DUE DILIGENCE AND GROUND LEASE AGREEMENT

Between

THE CITY OF EL SEGUNDO,
a General Law Municipal corporation
(“Lessor”)

And

ES CENTERCAL, LLC,
a Delaware limited liability company
(as “Lessee”)

Dated ____, 2015
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DUE DILIGENCE AND GROUND LEASE AGREEMENT (“LEASE”)

Date: ____________, 2015 (the “Commencement Date”)

Lessor: THE CITY OF EL SEGUNDO, a general law City and municipal corporation (“Lessor”).

Lessee: ES CENTERCAL, LLC, a Delaware limited liability company (“Lessee”).

Guarantors: CenterCal, LLC, a Delaware limited liability company (“CenterCal Guarantor”)

TopGolf International, Inc. a Delaware corporation (“TopGolf Guarantor” or “Top Golf”)

RECITALS

A. Whereas Lessor owns or is the Licensee of certain real property in the City of El Segundo, County of Los Angeles, State of California, more particularly described in Exhibit “A”(the “Property”) attached hereto and by this reference incorporated herein and delineated on the Site Plan attached hereto as Exhibit “B” and by this reference incorporated herein. A portion of the Property consists of that certain real property in the City of El Segundo, County of Los Angeles, State of California, more particularly described in Exhibit “A-1” attached hereto and by this reference incorporated herein and delineated on the Site Plan (the “Premises”). Also attached hereto as Exhibit “B-1” is a current preliminary Site Plan for the golf course and related improvements (the “Golf Course”), more particularly described in Exhibit A-2, which makes up a portion of the Property but is not part of the Premises. A portion of the Property is subject to that certain License Agreement dated June 24, 1991, by and between Southern California Edison as “Licensor” and the Lessor as Licensee, a copy of which is attached hereto as Exhibit “C” attached hereto and by this reference incorporated herein (the “License Agreement”); and,

B. Whereas subject to all of the Conditions Precedent and other terms and conditions of this Lease, Lessor desires to lease the Premises to Lessee and Lessee desires to lease the Premises from Lessor and to sublease the Premises to TopGolf USA El Segundo LLC, a Delaware limited liability company (“TopGolf El Segundo”) for the purpose of operating a commercial driving range, full service restaurant, clubhouse, and event space (herein called the “Sublease”) and Lessee wishes to lease the Premises from Lessor, for such use; and,

C. Whereas Lessee shall be making certain improvements to the Golf Course (“Golf Course Improvements”) and the Premises (“Premises Improvements”) for the benefit of Lessor and Lessee as described on Exhibit “D” attached hereto and by this reference incorporated herein; and,
D. Now Therefore Lessor and Lessee enter into this Lease based on the terms and conditions hereinafter set forth. For purposes of this Lease, Topgolf Guarantor and Topgolf El Segundo are sometimes collectively referenced as “Topgolf”.

TERMS

Section 1. Demise

Lessor and Lessee hereby enter into this Lease for purposes of allowing: Lessee to perform due diligence on the Property; and to provide an opportunity for the parties to potentially satisfy the Conditions Precedent. Upon satisfaction of the Conditions Precedent Lessor shall lease the Premises to Lessee, and Lessee shall lease the Premises from Lessor, upon the terms and conditions set forth in this Lease.

Section 2. Lease Term

2.1 The “Basic Term” of this Lease shall begin when all of the Conditions Precedent have been satisfied and Lessee has notified Lessor that it desires to have this Lease become effective as provided in Section 5.4 hereof (“Premises Turnover Date”) and shall end on the twentieth (20th) anniversary of the Premises Turnover Date. The Basic Term shall also be referred to herein as the “Initial Term”. The parties agree to execute and record a memorandum of an addendum to this Lease setting forth the Premises Turnover Date. While the terms “Lease”, “Lessor” and “Lessee” are used throughout this agreement/Lease, the Lessee shall not be deemed to have a leasehold interest in the Premises until the Premises Turnover Date.

On the Premises Turnover Date, Lessor shall deliver to Lessee, in conformance with all applicable laws, and except as otherwise explicitly provided herein (including without limitation the Permitted Exceptions and the Parking License), exclusive possession and control of the Premises in its “AS IS” condition except it shall be free of any and all occupants, liens, encumbrances, and security interests except for non-delinquent real estate taxes, and the Permitted Exceptions (which include the Parking License, the License Agreement and the Parking License and matters of record Permitted Exceptions as reflected in Exhibit “E”).

2.2 Lessee shall have six (6) successive options to extend the term of this Lease, each for a separate additional period of five (5) years, (each, an “Option Period”), from the date upon which such term would otherwise expire, provided that Lessee shall be entitled to exercise an Option Period only if at the time of exercise Lessee is in compliance with all of the material terms of this Lease, including but not limited to all Rent payments being current and the Premises being open to the public and operating as a driving range with food/beverage service. However, to the extent Lessee has received a default notice from Lessor and is diligently curing a default in accordance with Section 20 hereof, this Lease shall not be extended until such time as the default is cured and then the term may be extended. If Lessee does not cure such default within the time periods set forth in Section 20 hereof then Lessee shall forfeit the extension rights set forth in this Section. Subject to the above limitations, unless Lessee gives Lessor at least six (6) months prior written notice of its intent not to exercise an Option Period to extend this Lease, this Lease...
shall automatically be extended for an additional five (5) year term. Each such extension shall be upon and subject to the same terms, covenants and conditions as those herein specified except that Lessee may not again exercise any previously exercised option under this section.

The words “Lease Term, term of this lease”, “the term hereof”, or words of like import shall be deemed to refer to the Initial Term of this Lease provided for in Section 2.1 hereof together with any extension or renewal thereof which shall become effective pursuant to the provisions of this Lease or by reason of the exercise of an option or right granted hereunder.

Section 3. Rent

3.1 Lessee covenants and agrees to pay to Lessor, promptly when due, without notice or demand and without deduction or setoff of any amount whatsoever unless otherwise specifically provided in this Lease, the following amounts: (a) the amount of Eighteen Thousand and No/100 Dollars ($18,000.00) per month (“Initial Rent”) from the Premises Turnover Date until the “Fixed Rent Commencement Date” (as defined in Section 3.2), not to exceed One Hundred Eighty Thousand and No/100 Dollars ($180,000) in the aggregate, and (b) the amount of Forty-Three Thousand Seven Hundred Fifty Dollars ($43,750) per month ($525,000 per year) as rent for the Premises from the Fixed Rent Commencement Date through the end of the Lease Term, except as increased as specified below (the “Fixed Rent”). In addition to the Fixed Rent, Lessee shall pay to Lessor: (i) for each calendar year during the term of this Lease, an amount equal to three percent (3%) of the gross receipts for Gross Receipts from all beverages (alcoholic and non-alcoholic) sold on the Premises during the applicable calendar year (“Variable Rent”); and (ii) its pro-rata share of the consideration payable under the License Agreement as and when required by the License Agreement based upon the land area of the Premises located within the area subject to the License relative to all of the land area of the Premises and the Golf Course located within the area subject to the License. The obligation of Lessee to pay Fixed Rent and other sums hereunder may be satisfied by any person or entity making payment of Fixed Rent or other sums to Lessor as hereinafter provided. Variable Rent and other sums hereunder may be satisfied by any person or entity making payment of Fixed Rent, Variable Rent or other sums to Lessor as hereinafter provided. The term “Gross Receipts” wherever used in this Lease shall mean the aggregate amount of sales (whether for cash, on credit or otherwise) of all alcoholic and non-alcoholic beverages made and rendered on the Premises in connection with the business operation conducted on the Premises, but shall not include any federal, state, municipal or other sales, value added or retailer’s excise taxes paid or accrued, regardless of whether such taxes are collected from customers or absorbed, sales to employees, complimentary sales, donations for charitable events, discounts afforded customers from the redemption of coupons, fees paid to credit card issuers and processors, bulk and/or intercompany transfers of inventory (provided no such transfer is made to avoid liability to Variable Rent), or alcohol beverage license fees (if any).

Within one hundred (120) days after the end of each calendar year following the Variable Rent Commencement Date (defined in Section 3.2 below), Lessee shall deliver to Landlord a written statement setting forth the amount of Gross Receipts for the preceding calendar year. Simultaneously with the delivery of such statement, Lessee shall pay to Landlord the Variable Rent shown by such statement to be then due and owing. In computing the Variable Rent for the...
first calendar year following the Variable Rent Commencement Date, if such calendar year shall contain less than 365 days, then the Variable Rent shall be multiplied by fraction, the numerator of which shall be the number of days in such shorter calendar year, and the denominator of which shall be 365.

In the event that the Lessee exercises one or more Option Periods, the Fixed Rent shall be subject to a potential additional increase commencing on the twenty-first, thirty-first and forty-first anniversary from the Fixed Rent Commencement Date. Starting one year prior to these anniversary dates, the Lessor and Lessee shall meet and discuss whether the Fixed Rent amount is fair and reasonable based upon economic factors, including but not limited to the consumer price index changes and real property values and rental rates. The parties shall have ninety days to conduct such discussion and attempt to agree on whether to increase the Fixed Rent and the amount of the increase and amend this Lease to reflect such increase if applicable. In the event that the parties cannot agree on whether to increase the amount of the Fixed Rent or the amount of the increase, then each party shall within ninety (90) days have an appraisal regarding the fair market rent that is prepared by an MAI appraiser and submit the appraisals to an independent MAI appraiser selected within the same ninety (90) day period jointly by the parties’ two appraisers. The independent appraiser shall make a determination as to which appraisal submitted by the parties is closest to the fair market rent which shall then become the Fixed Rent commencing on the applicable anniversary date subject to the increases set forth in Section 3.3. The independent appraiser’s fees and costs shall initially be split equally between the parties. The party whose appraisal is chosen by the independent appraiser as being the new Fixed Rent shall be reimbursed for its portion of the costs and fees of the independent appraiser as well as the costs and fees of its own appraiser.

3.2 The first installment of Initial Rent shall be payable on the Premises Turnover Date in a pro-rata amount based upon the number of days remaining in the month. The first installment of Fixed Rent shall be payable from the earlier of (i) the date that the Premises opens to the public for business or (ii) ten (10) months following the Premises Turnover Date, subject to Force Majeure as defined in Section 30 and delays caused by Lessor (the “Fixed Rent Commencement Date”). All Rent (other than Variable Rent) from and after the Fixed Rent Commencement Date shall be paid in advance, on the first day of each month. Upon termination of this Lease, Rent payable for less than a full month shall be paid in a pro-rata amount based on the number of days that the Lease was in effect for the month. The obligation to pay Variable Rent shall commence on the second anniversary of the Premises Turnover Date. The Variable Rent shall be due and payable to the Lessor commencing on the first day of the third quarter following the second anniversary of the Premises Turnover date (“Variable Rent Commencement Date”) and shall be calculated based upon the gross beverage sold during the first quarter following the second anniversary of the Premises Turnover Date. Thereafter, all Variable Rent payments shall be due on the first day of each quarter based upon the gross beverage sales from the quarter that ended just prior to the quarter immediately preceding the due date of the Variable Rent payment. Within sixty days third anniversary of the Fixed Rent Commencement Date (“Variable Rent Commencement Date”). Within ninety days of the termination of this Lease, Lessee shall pay to Lessor all Variable Rent payments owed to the Lessor based upon the payments being made
in arrears. This agreement shall not be construed as giving Lessor any partnership or other interest in Lessee’s or Topgolf’s business. It is understood and agreed by Lessor that there has been no representation of any kind whatsoever made by Lessee or Topgolf as to the amount of Gross Receipts which may or shall be made from the Premises during any year of the term of this Lease.

3.3 The Fixed Rent shall, for the first five (5) years following the Fixed Rent Commencement Date, increase at the end of each year of the commencement of Years 2, 3, 4 and 5 by two percent (2%) and for at the commencement of each five-year period thereafter (i.e., Year 6, Year 11, Year 16), the Fixed Rent shall increase by ten percent (10%) (which shall include any Option Periods that may be exercised by Tenant).

3.4 All amounts payable under Section 3.1 above, as well as all other amounts payable by Lessee to Lessor under the terms of this Lease, shall be paid at the address of Lessor set forth in Section 31.1, or at such other place within the continental limits of the United States as Lessor shall from time to time designate by written notice to Lessee, in lawful money of the United States, which shall be legal tender in payment of all debts and dues at the time of payment.

3.5 It is intended that the Initial Rent, the Fixed Rent, the Variable Rent and any Additional Rent provided for in this Lease (together “Rent”) shall be an absolutely net return to Lessor throughout the Lease Term, free of any expense, charge, or other deduction whatsoever, including all claims, demands, or setoffs of any nature whatsoever, except as otherwise explicitly provided in this Lease.

3.6 Except as may be provided in this Lease, Lessee shall also pay without notice and without abatement, deduction, or setoff, as “Additional Rent,” all sums, impositions, costs, and other payments that Lessee in any of the provisions of this Lease assumes or agrees to pay, and in the event of any nonpayment, but subject to the terms and provisions of this Lease and all applicable laws, Lessor shall have (in addition to all other rights and remedies) all the rights and remedies provided for in this Lease or by law or equity in the case of nonpayment of the Rent.

Section 4. Use

4.1 Notwithstanding any other provision of this Lease, Lessee may only use the Premises, and the Premises Improvements, for a driving range and related clubhouse with restaurant, bar, lounge, grill and event space, subject to the provisions of Section 4.2 (the “Permitted Use”). Lessee shall not be permitted to conduct any of the driving range or clubhouse operations on the Premises until the Golf Course Improvements described in Exhibit “D” are substantially completed (which for purposes hereof means that the Golf Course Improvements are completed subject to minor alterations or corrections, that is, “punch list” items and that the nine-hole course, clubhouse, pro-shop and bathrooms are capable of being open for business) as reasonably determined by Lessor. Lessor acknowledges and agrees that the operation of a TopGolf driving range, restaurant, bar, lounge and event space, that is similar with regard to the current operations of that certain existing TopGolf facility located at 2700 Esperanza Crossing, Austin, Texas 78758 and is generally consistent with regard to its construction with those renderings and descriptions attached hereto as Exhibits “D” and “G” and by this reference
incorporated herein (the “Prototype Facility”), including a driving range and related teaching facilities and both indoor and outdoor café / bar / grill facilities serving alcoholic beverages, and meeting and banquet facilities, also serving alcoholic beverages (referred to herein as a “TopGolf Facility”) is a Permitted Use under this Section 4.1.

