completed certificate and execute the completed certificate in such form as is required by Texas Government Code, Section 2252.908 and the rules of the Texas Ethics Commission and provide to the TIRZ # 1, at the time of delivery of an executed counterpart of this TIRZ Agreement, a duly executed completed Form 1295 Certificate.
- (o) **Non-Boycott of Israel Provision.** In accordance with Chapter 2271 of the Texas Government Code, a Texas governmental entity may not enter into an agreement with a business entity for the provision of goods or services unless the agreement contains a written verification from the business entity that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the agreement. Chapter 2271 of the Texas Government Code does not apply to a (1) a Developer that is a sole proprietorship; (2) a Developer that has fewer than ten (10) full-time employees; or (3) the contract has a value of less than One Hundred Thousand Dollars (\$100,000.00). Unless Developer is not subject to Chapter 2271 of the Texas Government Code for the reasons stated herein, the signatory executing this TIRZ Agreement on behalf of Developer verifies that Developer does not boycott Israel and will not boycott Israel during the Term of this TIRZ Agreement.
- (p) **Prohibition on Contracts with Certain Companies Provision.** In accordance with Section 2252.152 of the Texas Government Code, the Parties covenant and agree that Developer is not on a list maintained by the State Comptroller's office prepared and maintained pursuant to Section 2252.153 of the Texas Government Code.
- (q) **Report Agreement to Comptroller's Office.** TIRZ # 1 covenants and agrees to report this TIRZ Agreement to the State Comptroller's office within fourteen (14) days of the Effective Date of this TIRZ Agreement, in accordance with Section 380.004 of the Texas Government Code.
- (r) **Verification Against Discrimination of Firearm or Ammunition Industries.** Pursuant to Chapter 2274 of the Texas Government Code, unless otherwise exempt, if the Developer employs at least ten (10) fulltime employees and this TIRZ Agreement has a value of at least \$100,000 that is paid wholly or partly from public funds of the TIRZ # 1, the Developer represents that: (1) the Developer does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) the Developer will not discriminate during the Term of the TIRZ Agreement against a firearm entity or firearm trade association.
- (s) **Verification Against Discrimination Developer Does Not Boycott Energy Companies.** Pursuant to Chapter 2276 of the Texas Government Code, unless otherwise exempt, if the

Developer employs at least ten (10) fulltime employees and this TIRZ Agreement has a value of at least \$100,000 that is paid wholly or partly from public funds of the TIRZ # 1, the Developer represents that: (1) the Developer does not boycott energy companies; and (2) the Developer will not boycott energy companies during the Term of this TIRZ Agreement.

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THE PARTIES ACKNOWLEDGE HAVING READ ALL THE PROVISIONS OF THIS TIRZ AGREEMENT, AND THE PARTIES AGREE TO ITS TERMS. THIS TIRZ AGREEMENT IS EFFECTIVE AS OF THE EFFECTIVE DATE AS DEFINED HEREIN.

TIRZ # 1:

**TAX INCREMENT REINVESTMENT ZONE
NUMBER ONE, CITY OF NEW BRAUNFELS,
TEXAS,**

By: _____
Tobin Hoffmann, TIRZ 1 Chair
Date Signed: _____

DEVELOPER:

**A-L 95 CREEKSIDE TOWN CENTER, L.P.,
a Texas limited partnership,**

By: _____
Name: _____
Title: _____
Date Signed: _____

APPROVED BY:

CITY:

**CITY OF NEW BRAUNFELS, TEXAS,
A Texas home-rule municipality**

By: _____
Neal Linnartz, Mayor
Date Signed: _____

ATTEST:

