

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Agreement") dated as of August 19, 2019, is entered into by and between BSC Partners LLC with an address of 1395A Commerce Way, Attleboro, Massachusetts ("Assignor 1"), and 5 Capital Management, Inc. a Massachusetts corporation having a place of business at 521 Mount Hope Street, North Attleboro, Massachusetts ("Assignor 2") (Assignor 1 and Assignor 2 are collectively "Assignors"), and E Street LLC¹, with an address of 1105 East Street, Dedham, MA 02026 ("Assignee").

A. Assignor 1 is the Lessee under the Ground Lease dated February 28, 2018 executed between the Town of Braintree, a Massachusetts municipal corporation having a principal place of business at One JFK Memorial Drive, Braintree, Massachusetts, as Lessor ("Town"), and Assignor 1, as Lessee (the "Lease"). A true copy of the Lease is attached hereto as Exhibit A.

B. Assignor 2 is the Developer named under the Lease and Development Agreement Components dated April 15, 2015 executed between the Town of Braintree as Owner ("Town"), and Assignor 2, as Developer (the "Development Agreement"). A true copy of the Development Agreement is attached hereto as Exhibit B.

C. Assignor 1 desires to assign its interest in the Lease to Assignee and Assignor 2 desires to assign its interest in the Development Agreement to Assignee effective upon Assignee's closing of the agreement with the Town to acquire all of Assignors' rights and obligations of development and use of the Facility referenced in the Lease, and contemplated in the Development Agreement in accordance with Assignee's agreements with the Town (the "Closing"), and Assignee desires to accept such assignment and conveyance and assume the liabilities of Assignor 1 as Lessee under the Lease and as Developer under the Development Agreement, on the terms and conditions below.

D. The Town desires to consent to the foregoing assignment, expressly subject to the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereto do hereby agree as follows:

1. Effective upon the Closing, Assignor 1 hereby assigns to Assignee all of its right, title, and interest in and to the Lease and Assignor 2 hereby assigns to Assignee all of its right, title, and interest in and to the Development Agreement, and Assignee hereby accepts such assignments and assumes all of each of the Assignor's respective obligations under the Lease and Development Agreement as of the date hereof, subject to the modifications of the foregoing agreements as set forth herein. The Assignors and

¹ Or nominee

Assignee acknowledge that the Lease and Development Agreement shall be modified in accordance with the terms of the Amendment of Lease and Amendment of Development Agreement, to be negotiated with the Town and containing terms and conditions acceptable to the Town and Assignee, effective upon the effectiveness of this Agreement.

2. Assignee agrees to indemnify Assignors and hold Assignors harmless from and against any and all claims, liens, damages, demands, causes of action, liabilities, lawsuits, judgments, losses, costs and expenses (including but not limited to reasonable attorneys' fees and expenses) asserted against or incurred by either Assignor by reason of or arising out of any failure by Assignee to perform or observe the obligations, covenants, terms and conditions assumed by Assignee hereunder which arise from and after the effectiveness of this Agreement.

3. Each Assignor agrees to indemnify Assignee and hold Assignee harmless from and against any and all claims, liens, damages, demands, causes of action, liabilities, lawsuits, judgments, losses, costs and expenses (including but not limited to reasonable attorneys' fees and expenses) asserted against or incurred by Assignee by reason of or arising out of any failure by either Assignor to perform or observe the obligations, covenants, terms and conditions assumed by Assignee hereunder which arose prior to the effectiveness of this Agreement.

4. The Town shall, at the Closing, (a) issue its consent to the foregoing assignments and assumptions, by execution of the Consent substantially in the form attached hereto as Exhibit C; (b) agree to the modifications to the Lease and Development Agreement as assumed by Assignee in accordance with the Amendment of Lease and Amendment of Development Agreement, referenced above, and (c) execute and deliver a Release in favor of Assignors, substantially in the form attached hereto as Exhibit D to Assignors.

5. From and after the date hereof, the Lease and the Development Agreement shall be deemed to be amended in accordance with the Amendment of Lease and Amendment of Development Agreement, referenced above.