4.2 Lessee shall not use or occupy, or permit or suffer all or any part of the Premises or any Premises Improvements to be used or occupied except as provided in Section 4.1 and Lessee’s use of the Premises is further restricted and cannot be used: (i) for any unlawful or illegal business, use, or purpose, or (ii) for any purpose or in any way that is in violation of a lawfully issued existing certificate of occupancy for the Premises, or of any “Legal Requirements” (as defined below), including but not limited to “Legal Requirements” respecting “Hazardous Substances” (as defined in Section 42). For the purposes of this Lease, the term “Legal Requirements” means all present and future laws, ordinances, orders, judgments, rules, regulations, and requirements of all federal, state, regional, and municipal governments, departments, agencies, commissions, boards, and officers, foreseen or unforeseen, ordinary as well as extraordinary, applicable to the Premises or to the use or manner of uses of the Premises or any Premises Improvements or the owners or users of any Premises Improvements.

4.3 Nothing contained in this Lease shall be deemed to be a gift or dedication of any portion of the Premises to the general public or for the general public or for any public purpose whatsoever, or an agreement to do so, it being the intention of Lessor and Lessee that this Lease shall be strictly limited to and for the purposes herein expressed and strictly for the benefit of Lessor and Lessee. Unless required otherwise by a governmental authority, Lessee shall take commercially reasonable actions to prevent the Premises from being used by any individual or entity, or the public, from and after the Premises Turnover Date, in such manner as might reasonably make possible a claim or claims of adverse usage, adverse possession, or prescription, or of implied dedication, of the Premises or any Premises Improvements or any portion thereof.

Section 5. Due Diligence; Condition of Premises

5.1 Unless earlier terminated pursuant to Section 5.5, Lessee shall have until twelve (12) months from the Commencement Date (such period, as the same may be extended hereunder, is referred to herein as the “Due Diligence Period”) to complete its due diligence investigations of the Premises. During the Due Diligence Period, Lessee and Lessee’s authorized representatives, during normal business hours, shall have the right to enter upon the Property for the purposes of conducting studies, inspections and investigations of the Property (without unreasonably interfering with the operations of the current facilities located on the Property) and analyzing all documents and matters pertaining to the Property as Lessee reasonably deems necessary or desirable in connection with its leasing of the Premises, including geotechnical, seismic, mechanical, engineering and environmental testing, and to satisfy itself in its sole and absolute discretion that the Property is suitable for the Golf Course Improvements and the Premises Improvements and Lessee’s intended use of the Premises, including without limitation, zoning classifications, building regulations, governmental entitlements, land use entitlements permitting private recreational use at the Premises (including without limitation, a general plan amendment, specific plan designation, alcohol permits, and lot line adjustments), a determination under the
California Environmental Quality Act ("CEQA") on all actions subject to CEQA (including without limitation the leasehold interest that may be granted to Lessee under this Lease), and all other legal matters applicable to the Premises (collectively, the “Required Project Entitlements”), all at Lessee’s sole expense (collectively, the “Investigation”). Notwithstanding the foregoing, the Due Diligence Period may be extended by Lessee for an additional sixty (60) days in duration by Lessee providing written notice to Lessor before the end of the Due Diligence Period to secure the approvals it reasonably deems necessary for the operation of the Premises as contemplated by this Lease. If Lessor has not received a notice from Lessee that Lessee has elected to exercise a permitted extension of the Due Diligence Period, then it shall be presumed that Lessee intended not to extend the Due Diligence Period and the Due Diligence Period will be deemed to have expired and not been so extended. The Due Diligence Period shall not exceed 425 days except in the event that any person or entity that is not a party to this Lease nor a guarantor of this Lease challenges any of the Required Project Entitlements, then the Due Diligence Period shall automatically be extended to end upon the thirtieth (30th) day following the final disposition of any such challenge (i.e. the entry of a non-appealable order of a court of competent jurisdiction dismissing such challenge, granting some or all of the relief sought by such person or entity, or settlement of the challenge), provided that Lessee is diligently defending and pursuing such challenge.

Except with respect to provisions that expressly survive the termination of this Agreement, upon expiration of the Due Diligence Period (which shall not be extended under any circumstance by Force Majure) all of the rights and obligations of the parties hereunder shall terminate and each party represents and warrants that it understand and agrees that it shall have no right to file a legal or equitable action against the other party if the Conditions Precedent are not satisfied during the Due Diligence Period.

5.2 Cooperation and Entry Notice. Lessor and Lessee agree to reasonably cooperate during the Due Diligence Period, including but not limited to Lessor providing public information to Lessee in Lessee’s efforts to obtain approvals from other governmental agencies. Lessee agrees to make reasonable efforts to notify Lessor, a minimum of twenty-four (24) hours before each entry onto the Premises and/or contact with employees on the Premises.

5.23 Title Due Diligence. At the Premises Turnover Date, the real property comprising the Premises must be free from all easements, encumbrances, or restrictions other than those set forth on Exhibit “E”, which will be finalized and attached hereto within sixty (60) days from the Commencement Date (the “Permitted Exceptions”). Lessee at its option may procure an ALTA extended leasehold owner’s policy of title insurance from Chicago Title Insurance Company (the “Title Company” or “Escrowee”) which policy must be free and clear of any exceptions or objections other than the Permitted Exceptions (the “Title Policy”). The Lessor shall have no obligation to take any action to remove any exceptions or objections that the Title Company may place on the Title Policy. The cost of a standard leasehold title policy and/or the Title Policy shall be borne by Lessee.

Lessee shall use reasonable efforts to cause the Title Company to deliver to Lessee a Preliminary Report issued by the Title Company covering the Premises (the “Preliminary Report”), together with true and legible copies of all documents evidencing matters of record shown as exceptions to title thereon (“Underlying Documents”) as soon as practicable after the Commencement Date.
The Preliminary Report and Underlying Documents shall hereinafter sometimes be collectively referred to as the “Title Documents”. Lessee shall have the right to object to any exceptions contained in the Preliminary Report, except those set forth on Exhibit E, in Lessee’s sole and absolute discretion by giving written notice to Lessor within fifteen (15) business days after Lessee has received the Title Documents. Lessee shall have the right to object to any matters revealed by the Survey (as defined below) by giving written notice to Lessor within fifteen (15) business days after Lessee has received the Survey. If Lessee disapproves of any matter affecting title or the Survey (the “Title Disapproval”), Lessor shall have the option until 5:00 p.m. on the day that is five (5) business days after delivery to Lessor of the Title Disapproval to elect in Lessor’s sole and absolute discretion by written notice to Lessee (“Lessor’s Title Response”) to (i) cure or remove such disapproved matter(s) on or before the Premises Turnover Date or (ii) not cure some or all of such disapproved matters, in which case Lessee may, by written notice to Lessor within five (5) business days after Lessor’s Title Response, elect to waive this contingency or terminate this Lease (in which event the parties shall have no further obligations to one another except with respect to the obligations that survive the termination of this Lease). Lessor’s failure to timely notify Lessee of its election aforesaid shall conclusively be deemed to be Lessor’s election not to cure any objection. If Lessee elects not to terminate this Lease as provided above, Lessee agrees that the matters expressly approved or waived by Lessee in writing shall be added to and be attached to this Lease as an addendum to Exhibit “E” as the “Permitted Exceptions”). Notwithstanding the above, Lessor shall have no obligation to take any action to remove any exceptions or objections that the Title Company may place on the Title Policy, whether or not Lessee disapproves such matters. Lessor’s approval of the Preliminary Report shall be without prejudice to Lessee’s right to disapprove the “Survey” (defined below) as provided above, or any supplementary reports issued by Title Company except those that arise after the Premises Turnover Date. The cost of a standard leasehold title policy and/or the Title Policy shall be borne by Lessee.

Within five (5) business days after the Commencement Date, Lessor shall provide Lessee with a copy of any existing ALTA survey of the Real Property in Lessor’s possession, if any (the “Existing Survey”). Lessee shall be responsible, as its sole cost and expense, for thereafter obtaining and paying for any update to the Existing Survey (“Survey”) to meet the requirements of Lessee or its lender for the Title Policy.

5.3 All Investigations shall be at the sole risk and expense of Lessee and Lessee shall defend, indemnify and hold Lessor and its employees, agents, officers and elected officials, (collectively the “Indemnified Parties”) harmless for, from and against any and all claims, causes of action, demands, injuries, damages, costs, expenses (including reasonable attorneys’ fees) or liability (collectively, the “Liability”) imposed upon, suffered by, incurred by or asserted against the Indemnified Parties as a result of or relating to the Investigations conducted by or on behalf of Lessee in connection with the Property, except for damages resulting from the negligence or willful misconduct of Lessor or those acting at its request or on its behalf or the discovery of Hazardous Substances (as defined in Section 42) on the Property that were not released on the Property by Lessor or its agents. However, if Lessee takes possession of the Premises then it shall be responsible for all Hazardous Substance (as defined in Section 42) clean-up costs that are required for purposes of completing the Premises Improvements on the Property. Lessee shall maintain
and shall cause any person performing work or investigation on the Premises on behalf of Lessee to maintain a policy of comprehensive general liability insurance with premiums fully paid, issued by an insurance company reasonably acceptable to Lessee in an amount not less than $2,000,000.00 to insure the risks covered by the indemnity provided above, which policy shall name the Indemnified Parties as insureds. The insurance shall not act as a limit on Lessee’s Liability. This indemnity shall survive any termination or expiration of this Lease. Notwithstanding any other provision in this Lease, in the event that the Conditions Precedent are not satisfied and Lessee does not take possession of the Premises, then Lessee shall return the Golf Course and Premises to substantially their same condition as they existed prior to the Commencement Date.

5.4 The following shall be conditions precedent to the Premises Turnover Date and commencement of the Basic Term hereunder (items (i) through (xiii) shall be collectively referred to as the “Conditions Precedent”): (i) (A) Lessee filed an application within ninety (90) days of the Commencement Date for the Required Project Entitlements which Required Project Entitlements the City Council may in its sole and absolute discretion either approve or disapprove and (B) prior to the end of the Due Diligence Period, Lessee has obtained such Required Project Entitlements; (ii) Lessee has prepared and the City has approved final building plans for the Golf Course Improvements and the Premises Improvements (collectively, the “Plans and Specifications”), which Plans and Specifications for the Golf Course Improvements shall be approved by Lessor if they are consistent in all material respects with the description of the Golf Course Improvements described on Exhibit “D”, and all zoning and building and safety laws and regulations, and for the Premises Improvements that shall be approved by the City if they are consistent in all material respects with the Prototype Facility and all applicable zoning and building and safety laws and regulations; the City shall be a third party beneficiary to the agreements between the Lessee and the architects and design professional responsible for preparing the Plans for the Golf Course and Premises Improvements; (iii) Lessee has entered into construction contracts consistent with this Lease, for the completion of the Golf Course Improvements on Exhibit “D” hereto, and has entered into construction contracts consistent with this Lease, for the completion of the Premises Improvements as described and depicted on Exhibit “B-1” hereto but such shall not relieve Lessee as being obligated for completing such improvements, (iv) Lessee has entered into a sub-lease of the Premises with entered into a sublease with TopGolf Topgolf has entered into construction contracts consistent with this Lease, for the completion of the Golf Course Improvements on Exhibit “B-1” hereto but such shall not relieve Lessee as being obligated for completing such improvements, (v) Lessee has delivered within ten (10) business days following the expiration of the Due Diligence Period written notice to Lessor that it desires to have this Lease become effective (“Due Diligence Acceptance Notice”); (vi) Lessor and Lessee have obtained within sixty (60) days from the Commencement Date an extension to the License in a form acceptable to the Lessor and Lessee in their respective sole and absolute discretion; (vii) Lessee has received written confirmation from Chevron USA, Inc., a Pennsylvania corporation (“Chevron”), within thirty (30) days from the Commencement Date approving of the Premises Improvements and use of the Premises as contemplated by this Lease in a recordable form acceptable to Lessee in its sole and absolute discretion (provided that, Lessee may, in its sole discretion, grant one or more extensions of the
foregoing thirty day period during which this Condition Precedent may be satisfied by delivery of written notice to Lessor setting forth the time period of any such extension(s) but in no event shall the initial thirty (30) day period and any extension thereto exceed the initial twelve month portion of the Due Diligence Period set forth in Section 5.1, plus, if applicable, the sixty day (60) day extension period; however, such approval by Chevron shall not place any obligations or restrictions on the City or on the Property that do not currently exist but may place obligations on the Lessee during the terms of this Lease which arise from Lessee’s use of the Premises; (viii) Lessor has in its sole and absolute discretion determined within sixty (60) days from the Commencement Date that the CenterCal Guarantor has sufficient financial strength to guarantee the construction of the Golf Course Improvements and the Top Golf Guarantor has sufficient financial strength to guarantee construction of the Premises Improvements and the operation of the Premises during the Operating Period and to Guarantee Rent payments through completion of the Golf Course Improvements and the Premises Improvements as expressly required by this Lease and as set forth in the Top Golf Guaranty. In the event that despite Lessor’s efforts as set forth above, the financial review of the CenterCal Guarantor and the Top Golf Guarantor cannot be completed within such 60 day period, Lessor shall notify Lessee and the 60 day period shall be automatically extended for an additional 30 days; (ix) (A) the Top Golf Guarantor shall have executed the Guaranty in the form attached hereto as Exhibit “H” and delivered such to the Lessor, and (B) the CenterCal Guarantor shall have executed the Guaranty in the form attached hereto as Exhibit “H” and delivered such to the Lessor (Delivery of these Guaranties shall also constitute performance of Condition Precedent item (iv); and neither the Top Golf Guarantor nor the CenterCal shall have withdrawn such Guarantees within five (5) business days as set forth in Section 5.5 of this Lease; (x) Lessee shall have entered into an irrevocable license with the Lessor that grants the Lessor ingress and egress to and from the parking lot located on the Premises and the right to use seventy (70) parking spaces on the parking lot on the Premises and provides that up to thirty (30) of such seventy (70) parking spaces will be marked with appropriate signage to indicate that they are to be used exclusively by the patrons of the Golf Course during the Golf Course’s hours of operation as provided in Exhibit “D” (“Parking License”); (xi) Lessor and Lessee have entered into an Access Agreement granting Lessee the right to have access to the Golf Course to construct the Golf Course Improvements; (xii) Lessee shall have prepared at its expense within one hundred and twenty (120) days after the Commencement Date the legal descriptions for Exhibits “A-1” and “A-2” for Lessor’s approval, (xiii) Lessor and Lessee shall have agreed upon the Land Value (as defined in Section 17.2.1.1 hereof) in their respective sole and absolute discretion within 180 days from the Commencement Date; and, (xiv) Lessee shall deposit four hundred thousand dollars ($400,000) into a special fund owned an escrow account with the Title Company (“Escrow Holder and maintained by the City”) into an escrow agreement with Lessor and Escrow Holder solely for the purpose of potentially funding a portion of the cost to purchase and install lights on the golf course on the Property for the purpose of allowing golf to be played on the golf course during twilight and after sunset hours. The escrow agreement shall provide that the City shall have up to ten (10) years to install lights on the golf course and that if such is not had occurred within ten (10) years that the funds shall be returned to the Lessee. Notwithstanding any provision hereof to the contrary, the parties agree and acknowledge that in connection with obtaining the Required Project Entitlements Lessee will obtain a parking study from a third party consultant. In
the event that such parking study reveals that the parking requirements for the Golf Course and the Premises require an adjustment of the total number of parking spaces needed for the Golf Course or that providing Lessor with thirty (30) exclusive parking spaces during the Golf Course’s hours of operation as described in clause (x) hereof is incompatible with the Permitted Use and Lessor’s use of the Golf Course, then prior to the end of the Due Diligence Period, the parties shall work together to modify the Parking License (and the number of parking spaces and exclusive parking spaces granted thereunder) in such a manner so as to be compatible with the Permitted Use and the Lessor’s operation of the Golf Course.