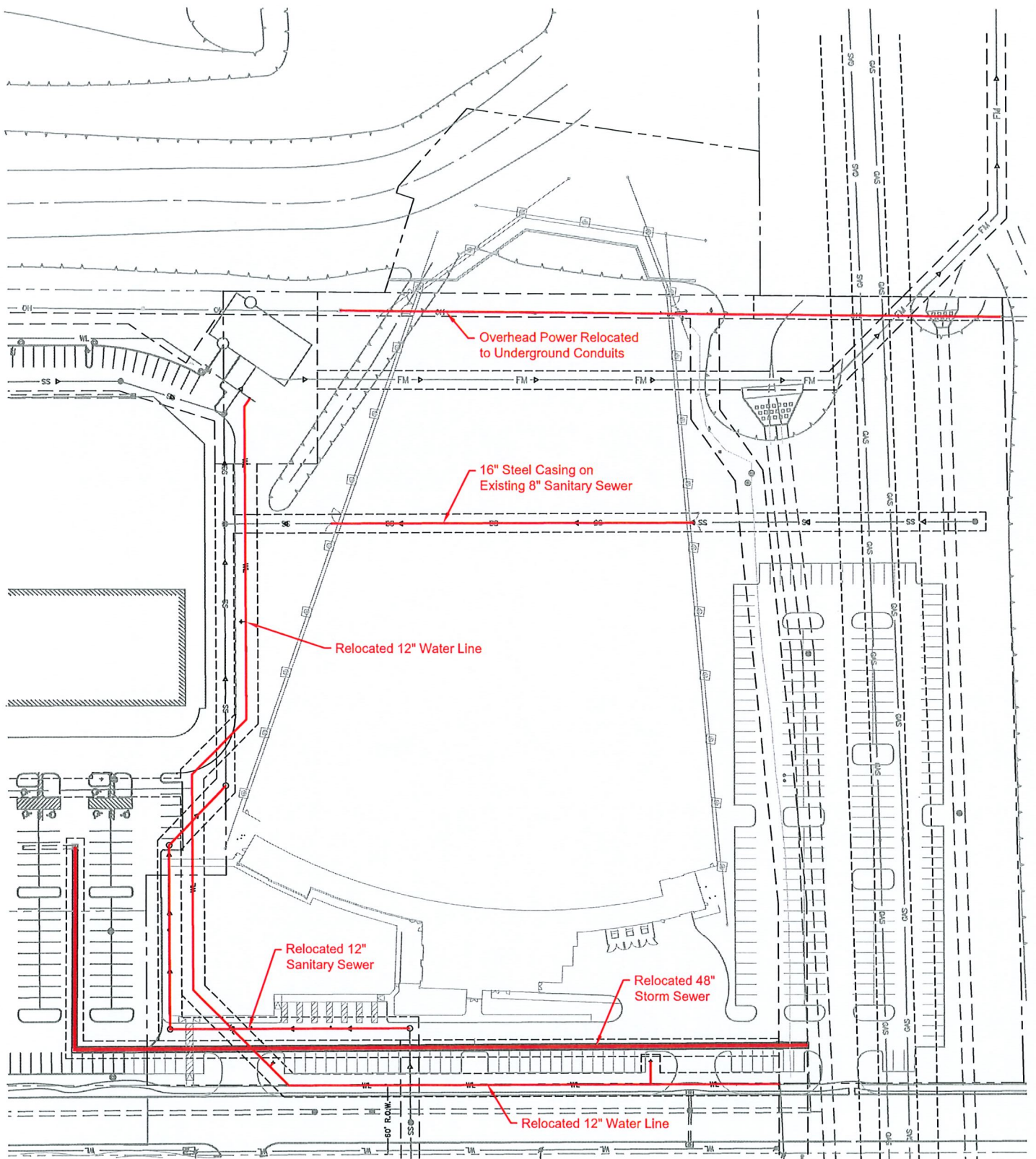
Gayle Wilkinson, City Secretary

APPROVED AS TO FORM:

Valeria M. Acevedo, City Attorney

Exhibit A

[Depiction of the Project]



TOP GOLF AT CREEKSIDE TOWN CENTER UTILITY RELOCATIONS

EXHIBIT C

[Incentive Agreement - Topgolf USA NBR, LLC]

**TAX INCREMENT REINVESTMENT ZONE NUMBER ONE,
CITY OF NEW BRAUNFELS, TEXAS,
AND
TOPGOLF USA NBR, LLC
INCENTIVE AGREEMENT**

This **INCENTIVE AGREEMENT** (hereinafter referred to as this “Agreement”) is made and entered into by and among the **TAX INCREMENT REINVESTMENT ZONE NUMBER ONE, CITY OF NEW BRAUNFELS, TEXAS**, (hereinafter referred to as the “TIRZ # 1”), a tax increment reinvestment zone created by the City of New Braunfels, Texas, pursuant to Chapter 311 of the Texas Tax Code, as amended, and **TOPGOLF USA NBR, LLC**, a Delaware limited liability company (hereinafter referred to as the “Company”), on _____, 2024 (the “Effective Date”).

