

LEASE AND DEVELOPMENT AGREEMENT COMPONENTS

This the 15th day of April 2015

1. The parties, TOWN OF BRAINTREE, a Massachusetts Municipal Corporation with principal offices at Town Hall, One JFK Memorial Drive, Braintree, Massachusetts, 02184, hereinafter called the LESSOR, agrees to LEASE and 5 Capital Management, a corporation with principal offices at 521 Mount Hope Street, North Attleborough MA, or a nominee under their control, hereinafter called the LESSEE , agrees to LEASE, upon the terms hereinafter set forth, the following described property:
2. The term of the LEASE shall be for fifty (50) years commencing from the date of signing by the Mayor and the LESSEE, following the approval of the Town Council and the School Committee of the Town of Braintree.
3. The property being shown as an approximate six (6) acre portion of a property located on the campus of Braintree High School known as the former Carson Field, as shown , in Braintree, MA, Norfolk County, Massachusetts, 02184, and as more particularly described as Lot 1 on Exhibit A attached hereto, but subject to change to conform to the Approval Under the Subdivision Control Law Not Required plan to be prepared by the Town and approved by the Braintree Planning Board as may be required, hereinafter the "Property".
4. Said Town Property is to be provided to the LESSEE free from encumbrances except those listed below, and subject to the following conditions:
 - a. liens for municipal betterments assessed after the date of this agreement;
 - b. provisions of existing building and zoning laws as well as Town's General ordinances;
 - c. easements, restrictions other than those described in subparagraph e herein, and reservations of record, if any, so long as the same do not prohibit or materially interfere with the use of said Property as a recreational facility;
 - d. a lease restriction, for the full term of the lease, that said Property will only be used for recreational purposes and accessory uses thereto (including but not limited to sale of concessions and recreational related merchandise through a pro shop) subject to the approval of the LESSOR;
 - e. contingent upon approval of the lease of the Property by the Braintree Town Council and School Committee;
5. The LESSOR agrees to provide the following:
 - a. the approximate six acre parcel of land depicted in Exhibit A;
 - b. assistance in obtaining approval of the Town Council, School Committee, Planning Board, Zoning Board of Appeals and Conservation Commission. LESSOR will be a co-applicant with LESSEE for any

filings before the aforementioned Boards

- c. the sum of One Million Five Hundred Thousand Dollars (\$1,500,000) for the design and construction of the Petersen Pool and related facilities to be provided in increments of two hundred fifty thousand dollars (\$250,000) at the signing of an agreement by the LESSOR and LESSEE to develop preliminary plans for the design and engineering of the recreational facility ; two hundred fifty thousand dollars (\$250,000) upon the completion of the design and engineering plans required for permitting in a manner and form approved by the LESSOR, provided the plans are completed no later than ninety (90) days from the signing of the agreement and failure to complete such plans within the agreed upon time shall constitute breach and entitle LESSOR to seek recovery of the initial payment, provided further that the design and engineering plans upon their completion and acceptance by LESSOR shall be the joint intellectual property of the LESSOR and LESSEE; five hundred thousand dollars(\$500,000) at the signing of the lease agreement by the parties, five hundred thousand (\$500,000)at the issuance of building and planning permits sufficient to commence construction;
- d. the LESSOR, at its discretion may provide additional funding for the construction of the recreational facility through Community Preservation funds or “like kind” contributions which may include improvements to the surrounding land, additional parking, extension of utilities, water and sewer, grounds maintenance, provision of insurance or waiver of fees;
- e. the LESSOR shall provide a schedule of Braintree Public School Braintree Youth Hockey and other Braintree youth sports organizations, practices, games and athletic events that will be hosted by the recreational facility on an agreed upon date annually.

6. The Leased premises may be used and occupied by the LESSEE and its servants, agents, employees and independent contractors for the design, construction, maintenance and operation of a recreational facility. The LESSEE may store equipment, subject to the Ordinances of the Town, related to the operation and maintenance of the facility on the leased property. The LESSEE may, subject to the LESSOR’s approval, sub-lease the property, or recreational facility or the whole or parts thereof. The LESSEE may, subject to compliance with

7. The LESSEE agrees to provide the following:

A. within the time frame set forth in Section 4(e) of this agreement; designs, engineering and plans of operation for a recreational facility that shall include the Captain August J. Petersen swimming pool and a skating rink. The pool shall operate year round and shall be at least Junior Olympic size (75 feet long by 70 feet wide, with a

one meter diving board, diving area with twelve (12) foot depth and twenty (20) foot head clearance and a walk in area. The skating rink shall consist of at least one ice surface 200 feet long and 85 feet wide. The rink may operate seasonally or year round. Both the rink and the pool shall be accessible to persons with disabilities and both shall meet the requirements to accommodate Massachusetts Interscholastic Athletic Association competition. Locker and meeting rooms for school sports teams, changing areas, spectator stands that accommodate at least 350 persons for the skating rink shall be provided. The LESSEE may at its discretion develop other recreational facilities on the property, subject to the approval of the LESSOR. The LESSOR shall have the final approval of the design and operational plan of the aforementioned facilities;

8. The LESSEE agrees to accommodate the schedule the LESSOR provides pursuant to subparagraph (e) of Section 5 at an agreed upon fee;

9. The LESSEE agrees to provide LESSOR with a mutually agreed upon schedule for public swimming and skating on not less than two days per week, not less than eight hours per week of swimming and eight hours per week of skating.