5.5 Items (vi), (vii) and (viii) of Section 5.4 shall be collectively referred to as the “Preliminary Conditions Precedent.” If, on or before the expiration of the time periods set forth for any of the Preliminary Conditions Precedent, Lessee shall determine in its sole and absolute discretion that any of the Preliminary Conditions Precedent will not be satisfied, then Lessee may notify Lessor of such determination at any time before or within ten (10) days after the expiration of such applicable time period that it has elected to terminate this Lease. With respect to the Preliminary Conditions Precedent set forth in items (vi) and (viii) above, if, on or before the expiration of the time periods set forth in items (vi) and (viii) above Lessor shall determine in its sole and absolute discretion that items (vi) and (viii) will not be satisfied within the applicable time period, then Lessor may notify Lessee of such determination at any time before or within ten (10) days after the expiration of such applicable time period that it has elected to terminate this Lease. Additionally, if Lessee does not file its application for the Required Project Entitlements within the time period set forth in 5.4 (i)(A), then unless the parties agree to extend the applicable time period in writing, this Lease shall terminate except those provisions that expressly survive a termination of this Lease. If this Lease is not so terminated by either Lessee or Lessor, then Lessee shall continue with its Investigation and shall have the right to terminate this Lease as set forth herein, including without limitation, the Conditions Precedent, and Lessor shall have also have the right to terminate this Lease by notice to Lessee if the Conditions Precedent are not satisfied within the Due Diligence Period; Lessee may terminate this Lease for any reason at any time in its sole and absolute discretion during the Due Diligence Period by notifying Lessor of such determination (the “Due Diligence Termination Notice”), whereupon any termination by Lessor or Lessee of this Lease and the obligations of the parties hereunder shall terminate (and no party hereto shall have any further obligations in connection herewith except under those provisions that expressly survive a termination of this Lease). Each party hereto agrees to diligently pursue the satisfaction of all Conditions Precedent within the time frames set forth herein. In the event that Lessee determines to proceed with the leasing of the Premises and all of the Conditions Precedent are satisfied and thereby waive its right to terminate this Lease as provided in this Section 5.5, then Lessee shall notify Lessor of such determination in writing on or before 5:00 p.m. (Pacific time) on the date that the Due Diligence Period shall expire (the “Due Diligence Acceptance Notice”). If the Lessee delivers the Due Diligence Acceptance Notice and neither the Top GolfToppolf Guarantor or the CenterCal Guarantor have withdrawn their Guarantees by providing written notice of such within five (5) business days of the Due Diligence Acceptance Notice then the Guarantees shall be deemed to be in full force and effect and the Top GolfToppolf Guarantor and the CenterCal Guarantor shall have waived any rights, if any, to claim that their respective Guarantees are not in full force and effect. If either Guarantor has given
written notice of the withdrawal of their Guaranty then this Lease shall be deemed terminated and
the parties shall have no further obligations under this Lease except those that expressly survive
the termination of this Lease. The Due Diligence Acceptance Notice shall be deemed to be a
confirmation from Lessee that the parties have entered into the sub-leases of the Premises further
described in clause (iv) of Section 5.4 hereof. In the event that Lessee shall fail to deliver either
the Due Diligence Termination Notice or the Due Diligence Acceptance Notice to Lessor on or
before 5:00 p.m. (Pacific time) on the date that is the tenth business day following the expiration
of the Due Diligence Period then this Lease shall expire and the obligations of the parties hereunder
shall terminate (and no party hereto shall have any further obligations in connection herewith
except under those provisions that expressly survive a termination of this Lease). In addition to
the foregoing, if, on or before the expiration of the Due Diligence Period the Conditions Precedent
have not been satisfied or the City does not approve of the Required Project Entitlements, then this
Lease and the obligations of the parties hereunder shall terminate and no party hereto shall have
any further obligations in connection herewith except under those provisions that expressly survive a
termination of this Lease. It is expressly understood that the City is not committing to issuance
of the Required Project Entitlements, including the CEQA determination or that the Conditions
Precedent shall otherwise be satisfied by executing this Lease as such are subject to a separate
discretionary land use entitlement processes, including public hearings, and/or are outside of the
City’s control and/or are, as applicable, subject to the approval of the City. If the public hearings
for the Required Project Entitlements are not commenced or completed within the Due Diligence
Period for whatever reason, such shall not extend the Due Diligence Period and the City shall
have no liability to any party for such.

Within five (5) business days of the delivery by Lessee to Lessor of the Acceptance Notice, so
long as neither the Top Golf Guarantor nor the CenterCal Guarantor have provided written
notice that it has withdrawn its Guarantee, Lessor and Lessee shall each execute a memorandum
evidencing this Lease that may be recorded by Lessee at Lessee’s sole cost and expense and in the
form of Exhibit “F.” If, for any reason at any time during the Term of this Lease the legal
description of the Premises changes, Lessor and Lessee agree to execute and record a new
Memorandum of Lease, modifying the original Memorandum to reflect such new legal description.
Notwithstanding the foregoing sentence, the parties are under no obligation to modify the legal
description of the Premises. In the event this Lease is terminated pursuant to the terms hereof the
parties agree, upon written request of either party, to execute and record evidence of such
termination of the above Memorandum.

5.6 Notwithstanding anything in this Lease to the contrary, Lessee shall have no right
to terminate this Lease and Top Golf Guarantor and CenterCal Guarantor shall have no
right to terminate or diminish their obligations under their respective guarantees following the
Premises Turnover Date through the time that the Golf Course Improvements and the Premises
Improvements are completed and a certificate of occupancy has been issued for the Golf Course
and the Premises, except for termination due to a material default of this Lease by Lessor that
Lessor has not remedied after being notified of the default and afforded the opportunity to cure it
as provided in Section 19. Notwithstanding the foregoing, if, during construction of the Golf
Course Improvements or the Premises Improvements, Lessee discovers that due to the discovery
of Hazardous Substances (as defined in Section 42) on or under the Golf Course or Premises after
the Turnover Date which: (i) could not have not been reasonably discovered by Lessee as part of
its investigation of the Premises and Golf Course; or (ii) were not caused by Lessee, its agents,
contractors, employees, tenants, occupants or invitees or otherwise resulting from Lessee’s use of
the Premises; and Lessee is not able to construct its contemplated Premises Improvements in
accordance with desired or approved plans, site plans and the Required Project Entitlements,
Lessee shall be obligated to return the Golf Course and Premises to the same or better condition,
including all improvements that existed thereon, they were in prior to the Premises Turnover Date
and terminate this Lease and the parties shall have no further rights or obligations under this Lease
except as expressly set forth herein.

5.7 Upon any termination of this Lease pursuant to this Section 5, and provided that
Lessor is not in default of any material provision hereunder, Lessee shall deliver to Lessor, within
ten (10) days of such termination and without any representation or warranty whatsoever as to the
truth, accuracy or completeness of such information and Lessor shall rely on such information at
Lessor’s sole risk and expense, originals or copies of all studies, reports, maps, documents and
other material obtained by Lessee from third parties as part of Lessee’s Investigation that are in
Lessee’s possession and that Lessee is not expressly prohibited from providing to Lessor.

5.8 All those provisions of this Section 5 whose full performance are not accomplished
prior to any termination of this Lease shall survive such termination to allow such performance
within a reasonable time. However, this provision shall not extend the Due Diligence Period,
provide additional time for satisfying the Conditions Precedent or in any way result in a leasehold
or other possessory interest to be created in the Lessee or any other party with respect to the
Premises or the Property.

Section 6. Liens

6.1 Except as otherwise specifically provided in this Lease, Lessee shall have no power
to do any act or to make any contract that may create or be the foundation for any lien, mortgage,
or other encumbrance on the reversion or other estate of Lessor, or on any interest of Lessor in the
Property.

6.2 Lessee shall not suffer or permit any liens to attach to the interest of Lessor or the
interest of Lessee in all or any part of the Property by reason of any work, labor, services, or
materials done for, or supplied to, or claimed to have been done for or supplied to, Lessee or
anyone occupying or holding an interest in all or any part of any the Golf Course Improvements
on the Property or the Premises Improvements on the Premises through or under Lessee; provided,
that if any such lien shall at any time be filed against the Property, Lessee shall cause the same to
be discharged of record within sixty (60) days after the date of filing the same by either payment,
deposit, or bond. Lessee may, however, postpone its obligation to discharge a lien arising out of
work done by or for Lessee if Lessee provides Lessor or any prospective purchaser of Lessor’s fee
interest with title insurance that insures Lessor’s title and either: (i) omits the lien, or (ii) insures
against collection of the debt underlying the lien, and Lessee shall not be in default of its

Error! Unknown document property name.
obligations under this Section 6.2 during any such period of postponement, provided such title insurance is provided within the aforesaid sixty (60) day period, at Lessee’s expense.

6.3 Subject to Section 12, unless otherwise set forth to the contrary herein, nothing in this Lease shall be deemed to be, or be construed in any way as constituting, the consent or request of Lessor, express or implied, by inference or otherwise, to any person, firm, or corporation for the performance of any labor or the furnishing of any materials for any construction, rebuilding, alteration, or repair of or to the Property or to any Golf Course Improvements or Premises Improvements, or as giving Lessee any right, power, or authority to contract for or permit the rendering of any services or the furnishing of any materials that might in any way give rise to the right to file any lien against Lessor’s interest in the Property or against Lessor’s interest, if any, in the Golf Course Improvements or Premises Improvements. Lessee is not intended to be an agent of Lessor for the construction of any Golf Course Improvements or Premises Improvements on the Property. Lessor shall have the right to post and keep posted at all reasonable times on the Property and on any Golf Course Improvements or Premises Improvements, any notices that Lessor shall be required to post for the protection of Lessor, the Property, and of the Golf Course Improvements or Premises Improvements from any such lien. The foregoing shall not be construed to diminish or vitiate any rights of Lessee in this Lease to construct, alter, or add to any Golf Course Improvements or Premises Improvements in accordance with the terms of this Lease.

Section 7. Utilities, Taxes, and Other Charges

7.1 Lessee shall pay or cause to be paid all charges for water, gas, electricity, garbage, telephone, sanitary sewer, storm water, drainage, and any and all other services used by Lessee in or upon the Premises or any Premises Improvements.

7.2 Subject to Section 7.7, Lessee shall pay and discharge, or cause to be paid and discharged, before any fine, penalty, interest, or cost may be added for nonpayment, all real estate taxes, personal property taxes, privilege taxes, excise taxes, business and occupation taxes, gross sales charges, assessments (including but not limited to, assessments for public improvements or benefits), and all other governmental impositions and charges of every kind and nature whatsoever, whether or not now customary or within the contemplation of the parties and regardless of whether the same shall be extraordinary or ordinary, general or special, unforeseen or foreseen, or similar or dissimilar to any of the foregoing which, at any time during the Lease Term following the Premises Turnover Date, shall be or become due and payable and which:

7.2.1 Shall be levied, assessed, or imposed against the Premises or any Premises Improvements or any interest of Lessor or Lessee under this Lease; or

7.2.2 Shall be or become liens against the Premises or any Premises Improvements or any interest of Lessor or Lessee under this Lease unless caused by or on behalf of Lessor; or
7.2.3 Shall be levied, assessed, or imposed on or against Lessor by reason of any actual or asserted engagement by Lessee, or by Lessor at the direction of, directly or indirectly, in any business, occupation, or other activity in connection with the Premises or any Premises Improvements; or

7.2.4 Shall be levied, assessed, or imposed on or in connection with the ownership, leasing, operation, management, maintenance, repair, rebuilding, use, or occupancy of the Premises or any Premises Improvements under or by virtue of any present or future Legal Requirement, it being the intention of the parties that, insofar as the same may lawfully be done, Lessor shall be free from all such expenses and all such real estate taxes, personal property taxes, privilege taxes, excise taxes, business and occupation taxes, gross sales taxes, occupational license taxes, water charges, sewer charges, assessments, and all other governmental impositions and charges of every kind and nature whatsoever (all of such taxes, water charges, sewer charges, assessments, and other governmental impositions and charges that Lessee is obligated to pay being collectively called “Tax” or “Taxes”).

7.3 If by law any Tax is payable, or may at the option of the taxpayer be paid, in installments, Lessee may, whether or not interest shall accrue on the unpaid balance, pay the same, and any accrued interest on any unpaid balance, in installments as each installment becomes due and payable, but in any event before any fine, penalty, interest, or cost may be added for nonpayment of any installment or interest. With respect to any assessments for public improvements or any similar assessments, Lessee may request amortization of such assessments over the longest period permitted by governmental authority so long as such does not exceed the Basic Term or any extension thereof exercised by Lessee. Lessee shall be obligated to pay off any unpaid balance of any such installment payment plan upon the termination of this Lease.

7.4 Any Tax relating to a fiscal period of the taxing authority, a part of which is within the Lease Term and a part of which is not within the Lease Term, shall be apportioned and adjusted between Lessor and Lessee so that Lessee shall pay only the portions that correspond with the portion of such fiscal periods included within such period. Any such adjustments shall be resolved, as applicable, at the Premises Turnover Date and the expiration of the Lease Term.

7.5 Lessee covenants to furnish to Lessor, within thirty (30) days after the last date when any Tax must be paid by Lessee as provided in this section, official receipts, if such receipts are then available to Lessee, or other proof reasonably satisfactory to Lessor, evidencing payment.