WHEREAS, in accordance with the provisions of the Tax Increment Financing Act, Chapter 311 of the Texas Tax Code, as amended (hereinafter referred to as the “Act”), the City Council of the City of New Braunfels, Texas, a Texas home-rule municipality (hereinafter referred to as the “City”) adopted Ordinance No. 2007-45 on May 29, 2007, which Ordinance, among other things, (i) created, established, and designated an area within the corporate limits of the City as “Reinvestment Zone Number One, City of New Braunfels, Texas” (the “Reinvestment Zone”), (ii) created a Board of Directors for the Reinvestment Zone, and (iii) established a tax increment fund for the Reinvestment Zone; and

WHEREAS, Section 311.010(b) of the Act provides that the Board of Directors of TIRZ # 1 (hereinafter referred to as the “Board”) may enter into agreements as the Board considers necessary or convenient to implement the Project and Financing Plan (as defined below) and achieve its purposes; and

WHEREAS, Section 311.010(h) of the Act authorizes the Board subject to the approval of the City Council of the City, “to implement the project plan and reinvestment zone financing plan (the “Project and Financing Plan”) and achieve their purposes, may establish and provide for the administration of one or more programs for the public purposes of developing and diversifying the economy of the zone, eliminating unemployment and underemployment in the zone, and developing or expanding transportation, business, and commercial activity in the zone, including programs to make grants and loans from the tax increment fund of the zone in an aggregate amount not to exceed the amount of the tax increment produced by the municipality and paid into the tax increment fund for the zone for activities that benefit the zone and stimulate business and commercial activity in the zone. For purposes of this subsection, on approval of the municipality or county, the board of directors of the zone has all the powers of a municipality under Chapter 380, Local Government Code. The approval required by this subsection may be granted in an ordinance, in the case of a zone designated by a municipality, or in an order, in the case of a zone designated by a county, approving a project plan or reinvestment zone financing plan or approving an amendment to a project plan or reinvestment zone financing plan”; and

WHEREAS, the Board has concluded and hereby finds that this Agreement clearly promotes economic development within the City of New Braunfels, Texas, and, as such, meets the requirements of Article III, Section 52-a of the Texas Constitution and Section 311.010(h) of the Act by assisting in the development and diversification of the economy of the State of Texas and the City, by eliminating unemployment or underemployment in the State of Texas, and the City, and by the development or expansion of commerce within the State of Texas, and the City; and

WHEREAS, the Board has determined that it is in the best interest of TIRZ # 1 to contract with Company, in order to provide for the efficient and effective implementation of certain aspects of the TIRZ # 1's Project and Financing Plan; and

WHEREAS, TIRZ # 1 desires to reimburse Company for certain costs in the amount not to exceed **One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000.00)** (hereinafter defined as the "Grant Amount") on a reimbursement basis consistent with this Agreement.

NOW, THEREFORE, for and in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, TIRZ # 1 and the Company agree as follows:

SECTION 1. FINDINGS INCORPORATED.

The foregoing recitals are hereby incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration and promises that bind the parties.

SECTION 2. TERM.

This Agreement shall be effective as of the Effective Date, and shall continue thereafter until the sooner of the following: (a) **December 31, 2040**; or (b) payment of the Grant Amount to Company, unless terminated sooner under the provisions hereof. This Agreement shall be continued in effect for the purposes of paying Company any monies from the TIRZ # 1 Tax Increment Fund due and payable by **December 31, 2040**.

SECTION 3. DEFINITIONS.

The following words shall have the following meanings when used in this Agreement.