6. In connection with, and in consideration of, the foregoing assignments, Assignors and Assignee acknowledge and agree to the following:

- a. Assignor 1 acknowledges unpaid project balances due to certain parties for goods and services rendered, and the parties hereto have agreed to the resolution of such claims with each respective claimant to be paid in such agreed amounts as set forth on a separate schedule, and settled upon receipt of an acceptable release and satisfaction from each such creditor so paid;
- b. Assignee acknowledges the value created by Assignors in the form of Zoning, Planning, Conservation Commission, Civil Engineering and other related work;
- c. Assignors and Assignee acknowledge that neither Assignor will have

any ownership rights or financial gains from the Project, the Lease or the Development Agreement from and after the date of this Agreement;

- d. Assignors agree to turn over to Assignee all files on the Project dating back to November 2014;
- e. Assignor 1 agrees to use reasonable efforts to assist Assignee with any contacts, business agreements, or work that has been documented on the Project up to the date of this Agreement; and
- f. The Assignee and Assignors shall provide to the Town copies of all releases and satisfactions and proof of payment with respect to all of the unpaid project balances referenced in Section 6(a) above.

7. Except as expressly modified hereby, and in any Exhibit hereto, nothing in this Agreement shall be deemed to waive or modify any of the provisions of the Lease or Development Agreement, and the Lease and Development Agreement are each hereby ratified and confirmed in all other respects.

8. It is understood and agreed that, notwithstanding this assignment, Assignors are in default of certain of their respective obligations under the Lease and Development Agreement, and pursuant to the agreement with the Town, Assignee will not be held responsible for payment, performance or other cure of Assignors' defaults as of the date hereof.

9. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Notwithstanding the foregoing, in the event the Closing does not occur, then this Agreement shall be deemed to be null, void and of no force or effect, *ab initio*, and shall be deemed to be terminated by the parties without recourse.

10. This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Massachusetts.

11. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties have executed this Agreement under seal as of the date first above written.

ASSIGNOR 1:

BSC PARTNERS LLC

By: 

Name: David P Boucher

Title: Manager

ASSIGNOR 2:

5 CAPITAL MANAGEMENT, INC.

By: 

Name: David P Boucher

Title: Manager

ASSIGNEE:

E STREET LLC²

By: paul cokinos

Name: Paul Cokinos

Title: Manager

TOWN:

TOWN OF BRAINTREE:

By: 

Title: Mayor

4849-9113-5639.7

² Or nominee

**EXHIBIT C (to Assignment and Assumption Agreement)
CONSENT TO ASSIGNMENT OF GROUND LEASE
AND LEASE AND DEVELOPMENT AGREEMENT COMPONENTS**

THIS CONSENT TO ASSIGNMENT OF GROUND LEASE AND LEASE AND DEVELOPMENT AGREEMENT COMPONENTS (this "Assignment") is made, entered into and effective as of the 11 day of August 2019 (the "Effective Date") by and among BSC Partners LLC with an address of 1395A Commerce Way, Attleboro, Massachusetts ("Assignor 1"), 5 Capital Management, Inc. a Massachusetts corporation having a place of business at 521 Mount Hope Street, North Attleboro, Massachusetts ("Assignor 2") (Assignor 1 and Assignor 2 are collectively "Assignors"), E Street LLC¹, with an address of 1105 East Street, Dedham, MA 02026 ("Assignee"), and the Town of Braintree, a Massachusetts municipal corporation having a principal place of business at One JFK Memorial Drive, Braintree, Massachusetts ("Lessor").

WITNESSETH:

A. Assignor 1 entered into a Ground Lease, dated as of February 28, 2018 (the "Lease"), whereby Lessor leased to Assignor 1 certain premises as defined therein (the "Premises").

B. Assignor 2 entered into a Lease and Development Agreement, dated as of April 15, 2015 (the "Development Agreement"), whereby Assignor 2 and Lessor agreed to certain rights of development, use and operations of the Premises (the "Development and Operating Rights").