7.6 Lessee shall have the right at Lessee’s expense to contest or review the amount or validity of any Tax or to seek a reduction in the assessed valuation on which any Tax is based, by appropriate legal proceedings. Lessee may defer payment of such contested Tax on condition, however, that if such contested Tax is not paid beforehand and if such legal proceedings shall not operate to prevent the enforcement of the collection of the Tax so contested and shall not prevent the sale of the Premises or any Premises Improvements to satisfy the same, then before instituting any such proceedings, Lessee shall furnish to Lessor a surety company bond, cash deposit, or other security reasonably satisfactory to Lessor as security for the payment of such Tax, in an amount
sufficient to pay such Tax, together with all interest and penalties in connection with such Tax and all charges that might be assessed against the Premises or any Premises Improvements in the legal proceedings. On termination of such legal proceedings, the security originally deposited shall be applied to the payment, removal, and discharge of the Tax and the interest and penalties in connection with the Tax and the charges and costs accruing in such legal proceedings and the balance, if any, shall be paid to Lessee. If such security shall be insufficient for this purpose, Lessee shall forthwith pay over to Lessor an amount sufficient, together with the security originally deposited, to pay the same. Lessee shall not be entitled to interest on any money deposited pursuant to this section.

7.7 Any contest as to the validity or amount of any real or personal property tax, or assessed valuation on which such tax was computed or based, whether before or after payment, may be made by Lessee in the name of Lessor or of Lessee, or both, as Lessee shall determine, and Lessor agrees that it will cooperate with Lessee in any such contest to such extent as Lessee may reasonably request, and Lessee covenants to indemnify and save Lessor harmless from any such costs or expenses. Lessee shall be entitled to any refund of any such Tax and penalties or interest that have been paid by Lessee.

7.8 Lessee shall be responsible and shall pay or cause to be paid all costs directly or indirectly related to Lessee’s development and use of the Premises and Premises Improvements constructed thereon.

7.9 The parties shall use reasonable efforts to see that all communications from governmental authorities respecting Taxes are sent directly by such authorities to Lessee. The certificate, advice, receipt, or bill of the appropriate official designated by law to make or issue the same or to receive payment of any Tax or nonpayment of such Tax, shall be prima facie evidence that such Tax is due and unpaid or has been paid at the time of the making or issuance of such certificate, advice, receipt, or bill.

Section 8. Insurance

Lessee, at its expense, shall maintain at all times during the Lease Term commercial general liability insurance in respect of the Premises and use of the Premises with Lessor as additional insured, with five million dollars ($5,000,000.00) in “Constant Dollars” (as defined below) minimum combined single-limit coverage, or its equivalent. Such insurance shall include contractual liability coverage in such amount for Lessee’s indemnification and other obligations contained herein. Such insurance policy shall be written as a primary policy and shall not be contributing with or be in excess of the coverage that either Lessor or Lessee may carry and shall be issued in the name of Lessee, with Indemnified Parties as being included in the insurance policy definition of who is an additional insured, and shall be primary to any insurance available to Lessor. Lessee shall also maintain during the Basic Term, at no expense to Lessor, fire and extended coverage insurance sufficient to replace all Premises Improvements notwithstanding the amounts set forth below. Such policies of insurance shall be issued by good, responsible companies that are reasonably acceptable to Lessor and qualified to do business in the state of California. An insurance certificate or certificates evidencing such insurance shall be delivered to
Lessor prior to the Commencement Date (evidencing coverage in the amount of two Million Dollars ($2,000,000) covering the Due Diligence Period), and thereafter prior to the Premises Turnover Date (evidencing coverage in the amount of five Million dollars ($5,000,000)), and renewal policies shall be delivered to Lessor within ten (10) days before the expiration of the term of each such policy or policies. As often as any such policy or policies shall expire or terminate, renewal or additional policies shall be procured and maintained by Lessee in like manner and to like extent. All policies of insurance must contain a provision that the company writing the policy will give Lessor thirty (30) days’ written notice in advance of any cancellation, non-renewal substantial change of coverage, or the effective date of any reduction in amount of insurance.

During the term of this Lease, Lessor shall maintain, or cause to be maintained, in full force and effect, on and with respect to the Golf Course, either proof of self-insurance, or insurance through a joint powers authority, reasonably acceptable to Lessee in the amounts and with additional insured requirements set forth in this paragraph or policies of: (i) commercial general liability insurance, written on an “occurrence” policy form, with bodily injury and property damage coverage arising out of or relating to Lessor’s ownership, business operations, use or occupancy of the Golf Course, which shall name Lessee, Lessee’s first mortgagee, and Topgolf as additional insureds as their respective interests may appear, and (ii) first party property insurance written on a “special form” policy covering loss or damage to the improvements on the Golf Course for not less than the amount of the full replacement value of such improvements. The limits of the commercial general liability policy shall be at least Twentyfive Million Dollars ($25,000,000) per person, with a combined single limit of not less than Thirtyfive Million Dollars ($35,000,000.00) on a “per occurrence” basis (bodily injury and property damage), or in such higher amounts and with such additional coverages as Lessor may be required pursuant to agreement with any mortgage lender of Lessor or pursuant to any other contractual agreement relating to the Golf Course or any part thereof to which Lessor is a party. At Lessee’s request, Lessor shall furnish appropriate certificates of such insurance to Lessee.

The insurance required of Lessee and Lessor by this provision or otherwise in this Lease shall not limit such party’s liability under any indemnity provision set forth in this Lease or any other liability that such party may have under this Lease.

“Constant Dollars” shall mean the value of the U.S. dollar to which such phrase refers, as adjusted from time to time. An adjustment shall occur on the 1st day of June of the sixth (6th) full calendar year following the date of this Lease, and thereafter at five (5) year intervals. Constant Dollars shall be determined by multiplying the dollar amount to be adjusted by a fraction, the numerator of which is the Current Index Number and the denominator of which is the Base Index Number. The “Base Index Number” shall be the level of the Index for the year of the Commencement Date; the “Current Index Number” shall be the level of the Index for the year immediately preceding the adjustment year; the “Index” shall be the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the United States Department of Labor for U.S. City Average, All Items (1982-84=100), or any successor index thereto as hereinafter provided. If publication of the Index is discontinued, or if the basis of calculating the Index is materially changed, then Lessor and Lessee shall substitute for the Index comparable
Section 9. Lessor’s Right to Perform Lessee’s Covenants

9.1 If Lessee at any time fails to pay any Tax in accordance with the provisions of this Lease or fails to make any other payment (other than Rent) or perform any other material act on its part to be made or performed (in each instance, to the extent applicable, within the applicable notice and cure periods provided in this Lease), then Lessor may (but shall be under no obligation to):

9.1.1 Obtain the same on Lessee’s behalf, and without waiving or releasing Lessee from any obligation of Lessee contained in this Lease or from any default by Lessee and without waiving Lessor’s right to take such action as may be permissible under this Lease as a result of such default, and after Lessee’s failure to obtain any required liability insurance or evidence thereof, procure such insurance and Lessee shall pay to Lessor the actual costs and expenses thereof as applicable to that period of time between the expiration of such notice and the date upon which Lessee provides such certificate or evidence of liability insurance to Lessee as required hereinabove, and any actual costs incurred by Lessor in obtaining or terminating its procured insurance; and/or

9.1.2 After ten (10) days prior written notice to Lessee which specifies what action is required, perform the same on Lessee’s behalf, make any other payment or perform any other act on Lessee’s part to be made or performed as provided in this Lease.

9.2 All sums so paid by Lessor and all actual costs and expenses incurred by Lessor, in connection with the performance of any such act, shall constitute Additional Rent payable by Lessee under this Lease and shall be paid by Lessee to Lessor on demand.

Section 10. Compliance with Legal Requirements

10.1 Throughout the Lease Term Lessee shall promptly comply with all Legal Requirements (as defined in Section 4.2). To the extent that there is any change in Legal Requirements such that the Permitted Use is no longer a lawful use of the Premises, Lessee may terminate this Lease upon delivery of written notice to Lessor. Lessee shall pay all costs of compliance with Legal Requirements.

10.2 Lessee shall have the right, after prior written notice to Lessor, to contest by appropriate legal proceedings, diligently conducted in good faith, in the name of Lessee or Lessor or both, without cost or expense to Lessor, the validity or application of any Legal Requirement subject to the following:

10.2.1 If, by the terms of any Legal Requirement, compliance may legally be delayed pending the prosecution of any such proceeding without the incurrence of any lien, charge,
or liability of any kind against all or any part of the Premises and without subjecting Lessor to any liability, civil or criminal, for failure to comply, Lessee may delay compliance until the final determination of such proceeding; or

10.2.2 If any lien, charge, or civil liability would be incurred by reason of any such delay, Lessee nevertheless may contest the matter and delay compliance, provided that such delay would not subject Lessor to criminal or civil liability or fine, and Lessee prosecutes the contest with due diligence.

10.3 Lessor shall execute and deliver any appropriate papers, as determined in the Lessor’s sole discretion, that may be necessary, proper or desirable to permit Lessee to contest the validity or application of any Legal Requirement, provided all the requirements of this section have been satisfied by Lessee.

10.4 Each party shall promptly provide the other party, in the manner provided in Section 31 below, copies of all material correspondence or other documents sent to or received from governmental agencies or other persons: (i) relating to Lessee’s development of the Premises; and/or (ii) that may materially adversely affect the fair market value of the Premises.

10.5 Lessor represents and warrants to Lessee, that as of the Commencement Date and as of the Premises Turnover Date:

10.5.1 Lessor shall not during the Lease Term initiate any action that would create any encumbrances except for taxes, assessments and fees imposed pursuant to California Constitution Articles XII C and D (or other applicable laws), that would adversely affect Lessee’s use, operation or occupancy of the Premises.

10.5.2 All persons and entities supplying labor, materials, and equipment to the Premises have been paid, there are no claims of liens and there are no service contracts applicable to the Premises.

10.5.3 To the best of Lessor’s knowledge there is no action in the nature of litigation, claim, investigation or other proceeding pending or to Lessor’s best knowledge, threatened against or affecting the Premises, the use thereof, or Lessor, or if there is, then Lessor shall promptly disclose such matter to Lessee.

10.5.4 Lessor has not committed nor obligated itself in any manner whatsoever to sell or lease the Premises to any person other than Lessee. Without limiting the generality of the foregoing, no right of first refusal regarding the Premises exists. Lessor will not, prior to the Premises Turnover Date, offer to or enter into any backup or contingent option or other agreement to sell or lease the Premises to any other person.

10.5.5 Except for ______________, which, however, will be unconditionally terminated prior to manage the Property but the Lessor shall by the Premises Turnover Date ensure
that there are no existing leases, tenancies, rental agreements or entitlements or use agreements, or unrecorded restrictive covenants affecting all or any portion of the Premises except for the Permitted Exceptions.

10.5.6 Lessor is not a foreign person, nonresident alien, foreign corporation, foreign partnership, foreign trust, or foreign estate, as those terms are defined in the Internal Revenue Code and the Income Tax Regulations promulgated thereunder.

10.5.7 Lessor has made no untrue statements or representations in connection with this Lease.

10.5.8 Lessor has to the best of its knowledge provided or made available to Lessee all information in Lessor’s possession that Lessee has requested, and Lessor to the best of its knowledge has provided or made available to Lessee any public information or knowledge actually obtained by Lessor of any change contemplated in any applicable laws, ordinances or restrictions, or any judicial or administrative action, or any action by adjacent landowners, or natural or artificial condition, financial or otherwise, which would prevent, limit or impede the use of the Premises as contemplated by this Lease.

10.5.9 All documents delivered or made available to Lessee by or on behalf of Lessor are to the best or Lessor’s knowledge true and correct copies of the documents in Lessor’s possession.

10.5.10 Prior to the Premises Turnover Date, and except as otherwise provided in this Lease, Lessor has: (i) performed all of its obligations under any lien indebtedness, and (ii) except as expressly permitted by this Lease, not allowed any lien to attach to the Premises or any portion thereof which is not discharged at the Premises Turnover Date, nor granted, created, modified or permitted the creation of, any easement, right-of-way, encumbrance, restriction or covenant affecting the Premises or any part thereof.

10.5.11 To Lessor’s actual knowledge, except as may be contained in the written materials delivered or made available to Lessee during the Due Diligence Period, Lessor is not aware of the existence of Hazardous Substances (as defined in Section 42), at the Property. For purposes of this Section 10.5.11, the phrase “actual knowledge” shall mean the present, actual knowledge of the City Manager (“Lessor’s Designated Representative”) with no duty of investigation, inquiry or inspection. In no event shall Lessee be entitled to assert any cause of action against Lessor’s Designated Representative, nor shall such individual have any personal liability whatsoever for any matter under or related to this Lease. Lessor represents and warrants that Lessor’s Designated Representative is the City Manager and the person on behalf of Lessor most knowledgeable about the matters which are the subject of this Section.
Section 11. Operation, Repairs and Maintenance

11.1 Lessee shall maintain and repair or cause to be maintained and repaired the Premises and any Premises Improvements Lessee constructs on the Premises, and off the Premises but in conjunction with the development of the Premises and that Lessee is required by Legal Requirements to maintain, as necessary to keep them in first-class order, condition, and repair throughout the entire Lease Term after the Premises Turnover Date, at no cost to Lessor, provided that during the periods that TopGolf is operating the Premises, this condition shall be satisfied by keeping the Premises in a condition substantially comparable to other facilities currently being operated by TopGolf. Lessor and Lessee agree that wherever in this Lease an obligation is imposed on Lessee, Lessee, without being released from any of its obligations under this Lease or requiring that the City pursue any party other than Lessee for performance of such obligations, shall have the right to delegate responsibility for performing such obligations and will delegate such responsibility for performing such obligations to TopGolf or to any other occupant of the entire Premises approved by Lessor under Section 18 of this Lease (an “Operator”) and performance of such obligation by TopGolf or the Operator in accordance with the terms of this Lease shall be deemed performance by Lessee.