- (a) **Agreement.** The term "Agreement" means this Grant Agreement, together with all exhibits and schedules attached to this Agreement from time to time, if any, authorized pursuant to Section 311.010 of the Act.
- (b) **Act.** The word "Act" means the Tax Increment Financing Act, Chapter 311 of the Texas Tax Code, as amended.

- (c) **Additional Sales and Use Tax.** The words “Additional Sales and Use Tax” mean the City’s additional municipal sales and use tax, at the rate of one-eighths of one percent (0.125%), pursuant to section 321.103(b) of the Texas Tax Code, as amended.
- (d) **Board.** The word “Board” means the Board of Directors of TIRZ # 1 authorized by Section 311.009 of the Act. For the purposes of this Agreement, Board’s address is 550 Landa Street, New Braunfels, Texas 78130.
- (e) **City.** The word “City” means the City of New Braunfels, Comal County, Texas, a Texas home-rule municipality. For the purposes of this Agreement, City’s address is 550 Landa Street, New Braunfels, Texas 78130.
- (f) **Company.** The word “Company” means Topgolf USA NBR, LLC, a Delaware limited liability company, its successors and assigns, whose corporate address for the purposes of this Agreement is 8750 N. Central Expressway, Suite 1200, Dallas, Texas 75231.
- (g) **Intentionally omitted.**
- (h) **Event of Default.** The words “Event of Default” mean and include any of the Events of Default set forth below in the section entitled “Events of Default.”
- (i) **Grant Amount.** The words “Grant Amount” mean the aggregate total not to exceed **One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000.00)**. In no event shall the aggregate payments paid to Company pursuant to this Agreement exceed **One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000.00)**.
- (j) **Project.** The word “Project” means the opening and operation of a Topgolf facility by Company at the Property.
- (k) **Property.** The word “Property” means the Topgolf branded entertainment facility generally to be located at 427 Creekside Way, New Braunfels, Texas 78130.
- (l) **Sales and Use Tax.** The words “Sales and Use Tax” or “Sales and Use Taxes” mean the sales and use tax, at the rate of one percent (1.0%), collected pursuant to section 321.103(a) of the Texas Tax Code, as amended.
- (m) **State Comptroller.** The words “State Comptroller” mean the Office of the Texas Comptroller of Public Accounts, or any successor agency.
- (n) **Taxable Sales.** The words “Taxable Sales” refer to revenue generated by the Project that is subject to Sales and Use Tax pursuant to section 321 of the Texas Tax Code.
- (o) **Term.** The word “Term” means the term of this Agreement as specified in Section 2 of this Agreement.

- (p) **TIRZ # 1.** The term “TIRZ # 1” means the tax increment financing reinvestment zone named Tax Increment Reinvestment Zone Number One, City of New Braunfels, Texas, created by City Ordinance No. 2007-45, approved by the City Council of the City on May 29, 2007, as amended, and as authorized by the Act.
- (q) **TIRZ # 1 Tax Increment Fund.** The term “TIRZ # 1 Tax Increment Fund” means the tax increment fund established pursuant to Section 311.014 of the Act, and Section 6 of Ordinance No. 2007-45, approved by the City Council of the City on May 29, 2007.
- (r) **Type B Sales and Use Tax Revenue.** The words “Type B Sales and Use Tax Revenue” mean the economic development sales and use tax revenue, at the rate of three-eighths of one percent (0.375%), generated for use by the New Braunfels Economic Development Corporation, a Type B economic development corporation.

SECTION 4. OBLIGATIONS OF COMPANY.

Company covenants and agrees while this Agreement is in effect Company shall comply with the following terms and conditions:

