

GROUND LEASE MODIFICATION AGREEMENT

THIS GROUND LEASE MODIFICATION AGREEMENT (“Agreement”) made this 21st day of September, 2019, by and between the Town of Braintree, a Massachusetts municipal corporation having a principal place of business at One JFK Memorial Drive, Braintree, Massachusetts (“Town”), and E Street LLC¹, with an address of 1105 E Street, Dedham, MA 02026 (“Assignee”).

WITNESSETH:

WHEREAS, Town and BSC Partners LLC (“Assignor 1”) entered into that certain Ground Lease Agreement dated February 28, 2018 (hereinafter referred to as the “Ground Lease”), pursuant to which Assignor 1 leased from Town the Premises stated therein; and

WHEREAS, the Ground Lease was assigned by Assignor 1 to Assignee in accordance with that certain Assignment and Assumption Agreement dated of even date (the “Assignment Agreement”); and

WHEREAS, in connection with the Assignment Agreement, and as a condition to the effectiveness thereto, the parties hereto desire to modify the Ground Lease with respect to Assignee’s obligations and timetable for performance, all as more specifically detailed below.

WHEREAS, the parties hereto desire to amend and supplement the Ground Lease, all as hereinafter provided.

NOW THEREFORE, in consideration of the foregoing and the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and the mutual promises contained herein, the parties hereto, intending to be legally bound, agree as follows:

- 1) Recitals. Each of the foregoing recitals and representations form a material part of this Agreement and are incorporated herein by this reference.
- 2) From and after the effective date hereof, Assignee shall be deemed to be the Tenant named under the Ground Lease.
- 3) To strike the following from Article I, Section 1.1(a): “The right to permit, construct, use, repair, maintain, replace, and operate two indoor hockey rinks and a swimming pool, together with ancillary uses thereto, including: locker rooms and changing areas; spectator areas; physical therapy, training, concessions and other accessory businesses as shown on plans incorporated and referenced in Required Permits; and offices, meeting rooms, and conference facilities (the “Facility”), as described herein and the Use Schedules” and replace with “The right to permit, construct, use, repair, maintain, replace and operate a recreational facility that shall include the Captain August J. Petersen swimming pool, at least one full size ice surface, one half sheet ice surface and any other recreational facilities subject to the approval of the Town, together with ancillary uses thereto, including: locker rooms and changing areas; spectator areas;

¹ Or nominee

physical therapy, training, concessions and other accessory businesses as shown on plans incorporated and referenced in Required Permits; and offices, meeting rooms, and conference facilities (the “Facility”), as described herein and the Use Schedules.”

4) To strike the following from Article I, Section 1.3: “Since a Phase I Environmental Site Assessment has not yet been fully completed, the Tenant does not waive all rights to object to the condition thereof and does not assume all risks in connection therewith the Premises. In the event that the Phase I Environmental Site Assessment identifies a recognized environmental condition on the Premises or specifically requires specific testing or sampling pursuant to a Phase II Environmental Site Assessment, the Tenant shall have the right to terminate this Agreement, unless the Town assumes sole responsibility and cost for any required testing, sampling and/or remediation, and the subject Agreement is amended to reflect the same.”

5) To strike from Article I, Section 1.4(b): “Two skating rinks with ice surfaces 200 feet long and 85 feet wide, with spectator stands to accommodate 750 people for one of the rinks” and replace with “One skating rink with an ice surface 200 feet long and 85 feet wide, with spectator stands to accommodate 750 people and one half sheet with an ice surface 90 feet by 90 feet.”

6) To add Article I, Section 1.4 as (d): “A turf surface not to exceed 180 feet in length and 100 feet in width.”

7) To add to Article I, Section 1.4(c): “Both the rinks, **the turf field** and the pool.”

8) To strike the following from Article 3, Section 3.1(a): “Tenant shall commence work on the Project constructing the Facility and Tenant Improvements within ninety (90) days following the later of (i) the receipt by Tenant of all Required Permits, defined below, beyond applicable appeal periods and (ii) the closing on the Initial Project Financing, as such period may be affected by Unavoidable Delay as defined in Section 3.1(b) below (the “Outside Construction State Date”), which permits and financing Tenant shall diligently pursue and which construction Tenant shall thereafter diligently and continuously prosecute to Final Completion (as defined below) in accordance with the Schedule of Performance, provided below.” And replace with “Tenant shall commence work on the Project constructing the Facility and Tenant Improvements within thirty (30) days following the later of (i) the receipt by Tenant of all Required Permits, defined below, beyond applicable appeal periods and (ii) the closing on the Initial Project Financing, as such period may be affected by Unavoidable Delay as defined in Section 3.1(b) below (the “Outside Construction State Date”), which permits and financing Tenant shall diligently pursue and which construction Tenant shall thereafter diligently and continuously prosecute to Final Completion (as defined below) in accordance with the Schedule of Performance, provided below.”