11.2 During the Lease term (i) Lessee shall operate or cause to be operated the ground level (or other suitable portion) of the Premises Improvements as a driving range open for business seven days a week from at least 6:00 a.m. until at least 9:00 p.m., other than on any Specified Holidays and (ii) the remainder of the Premises Improvements, such that the same are open for business seven days a week from at least 8:00 a.m. until at least 9:00 p.m., other than on any Specified Holidays (“Continuous Operation Requirement”). The only exception to these requirements shall be during periods of damage or destruction, condemnation, or when Lessee is conducting alterations, routine repairs, maintenance and upgrades to the facilities and in such cases Lessee shall work diligently to minimize the number of hours and/or days that the driving range and/or restaurant are not open during the Continuous Operation Requirement. For purposes hereof, “Specified Holidays” means collectively, the following holidays: New Year’s Day, President’s Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day. Notwithstanding anything to the contrary contained or implied in this Lease, in the event that at any time after the expiration of the Operating Period the Lessee provides written notice that the Premises will not be operated by TopGolf or another Operator for the Permitted Use (a “Non-Operation Notice”), then Lessee shall not be deemed to be in default so long as (i) it is paying Rent and any other sums owing the Lessor hereunder in a timely manner, and (ii) Lessee either terminates this Lease as provided below or reopens the Premises for business to the public, in either event within two (2) years after any Non-Operation Notice (provided that any replacement Operator of the driving range is approved by Lessor pursuant to Section 18 hereof). Following receipt of the Non-Operation Notice, Lessor may notify Lessee that Lessor has elected to operate the driving range or cause the driving range to be operated on an interim basis during the period that the Premises is not open for business to the public, then Lessor shall then operate the driving range or cause the driving range to be operated during the time period set forth in Lessor’s notice in accordance with the standards of operation set forth in this Lease until such time as Lessee finds a new Operator for the Premises. In the event that Lessor elects to operate the driving range as set
forth above, Lessor shall operate the driving range pursuant to a month to month sublease in form and content reasonably acceptable to Lessor, Lessee and Top Golf Topgolf, which shall provide, among other things, for (i) the reduction of the Fixed Rent in an amount equal to the monthly net revenues that Lessor derives from its operation of the Premises (i.e. the aggregate gross revenues received by Lessor in connection with the operation of the driving range minus all reasonable third party out of pocket costs incurred by Lessor in connection with the operation of the driving range, as evidenced by monthly income and expense reports and other reasonable back-up information reasonably requested by Lessee and/or Top Golf Topgolf delivered to Lessee and Top Golf Topgolf by Lessor along with the monthly rental payments), and (ii) the right of termination by Lessee or Lessor of the sublease upon thirty business days’ prior written notice upon Lessee identifying an Operator that will sublease the Premises and operate the same for the Permitted Use. Notwithstanding anything herein to the contrary, in no event during Lessor’s operation of the Premises shall Lessor utilize any proprietary equipment and/or other proprietary elements of Topgolf’s business, including, without limitation, computer hardware and software and other intellelction property, located upon or about the Premises.

Following the expiration of the Operating Period, including during the two year period following delivery of the Non-Operation Notice, the Lessee shall have the right to terminate this Lease upon thirty (30) days written notice to Lessor and shall be obligated to pay Rent and all other sums due through the date of the termination of this Lease and no party hereto shall have any further obligations in connection herewith except under those provisions that expressly survive a termination of this Lease.

11.3 Lessee shall make driving bays available for youth sports and provide a ten percent (10%) discount on golf charges for residents of the City of El Segundo that have City of El Segundo Parks and Recreation Identification Cards. This discount will be in addition to all other golfing discounts offered by Lessee such as the twenty percent (20%) golf discount offered to senior citizens and active military personnel.

11.4 During such times that Top Golf Topgolf is the operator it shall: (a) between the hours of 6:00 a.m. and 912:00 a.m. charge users City of El Segundo residents that have a Parks and Recreation Card shall be allowed to use the portion of the Premises used as a driving range for fees that are generally and shall be charged consistent with fees charged by other driving range facilities in Los Angeles County that are open to the public and that are maintained in a similar first class condition; (b) provide discounted monthly user access cards for frequent customers similar to those provided at other Top Golf Topgolf facilities; (c) use commercially reasonable efforts to promote youth and junior golf programs, including but not limited to allowing the “Good Swings Happen” program to continue as well as associated camps, programs and lessons for junior and youth golfers; (d) utilize commercially reasonable efforts to allow golf professionals, including and allow use of the driving range for such groups on the Premises at rates commensurate with those currently charged to youth groups utilizing the driving range which rates may be adjusted on annual basis using the Los Angeles Area Consumer Price Index for All Urban Consumers; (d) employ or contract with golf professionals (at salaries or rates commensurate with amounts paid to golf professionals in Los Angeles County), including using a

Error! Unknown document property name.
good faith effort to employ or contract with those currently providing lessons and services on the Property, to continue to provide lessons and services in a similar manner as they are currently provided on the Property and it shall also, including using a good faith effort to employ or contract with two golf professionals that are currently providing services on the Property during the time period between the Initial Term and Premises Turnover Date utilize commercially reasonable efforts to employ two golf professional that currently provide lessons on the Property; (e) if the Site Plan (including the parking layout) will allow, use commercially reasonable efforts to include a putting practice element on the Premises to replace the existing putting practice element on the Property; (f) allow junior high school and high school players attending schools located in El Segundo and Manhattan Beach to use the portion of the Premises used as a driving range between the hours of 2:30 p.m. and 5:30 p.m. at no charge when such is a formal school practice event and at a rate commensurate with fees charged by other driving ranges open to the public that are maintained in a first class condition when they are practicing at other times (provided that such times are prior to 7:00 p.m. local time); and, (g) use commercially reasonable efforts to introduce the game of golf to a wider audience and work with PGA of America, PGA of Southern California, and the SCGA in this regard.

11.5 Lessor shall not be required to furnish to Lessee any facilities or services of any kind whatsoever during the Lease Term, including but not limited to, water, steam heat, gas, hot water, electricity, light, and power. Lessor shall in no event be required to make any alterations, rebuildings, replacements, changes, additions, improvements, or repairs to the Premises during the Lease Term.

11.6 Lessor assigns to Lessee such rights, if any, as Lessor may have against any parties causing damage during the Lease Term to any Premises Improvements on the Premises, to sue for and recover amounts expended by Lessee as a result of such damage.

Section 12. Development of the Golf Course Premises; Premises Improvements

12.1 Promptly following the Premises Turnover Date, Lessee shall at no cost or expense to Lessor modify and demolish, as necessary, and improve (or cause to be modified and demolished, as necessary, and improved) the Golf Course and Premises in accordance with the Golf Course Improvements and Premises Improvements as set forth in this Lease, and diligently prosecute the same to completion, provided that the Golf Course Improvements and Premises Improvements shall be substantially in accordance with the Plans and Specifications approved by Lessor as provided in this Lease, all applicable laws, building regulations, and other applicable restrictions on the use of the Premises, and further provided that Lessee shall be responsible for obtaining, at no cost or expense to Lessor, all governing and regulatory agency approvals and permits that may be required in connection with such Golf Course and Premises Improvements. Notwithstanding the foregoing, in the event that Top Golf defaults in its construction obligations under its sublease with Lessee after the expiration of any applicable notice and cure periods set forth in this Lease, which would also constitute a default by Lessee, Lessee shall have the right in its sole and absolute discretion to either: (a) complete the Premises Improvements as provided above, or (b) terminate this Lease and return the Golf Course and Premises to the same or better condition as they were in on the Premises Turnover Date. Lessee shall not be relieved of any
obligation to pay Rent or any other payment in the event of any such default by TopGolf or any other default hereunder by Lessee unless and until this Lease is terminated as set forth above in (b) and the Lessor is in possession of the Golf Course and the Premises and both have been returned to the same or better condition as they existed prior to the Premises Turnover Date. No action by Lessee to complete the Premises Improvements shall alter or diminish the 30West Pershing Topgolf Guarantor Guarantee. All improvements to the Golf Course and the Premises shall be completed within ten (10) months of the Premises Turnover Date, subject to events of force majeure and delays caused by Lessor.

12.2 Lessor and Lessee shall meet and attempt to agree on a plan, including but not limited to addressing any and all construction, operational and liability issues, that would result in keeping the Golf Course, or portions thereof, open for business during the construction of the Golf Course Improvements and the Premises Improvements, and Lessee shall be entitled to retain fifty percent (50%) of any net revenue resulting from the Golf Course operations for the period commencing on the Premises Turnover Date and ending on the Fixed Rent Commencement Date or until the Golf Course Improvements are completed and the Golf Course is capable of being operated in accordance with Section 4.1 of this Lease before the expiration of such ten month period. Notwithstanding the foregoing Lessee shall retain in its sole and absolute discretion the absolute and unconditional right to shut down the Golf Course operations or portions thereof at any time during the period commencing on the Premises Turnover Date and ending on the Fixed Rent Commencement Date. Within ninety (90) days after the Commencement Date, Lessee shall deliver to Lessor the conceptual Golf Course Improvement Plans and Specifications for Lessor’s approval as provided in Section 5.4 of this Lease.

12.3 Lessor shall review and approve the Plans and Specifications, such approval not to be unreasonably withheld, conditioned or delayed, and/or provide Lessee with its comments within thirty (30) days after Landlord’s receipt of the Plans and Specifications. If disapproved Lessee shall make all necessary revisions within ten (10) days after Lessee’s receipt thereof. This procedure will be repeated until Lessor ultimately approves the conceptual Plans and Specifications or until this Lease is terminated in accordance with Section 5.4 and/or 5.5 hereof. Notwithstanding the foregoing, the conceptual Plans and Specifications for the Premises Improvements shall be approved if they are consistent in all material respects with the Prototype Facility and all applicable zoning and building and safety laws and regulations, and the conceptual Plans and Specifications for the Golf Course Improvements shall be approved if they are consistent in all material respects with Exhibit “D” and all applicable zoning and building and safety laws and regulations.

Section 13. Title to Premises Improvements

Title to any Premises Improvements and any modifications, additions, restorations, repairs and replacements thereof hereafter placed or constructed by or through Lessee shall be and remain in Lessee until the expiration or termination of the Lease Term. On such expiration or sooner termination, title to any Premises Improvements shall automatically pass to, vest in, and belong to
Section 14. No Waste

Lessee shall not intentionally commit any material waste on or to the Premises.

Section 15. Inspection and Access

Lessor shall have the right to enter on the Premises and any Premises Improvements at all reasonable times during usual business hours upon not less than three (3) business days’ notice for the purpose of preventing the creation of any prescriptive rights to any third person, allowing inspection by mortgagees, and, within one hundred eighty (180) days of the expiration of the Lease Term, Lessor shall have the right to enter the Premises for the purpose of showing the Premises to prospective lessees or purchasers. Notwithstanding anything to the contrary herein, any access given to Lessor to enter the Premises for the purposes explicitly stated above shall be subject to Lessee’s reasonable security rules and regulations. Lessee reserves the right to accompany Lessor at all times during any entry by Lessor. Lessor shall use commercially reasonable efforts to minimize any interference with the day to day operations of the Premises in exercising any of its rights under this Section 15. In the event any subtenant has the right to abate rent, as a result of Lessor’s activities under this Section 15, then Lessee shall be entitled to an abatement of Fixed Rent to the extent of such subtenant rent abatement, less any rent loss insurance proceeds received by Lessee, provided that Lessee has given Lessor prior written notice of the terms of such subtenant abatement rights.

Section 16. Lessor’s and Lessee’s Exculpation and Indemnity

16.1 After the Premises Turnover Date, Lessee is and shall be in exclusive control of the Premises and of any Premises Improvements, and except as otherwise provided herein, Lessor shall not in any event whatsoever be liable for any injury or damage to any property or to any person happening on, in, or about the Premises or any Premises Improvements or any injury or damage to the Premises or any Premises Improvements or to any property, whether belonging to Lessee or to any other person, caused by any fire, flooding, earthquake, storm, act of God, terrorist act, breakage, leakage, defect, or bad condition in any part or portion of the Premises or of any Premises Improvements, or from steam, gas, electricity, water, or rain, that may leak into, or issue or flow from any part of the Premises or any Premises Improvements from the drains, pipes, or plumbing work of the same, or from the street, subsurface, or any place or quarter, or due to the use, misuse, or abuse of all or any of any Premises Improvements or from any kind of injury that may arise from any other cause whatsoever on the Premises or in or on any Premises Improvements, including defects in construction of any Premises Improvements, latent or otherwise. Notwithstanding the foregoing, Lessor shall indemnify, defend and hold harmless Lessee from and against all claims and all costs, expenses, and liabilities incurred in connection

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with all claims, including any action or proceeding brought thereon, arising from or as a result of: (i) any accident, injury, loss, or damage whatsoever caused to any person or to the property of any person, as shall occur on or about the Premises prior to the Premises Turnover Date, except to the extent such is caused by the negligent or wrongful acts of the Lessee, (ii) any failure on the part of Lessor to perform or comply with any of the covenants, agreements, terms, provisions, conditions, or limitations contained in this Lease on its part to be performed or complied with, or (iii) any negligent act of Lessor or the agents, contractors, servants, or employees of Lessor. In case any action or proceeding is brought against Lessee by reason of any claims covered in this Section 16.1, Lessor on written notice from Lessee shall, at Lessor’s expense, resist or defend such action or proceeding by counsel approved by Lessee in writing, which approval shall not be unreasonably withheld, conditioned or delayed.

16.2 To the extent not caused by the negligence or willful misconduct of Lessor or its official, agents, employees or contractors, Lessee shall indemnify, defend and hold Lessor harmless for, from and against all liabilities, obligations, damages, penalties, claims, costs, charges, and expenses, including reasonable attorneys’ fees, that may be imposed on or incurred by or asserted against Lessor by reason of or in any way related to any of the following occurrences following the Premises Turnover Date:

16.2.1 Any work done in, on, or about all or any part of the Property by or on behalf of Lessee, or any Premises Improvements related to the use, occupancy or development of the Property by or on behalf of Lessee; or

16.2.2 Any use, nonuse, possession, occupation, condition, operation, maintenance, or management of all or any part of the Premises or any Premises Improvements;

16.2.3 Any negligence or willful misconduct on the part of Lessee or any of its agents, contractors, servants, sublessees, licensees, or invitees;

16.2.4 Any accident, injury, or damage to any person or property occurring in, on, or about the Premises or any Premises Improvements; or

16.2.5 Any failure on the part of Lessee to perform or comply with any of the covenants, agreements, terms, provisions, conditions, or limitations contained in this Lease on its part to be performed or complied with.

16.3 [Intentionally Omitted]

16.4 In case any action or proceeding is brought against Lessor by reason of any claims covered in Section 16.2, Lessee on written notice from Lessor shall, at Lessee’s expense, resist or defend such action or proceeding by counsel approved by Lessor in writing, which approval shall not be unreasonably withheld, conditioned or delayed.
16.5 If Lessor or Lessee asserts any claim against the other party by reason of the other party's ownership interest, the party asserting the claim shall have no claim against the other party's officers, directors, employees or agents.

16.6 The provisions of this Section 16 shall survive any termination of this Lease.

Section 17. Condemnation

17.1 If all the Premises and Premises Improvements are taken or condemned, by right of eminent domain or by purchase in lieu of condemnation, or if such portion of the Premises or any Premises Improvements shall be so taken or condemned that the portion remaining is not sufficient and suitable for operation of a commercial driving range and restaurant, in Lessee's reasonable judgment, to permit the restoration of any Premises Improvements following such taking or condemnation or for Lessee's use of the Premises, then this Lease and the Lease Term, at Lessee's option, shall cease and terminate as of the date on which the condemning authority takes possession or title (any taking or condemnation of the land described in this section being called a "Total Taking"), and the Fixed Rent and Additional Rent shall be apportioned and paid to the date of such Total Taking.