- (a) **Certificate of Occupancy.** Company covenants and agrees to obtain from the City a certificate of occupancy for the Project located on the Property by **December 31, 2025**.
- (b) **Reporting of Sales and Use Taxes.** Company will provide to the TIRZ # 1, on an annual basis, a copy of the financial report that is being submitted to the State Comptroller relating to the remission of all local sales and use taxes collected at the Property as a result of the operation of the Project located on the Property (“Sales Tax Report”). The sales and uses taxes to be included within said Sales Tax Report includes the Sales and Use Tax, the Additional Sales and Use Tax, and the Type B Sales and Use Tax Revenue collected at the Property at the current combined rate of one and one-half percent (1.50%), and remitted by the State Comptroller to the City. Additionally, Company will obtain any third party’s consent for the State Comptroller’s office to release the annual reported figures along with any State audit adjustments to the City. The City and TIRZ # 1 hereby agrees to keep this information “Confidential” consistent with the Section 321.3022(f) of the Texas Tax Code, and to the extent allowed by law. The first Sales Tax Report from Company shall be due within one (1) year of receipt of a certificate of occupancy by **December 31, 2026**, and annually thereafter.
- (c) **Project Performance.** Company will generate at least \$5 million in taxable sales from the Project annually during the Term of this Agreement.

- (d) **Other Performance.** Company agrees to perform and comply with all terms, conditions and provisions set forth in this Agreement, and any other agreements by and between the TIRZ # 1 and Company.

SECTION 5. OBLIGATIONS OF TIRZ # 1.

TIRZ # 1 covenants and agrees while this Agreement is in effect TIRZ # 1 shall comply with the following terms and conditions:

- (a) **Payment of Grant Amount.** In consideration of Company's obligations and expenditures for the Project, subject to the conditions contained in this Agreement, TIRZ # 1 covenants and agrees to pay to Company the Grant Amount from current funds in the TIRZ # 1 Tax Increment Fund, as such funds are on deposit in the TIRZ # 1 Tax Increment Fund; provided however, that notwithstanding any other provisions to the contrary, the obligation to make Grant Amount payments to Company as described below shall be limited to the Grant Amount. Payments made under this Agreement shall be made solely from the TIRZ # 1 Tax Increment Fund, conditioned upon the following:

Five Million and No/100 Dollars (\$5,000,000.00) in annual taxable sales from the Project for each applicable year during the Term of this Agreement.

In the event the condition of Section 5(a) is satisfied, TIRZ # 1 shall provide Company a payment of **Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00)** annually. In no event shall the aggregate payments made pursuant to this Agreement exceed the Grant Amount. Said payment by TIRZ # 1 to Company shall occur within sixty (60) days of TIRZ # 1's receipt of proof of Company's satisfaction of the condition of Section 5(a).

- (b) **Performance.** TIRZ # 1 agrees to perform and comply with all terms, conditions and provisions set forth in this Agreement, and any other agreements by and between TIRZ # 1 and Company.

SECTION 6. PAYMENT PROCEDURE.

- (a) **Payments Solely from TIRZ # 1 Tax Increment Fund.** Board and Company agree that the Grant Amount payments shall be only from the TIRZ # 1 Tax Increment Fund, subject to the conditions and limitations set out in this Agreement, and only to the extent such funds are on deposit or to be deposited in the TIRZ # 1 Tax Increment Fund after:
- (1) payment of any amounts pledged or required for the payment of any outstanding bonds secured by the TIRZ # 1 Tax Increment Fund, including bonds in the process of issuance and refunding bonds, if any; and
 - (2) payment of administrative costs for the administration of TIRZ # 1.

Company covenants and agrees to look solely to the TIRZ # 1 Tax Increment Fund, and not to City's general funds, or other City bond funds for payment of the Grant Amount. Nothing in this Agreement shall be construed to require City to approve payments from any source of City funds other than the TIRZ # 1 Tax Increment Fund or to require City to issue tax increment financing bonds, the issuance of such bonds being solely within the discretion of the City Council of the City. Upon the expiration of the Term of the TIRZ # 1 any portion of the Grant Amount that remains unpaid due to the lack or unavailability of TIRZ # 1 Tax Increment Funds or due to Company's failure to meet any precondition of payment under this Agreement, shall no longer be considered an obligation of the TIRZ # 1 Tax Increment Fund and any obligation of TIRZ # 1 to pay Company shall automatically expire on such date; this provision, however, shall not be construed to limit or modify the obligations or covenants contained in any outstanding tax increment financing bonds which the City in its discretion may issue for the purpose of paying or reimbursing project costs or making grants. Further, any increment which has accrued during the Term of TIRZ # 1, but is collected subsequent to the date on which the Term of TIRZ # 1 expires shall be applied toward the payment of any portion of the Grant Amount that remains unpaid immediately prior to the expiration of the Term.