9) To strike the following from Article 3, Section 3.1(a): “The date upon which Final Completion of the Project occurs shall be referred to herein as the “Final Completion Date,” which shall occur not later than twenty-four (24) months from the latest date beyond applicable appeal periods of the Required Permits unless extended pursuant to Section 3.1(b) due to the occurrence of a Unavoidable Delay or for other reasons described in this Ground Lease.” And

replace with “The date upon which Final Completion of the Project occurs shall be referred to herein as the “Final Completion Date,” which shall occur not later than fifteen (15) months from the latest date beyond applicable appeal periods of the Required Permits unless extended pursuant to Section 3.1(b) due to the occurrence of a Unavoidable Delay or for other reasons described in this Ground Lease.”

10) To strike the following from Article 3, Section 3.1(c): “If Tenant is unable to demonstrate to the Town through written documentation, within ninety (90) days from the expiration date of the latest appeal period of the latest obtained Required Permit, that Tenant has obtained a commitment of sufficient financing from institutional or other sources to commence and complete the construction of the Project, the Town may terminate this Ground Lease upon thirty (30) days written notice to Tenant; provided, however, that if Tenant obtains said financing within such 30-day period, such termination notice shall be null and void and this Ground Lease shall continue in full force and effect.” And replace with “If Tenant is unable to demonstrate to the Town through written documentation, within sixty (60) days from the execution of this Amendment, that Tenant has obtained a commitment of sufficient financing from institutional or other sources to commence and complete the construction of the Project, the Town may terminate this Ground Lease upon thirty (30) days written notice to Tenant; provided, however, that if Tenant obtains said financing within such 30-day period, such termination notice shall be null and void and this Ground Lease shall continue in full force and effect.”

11) To strike the following from Article 3, Section 3.3(a): “If, despite Tenant’s diligent efforts, Tenant is unable to obtain all Required Permits, including any license needed for the operation of amusement devices within the Facility, for the initial construction of the project by June 30, 2018, Tenant shall have the right to terminate this Ground Lease by written notice to the Town.” And replace with “If, despite Tenant’s diligent efforts, Tenant is unable to obtain all Required Permits, including any license needed for the operation of amusement devices within the Facility, for the initial construction of the project by November 30, 2019, Tenant shall have the right to terminate this Ground Lease by written notice to the Town.”

12) To strike the following from Article 15, Section 15.1: “In recognition of the public benefits arising from the construction of the Project, and the fulfillment of the intended use of funds bequeathed to the Town from Captain Petersen as a gift for the specific purpose of the construction of a swimming pool to serve Town residents (the original gift, as augmented by subsequent investment proceeds, being designated as the “Donated Funds”), the Town agreed in the Components Agreement to a schedule of payments by the Town to the Tenant from the Donated Funds, to offset design, engineering, permitting and construction costs, in a total amount of One Million and Five Hundred Thousand Dollars (\$1,500,00) (“Town’s Financial Contribution”). As of the date of the execution of this Lease, the Town has paid \$697,663.32 towards the preparation of preliminary and final design and engineering plans and other costs associated with the permitting process (“Prior Contribution”). Notwithstanding any provision to the contrary in the Components Agreement, the schedule for the payment of the remaining portion of the Town’s Financial Contribution shall be as follows:...” And replace with “In recognition of the public benefits arising from the construction of the Project, and the fulfillment of the intended use of funds bequeathed to the Town from Captain Petersen as a gift for the specific purpose of the construction of a swimming pool to serve Town residents (the original

gift, as augmented by subsequent investment proceeds, being designated as the “Donated Funds”), the Town agreed to a schedule of payments by the Town to the Tenant from the Donated Funds, to offset design, engineering, permitting and construction costs, in a total amount of One Million Dollars (\$1,000,000) (“Town’s Financial Contribution”), which as of the date of the execution of this Modification has been paid in full.”

13) To strike from Article 15, Section 15.1, subsections (a) and (b).

14) To strike the following from Article 16, Section 16.2: “BSC Partners, LLC, c/o David Boucher, 1395A Commerce Way, Attleboro, MA 02703—With a copy to: Scott F. Lacey, Esq., 11 Robert Toner Boulevard, Suite 5, North Attleborough, MA 02760.” And replace with “E Street LLC, c/o Paul Cokinos, 1105 E Street, Dedham, MA 02026--With a copy to: Bob Kelley, Esq., 656 Canton Ave., Milton, MA 02186.

15) Defined Terms. Terms that are defined in the Ground Lease shall have the same meanings when such terms are used in this Agreement.

16) Time is of the Essence. Time is of the essence with respect to each and every obligation arising under this Agreement and the Ground Lease.

17) Binding Effect. All of the covenants and agreements herein contained shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, representatives, successors and assigns.

18) Confirmation of Terms. All of the terms, covenants and conditions of the Ground Lease, except as are herein specifically modified and amended, shall remain in full force and effect, and are hereby adopted and reaffirmed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and date set forth above.

WITNESS:



TOWN:

TOWN OF BRAINTREE:

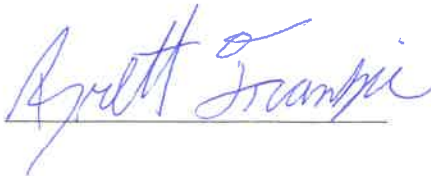
By:

Name:



Joseph C. Sullivan

WITNESS:



TENANT:

E STREET LLC

By:

Name:



Paul G. Cokinos