17.2 If this Lease expires and terminates as a result of a Total Taking, the rights and interests of the parties shall be determined as follows:

17.2.1 The total award or awards for the Total Taking shall be apportioned and paid to Lessee and Lessor in Proportionate Shares. For purposes hereof, the "Proportionate Shares" of Lessee and Lessor shall be expressed as a percentage of the whole and shall be calculated as of the date of the Total Taking, as follows: (i) Lessor's Proportionate Share shall equal the percentage obtained by dividing the Land Value by the Aggregate Sum, and (ii) Lessee's Proportionate Share shall equal the percentage obtained by dividing the Amortized Improvements Cost by the Aggregate Sum. In the event that the Golf Course is condemned then as between Lessor and Lessee (and the CenterCal Guarantor and the Top Golf Guarantor) any condemnation award with respect to the Golf Course or Golf Course Improvements shall be exclusively awarded to the City.

17.2.1.1 The term "Land Value" shall mean the fair market value of the land and the driving range improvements currently located thereon (prior to any development activity of Lessee or its sublessees or assigns) as determined as of the date of this Lease and without regard to this Lease, but encumbered by the License Agreement as the same may be amended pursuant to Section 5.4, the use restriction on the Premises imposed by Chevron in that certain Corporation Grant Deed form Chevron to Lessor, dated May 16, 1988 and recorded in the Official Records of Los Angeles County, California on May 24, 1988 as Instrument No. 88 826097 and any other liens or encumbrances existing as of the date of this Lease not including this Lease. Lessor and Lessee will work in good faith to agree upon the Land Value within 180 days from the Commencement Date. Each of Lessee and Lessor may, at its sole cost and expense, retain one or
more appraisers or other valuation consultants to perform appraisals or other analyses of the Land Value and assist with the determination of the Land Value hereunder. Following the agreement of Lessor and Lessee with regard to the Land Value, such Land Value shall remain fixed and shall not be subject to adjustment hereunder.

17.2.1.2 The term “Amortized Improvements Cost” shall mean at a given point in time the then unamortized cost of the Premises Improvements (i.e. the aggregate cost of the Premises Improvements as amortized using 40 year straight line depreciation commencing on the date that rent commences under the Sublease with Top Golf–Topgolf El Segundo through the date of the Total Taking hereunder).

17.2.1.3 The term “Aggregate Sum” shall mean, at any given point in time, the sum of the Land Value and the Amortized Improvements Cost.

17.3 If, during the Lease Term, there is a taking or condemnation of the Premises or any Premises Improvements that is not a Total Taking and not a temporary taking of the kind described below, or if there is a change in the grade of the streets or avenues on which the Premises abuts, this Lease and the Lease Term shall not cease or terminate, but shall remain in full force and effect with respect to the portion of the Premises and of any Premises Improvements not taken or condemned (any taking or condemnation or change of grade of the kind described in this section being referred to as a “Partial Taking”), and in such event:

17.3.1 The total award or awards for the taking shall be apportioned and paid to Lessee and Lessor in Proportionate Shares (as calculated as of the date of the Partial Taking).

17.3.2 Following any such taking or condemnation, Rent shall be equitably abated based on the portion of the Premises taken.

17.4 In the event of a taking of all or a part of the Premises or any Premises Improvements for temporary use, this Lease shall continue without change, as between Lessor and Lessee, and Lessee shall be entitled to the entire award made for such use; provided that Lessee shall be entitled to file and prosecute any claim against the condemnor for damages and to recover the same, for any negligent use, waste, or injury to the Premises or any Premises Improvements throughout the balance of the then-current Lease Term. The amount of damages so recovered shall belong to Lessee.

17.5 In the event of any dispute between Lessee and Lessor regarding any issue of fact arising out of a Taking mentioned in this Section 17, such dispute shall be resolved by the same court in which the condemnation action is brought, in such proceedings as may be appropriate for adjudicating the dispute.

Section 18. Assignment and Sublease

18.1 Lessee shall have the right, to assign this Lease or any interest therein, and shall further have the right to sublease or sublet all or any portion or portions of the Premises or any
interest therein, with the Lessor’s consent which may be withheld in the Lessor’s reasonable discretion based upon the financial strength of the proposed assignee or subtenant and its experience in operating commercial driving ranges and restaurants. Any such assignment or subletting by Lessee shall also be subject to all the following provisions:

18.1.1 Lessee shall not then be in default under this Lease beyond the expiration of any applicable notice and cure period;

18.1.2 The assignee of Lessee shall expressly assume in writing all of Lessee’s obligations hereunder from and after the effective date of any such assignment;

18.1.3 Any sublease shall be subject to the terms and provisions of this Lease with respect to such subtenant’s or occupant’s use and occupancy of the premises in question and shall not work to alter any term or condition of this Lease;

18.1.4 Except as provided hereinafter, no such subleasing or assignment shall relieve Lessee from liability for payment of Rent herein provided or from the obligations to observe and be bound by the terms, conditions, and covenants of this Lease. No transfer of corporate shares of Lessee, if Lessee is a corporation, unless such transfer of shares will result in a change in the present voting control of the Lessee by the person or persons owning a majority of said corporate shares on the date of this Lease, shall constitute an assignment and be subject to the conditions of this Section 18.2. Notwithstanding the foregoing, after completion of the Golf Course Improvements and the Premises Improvements and payment of all Rent owing as of the effective date of the assignment, Lessee shall be released from any and all further liabilities under this Lease from and after the effective date of an assignment of this Lease to either: (i) an assignee entity, that is not a so called “special purpose entity,” which has a net current worth and net tangible assets at the time of the assignment, determined according to generally accepted accounting principles consistently applied, of not less than Ten Million Dollars ($10,000,000.00) in Constant Dollars as defined in Section 8, or (ii) an approved assignee entity (as provided above), that is a so called “special purpose entity,” which is able to demonstrate to Lessor’s reasonable satisfaction the prospective financial ability and fiscal resources (which may include, but shall not be limited to, the cash flow from the business operations conducted or to be conducted on the Premises) to fulfill the monetary obligations of Lessee under this Lease; so long as the assignee also has significant experience in operating a commercial driving range and restaurant. Lessee’s release from liability pursuant to subsection (ii) of this Section 18.2.4 (i) shall be effective only if Lessee provides Lessor within thirty (30) days of request therefor a copy of the assignment and reasonable evidence of the assignee’s qualifications hereunder (and Lessor shall have sixty (60) days thereafter to review such evidence and render a reasonable determination in writing to the Lessee);

18.1.5 Provided that Lessee, within sixty (60) days following final execution of any sublease or other occupancy agreement for the Premises, provides Lessor with a copy of such sublease or occupancy agreement certified by Lessee to be a true and correct copy thereof, and further provided that Lessee does not thereafter amend such sublease or occupancy agreement without providing to Lessor a similar certification within sixty (60) days following final execution
thereof along with a copy of the sublease or occupancy agreement as amended as well as such other and further documentation that is reasonable and necessary to adequately review the financial strength and experience of the proposed sublessee. Lessor shall have sixty (60) days to provide written notice to Lessor of its approval or rejection of such sublease or other occupancy agreement. If Lessor approves of such subtenant or other occupancy agreement, within sixty (60) days following Lessee’s written request therefor, Lessor shall execute such other documents or instruments as may be reasonably requested by any subtenant or occupant of the Premises affirming and evidencing Lessor’s recognition of the sublease or occupancy agreement in question as provided hereinafore so long as: (i) the term of the sublease, inclusive of renewal options, shall not exceed the Lease Term, (ii) the subtenant’s permitted use is not in violation of Section 4 hereof, and (iii) the subtenant certifies that the sublease is subject to the terms and provisions of this Lease with respect to such subtenant’s or occupant’s use and occupancy of the premises in question.

Notwithstanding the foregoing, Lessor hereby approves the sublease of the Premises to TopGolf Topgolf El Segundo so long as such subleases do not alter the terms or conditions of this Lease. Lessor also agrees that in the event that Lessor terminates this Lease as a result of any Event of Default by Lessee, it shall deliver written notice to Top Golf Topgolf Guarantor and Lessor of such termination and shall provide — and Top Golf Topgolf Guarantor with thirty (30) days in which to agree as between themselves as to determine whether one or both of them will to enter into a lease of the Premises on the identical rental and other terms and conditions as this Lease (and Lessor shall afford them Topgolf Guarantor the opportunity to enter into such lease during such thirty (30) day period) which shall take effect immediately upon termination of this Lease; provided that (i) in connection with its execution and delivery of such lease, and Top Golf Topgolf Guarantor pays Lessor any unpaid Rent owing by Lessee to Lessor under this Lease (as determined without regard to any acceleration of or addition to any such Rents pursuant to Section 20.2.4 hereof) and cures any existing defaults that are capable of being cured by a person or entity other than the Lessee or CenterCal Guarantor, and (ii) in the event that Lessee disputes any such termination of this Lease, and Lessor and/or Lessee bring legal action to determine its rights hereunder, Top Golf Topgolf Guarantor shall have the right to continue to occupy the Premises during the pendency of such legal action (provided they continue to pay Rent and other sums to Lessor as they become due hereunder, as determined without regard to any acceleration or addition to Rents pursuant to Section 20.2.4 hereof) and Lessee shall provide Top Golf Topgolf Guarantor, as applicable, the right to enter into the new lease as described above during the thirty (30) day period after a court of competent jurisdiction determines that this Lease has terminated or Lessee agrees or otherwise concedes that this Lease has terminated, agrees or otherwise concedes that this Lease has terminated. In the event that the sublease is terminated within the later time period of seven (7) years following the Fixed Rent Commencement Date or within seven years (7) years and ten (10) months following the Premises Turnover Date, such shall be deemed a default and breach of this Lease and obligate the Top Golf Guarantor for damages resulting from such default and breach.

18.2 If this Lease is assigned to any person or entity pursuant to the provisions of the Bankruptcy Code, 11 USC § 101, et seq. (the “Bankruptcy Code”), any and all monies or other consideration payable or otherwise to be delivered to Lessor shall (subject to the Bankruptcy Code)
be and remain the exclusive property of Lessor and shall not constitute property of Lessee within the meaning of the Bankruptcy Code. Any and all monies or other considerations constituting Lessor’s property under the preceding sentence not paid or delivered to Lessor shall be held in trust for the benefit of Lessor and be promptly paid or delivered to Lessor. Any person or entity to which this Lease is assigned pursuant to the provisions of the Bankruptcy Code shall be deemed without further act or deed to assume all of the obligations arising under this Lease. Any such assignee shall upon demand execute and deliver to Lessor an instrument confirming such assumption.

18.3 The exercise of any right or other action under this Section 18 shall not diminish or alter the obligations of Top Golf Guarantor or CenterCal Guarantor under their respective guaranties.

Section 19. Lessor Default; Remedies

19.1 If Lessor, whether by action or inaction, is in default of any of its obligations under this Lease and such default continues and is not remedied within thirty (30) days after Lessee has given Lessor written notice of the same (or, in the case of a default that can be cured but not within such period of thirty (30) days, if Lessor has not: (i) commenced curing such default within such thirty (30) day period, (ii) notified Lessee within such thirty (30) day period of Lessor’s intention to cure the default, and (iii) continuously and diligently completed the cure of the default), except as otherwise expressly set forth in this Lease Lessee shall be entitled to pursue any right or remedy available to Lessee under this Lease, at law or in equity, including, without limitation: (a) the right to specific performance, and (b) the right to cure such default and deduct the cost of curing such default from the Rent payable under this Lease.

19.2 No failure by Lessee to insist on the strict performance of any agreement, term, covenant, or condition of this Lease or to exercise any right or remedy consequent on a breach, and no payment of Rent during the continuance of any such breach, shall constitute a waiver of any such breach or of such agreement, term, covenant, or condition. No agreement, term, covenant, or condition to be performed or complied with by Lessor, and no breach by Lessor, shall be waived, altered, or modified, except by a written instrument executed by Lessee. No waiver of any breach shall affect or alter this Lease, but each and every agreement, term, covenant, and condition of this Lease shall continue in full force and effect with respect to any other then-existing or subsequent breach.

19.3 Each right and remedy provided for in this Lease in favor of Lessee shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Lessee of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, shall not preclude the simultaneous or later exercise by the party in question of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.
Section 20. Lessee Default; Remedies

20.1 The occurrence of any one or more of the following shall constitute a breach of this Lease by Lessee and an "Event of Default":

20.1.1 If Lessee defaults in the payment of Rent or any other payment due and payable by Lessee or the provision of insurance, and such default continues for ten (10) days after Lessor has given Lessee a written notice specifying the same; or

20.1.2 If Lessee, whether by action or inaction, is in default of any of its obligations under this Lease (other than a default in the payment of Rent or the provision of insurance by Lessee) and such default continues and is not remedied within thirty (30) days after Lessor has given Lessee a written notice specifying the same, or, in the case of a default that can be cured but not within a period of thirty (30) days, if Lessee has not: (i) commenced curing such default within such thirty (30) day period, (ii) notified Lessor of Lessee’s intention to cure the default, and (iii) continuously and diligently completed the cure of the default, not to exceed five (5) months with respect to a failure to comply with the Continuous Operation Requirement. For purposes of this provision, except for the Continuous Operation Requirement, the filing of and diligent prosecution of successful litigation by Lessee against any sublessee to effect such cure (including any such litigation to gain possession of the Premises from Topgolf or its successor) shall constitute commencement of and continuous and diligent completion of cure of default so long as Rent is paid when due hereunder.

20.2 On the occurrence of an Event of Default and subject to Lessor’s obligations as provided under this Lease and under California law to mitigate Lessor’s damages, Lessor shall be entitled to pursue any right or remedy available to Lessor under this Lease, at law or in equity, including, without limitation: (a) the right to specific performance, and (b) any one or more of the remedies set forth in this section or any other remedy specifically set forth in this Lease.

20.2.1 Subject to Section 20.2.3, Lessor or Lessor’s agents and employees may immediately, or at any time thereafter, reenter the Premises either by summary eviction proceedings or by any available action or proceeding at law or equity, without being liable to indictment, prosecution, or damages (except for any damages caused by their negligence or willful misconduct), and may repossess the same, and may remove any person from the Premises, to the end that Lessor may have, hold, and enjoy the Premises.

20.2.2 Lessor may relet the whole or any part of the Premises from time to time, either in the name of Lessor or otherwise, to such lessees, for such terms ending before, on, or after the termination of the Lease

20.2.3 Whether or not Lessor retakes possession or relets the Premises, Lessor has the right to recover its damages, including, without limitation, all lost rentals, all reasonable costs
incurred by Lessor in restoring the Premises or otherwise preparing the Premises for reletting, and all reasonable costs incurred by Lessor in reletting the Premises.