- (b) **Permissible Expenditures.** City hereby declares that the payment procedure outlined above is necessary to implement the Project and Financing Plan, and that the payment of the Grant Amount complies with Section 311.010(h) of the Act.

SECTION 7. CESSATION OF ADVANCES.

If TIRZ # 1 has made any commitment to provide financial assistance to Company, whether under this Agreement or under any other agreement, TIRZ # 1 shall have no obligation to advance or disburse financial assistance if: (i) Company becomes insolvent, files a petition in bankruptcy or similar proceedings, or is adjudged bankrupt; or (ii) an Event of Default is occurring beyond the applicable notice and cure period.

SECTION 8. EVENT OF DEFAULT.

Each of the following shall constitute an Event of Default under this Agreement:

- (a) **General Event of Default.** Failure of Company or TIRZ # 1 to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement, or failure of Company or TIRZ # 1 to comply with or to perform any other term, obligation, covenant or condition contained in any other agreement by and between Company and TIRZ # 1 is an Event of Default.
- (b) **False Statements.** Any warranty, representation, or statement made or furnished to TIRZ # 1 by or on behalf of Company under this Agreement that is false or misleading in any material respect, either now or at the time made or furnished is an Event of Default.

- (c) **Insolvency.** Company's insolvency, appointment of receiver for any part of Company's property, any assignment for the benefit of creditors of Company, any type of creditor workout for Company, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Company is an Event of Default.
- (d) **Sales and Use Taxes.** Company's failure to timely and properly collect and remit sales and use taxes as required by law is an Event of Default.

SECTION 9. EFFECT OF AN EVENT OF DEFAULT.

In the event an Event of Default under Section 8 of this Agreement occurs, the non-defaulting party shall give written notice to the other party of any default, and the defaulting party shall have sixty (60) days to cure said default, provided, however, if such breach is not reasonably curable within such 60-day period, and the defaulting party has commenced and is pursuing such remedies as shall be reasonably necessary to cure such breach, then the defaulting party shall have an additional ninety (90) days to cure such breach. Should said default remain uncured as of the last day of the applicable cure period, and the non-defaulting party is not otherwise in default, the non-defaulting party shall have the right to immediately terminate this Agreement. In the event, Company defaults and is unable or unwilling to cure said default within the prescribed time period, the amounts, if any, previously paid by TIRZ # 1 to Company pursuant to Section 5 of this Agreement shall become immediately due and payable by Company to TIRZ # 1.

Notwithstanding the foregoing, in the event an Event of Default under Section 4(c) of this Agreement occurs, Company will receive no annual payment towards the Grant Amount in which Company failed to meet the requirement of Section 4(c), but will not be required to repay any grant paid for which Company was in compliance with the requirements of Section 4(c), and this Agreement shall continue in full force and effect.

SECTION 10. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

- (a) **Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.
- (b) **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Comal County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Comal County, Texas.
- (c) **Assignment.** This Agreement may not be assigned without the express written consent of the other party which shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Company may assign this Agreement, without the prior

written consent of TIRZ # 1 to any affiliate of Company (currently existing or later formed), provided that such assignee assumes the obligations and liabilities of Company in writing in a form reasonably approved by TIRZ # 1.

