

INDENTURE

This Indenture (hereinafter, "Indenture") by and between Maine School Administrative District No. 11, a school administrative district with a principal place of business and mailing address at 150 Highland Avenue, Gardiner, Maine 04345 (hereinafter, "School"), and the City of Gardiner, a body politic and corporate with a principal place of business and mailing address at _____ (hereinafter, "City").

WHEREAS, School owns Gardiner Area High School, a secondary school, located at and near West Hill Road in the City of Gardiner, County of Kennebec and State of Maine, being more particularly described in a deed dated May 29, 1961 and recorded in the Kennebec County Registry of Deeds, Book 1225, Page 378, a deed dated July 18, 1961 and recorded in said Registry of Deeds in Book 1234, Page 23, and a deed dated December 30, 1959 and recorded in said Registry of Deeds, Book 1175, Page 123 (hereinafter, the "High School"); and

WHEREAS, School previously owned Pray Street School, a former elementary school, located at and near Pray Street in the City of Gardiner, County of Kennebec, State of Maine as more particularly described in a deed dated December 30, 1959 and recorded in the Kennebec County Registry of Deeds, Book 1175, Page 123 (hereinafter, the "Pray Street School"); and

WHEREAS, the Pray Street School property adjoins the High School property; and

WHEREAS, School continues to need certain athletic and ancillary facilities located at the Pray Street School property to serve the High School property; and

WHEREAS, by deed of even date recorded herewith in said registry of deeds, School has conveyed to City a portion of the Pray Street School property, together with any buildings and improvements thereon, as more particularly described in **Schedule A**, attached hereto and made a part hereof (hereinafter, the "Premises"); and

WHEREAS, School and City, for themselves and their respective heirs, successors and assigns forever, propose that the High School property and the Premises be made subject to the terms and agreements of this Indenture, which terms and agreements shall run with the land, and are not intended as personal covenants;

NOW THEREFORE, in consideration of One Dollar (\$1.00) and other good and valuable consideration, each to the other given, School and City agree as follows.

1. **SCHOOL PREMISES SUBJECT TO THIS INDENTURE.** The premises of School subject to this Indenture is School's High School property, not conveyed previously, as described in the following deeds: (i) a deed dated May 29, 1961 and recorded in said Registry of Deeds, Book 1225, Page 378; and (ii) a deed dated July 18, 1961 and recorded in said Registry of Deeds in Book 1234, Page 23; as well as that portion of the Pray Street School Property described in a deed dated December 30, 1959 and recorded in said Registry of Deeds, Book 1175, Page 123,

which has not been conveyed previously and which also is not included in said deed of even date from School to City (hereinafter, "High School Premises").

2. CITY PREMISES SUBJECT TO THIS INDENTURE. The Premises of City subject to this Indenture is that portion of the Pray Street School property conveyed of even date from School to City, and to be reconveyed by deed of even date from City to The Boys and Girls Club of Greater Gardiner [**confirm exact name**] (hereinafter, "BGC"), as more particularly described in **Schedule A**, attached hereto and made a part hereof (hereinafter, "City Premises"). Said City Premises being shown as "Proposed Land of Pray Street School" on a survey entitled "Proposed Division of Pray Street School Parcel," dated July 11, 2005, Edward M. Lawrence, M.P.L.S. and containing 7.60 acres, more or less.

3. AGREEMENTS TO RUN WITH LAND. All of the terms, agreements, covenants, restrictions and easements contained in this Indenture are intended to run with, to be binding upon and to benefit, respectively, the owner of the High School Premises and the owner of the City Premises and their respective assigns (hereinafter sometimes collectively referred to as the "owners"), and not as personal obligations.

4. DURATION. This Indenture shall be binding in perpetuity, so long as School, or a successor unit of public school administration, continues to operate a public school at the High School Premises, unless sooner terminated as provided herein to include a termination in accordance with paragraph 12 herein.

5. SCHOOL EASEMENT OVER CITY PREMISES. The City Premises are hereby made subject to the following easement to benefit the High School Premises:

An easement to use the soccer and lacrosse field as shown on said survey (the "athletic field") for soccer and lacrosse preseason tryouts, regular season and post season practices, scrimmages and games, school tournaments, and summer athletic camps and programs of School and its permittees; and to use the adjoining parking lot as shown on said survey for parking by game attendees related to such uses of the athletic field; and for all ancillary uses of the athletic field and parking lot, including the right and easement to install, operate, maintain, repair and replace goals, nets, field markings, portable restrooms, a concessions stand, a ticket sales booth, a scoreboard, lighting, portable bleachers, a storage shed and other facilities; and together with rights of ingress and egress by vehicle and on foot both from the High School Premises and over any drives serving the parking area from Pray Street; reserving to the owner of the City Premises such use of the athletic field solely for youth programs and of the parking lot as shall not interfere with this easement. The senior administrators of the respective owners, currently the Superintendent of Schools and the Director of BGC, shall resolve parking conflicts in accordance with this Indenture.

