

TOWN OF BRAINTREE
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Charles C. Kokoros
Mayor

Nicole I. Taub
Town Solicitor

April 16, 2021

E Street, LLC
c/o Paul Cokinos
1105 East Street
Dedham, MA 02026

Re: Petersen Pool and Rink Facility

Dear Mr. Cokinos,

E Street, LLC (“E Street” or “Tenant”) took over the rights to the construction of the Petersen Pool and Rink Facility (“Facility”) through Assignment of the project on August 19, 2019. Shortly thereafter, on September 26, 2019, E Street and the Town executed a Ground Lease Modification Agreement, affirming E Street’s obligations and timetable for performance as the Tenant responsible for completion of the project.

As of the date of this correspondence, E Street has failed to meet the previously established milestones for the construction of the Facility, including but not limited to, providing proof of financing necessary to proceed with the project, payment of outstanding balances for work performed, the pursuit of required permits to commence construction and the production of construction and architectural plans necessary to obtain the same. The inability to complete these tasks is inconsistent with prior representations relied upon by the Town to continue the project beyond the dates set forth in the Ground Lease, as amended on September 26, 2019, and require termination as set forth below.

As you know, there are several governing documents relating to the development, construction and operation of the Facility, starting with the special legislation enacted to allow this project to move forward and culminating with the execution of the Ground Lease Modification Agreement (“Lease”) on September 26, 2019. Despite E Street’s recognition that time is of the essence with respect to each and every obligation arising under the Lease, a substantial amount of time has passed without significant progress towards the construction of the Facility. As a result, the Town has serious concerns about E Street’s current performance and plans for completing this project. Further, as detailed below, E Street 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.

Section 3.1(c)-Project.

The Lease sets forth clear responsibilities for both parties regarding the funding of this project, including E Street's agreement to "make diligent efforts to obtain financing" within sixty (60) days from the execution of the Lease. Where the Lease was executed on September 26, 2019, E Street was required to demonstrate to the Town through written documentation that it had "obtained a commitment of sufficient financing from institutional or other sources to commence and complete the construction of the Project" no later than December 24, 2019. *See Section 3.1(c), as amended.* More than eighteen (18) months have passed since the execution of the Lease and E Street has failed to "demonstrate to the Town through written documentation" that it has obtained a commitment of sufficient financing to commence and complete the construction of the project. Therefore, E Street is in violation of the Lease and the Town is exercising its right to terminate pursuant to Section 3.1(c), as amended, effective May 16, 2021.

Section 3.5-Manner of Construction; Cost of Project.

In addition to the obligation to obtain financing, E Street 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)." The Town has been informed that there are outstanding balances due to vendors who performed work on behalf of E Street on this project dating back to January 2020. The total due, as reported to the Town, is now \$233,289 to C. Carney Environmental and \$221,677.91 to Metro Equipment Corporation. E Street's failure to resolve these outstanding balances constitutes a further violation of the Lease 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 E Street 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 16, 2021 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.*

Additionally, the Lease establishes clear deadlines for the completion of the project based on E Street's obligation to "use diligent efforts to obtain all final permits, approvals and licenses" and to "diligently pursue" all permits required for the construction and use of the Facility. *See Section 3.1(a) and 3.3(a).* To date, E Street has failed to obtain a building permit necessary to commence construction. Despite filing an initial application in February 2020 for a foundation permit, and repeated requests from the Town for foundation and architectural plans, E Street has failed to submit the necessary documentation to support the application, thereby preventing the Building Inspector from issuing the permit.¹ E Street's failure to "diligently pursue" the building permit constitutes a further violation of the Lease and the failure to obtain the required permit constitutes an event of default pursuant to Article 11, Section 11.2(d) and 11.2 of the Lease. In the event that E Street is able to secure financing and pay all outstanding balances, as set forth

¹ Assuming E Street had obtained the building permit, final construction was scheduled for completion within fifteen months of receipt. *See Section 3.1(a), as amended.* Even allowing for a period of time to process the building permit application, construction of the facility should have been completed prior to the date of this correspondence or, at a minimum, initiated on the site.

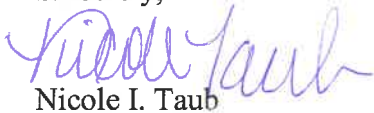
above, thereby remedying those breaches, it must also cure this default through receipt of a building permit no later than May 16, 2021 in order to prevent the expiration and termination of the Lease due to the Event of Default described herein. *See Sections 11.1(d) and 11.2.*

Further, please be advised that the termination of the Lease does not relieve E Street 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 E Street fulfill its obligations as previously agreed and pay all outstanding balances in full. Also, E Street is required to maintain several insurance policies, as well as ensure that any engineer, architect or other design professional maintains professional liability insurance, for the duration of the Lease. *See Sections 6.1-6.8.* Updated proof of insurance coverage is required and must be provided to avoid a further Event of Default as described in Section 11.1(c).

For these reasons, and the evidence that E Street 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 16, 2021, if E Street fails to cure the defaults identified herein. Upon the termination of the Lease, title to the facility, all tenant improvements and any design, engineering, architectural and other plans relating to the Facility 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: Bob Kelley, Esq., 656 Canton Ave., Milton, MA 02186