- (d) **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. TIRZ # 1 warrants and represents that the individual executing this Agreement on behalf of TIRZ # 1 has full authority to execute this Agreement and bind TIRZ # 1 to the same. Company warrants and represents that the individual executing this Agreement on Company's behalf has full authority to execute this Agreement and bind it to the same.
- (e) **Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.
- (f) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- (g) **Indemnity.** Company agrees to indemnify the TIRZ # 1, the City, and its officials and officers (in their capacities as officials and officers), from and against any third party claims, losses, damages, causes of action, suits and liabilities arising out of any negligence of Company in its operation of the Project; provided that Company shall not be obligated to indemnify the TIRZ # 1 or the City for claims arising out of the willful misconduct or gross negligence of the TIRZ # 1 or the City or its agents.
- (h) **No Joint Venture; No Third-Party Beneficiaries.** It is acknowledged and agreed to by the parties to this Agreement that the terms hereof are not intended to, and shall not constitute a partnership or joint venture between the parties. Further, this Agreement does not establish rights in any third parties. The City, and its respective officials, officers and agents, do not assume any responsibility or liability to any third parties in connection with the development of the Project.
- (i) **Notices.** Any notice or other communication required or permitted by this Agreement (hereinafter referred to as the "Notice") is effective when in writing and (i) personally delivered either by facsimile (with electronic information and a mailed copy to follow) or by hand or (ii) three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified with return receipt requested, and addressed as follows:

if to TIRZ # 1:

Tax Increment Reinvestment Zone Number One,
City of New Braunfels, Texas
550 Landa Street
New Braunfels, Texas 78130
Attn: City Manager

With copy to: City Attorney
550 Landa Street
New Braunfels, Texas 78130

if to Company: TOPGOLF USA NBR, LLC
8750 N. Central Expressway, Suite 1200
Dallas, Texas 75231
Attn: Legal Department

- (j) **No waiver of immunity.** No provision of this Agreement shall affect or waive any sovereign or governmental immunity available to the TIRZ # 1 and City and/or its elected or appointed officials, officers, employees and agents under Federal or Texas law nor waive any defenses or remedies at law available to the TIRZ # 1 and City and/or its elected or appointed officials, officers, employees and agents under Federal or Texas law.
- (k) **Revenue Sharing Agreement.** The City and TIRZ # 1 designate this Agreement as a revenue sharing agreement, thereby entitling the City and TIRZ # 1 to request Sales and Use Tax information from the State Comptroller pursuant to Section 321.3022 of the Texas Tax Code, as amended.
- (l) **Severability.** The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement is for any reason held by a court of competent jurisdiction to be contrary to law or contrary to any rule or regulation have the force and effect of the law, the remaining portions of this Agreement shall be enforced as if the invalid provision had never been included.
- (m) **Time is of the Essence.** Time is of the essence in the performance of this Agreement. Notwithstanding the foregoing, any deadlines provided in this Agreement shall be subject to any event of Force Majeure. For purposes of this Agreement, "Force Majeure" shall mean any contingency or cause beyond the reasonable control of any company, including without limitation, acts of God or the public enemy, war, riot, terrorism, civil commotion, insurrection, governmental or de facto governmental action or inaction including, but not limited to, government actions pertaining to the determination of flood zones or FEMA actions, fire, earthquake, tornado, hurricane, explosions, floods, epidemics, strikes, slowdowns, work stoppages, unusually severe weather or global recessions; provided, however, that in no event shall any event of Force Majeure extend any deadline in this Agreement by more than twelve months. In addition, if Company notifies TIRZ # 1 that it is unable to satisfy any deadline provided in this Agreement due to adverse economic conditions, TIRZ # 1 agrees to meet with Company to better understand the impact of those adverse economic conditions on Company and consider making good faith adjustments to the terms of this Agreement to address the impacts of such adverse economic conditions upon Company.
- (n) **Undocumented Workers Provision.** Company certifies that the Company does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of

the Texas Government Code, as amended. If during the Term of this Agreement, Company is convicted of a violation under 8 U.S.C. § 1324a(f), Company shall repay the amount of the public subsidy, if any, paid to Company under this Agreement plus interest, at the rate of six percent (6%), not later than the 120th day after the date the TIRZ # 1 notifies Company of the violation.

