



TOWN OF BRAINTREE
OFFICE OF THE TOWN SOLICITOR
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Joseph C. Sullivan
Mayor

Nicole I. Taub
Town Solicitor

April 3, 2019

BSC Partners, LLC
c/o David Boucher
1395A Commerce Way
Attleboro, MA 02703

Delivered In Hand

Re: Braintree Sports Complex

Dear Mr. Boucher,

As you know, BSC Partners, LLC (BSC) has failed to obtain financing for the Braintree Sports Complex (Complex) and, based on recent conversations, does not have the funding necessary to proceed with the project. As you know, there are several governing documents relating to the development, construction and operation of the Complex, starting with the special legislation enacted to allow this project to move forward and culminating with the execution of the ground lease (Lease) on February 28, 2018. Given the amount of time that has passed since the selection of BSC and the execution of the Lease, and the lack of progress on this project, the Town has serious concerns about BSC's current performance and plans for completing this project. As detailed below, BSC has failed to complete its obligations as set forth in the Lease and as of the date of this correspondence is in default requiring termination.

Article 3
Section 3.1-Project.

The Lease sets forth clear responsibilities for both parties regarding the funding of this project, including BSC's agreement to "make diligent efforts to obtain financing" within ninety (90) days from the expiration date of the latest appeal period of the latest obtained permit.¹ See Section 3.1(c). More than ten (10) months have passed since the latest appeal period of the latest obtained permit and BSC has failed to "demonstrate to the Town through written documentation" that it has obtained a commitment of sufficient financing to commence and

¹ The Order of Conditions was approved by the Conservation Commission on March 1, 2018 and issued on March 7, 2018. The appeal period expired on May 7, 2018. As a result, BSC was required to obtain financing no later than August 5, 2018.

complete the construction of the project. Therefore, BSC is in violation of the Lease and the Town is exercising its right to terminate pursuant to Section 3.1(c), effective May 3, 2019.

Section 3.5-Manner of Construction; Cost of Project.

In addition to the obligation to obtain financing, BSC maintains a responsibility to “pay (or cause to be paid) all costs and expenses associated with the Facility, Tenant Improvements or Tenant Work (including, without limitation, all architectural, engineering, construction, legal and consultant fees and costs, other than payments agreed to and made under the terms of the Components Agreement).” To “offset design, engineering, permitting, and construction costs,” and in recognition of the public benefits arising from the construction of the project, the Town agreed to provide a total payment in the amount of one and a half million dollars (\$1,500,000.00) towards the project. To date, the Town has disbursed one million dollars (\$1,000,000.00) to BSC for the preparation of preliminary and final design and engineering plans and permitting costs. *See Section 15.1.* Despite the Town’s commitment of funds as set forth in the Lease, BSC has been unable to produce the necessary construction documents to obtain a building permit and begin construction. Based on recent discussions, this is the result of outstanding balances to the vendors contracted by BSC to perform these services. As noted above, these outstanding costs are the responsibility of BSC and the failure to pay these expenses constitute an event of default pursuant to Article 11, Section 11.1(d) and 11.2 of the Lease. In the event that BSC is able to secure financing and commence construction, thereby rendering the above termination null and void, it must also cure this default through payment of all outstanding balances no later than May 3, 2019 in order to prevent the expiration and termination of the Lease due to the Event of Default described herein. *See Sections 11.1(d) and 11.2.*

Further, please be advised that the termination of the Lease does not relieve BSC from liability to pay any outstanding costs, or other obligations, relating to the project. *See Sections 4.2(a) and 11.7.* As such, the Town demands that BSC fulfill its obligations as previously agreed and pay all outstanding balances in full. Also, to the extent there are any construction documents, plans and specifications not previously provided, the Town demands production in the event of a termination of the Lease.

For these reasons, and the overwhelming evidence that BSC has not met the obligations outlined in the Lease, this letter shall service as notice that the Lease shall terminate in thirty (30) days, effective May 3, 2019, if BSC fails to cure the defaults identified herein. Upon the termination of the Lease, title to the facility, all tenant improvements and any design plans relating to the Complex shall immediately vest in the Town and shall be surrendered.

If you have any questions please contact me at (781) 794-8153.

Sincerely,


Nicole I. Taub

cc: Scott F. Lacy, Esq., 11 Robert Toner Boulevard, Suite 5, North Attleboro, MA 02760