20.2.4 To the extent permitted under California law: (i) Lessor may sue periodically for damages as they accrue without barring a later action for further damages; and (ii) Lessor may, in one action, recover accrued damages plus damages attributable to the remaining Lease Term equal to the difference between the Rent reserved in this Lease for the balance of the Lease Term after the time of award, and the fair rental value of the Premises for the same period, discounted at the time of award at a reasonable rate not to exceed twelve percent (12%) per annum. To avoid a multiplicity of actions, Lessor may obtain a decree of specific performance requiring Lessee to pay the damages stated in Sections 20.2.3 and 20.2.4 as they accrue.

20.2.5 Termination of this Lease shall not constitute a waiver of Lessor’s other remedies nor an election of remedies.

20.3 No failure by Lessor to insist on the strict performance of any agreement, term, covenant, or condition of this Lease or to exercise any right or remedy consequent on a breach, and no acceptance of full or partial Rent during the continuance of any such breach, shall constitute a waiver of any such breach or of such agreement, term, covenant, or condition. No agreement, term, covenant, or condition to be performed or complied with by Lessee, and no breach by Lessee, shall be waived, altered, or modified, except by a written instrument executed by Lessor. No waiver of any breach shall affect or alter this Lease, but each and every agreement, term, covenant, and condition of this Lease shall continue in full force and effect with respect to any other then-existing or subsequent breach.

20.4 Each right and remedy provided for in this Lease in favor of Lessor shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Lessor of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, shall not preclude the simultaneous or later exercise by the party in question of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

Section 21. No Abatement of Rent; Encroachment

21.1 Except as otherwise specifically provided in this Lease, no abatement, refund, diminution, or reduction of Rent or other compensation shall be claimed by or allowed to Lessee, or any person claiming under it.

21.2 Unless directly or indirectly caused by or on behalf of Lessor, if any adjoining building or structure encroaches on the Premises, no claim, demand, or objection of any kind shall be made by Lessee against Lessor by reason of such encroachments and no claim for abatement of Rent due under this Lease shall be made by reason of such encroachments or acts of, or in connection with, removal of the encroachments. The rights, liabilities, and obligations of the
parties shall be the same as if there were no encroachments. In any related legal proceedings, the Premises may properly and without prejudice be described according to the description previously used without reference to any such encroachments. Lessor agrees to fully cooperate at Lessee’s expense with Lessee in any proceedings sought by Lessee to remove such encroachments.

Section 22. Leasehold Mortgages

22.1 Lessee shall have the right, in addition to any other rights granted and without any requirement to obtain Lessor’s consent, to mortgage or grant a security interest in Lessee’s interest in this Lease and the Premises and the Premises Improvements and any subleases, under one or more leasehold mortgages or pursuant to a sale-leaseback financing arrangement to one or more “Lending Institutions” (as defined in Section 22.2), and/or under one or more purchase-money leasehold mortgages, and to assign this Lease and any subleases as collateral security for such leasehold mortgages or pursuant to the sale-leaseback financing arrangement, on the condition that all rights acquired under such leasehold mortgages or pursuant to the sale-leaseback financing arrangement shall be subject to each and all of the covenants, conditions, and restrictions set forth in this Lease and to all rights and interests of Lessor, none of which covenants, conditions, restrictions, rights, or interests is or shall be waived by Lessor by reason of the right given to mortgage or grant a security interest in Lessee’s interest in this Lease and the Premises and the Premises Improvements, except as expressly provided otherwise in this Lease.

22.2 Any mortgage or sale-leaseback financing arrangement made pursuant to this section is referred to as a “Permitted Leasehold Mortgage,” and the holder of or secured party under a Permitted Leasehold Mortgage is referred to as a “Permitted Leasehold Mortgagee.” The Permitted Leasehold Mortgage that is prior in lien or interest among those in effect is referred to as the “First Leasehold Mortgage,” and the holder of or secured party under the First Leasehold Mortgage is referred to as the “First Leasehold Mortgagee.” For the purposes of any rights created under this section, any so-called wraparound lender shall be considered a First Leasehold Mortgagee. If a First Leasehold Mortgage and a Permitted Leasehold Mortgage that is second in priority in lien or interest among those in effect are both held by the same Permitted Leasehold Mortgagee, the two Permitted Leasehold Mortgages are collectively referred to as the “First Leasehold Mortgage.” A Permitted Leasehold Mortgage includes, without limitation, mortgages and trust deeds as well as financing statements, security agreements, sale-leaseback instrumentation, and other documentation that the lender may require. The words “Lending Institution,” as used in this Lease, mean any commercial, national, or savings bank, savings and loan association, trust company, pension trust, foundation, or insurance company, and any other entity, person, corporation or partnership making a loan on the security of Lessee’s interest in this Lease or all or any part of the Premises Improvements.

22.3 If a Permitted Leasehold Mortgagee sends to Lessor written notice specifying the name and address of the Permitted Leasehold Mortgagee, then provided this Lease is still in effect
and as long as such Permitted Leasehold Mortgage remains unsatisfied of record or until written notice of satisfaction is given by the holder to Lessor, the following provisions shall apply (in respect of such Permitted Leasehold Mortgage and of any other Permitted Leasehold Mortgages):

22.3.1 There shall be no amendment, or modification, except those explicitly contemplated by this Lease, of this Lease without in each case the prior consent in writing of the Permitted Leasehold Mortgagee and the Subtenant under the Sublease described in Section 5.4(iv). Nor shall any merger result from the acquisition by, or devolution on, any one entity of the fee and the leasehold estates in the Premises.

22.3.2 Lessor shall, upon delivering Lessee any notice, whether of default or any other matter, simultaneously deliver a copy of such notice to the Permitted Leasehold Mortgagee, and no such notice to Lessee shall be deemed delivered unless a copy is so delivered to the Permitted Leasehold Mortgagee in the manner provided in this Lease for giving notices.

22.3.3 In the event of any default by Lessee under this Lease, each Permitted Leasehold Mortgagee shall have the same concurrent period as Lessee has to remedy or cause to be remedied or commence to remedy and complete the remedy of the default complained of for such default, and Lessor shall accept such performance by or at the instigation of such Permitted Leasehold Mortgagee as if the same had been done by Lessee. Each notice of monetary default given by Lessor will state the amounts of whatever Rent or other payments are then claimed to be in default. Nothing herein shall require any Permitted Leasehold Mortgagee to cure any Event of Default. No such cure shall constitute an assumption of any liability by such Permitted Leasehold Mortgagee (unless the Permitted Leasehold Mortgagee assumes this Lease or enters into a new lease with Lessor in their respective sole discretion) unless a liability arises directly from a negligent or wrongful act of the Permitted Leasehold Mortgagee and in such a case the Permitted Leasehold Mortgagee shall have the obligation to defend and indemnify the Lessor consistent with the Lessee's obligation to defend and indemnify Lessor, nor prejudice the right of such Permitted Leasehold Mortgagee and/or Lessee to later contest or continue to contest the validity of the claim of the Event of Default.

22.3.4 Lessor agrees that the name of the Permitted Leasehold Mortgagee may be added to the “Loss Payable Endorsement” of any and all insurance policies required to be carried by Lessee.

22.3.5 Except as otherwise explicitly provided in this Lease, no liability for the payment of Rent or the performance of any of Lessee’s covenants and agreements shall attach to or be imposed on the Permitted Leasehold Mortgagee (other than any obligations expressly assumed by the Permitted Leasehold Mortgagee), all such liability (other than any obligations expressly assumed by the Permitted Leasehold Mortgagee) being expressly waived by Lessor.

22.3.6 Lessor, within thirty (30) days after a request in writing by Lessee or any Permitted Leasehold Mortgagee, shall furnish a written statement, duly acknowledged, that this Lease is in full force and effect and unamended, or if there are any amendments, such statement
will specify the amendments, and that there are no defaults by Lessee that are known to Lessor, or if there are any known defaults, such statement shall specify the defaults Lessor claims exist.

22.3.7 Intentionally Omitted

22.3.8 Attornment

Lessor, on request, shall execute, acknowledge, and deliver to each Permitted Leasehold Mortgagee an agreement prepared at the sole cost and expense of Lessee, in form satisfactory to the Permitted Leasehold Mortgagee and Lessor, among Lessor, Lessee, and the Permitted Leasehold Mortgagee, agreeing to all the provisions of this section. Lessor shall attorn to any Permitted Leasehold Mortgagee or any other person who becomes Lessee by, through, or under a Permitted Leasehold Mortgage, to the extent such is consistent with Section 18.1.5 and as long as (i) all Rent and other monetary payments due under this Lease have been made; and (ii) the Permitted Leasehold Mortgage has sufficient net worth, subject to the reasonable approval of the Lessor, to operate the driving range and restaurant on the Premises.

22.3.9 Lessor shall at no time be required to subordinate its interest in the Premises to the lien of any leasehold mortgage, including any Permitted Leasehold Mortgage, nor to mortgage its fee simple interest in the Premises as collateral or additional security for any leasehold mortgage, including any Permitted Leasehold Mortgage.

22.3.10 If following completion of the Golf Course Improvements and the Premises Improvements Lessee is declared bankrupt or insolvent and this Lease is thereafter lawfully canceled or rejected, Lessor shall to the extent permitted by law promptly execute a new lease with Top Golf Topgolf El Segundo under the identical terms and conditions as this Lease, provided (i) all Rent and other monetary payments due under this Lease have been made; (ii) all defaults that are capable of being cured by a person or entity other than the Lessee or CenterCal Guarantor have been cured, and (ii) the replacement lessee or a guarantor of its obligations hereunder has a net worth of at least $10,000,000.00 and $10,000,000 respectively.

22.3.11 If Lessor declares bankruptcy and Lessor’s bankruptcy trustee rejects this Lease when there is a Permitted Leasehold Mortgagee, Lessee’s right to elect to terminate this Lease or to retain its rights pursuant to 11 USC § 365(h)(1) shall be exercised by the Permitted Leasehold Mortgagee.

22.3.12 No filing of bankruptcy by Lessee, a sublessee, assignee, or Permitted Leasehold Mortgagee or any other party, other than Lessor, under, subject to or otherwise having rights or obligations under or through this Lease, shall relieve the CenterCal Guarantor or the Top Golf Topgolf Guarantor of their respective obligations.

Section 23. Lessor’s Right to Encumber

Lessor, during the Lease Term, may encumber or mortgage its fee simple interest in the Premises so long as Lessee has reasonably consented, which consent shall be promptly granted if
each of the following conditions have been satisfied: (i) Lessee has received thirty (30) days prior written notice of any such encumbrance, (ii) the holder of any such encumbrance executes with Lessee a mutually agreeable nondisturbance and attornment agreement, and (iii) at no time shall the aggregate amount of all such encumbrances of Lessor’s fee simple interest in the Premises exceed a seventy percent (70%) loan to value ratio (using the land value only without Premises Improvements). Except as explicitly provided above, Lessor covenants and agrees that Lessor shall not permit any liens to attach to the Premises that are created by, through or under Lessor. If any such liens do attach to the Premises, Lessor shall immediately pay off such liens; provided that if any such liens are not paid off by Lessor within thirty (30) days of the date that Lessor receives written notice from Lessee that such liens are recorded against the Premises and a demand that they be removed, Lessee may, at its option, pay off such liens and deduct the payment from Fixed Rent.

Section 24. Nonmerger

There shall be no merger of this Lease, or of the leasehold estate created by this Lease, with the fee estate in the Premises by reason of the fact that this Lease, the leasehold estate created by this Lease, or any interest in this Lease or in any such leasehold estate, may be held, directly or indirectly, by or for the account of any person who shall own the fee estate in the Premises or any interest in such fee estate, and no such merger shall occur, unless and until all persons at the time having an interest in the fee estate in the Premises and all persons having an interest in this Lease, or in the leasehold estate created by this Lease, shall join in a written instrument effecting such merger and shall duly record the same.

Section 25. Quiet Enjoyment

Lessee, on paying the Rent and observing and keeping all covenants, agreements, and conditions of this Lease on its part to be kept, shall quietly have and enjoy the Premises during the Lease Term without hindrance or molestation by anyone claiming by, through, or under Lessor as such, subject, however, to the exceptions, reservations, and conditions of this Lease.

Section 26. Surrender

26.1 Except as otherwise provided, Lessee, on the last day of the Lease Term or upon any earlier termination, shall surrender and deliver up the Premises and any Premises Improvements to the possession and use of Lessor, free and clear of all liens and encumbrances other than those, if any, existing on the Premises Turnover Date or created or consented to in writing by Lessor that Lessor expressly agreed would remain following termination of this Lease, without any payment or allowance whatsoever by Lessor on account of any Premises Improvements on the Premises, and in a broom clean as-is condition and with the Premises in its then condition being capable of being operated as a driving range generally consistent with the operation of the driving range in existence as of the Premises Turnover Date (a “Driving Range”). Subject to the preceding and Lessee’s other obligations under this Lease:
26.2 When furnished by or at the expense of Lessee, fixtures, and equipment may be removed by Lessee at or before this Lease terminates. For purposes hereof, Lessee’s fixtures and equipment include the outfield target equipment, golf balls, any proprietary technology in the golf ball dispensers and touch screens, and other proprietary or related technology equipment. Notwithstanding the foregoing, Lessee shall ensure that the Premises are capable of being operated as a Driving Range on the last day of the Lease Term or upon any earlier termination and Rent shall be due and payable until Driving Range is operational.

26.3 Any personal property of Lessee that shall remain on the Premises after the termination of this Lease and the removal of Lessee from the Premises may, at the option of Lessor, be deemed to have been abandoned by Lessee, and may either be retained by Lessor as its property or be disposed of, without accountability, in such manner as Lessor may see fit, or if Lessor gives written notice to Lessee to such effect, such personal property shall be removed by Lessee at Lessee’s sole cost and expense. If this Lease terminates early for any reason other than the default of Lessee, then, anything to the contrary notwithstanding, Lessee shall have ninety (90) days thereafter to remove its personal property and Lessee shall be responsible for paying all Rent and other costs required hereunder until the Premises are delivered to the Lessor.

26.4 Lessor shall not be responsible for any loss or damage occurring to any property owned by Lessee unless such loss or damage is caused by Lessor’s negligence or willful misconduct, or that of its agents, employees or contractors.

26.5 If, with the written consent of Lessor, Lessee fails to vacate the Premises after the expiration of the Lease Term, or any earlier termination hereof, Lessee shall become a tenant from month to month upon the terms of this Lease; provided, however, that Rent shall be adjusted beginning on the first day after the expiration or earlier termination to be one hundred ten percent (110%) of the Rent then in effect under this Lease.

26.6 Notwithstanding anything contained herein to the contrary, Lessee shall be liable to Lessor for any and all actual and direct damages caused by its failure to vacate the Premises after the expiration or any earlier termination of this Lease hereof, but not including incidental and consequential damages to Lessor. Lessee shall pay such damages within thirty (30) days of demand. Lessee shall not be subject to the preceding liability to the extent that Lessor has elected to allow Lessee to continue as a month-to-month tenant beyond the expiration or earlier termination of this Lease.