C. Pursuant to that certain Assignment and Assumption Agreement dated August __, 2019, by and among Assignor 1, Assignor 2, Assignee and Lessor (the "Assignment Agreement"), Assignors are conveying to Assignee substantially all of their right title and interest in and to the Lease, Development Agreement, Development and Operating Rights and all other rights conferred by the Lessor thereunder, as of the date of the transaction contemplated by the Assignment Agreement closes (the "Closing Date").

D. Assignee is willing to accept Assignors' assignment to it of the Lease and the Development Agreement, and to assume all of Assignors' obligations under the Lease and Development Agreement, as modified by Lessor, from and after the Closing Date.

E. Assignors and Assignee have requested Lessor's consent to the foregoing assignments pursuant to the Lease, and Lessor is willing to consent to such transfer and assignments, all on the terms and conditions set forth in the Assignment Agreement.

NOW THEREFORE, in consideration of the mutual terms and conditions herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Lessor hereby consents to the transfer and assignment of the Lease and Development Agreement, upon the terms and conditions set forth in the Assignment Agreement. The consent granted herein shall in no event be construed as consent to any further assignment.
2. Lessor hereby certifies that, upon execution of the Consent and the effectiveness of the Assignment Agreement (a) the Lease and Development Agreement will be deemed in full force and effect and have not been modified or amended, except to the extent modified in accordance with the terms of the Amendment of Lease and Amendment of Development Agreement, on the date hereof, and (b)

¹ Or nominee


neither party would be deemed in default under the Lease and Development Agreement, and no past event or circumstance which, with notice or the passage of time, would give rise to any default.

3. This Consent may be executed in multiple counterparts, each of which shall be deemed an original copy, and all of which together shall constitute one and the same instrument. A signed copy of this Consent delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Consent.
4. This Consent shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.
5. It is understood and agreed that this Consent is being executed and delivered pursuant to the Assignment Agreement, and nothing contained in this Consent is intended to modify, amend, limit, enlarge or supersede any of the terms, provisions, representations, warranties, covenants or indemnities contained in the Assignment Agreement, the Lease, or the Development Agreement, all of which are hereby incorporated by reference. In the event the closing under the Assignment Agreement does not occur, this Consent shall be considered null and void, and shall have no force or effect.

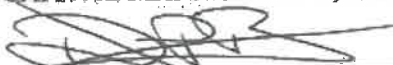
[Remainder of Page Intentionally Left Blank; Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Agreement under seal as of the date first above written.

ASSIGNOR 1: BSC PARTNERS LLC

By: 
Name: David P Boucher
Title: Manager


ASSIGNOR 2: 5 CAPITAL MANAGEMENT, INC.

By: 
Name: David P Boucher
Title: Manager

ASSIGNEE: E STREET LLC²

By: paul cokinos
Name:
Title: manager

TOWN: TOWN OF BRAINTREE:

By: 
Name:
Title: Mayor

4823-9970-6520.3

² Or nominee

EXHIBIT D (to Assignment and Assumption Agreement)

RELEASE

Release executed on August 19, 2019 by the undersigned, Town of Braintree, a Massachusetts municipal corporation having a principal place of business at One JFK Memorial Drive, Braintree, Massachusetts, herein referred to as the "Town" or "RELEASOR," in favor of BSC Partners LLC, a Massachusetts limited liability company having a place of business at 1395A Commerce Way, Attleboro, Massachusetts, and 5 Capital Management, Inc. a Massachusetts corporation having a place of business at 521 Mount Hope Street, North Attleboro, Massachusetts, collectively herein referred to as the "BSC Parties" or "RELEASEES."