6. SCHEDULING; COOPERATION. The owners covenant to meet regularly, at least monthly unless otherwise agreed, to coordinate the scheduling of School's use of its easement, and shall inform each other of scheduling changes. The owner of the High School Premises shall have priority in scheduling its easement use, but shall cooperate with the athletic field use for non-profit recreation programs by the owner of the City Premises. The owners agree not to

interfere with each other's use of the athletic field and parking area, but notwithstanding this agreement the owner of the High School Premises may reschedule games, scrimmages and practices due to inclement weather and other circumstances, and may schedule post season and tournament games required by the Maine Principals' Association, even if such rescheduled and post season uses interfere with use by the owner of the City Premises. Furthermore, the owner of the City Premises shall limit its schedule of activities so that the total use of the athletic field does not cause unreasonably excessive maintenance costs or severely overburden the athletic field turf. As necessary, the owner of the High School Premises will remind its students and spectators that restrooms in the BGC facility are not available for their use. The senior administrators of the respective owners, currently the superintendent of Schools and the Director of BGC, shall resolve scheduling conflicts in accordance with this Indenture.

In the event the owner of the City Premises develops a swimming facility on the City Premises, it shall permit the owner of the High School Premises, for a reasonable fee to be negotiated by the owners, to use the swimming pool facility and associated locker, changing and shower areas and restrooms, for school purposes, provided that such use shall occur at hours that do not interfere with swimming activities scheduled by the owner of the City Premises. The owners shall cooperate in scheduling such hours of use by the owner of the High School Premises.

7. ATHLETIC FIELD MAINTENANCE. The owner of the High School Premises shall be solely responsible for the maintenance and repair of the athletic field for its use, including any maintenance and care made necessary by virtue of reasonable wear and tear due to use of the fields by the owner of the City Premises, its employees, contractors and invitees. The owner of the High School Premises shall be solely responsible for the cost of such maintenance and care, except that the owner of the City Premises shall provide reimbursement for such costs incurred due to negligent use or intentional damage by its employees, contractors and invitees.

8. PARKING LOT MAINTENANCE. The owner of the City Premises shall be solely responsible for maintenance and repair of the parking lot and drives, including any replacement of paving, asphalt and curbing, re-striping, and snow/ice removal and sanding, and including any maintenance and care by virtue of reasonable wear and tear due to use of the parking and drives by the owner of the High School Premises, its employees, contractors and invitees. The owner of the City Premises shall be solely responsible for the cost of such maintenance and repair, except that the owner of the High School Premises shall provide reimbursement for such costs incurred due to negligent use or intentional damage by its employees, contractors and invitees.

9. INSURANCE. Each of the owners agrees to keep in force, so long as available at commercially reasonable prices, policies of general liability insurance to protect itself against claims and expenses for property damage and bodily injury occurring on the City Premises, and naming the other owner as an additional insured. Each owner's policy of general liability insurance shall have a minimum limit of \$1,000,000 per occurrence, or in the case of an owner enjoying sovereign immunity, a minimum equal to such owner's liability under the Maine Tort Claims Act (currently \$ 400,000 per occurrence). Each of the owners also shall keep in force worker's compensation insurance for all of its employees in accordance with the requirements of

Maine law. Each of the owners shall provide written evidence of insurance required hereunder upon written request of the other.

10. USE RESTRICTIONS ON CITY PREMISES. The permitted uses of the City Premises (other than the athletic field, use of which shall be limited to non-profit recreation programs) shall include charitable, non-profit and recreational use, and any other use permitted under the City's zoning and land use laws in effect as of the date of this Indenture, provided that such use shall not be (a) inconsistent with the rights and easements under this Indenture, (b) inconsistent with the use of the High School Premises for public secondary or elementary education, or (c) otherwise objectionable to the owner of the High School Premises, in the exercise of its reasonable discretion. Examples of uses inconsistent with public secondary or elementary education include but are not limited to adult stores, tattoo, body piercing, massage and tanning establishments, establishments selling cigarettes, establishments selling or serving alcoholic beverages and establishments selling lottery tickets or used for gaming activities.

11. RIGHT OF FIRST OFFER ON CITY PREMISES. The owner of the High School Premises shall have a continuing right of first offer to purchase all or any portion of the City Premises that the owner of the City Premises proposes to sell or transfer. Prior to any sale or other transfer of all or any portion of the City Premises (other than a bona fide mortgage financing not intended to avoid this right of first offer), the owner of the City Premises shall offer to sell such property to the owner of the High School Premises for a purchase price equal to the lesser of (a) the then fair market value of such property as determined by independent appraisal, or (b) \$345,409.40 times the fraction whose numerator is the fair market value of the property to be sold and whose denominator is the sum of the fair market value of the property proposed to be sold plus the fair market value of the remaining portion of the City Premises. The owner of the City Premises shall have the sole discretion to select which valuation method, (a) or (b), shall be used to determine the purchase price.