10. The LESSEE agrees to provide scheduling priority to the Town of Braintree School, recreational programs and youth sports organizations which may seek to rent or sub-lease the LESSEE's facility.

11. The LESSEE shall be responsible for all real or personal property taxes payable on the facility. The LESSEE may, in good faith and upon reasonable grounds dispute or contest the validity of any taxes assessments or penalties and claims with respect to taxes; the LESSEE shall also provide for insurance of the recreational facility and its operation as required by the LESSOR;

12. The LESSEE agrees to make a payment to the LESSOR in accordance with the schedule contained in Exhibit B (upon approval from LESSOR of construction and design phase) which shall be attached and incorporated by reference into the final agreement;

13. The LESSEE may, as part of financing the design and construction of the recreational facility, and with the LESSOR's prior consent, mortgage or otherwise encumber LESSEE's Leasehold Estate created by this lease, and assign this Lease as security for such mortgage.

a. in the event of the LESSEE's default on the lease with LESSOR the mortgagee shall have the right to cure the LESSEE's default within sixty (60) days of receiving notice of the LESSEE's default. Such curing of the default shall prevent the lease from terminating and the mortgagee shall assume all rights and privileges of the LESSEE

b. in the event the LESSEE defaults on a mortgage for the design and construction of the recreational facility, and the mortgagee, having provided the LESSOR with appropriate notice of said default chooses not to, the LESSEE shall be declared in default and the LESSOR shall have the right to cure the LESSEE's default by assuming the payments on the mortgage, entering into a lease with a new lessee or by any other means LESSOR may deem appropriate. In the event the LESSOR has failed to take appropriate steps to cure

LESSEE's default on the mortgage within one hundred and eighty (180) days of notice of default, the mortgagee shall assume the LESSEE'S interest and shall have the right to assume the rights and responsibilities of the LESSEE or, subject to the approval of the LESSOR, seek a new lessee. The LESSOR shall be responsible to the mortgagee for payments due during the one hundred and eighty day period.

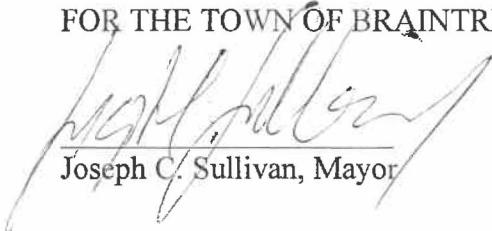
c. the LESSEE shall not be entitled to enter into a second or subsequent mortgage or otherwise refinance or use as collateral for any loan the lease or the recreational facility without the approval of the LESSOR

14. The LESSEE shall communicate and cooperate with the LESSOR's designee or designees on matters of scheduling, rental or use of the recreational facility for Braintree Schools, Braintree Youth Hockey, recreational, youth league organizations or public use.

15. Default by the LESSOR shall occur if the LESSOR fails to fulfill any of its obligations under the lease, and after having received appropriate notice from the LESSEE, failed to have complied with its obligations within ninety (90) days.

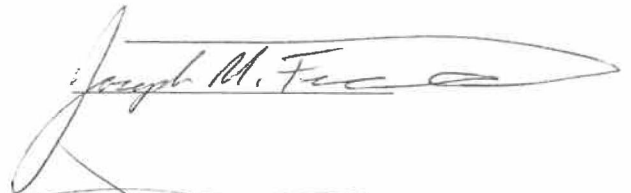
16. Default by the LESSEE shall occur if the LESSEE fails to meet any of their responsibilities or make any of the payments agreed to under this agreement to the LESSOR, or fails to fulfill its obligations to the LESSOR relating to the design, construction or operation of the recreational facility. In the event of any default relating to design the LESSEE shall have thirty (30) days from the date of notice by the LESSOR to cure the breach, in the event of non-payments, within sixty (60) days, with regard to breach related to maintenance and operations within forty-five (45) days.

FOR THE TOWN OF BRAINTREE:



Joseph C. Sullivan, Mayor

FOR 5 CAPITAL MANAGEMENT:



Joseph M. Fucina