- (o) **Form 1295 Certificate.** Company agrees to comply with Texas Government Code, Section 2252.908 and in connection therewith, Company agrees to go online with the Texas Ethics Commission to complete a Form 1295 Certificate and further agrees to print the completed certificate and execute the completed certificate in such form as is required by Texas Government Code, Section 2252.908 and the rules of the Texas Ethics Commission and provide to the TIRZ # 1, at the time of delivery of an executed counterpart of this Agreement, a duly executed completed Form 1295 Certificate.
- (p) **Non-Boycott of Israel Provision.** In accordance with Chapter 2271 of the Texas Government Code, a Texas governmental entity may not enter into an agreement with a business entity for the provision of goods or services unless the agreement contains a written verification from the business entity that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the agreement. Chapter 2271 of the Texas Government Code does not apply to a (1) a company that is a sole proprietorship; (2) a company that has fewer than ten (10) full-time employees; or (3) the contract has a value of less than One Hundred Thousand Dollars (\$100,000.00). Unless Company is not subject to Chapter 2271 of the Texas Government Code for the reasons stated herein, the signatory executing this Agreement on behalf of Company verifies that Company does not boycott Israel and will not boycott Israel during the Term of this Agreement.
- (q) **Prohibition on Contracts with Certain Companies Provision.** In accordance with Section 2252.152 of the Texas Government Code, the Parties covenant and agree that Company is not on a list maintained by the State Comptroller's office prepared and maintained pursuant to Section 2252.153 of the Texas Government Code.
- (r) **Report Agreement to Comptroller's Office.** TIRZ # 1 covenants and agrees to report this Agreement to the State Comptroller's office within fourteen (14) days of the Effective Date of this Agreement, in accordance with Section 380.004 of the Texas Government Code.
- (s) **Verification Against Discrimination of Firearm or Ammunition Industries.** Pursuant to Chapter 2274 of the Texas Government Code, unless otherwise exempt, if Company employs at least ten (10) fulltime employees and this Agreement has a value of at least \$100,000 that is paid wholly or partly from public funds of the TIRZ # 1, Company represents that: (1) Company does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) Company will not discriminate during the Term of this Agreement against a firearm entity or firearm trade association.

- (t) **Verification Against Discrimination Company Does Not Boycott Energy Companies.** Pursuant to Chapter 2276 of the Texas Government Code, unless otherwise exempt, if Company employs at least ten (10) fulltime employees and this Agreement has a value of at least \$100,000 that is paid wholly or partly from public funds of the TIRZ # 1, Company represents that: (1) Company does not boycott energy companies; and (2) Company will not boycott energy companies during the Term of this Agreement.
- (s) **Business Day.** If any date or any period provided in this Agreement ends on a Saturday, Sunday, or legal holiday, the applicable period for calculating the notice shall be extended to the first business day following such Saturday, Sunday, or legal holiday.
- (u) **Authority.**
 - a. TIRZ #1 hereby represents and warrants that TIRZ #1 has full constitutional and lawful right, power and authority, under currently applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and all of the foregoing have been or will be duly and validly authorized and approved by all necessary City proceedings, findings and actions. Accordingly, this Agreement constitutes the legal, valid and binding obligation of TIRZ #1, is enforceable in accordance with its terms and provisions and does not require the consent of any other governmental authority.
 - b. Company hereby represents and warrants that it has full lawful right, power, and authority to execute and deliver and perform the terms and obligations of this Agreement and all of the foregoing have been or will be duly and validly authorized and approved by all necessary actions.

[The Remainder of this Page Intentionally Left Blank]

THE PARTIES ACKNOWLEDGE HAVING READ ALL THE PROVISIONS OF THIS AGREEMENT, AND THE PARTIES AGREE TO ITS TERMS. THIS AGREEMENT IS EFFECTIVE AS OF THE EFFECTIVE DATE AS DEFINED HEREIN.

TIRZ # 1:

**TAX INCREMENT REINVESTMENT ZONE
NUMBER ONE, CITY OF NEW BRAUNFELS,
TEXAS,**

By: _____
Tobin Hoffmann, TIRZ 1 Chair
Date Signed: _____

COMPANY:

TOPGOLF USA NBR, LLC,
a Delaware limited liability company,

By: _____
Title: _____
Date Signed: _____

APPROVED BY:

CITY:

CITY OF NEW BRAUNFELS
A Texas home-rule municipality

By: _____
Neal Linnartz, Mayor
Date Signed: _____

ATTEST:

Gayle Wilkinson, City Secretary

APPROVED AS TO FORM:

Valeria M. Acevedo, City Attorney