WHEREAS, the BSC Parties were selected pursuant to the Town's Request for Proposals dated September 24, 2014 entitled "Recreation Facility Design, Construction, and Management" to design, construct and operate a skating rink and swimming pool complex (the "Project") on a six-acre parcel of land located on the campus of Braintree High School;

WHEREAS, reference is made to that certain Ground Lease dated as of February 28, 2018 (the "Ground Lease"), and that certain Lease and Development Agreement dated as of April 15, 2015 (the "LDA"), each by and between the Town and the BSC Parties regarding the Project;

WHEREAS, the BSC Parties desire to assign all of their right title and interest in and to the Ground Lease and the LDA, and all other rights they hold in the Project, to E Street LLC or its affiliate¹ (the "Assignee"), a Massachusetts limited liability company (the "Assignment"), and the Town has tentatively approved the Assignment as required by the Ground Lease;

WHEREAS, in order to implement the Assignment and the delivery of the rights and obligations of the BSC Parties to the Assignee, the Town has agreed to release the BSC Parties from any and all obligations imposed under the Lease, LDA and all other responsibilities that the Town has imposed upon the BSC Parties to the Town in connection with the Project subject to the conditions detailed herein;

WHEREAS, the Town seeks a similar release from the BSC Parties in connection with all matters associated with the Project";

WHEREAS, the Parties desire to release and discharge each other and their respective affiliates, but not any sub-contractors, vendors or other third parties, from all claims that each may have against the other with respect to each Party's role and participation in the Project subject to the conditions detailed herein.

NOW, THEREFORE, in consideration of the mutual covenants and promises made herein, the receipt and sufficiency of which are hereby acknowledged, and in consideration of the above recitals which are incorporated into and made a part of this Release, the Parties do agree as follows:

¹ E Street will likely form a new entity for this project.

FOR VALUE RECEIVED, the receipt of which is hereby acknowledged, the RELEASOR, except as provided herein below, on behalf of itself, its members, managers, officers, legal representatives, successors, and assigns hereby expressly remises, releases, and forever discharges each of the RELEASEES, each of its members, managers, officers, directors, legal representatives, successors, and assigns (and their respective members, managers, legal representatives, successors, and assigns) from all debts, liabilities, obligations, claims, demands, actions, suits, contracts, controversies, damages, defenses, and causes of action whatsoever of every name, nature, and description, both in Law and in Equity, that the RELEASOR ever had, may now have, known or unknown, direct or indirect, liquidated or unliquidated, primary or secondary, joint, several or joint and several, absolute or contingent, or might subsequently accrue to the RELEASOR, which arise out of or are connected with, directly or indirectly, the Ground Lease, LDA and Project, each Party's ownership, participation or management thereof, and each Party's service to or obligations in favor of each other with respect thereto or to any of the foregoing. This Release does not release any tax obligations of any party. Further, this Release does not release the BSC Parties from any claims by third parties relating to the Project.

This Release shall become effective if and when all of the following conditions have been met: (1) the BSC Parties and the Assignee execute and deliver the Assignment and it becoming effective upon the written consent of the Town; (2) the existing financial obligations incurred by the BSC Parties relating to the Project are satisfied, either by payment to or settlement with the respective creditor; (3) the Assignee obtains a commitment of sufficient private financing to complete the Project; (4) the Assignee obtains the building permit necessary to commence construction; and (5) the Project construction achieves weather tight status.

This Release is given as a material inducement for the RELEASOR to enter into and consummate the foregoing Assignment and the transaction contemplated therein. Upon such taking effect, the Release shall forever settle, adjust, and discharge all of the foregoing claims of the RELEASOR against each of the RELEASEES designated above through the date of this instrument. The RELEASOR voluntarily and knowingly executes this release with the intent or effecting the extinguishment of obligations as hereinabove designated. The undersigned has read this release and understands all of its items. This release is executed voluntarily and with full knowledge of its significance.

EXECUTED as an instrument under seal the day and year first above written.

RELEASOR:

Town of Braintree:

By: 

Title: *Mayor*

RELEASE

Release executed on August __, 2019 by the undersigned, BSC Partners LLC, a Massachusetts limited liability company having a place of business at 1395A Commerce Way, Attleboro, Massachusetts, and 5 Capital Management, Inc. a Massachusetts corporation having a place of business at 521 Mount Hope Street, North Attleboro, Massachusetts, collectively herein referred to as the "BSC Parties" or "RELEASORS," in favor of Town of Braintree, a Massachusetts municipal corporation having a principal place of business at One JFK Memorial Drive, Braintree, Massachusetts, herein referred to as the "Town" or "RELEASEE."