Upon receipt of such offer to sell the City Premises, or interest therein, the owner of the High School Premises shall have 45 (forty-five) days to accept such offer, provided that the owner of the High School Premises shall be permitted to condition its acceptance of such offer on all approvals legally required for a public school to acquire and to obtain financing for such purpose, including as may be applicable, voter approval and approvals of the Department of Education and State Board of Education, and shall have a reasonable time within which to attempt to procure such approvals and financing. If the owner of the High School Parcel does not accept the offer in writing within said 45 day period, or is unable to procure such approvals within a reasonable time, the owner of the City Premises may sell or transfer the City Premises, or interest therein, to a third party, provided, however, that if the transfer is to an affiliate or is not an arm's length transaction for fair market value, this right of first offer shall continue in force, and in any case this right of first offer shall continue in force with respect to any portion of the City Premises that is not included within the first offer, or that is not sold or transferred to such third party following non-acceptance of the first offer by the owner of the High School Premises.

The owners hereby recognize and agree that the purchase price established herein if the owner of the High School Premises exercises its right of first offer is reasonable in light of the

below market value paid by BGC for the City Premises, the other rights, easements and agreements of this Indenture to which the City Premises is subject, and the public interest in maintaining an athletic field for public school purposes by the owner of the High School premises.

The right of first offer provided in this paragraph 11 shall not apply to the initial transfer of the City Premises by the City to BGS as contemplated in paragraph 2 of this Indenture, and the City shall have no responsibility in respect of said right of first offer.

12. AGREEMENT TO TERMINATE UPON DEVELOPMENT OF MCGEE FIELD. The owners agree to cooperate with respect to the development of McGee Field, a parcel of land currently owned by the Boys and Girls Club of Greater Gardiner_ and located on the west side of West Hill Road across from the High School Premises, as more particularly described in a deed to the Boys and Girls Club of Greater Gardiner dated November 19, 2004 and recorded in said Registry of Deeds, Book _8212_, Page _0254_. It is the intention that the owner of the City Premises shall develop McGee Field when sufficient funds are available to do so. The owner of the City Premises shall develop McGee Field to include a soccer/lacrosse field designed and completed to public high school soccer and lacrosse standards, and agrees to convey by indenture to the owner of the High School Premises an easement that includes athletic field, parking and ancillary uses and facilities, and terms for scheduling and cooperation (including swimming at the Pray Street or McGee site) maintenance and insurance, all of which are at least comparable to those described in this Indenture, whereupon the parties agree to terminate this Indenture. The replacement indenture shall also convey to the owner of the High School Premises a use restriction on McGee Field and, with respect to the soccer/lacrosse athletic field and parking areas of McGee Field, a continuing right of first offer, which use restriction and continuing right of first offer shall be on terms no less favorable to the owner of the High School premises as those contained in this Indenture. Said replacement indenture shall be binding in perpetuity, so long as School, or a successor unit of public school administration, continues to operate a public school at the High School Premises. Upon transfer of the indenture to the McGee field all limitations including all Rights of First Refusal upon the City premises shall terminate.

13. MISCELLANEOUS.

(a) This Indenture shall run with the land and shall be binding upon and shall inure to the benefit of the respective assigns of the real estate subject hereto.

(b) This Indenture constitutes the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior agreements, written or oral, between the parties. This Indenture may not be modified, waived or amended except in writing signed by the parties hereto. No course of dealing or delay or omission on the part of any party in exercising any right or remedy shall operate as a waiver thereof or otherwise be prejudicial thereto.

(c) Any notice relating in any way to this Indenture shall be in writing and shall be sent by registered or certified mail, return receipt requested, addressed to the party to whom such notice is directed at the address first set forth above and such notice shall be deemed delivered

when so posted. The parties may, by such manner of notice, substitute persons or addresses for notice other than those set forth above.

(d) Any and all prior and contemporaneous discussions, undertakings, agreements and understandings of the parties are merged in this Indenture, which alone fully and completely expresses their entire agreement.

(e) This Indenture may be simultaneously executed in any number of counterparts, each of which when so executed and delivered shall be an original; but such counterparts shall constitute but one and the same instrument.

(f) This Indenture shall be governed by and its terms construed in accordance with the laws of the State of Maine.

IN WITNESS WHEREOF the parties have executed this Indenture as of the ____ day of _____, 2006.

WITNESS:

Maine School Administrative District No. 11

By: _____
Paul Knowles, Superintendent of Schools

City of Gardiner

By: _____

State of Maine
Kennebec County, ss.

_____, 2006

Personally appeared before me Paul Knowles, Superintendent of Schools of Maine School Administrative District No. 11, and acknowledged the foregoing instrument to be his free act and deed in said capacity and the free act and deed of said school administrative district.

Before me,

Notary Public

Type or Print Name

My Commission Expires: _____

State of Maine
Kennebec County, ss.

_____, 2006

Personally appeared before me _____, _____
of the City of Gardiner and acknowledged the foregoing instrument to be his/her free act and deed in said capacity and the free act and deed of said City.

Before me,

Notary Public

Type or Print Name

My Commission Expires: _____