

THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY



Contract Number
19-279 A1

SAP Number

Real Estate Services Department

Department Contract Representative	Terry W. Thompson, Director
Telephone Number	(909) 387-5252
Contractor	TOPGOLF USA SBD, LLC
Contractor Representative	William Davenport, CFO
Telephone Number	(214) 377-0615
Contract Term	20 years from the rent commencement date
Original Contract Amount	\$14,503,125
Amendment Amount	N/A
Total Contract Amount	\$14,503,125
Cost Center	6522402750
GRC/PROJ/JOB No.	
Internal Order No.	

Briefly describe the general nature of the contract:

First Amendment to Ground Lease Agreement No. 19-279 by and between the County of San Bernardino and Topgolf to confirm the termination of the due diligence period and force majeure period, reset the rent commencement date, and allow construction of a portion of the Initial Improvements.

FOR COUNTY USE ONLY

Approved as to Legal Form

► SEE SIGNATURE PAGE

Robert F. Messinger,
Principal Assistant County Counsel

Date _____

Reviewed for Contract Compliance

►

Date _____

Reviewed/Approved by Department

►

Brandon Ocasio, Manager, Acquisitions Division

Date

7/29/21

FIRST AMENDMENT TO GROUND LEASE AGREEMENT 19-279

THIS FIRST AMENDMENT TO GROUND LEASE AGREEMENT, CONTRACT 19-279 ("FIRST Amendment"), shall become effective as of the date the last of the parties hereto execute this Agreement ("Effective Date") is entered into by and between the County of San Bernardino ("COUNTY") and Topgolf USA SBD, LLC, a Delaware limited liability company ("TENANT"). COUNTY and TENANT are, at times, referred to herein as, the "Parties."

WITNESSETH:

WHEREAS, the COUNTY and TENANT entered into that certain Ground Lease Agreement, Contract 19-279, dated April 30, 2019 (the "Agreement"), relating to that certain property (approximately 13.7 acres of vacant land located at the southeast corner of Fourth Street and Archibald Avenue in the City of Ontario) as more specifically described in the Agreement (the "Property");

WHEREAS, the Parties hereby confirm that TENANT notified the COUNTY of its satisfaction of the Property, and terminated the Due Diligence Period as of March 20, 2020, pursuant to Section 4.G of the Agreement;

WHEREAS, the nationwide lockdown under the COVID-19 pandemic constituted a Force Majeure Event under Paragraph 25 of the Agreement, which delay period lasted by agreement of the Parties from March 21, 2020 through January 25, 2021;

WHEREAS, the Rent Commencement Date must be redefined as a result of the Force Majeure Event;

WHEREAS, TENANT desires to begin construction of a portion of the Initial Improvements, limited to the grading work, pursuant to its approved grading plan;

WHEREAS, the Parties hereby agree that TENANT has fulfilled those prior obligations and conditions precedent, except for the execution of a performance bond agreement, for commencement of the grading work, as outlined in Section 10 of the Agreement, but do not attest to the fulfillment of any obligations for any other improvements;

WHEREAS, the remaining scope of the Initial Improvements, as outlined in the Agreement, remains subject to all of the provisions of Section 10. IMPROVEMENTS;

NOW, THEREFORE, in consideration of mutual covenants and conditions, the parties hereto agree the Agreement, Contract No. 19-279, is amended as follows:

1. As of the Effective Date, DELETE in its entirety the **Rent Commencement Date** provision of the Basic Lease Terms - Reference Pages, and SUBSTITUTE therefore the following:

Rent Commencement Date: The date the earlier of the following events occur: (i) Tenant opens its business at the Premises for the Permitted Use to the public; or (ii) three hundred sixty-five (365) days from January 25, 2021, the conclusion of the Force Majeure period.

2. As of the Effective Date, ADD the following Section 10.C(iv):

10. **IMPROVEMENTS.**

C. **Construction of Improvements.**

(iv). As of February 1, 2021, TENANT may commence grading work, as authorized under County of San Bernardino Land Use Services Grading Permit No. GRAD-2019-00180. TENANT shall post a performance bond with a face value of \$1,125,609, naming COUNTY as an obligee, within 4 business days of commencing said grading work.

3. This FIRST Amendment may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same agreement. For purposes of this FIRST Amendment, the parties shall be entitled to sign and transmit an electronic signature of the FIRST Amendment which signature shall be binding on the party whose name is contained therein.

All other provisions of the Agreement shall remain in full force and effect.

[Signatures of parties on following page]

IN WITNESS THEREOF, the parties executed this agreement.

COUNTY:
County of San Bernardino

TENANT:
Topgolf USA SBD, LLC,
a Delaware limited liability company

By: 
Leonard X. Hernandez, CEO

DocuSigned by:
By: William Davenport
(NAME)

Dated: 1/29/2021

Title: Chief Financial officer

Dated: January 29, 2021

SIGNED AND CERTIFIED THAT A COPY
OF THIS DOCUMENT HAS BEEN
DELIVERED TO THE CHAIRMAN OF THE
BOARD

Lynna Monell,
Clerk of the Board of Supervisors
of the County of San Bernardino

By: 
Deputy

APPROVED AS TO LEGAL FORM

MICHELLE D. BLAKEMORE,
County Counsel
San Bernardino County, California

By: Robert F. Messinger
Robert Messinger
Principal Assistant County Counsel

Dated: January 29, 2021