WHEREAS, the BSC Parties were selected pursuant to the Town's Request for Proposals dated September 24, 2014 entitled "Recreation Facility Design, Construction, and Management" to design, construct and operate a skating rink and swimming pool complex (the "Project") on a six-acre parcel of land located on the campus of Braintree High School;

WHEREAS, reference is made to that certain Ground Lease dated as of February 28, 2018 (the "Ground Lease"), and that certain Lease and Development Agreement dated as of April 15, 2015 (the "LDA"), each by and between the Town and the BSC Parties regarding the Project;

WHEREAS, the BSC Parties desire to assign all of their right title and interest in and to the Ground Lease and the LDA, and all other rights they hold in the Project, to E Street LLC or its affiliate¹ (the "Assignee"), a Massachusetts limited liability company (the "Assignment"), and the Town has tentatively approved the Assignment as required by the Ground Lease;

WHEREAS, in order to implement the Assignment and the delivery of the rights and obligations of the BSC Parties to the Assignee, the BSC Parties have agreed to release the Town from any and all obligations imposed under the Lease, LDA and all other responsibilities that the BSC Parties have imposed upon the Town in connection with the Project;

WHEREAS, the BSC Parties seek a similar release from the Town in connection with all matters associated with the Project";

WHEREAS, the Parties desire to release and discharge each other and their respective affiliates, but not any sub-contractors, vendors or other third parties, from all claims that each may have against the other with respect to each Party's role and participation in the Project.

NOW, THEREFORE, in consideration of the mutual covenants and promises made herein, the receipt and sufficiency of which are hereby acknowledged, and in consideration of the above recitals which are incorporated into and made a part of this Release, the Parties do agree as follows:

FOR VALUE RECEIVED, the receipt of which is hereby acknowledged, each of the RELEASORS, except as provided herein below, on behalf of itself, its members, managers, officers, directors, legal representatives, successors, and assigns hereby expressly remises,

¹ E Street will likely form a new entity for this project.


releases, and forever discharges the RELEASEE, each of its members, managers, officers, legal representatives, successors, and assigns (and their respective members, managers, legal representatives, successors, and assigns) from all debts, liabilities, obligations, claims, demands, actions, suits, contracts, controversies, damages, defenses, and causes of action whatsoever of every name, nature, and description, both in Law and in Equity, that each of the RELEASORS ever had, may now have, known or unknown, direct or indirect, liquidated or unliquidated, primary or secondary, joint, several or joint and several, absolute or contingent, or might subsequently accrue to each of the RELEASORS or that anyone claiming through or under it may have or claim to have against the RELEASEE, which arise out of or are connected with, directly or indirectly, the Ground Lease, LDA and Project, each Party's ownership, participation or management thereof, and each Party's service to or obligations in favor of each other with respect thereto or to any of the foregoing.

This Release shall become effective if and when (a) the BSC Parties and the Assignee execute and deliver the Assignment and it becoming effective upon the written consent of the Town, and further (b) all of the conditions to the effectiveness of the Town's release of the BSC Parties by instrument executed and delivered this day in connection herewith has become effective, according to its terms. This Release is given as a material inducement for each of the RELEASORS to enter into and consummate the foregoing Assignment and the transaction contemplated therein. Upon such taking effect, the Release shall forever settle, adjust, and discharge all of the foregoing claims of each of the RELEASORS against the RELEASEE designated above through the date of this instrument. Each of the RELEASORS voluntarily and knowingly executes this release with the intent or effecting the extinguishment of obligations as hereinabove designated. We have read this release and understand all of its items. We executed same voluntarily and with full knowledge of its significance.


EXECUTED as an instrument under seal the day and year first above written.

RELEASORS:

BSC Partners LLC:


By: David P Boucher
Title: Manager

5 Capital Management, Inc.:


By: David P Boucher
Title: Manager