26.7 The provisions of this Section 26 shall survive any termination of this Lease.

Section 27. Invalidity of Particular Provisions

If any term or provision of this Lease or the application of the Lease to any person or circumstances is, to any extent, invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.
Section 28. No Representations

Lessee acknowledges that it has examined the Premises and that no representations as to the condition of the Premises or as to any other matters have been made by Lessor or any agent or person acting for Lessor except as expressly provided in this Lease.

Section 29. Estoppel Certificate

Either party, within twenty (20) days after a request from time to time made by the other party and without charge, shall give a certification in writing to any person, firm, or corporation reasonably specified by the requesting party stating: (i) that this Lease is then in full force and effect and unmodified, or if modified, stating the modifications; (ii) that Lessee is not in default in the payment of Rent to Lessor, or if in default, stating such default; (iii) that as far as the maker of the certificate knows, neither party is in default in the performance or observance of any other covenant or condition to be performed or observed under this Lease, or if either party is in default, stating such default; (iv) that as far as the maker (if Lessor) of the certificate knows, no event has occurred that authorized, or with the lapse of time will authorize, Lessee to terminate this Lease, or if such event has occurred, stating such event; (v) that as far as the maker of the certificate knows, neither party has any offsets, counterclaims, or defenses, or, if so, stating them; (vi) the dates to which Rent have been paid; and (vii) any other matters that may be reasonably requested by the requesting party. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Premises or encumbrancer of the interest of Lessee hereunder. A party’s failure to deliver such statement within such time shall be conclusive upon such party: (a) that this Lease is in full force and effect without modification, except as may be represented by the party requesting the certificate, and (b) that there are no uncured defaults in such requesting party’s performance.

Section 30. Force Majeure

If the performance by either of the parties of their respective obligations under this Lease (excluding Rent or other monetary obligations) is delayed, or prevented in whole or in part by any acts of God, fire or other casualty, floods, storms or other natural disasters, explosions, accidents, epidemics, war, civil disorders, labor strikes, shortage or failure of supply of materials, labor, fuel, power, equipment, supplies or transportation, third-party legal challenges, actions taken by governmental agencies, not including the city, that could not have been reasonably anticipated by and timely resolved by a party, or by any other cause not reasonably within the party’s control, whether or not specifically mentioned ("Force Majeure"), the party’s obligation to perform shall be delayed for a time period equivalent to the Force Majeure (excluding any monetary obligation).

Section 31. Notices

31.1 Any notice required or permitted by the terms of this Lease shall be in writing and shall be deemed given: (i) when delivered personally to an officer or other authorized representative of the party to be notified, or (ii) after deposit in the United States mail as certified
mail, postage prepaid, return-receipt requested, or (iii) sent by reputable overnight courier, and addressed as follows:

If to Lessor: The City of El Segundo
350 Main Street
El Segundo, CA 90245-4635
Attention: City Clerk

With a copy (which shall not constitute notice) to:

The City of El Segundo
350 Main Street
El Segundo, CA 90245-4635
Attention: City Manager

If to Lessee or Guarantors: ES CenterCal, LLC,
1600 East Franklin Street
El Segundo, CA 90245
Attention: Jean Paul Wardy

CenterCal, LLC
1600 East Franklin Street
El Segundo, CA 90245
Attention: Fred W. Bruning

TopGolf USA Inc.
1717 McKinney Avenue
8th Floor
El Segundo, LLC
8750 N. Central Expressway, Suite 1200
Dallas, Texas 75231
Fax: (866) 577-1612
Attn: Randall P. Starr, Vice President Chief Development Officer

TopGolf USA El Segundo, LLC
8750 N. Central Expressway, Suite 1200
Dallas, Texas 75231
Attn: Elizabeth Bonesio, Corporate Counsel
With a copy (which shall not constitute notice) to:

Griffin Fletcher & Herndon, LLP
6857 Amber Lane
Carlsbad, CA 92009
Attention: Edward Krasnove, Esq.

Locke Lord Dentons US LLP
2200 Ross 2000 McKinney Avenue, Suite 2200 1900
Dallas, Texas 75201
Fax: (214) 756-8582
Attn: Donald A. Hammett, Jr.

Or such other addresses as may be designated by either party by written notice to the other. Notwithstanding anything in this section to the contrary, any notice sent or mailed to the last designated address of any person or party to which a notice may be or is required to be delivered pursuant to this Lease or this section, shall not be deemed ineffective if actual delivery cannot be made due to a change of address of the person or party to which the notice is directed or if such notice is rejected by such party.

Section 32. Venue

32.1 The venue for any claim, controversy, or dispute between the parties arising out of or relating to this Lease, or to the interpretation or breach thereof, shall be the Los Angeles Superior Court. The parties may, but are not required to, engage in mediation prior to the initiation of any litigation.

Section 33. Entire Agreement

This Lease contains the entire agreement between the parties and, except as otherwise provided, can be changed, modified, amended, or terminated only by an instrument in writing executed by the parties. It is mutually acknowledged and agreed by Lessee and Lessor that there are no verbal agreements, representations, warranties, or other understandings affecting this Lease. This Agreement was negotiated by and jointly drafted by the parties and the language contained herein shall not be construed against either party hereto based upon any presumption or evidence that particular language was drafted by one of the parties hereto. All Exhibits referenced in the Lease and attached hereto are incorporated into and are considered a part of this Lease.

Section 34. Applicable Law

This Lease shall be governed by, and construed in accordance with, the laws of the state of California.
Section 35. License Agreement

Lessor represents and warrants to Tenant/Lessee that as of the date of this Lease, there are no uncured defaults under the License Agreement and, to Lessor’s knowledge, no events have occurred, which with the giving of notice or the passage of time could become a default under the License Agreement.

Lessor and Lessee agree not to take any action that would result in the termination of the License Agreement or to modify the License Agreement without both parties written consent. Lessor and Lessee agree to perform all of their respective obligations under the License Agreement in a timely manner so as not to cause the termination of the License Agreement. If Lessor or Lessee receives a notice of default from Licensor, then the party receiving the notice shall promptly give notice of the default to other party, which notice shall include a copy of any such notice of default that is so given or received.

In the event of a default by Lessor or Lessee under the License Agreement, both parties shall have the right, but not the obligation, to cure the default of the other party by giving notice thereof to the other party, and any reasonable costs incurred by non-defaulting party in curing such default shall be borne by the defaulting party.

Section 36. Late Charge

Lessee acknowledges that late payment by Lessee to Lessor of any Rent or other payments due hereunder will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs may include, without limitation, processing and accounting charges and late charges which may be imposed on Lessor. Accordingly, if any Rent payment is not received by Lessor within ten (10) days after receipt by Lessee of notice from Lessor that such Fixed Rent is past due, Lessee shall pay to Lessor a late charge equal to four percent (4%) of the unpaid Fixed Rent (the “Late Charge”). The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs incurred by Lessor by reason of the late payment by Lessee. Acceptance of any Late Charge by Lessor shall, in no event, constitute a waiver of Lessee’s default with respect to the overdue amount in question, nor prevent Lessor from exercising any of the other rights and remedies granted hereunder.

Section 37. Nonwaiver

No provision of this Lease shall be deemed to have been waived by Lessor or Lessee, unless such waiver is in writing signed by Lessor or Lessee, as applicable. Waiver of a breach of any term or condition of this Lease shall not be deemed a waiver of any subsequent breach. Acceptance of any Rent or other payments shall not be deemed a waiver of such breach.

Section 38. Brokerage
Lessor and Lessee represent to each other that they have not employed any brokers in negotiating and consummating the transaction set forth in this Lease, but have negotiated directly with each other. Lessor represents and warrants to Lessee, and Lessee represents and warrants to Lessor, that no other broker or finder has been engaged by it, respectively, in connection with this Lease. In the event of any claims for additional brokers’ or finders’ fees or commissions in connection with the negotiation, execution, or consummation of this Lease, then Lessee shall indemnify, hold harmless, and defend Lessor from and against such claims if they shall be based on any statement or representation or agreement by Lessee, and Lessor shall indemnify, hold harmless, and defend Lessee if such claims shall be based on any statement, representation, or agreement made by Lessor.


39.1 Lessee shall have the right in its sole and absolute discretion to obtain, at its cost, a lot line adjustment approval, as part of the Required Project Entitlements process which comprise the Conditions Precedent, to reconfigure the lots currently comprising the Premises to a reconfiguration reasonably agreed upon with Lessor. As part of or separate from this process, Lessor and Lessee shall reasonably cooperate with each other in their efforts to subdivide the Premises.

39.2 Except as expressly set forth in this Lease, Lessee shall have the right to choose the name of the project in its sole and absolute discretion.

Section 40.  Covenants to Bind and Benefit Parties

Subject to the limitations set forth in Section 18, the covenants and agreements contained in this Lease shall bind and inure to the benefit of Lessor, its successors and assigns, and Lessee, its successors and assigns.

Section 41.  Captions and Table of Contents

41.1 The captions of this Lease are for convenience and reference only, and in no way define, limit, or describe the scope or intent of this Lease or in any way affect this Lease.

41.2 The table of contents preceding this Lease but under the same cover is for the purpose of convenience and reference only, and is not to be deemed or construed in any way as part of this Lease, nor as supplemental or amendatory.

Section 42.  Hazardous Materials

The term “Hazardous Substances” shall mean and refer to the following: petroleum products and fractions thereof, asbestos, asbestos containing materials, urea formaldehyde, polychlorinated biphenyls, radioactive materials and all other dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials, substances and wastes listed or identified in, or regulated by, any Environmental Law. The term “Environmental Laws” shall mean and refer to
the following: all federal, state, county, municipal, local and other statutes, laws, ordinances and regulations which relate to or deal with human health or the environment, all as may be amended from time to time. The term “Release” shall mean and refer to any spilling, leaking, pumping, pouring, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment, including the abandonment or discarding of barrels, drums, containers, tanks, or other receptacles containing or previously containing any Hazardous Substance.

Section 43. Audit

The City Lessor shall have the right no more than once annually, to conduct annual audits either of an audit of the Gross Receipts for the immediately preceding calendar year or prior three years with City staff or a qualified Certified Public Accountant, an audit of the gross beverage revenues for purposes of determining the accuracy of the Variable Rent calculations and payments, for the preceding calendar year or prior three years. Any such audit shall not unreasonably interfere with Lessee’s business operations. Any such audit by Lessor shall be at Lessor’s own expense. If such audit reveals that the City Lessor was underpaid by three percent (3%) or more for the audited period, Lessor shall pay Lessee the reasonable cost of the audit together with the amount of the underpayment plus a ten percent (10%) penalty on the amount of the underpayment within thirty days of being presented with a copy of the audit from the City Lessor.

Section 44. Counterparts

This Lease may be executed in any number of counterparts and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one Lease.

Section 45. Consent and Approval Rights

Except as otherwise expressly set forth in this Lease or provided by law, references in this Lease to “consent,” “approval,” “acceptable,” and “satisfactory” shall not be interpreted as justifying arbitrary rejection but shall imply a good faith, reasonable application of judgment taking into consideration customary leasing practice and commercial custom.

Section 46. Prevailing Wages

Lessee shall pay prevailing wages as defined by the California Labor Code and applicable regulations for all the Golf Course Improvements and the Premises Improvements and other work performed on the Property. Lessee shall provide to Lessor all records required by state law, including but not limited to the California Labor Code and applicable regulations, to prove that prevailing wages are being paid, including without limitation maintaining and providing weekly certified payroll records to the Lessor evidencing that Lessee paid prevailing wage for all of the
Premises Improvements and Golf Course Improvements and other work performed on the Property.

Section 47. Golf Course

Lessor shall maintain the appearance of the Golf Course in accordance with the same standards that it is maintained as of the execution of this Lease. In the event that the use of the Golf Course changes the Lessor shall maintain the appearance of the property that comprises the Golf course in a clean and aesthetically reasonable manner. The Lessee’s sole remedy for a breach of this Section shall be specific performance. In addition, in the event that all or any portion of the Golf Course is used for business of a sexually oriented nature, such as a strip club or adult novelty store, then in such event Fixed Rent shall be reduced by fifty percent (50%) for as long as such use continues on the Golf Course.

Section 48. Business License Taxes

Lessee hereby waives and agrees it shall have no right to offset the amount of business license taxes owed to the City pursuant to El Segundo Municipal Code Chapters 3 or 4 based upon sales tax the City receives from operations occurring on the Premises during the term of this Lease, and any such applicable sales tax credits are hereby waived.
IN WITNESS WHEREOF, Lessee and Lessor have caused this Lease to be executed by their duly authorized representatives.

**Lessor:**

THE CITY OF EL SEGUNDO, a Chartered City and Municipal corporation

By: ______________________
Name: ______________________

**Lessee:**

ES CENTERCAL, LLC,
a Delaware limited liability company

By: CENTERCAL, LLC,
a Delaware limited liability company

By: CENTERCAL ASSOCIATES, LLC,
a Delaware limited liability company

By: ______________________
Print Name: ______________________
Print Title: Its Manager

Exhibit “A” – Legal Description
Exhibit “A-1” – The Premises
Exhibit “A-2” – The Golf Course
Exhibit “B” – Site Plan
Exhibit “B-1” – Preliminary Site Plan
Exhibit “C” – License Agreement
Exhibit “D” – Golf Course and Premises Improvements
Exhibit “E” – Permitted Exceptions
Exhibit “F” – Form of Memorandum of Lease
Exhibit “G” – Prototype Facility
Exhibit “H” – Form of Guaranties
EXHIBIT “A”

LEGAL DESCRIPTION
EXHIBIT A-1
THE PREMISES

THIS EXHIBIT TO BE PREPARED WITHIN ONE HUNDRED TWENTY DAYS OF COMMENCEMENT DATE AND ATTACHED HERETO.
EXHIBIT A-2

THE GOLF COURSE

THIS EXHIBIT TO BE PREPARED WITHIN ONE HUNDRED TWENTY DAYS OF THE COMMENCEMENT DATE AND ATTACHED HERETO.
EXHIBIT “D”

GOLF COURSE AND PREMISES IMPROVEMENTS
EXHIBIT “E”
PERMITTED EXCEPTIONS

[TOT BE FINALIZED AND ATTACHED WITHIN 60 DAYS FROM THE COMMENCEMENT DATE]
EXHIBIT “F”

FORM OF MEMORANDUM OF LEASE

THIS EXHIBIT TO BE PREPARED PRIOR TO EXECUTION OR CONDITION PRECEDENT TO BE ADDED REQUIRING THAT IT BE PREPARED WITHIN NINETY DAYS AND ATTACHED HERETO.
EXHIBIT “G”
PROTOTYPE FACILITY