First Amended and Restated Lindbergh Center
Joint Powers Ownership and Management Agreement

This Agreement is made on March 1, 2009, between Independent School District No. 270, a Minnesota public corporation (the District), and the City of Minnetonka, a Minnesota municipal corporation (the City). This agreement replaces and restates the initial agreement between the parties that was dated October 25, 1994.

1. PURPOSE.

The District and the City have determined that it is more economical and efficient to jointly operate an activity center (the facility) than for each to do so separately. The purpose of this agreement is to set forth the terms governing the parties in the ownership, operation, maintenance, and sale of the facility. The parties agree that the facility will be used for providing educational, recreational, and athletic programs, community-based activities, and related activities, such as those commonly provided at community activity centers and school athletic facilities in the Twin Cities metropolitan area, and for no other purpose. Such programs and activities will be consistent with the use of the surrounding and adjoining facilities and property as the site of a school building. The overall guiding principle embodied in this agreement is the mutual desire of the District and the City to maximize the use of the facility as well as the adjoining building by all members of the District's and City's respective constituencies. This agreement is made pursuant to Minnesota Statutes Section 471.59.

2. OWNERSHIP.

2.1. The facility is located on property owned by the District. The District agrees that this property is available for the facility and will grant a ground lease to itself and the City as tenants in common.

2.2. In addition, the ground lease to the City will give it the non-exclusive right to allow vehicles associated with use of the facility to park on land owned by the District, the location of which is shown approximately on attached Exhibit A. This parking lot will be used on a first come, first served basis, with no priority or reserved spaces for either party unless first agreed to in writing by both parties.

2.3. The facility will be owned jointly by the District and the City as tenants in common, in the following proportionate shares: District - 71%; City - 29%.

3. OPERATION, MAINTENANCE.

3.1. The District and the City will jointly use and operate the facility in accordance with this agreement. The operation and maintenance of the facility will be under the jurisdiction of a facility operating committee consisting of the District Superintendent and the City Manager, or their designees. Decisions of the operating committee must be unanimous.

3.2. The operating committee will jointly select a facility manager to supervise the operation, scheduling, and maintenance of the facility. This person will be a District employee, subject to the direction, control, salary schedule, and policies of the District, but will also have a reporting relationship to the operating committee. The operating committee will determine whether other employees are reasonably necessary to assist the facility manager in the supervision and operation of the facility. If so, these will also be District employees, subject to the direction, control, salary schedule, and policies of the District. The direct costs of these employees will include each employee's salary, benefits, worker's compensation costs, and unemployment costs, multiplied by the percentage of the employee's time devoted to the facility. The City will reimburse the District for 29% of these direct costs.

3.3. The District will provide all of the necessary utilities, maintenance and repair for the facility and the parking areas used in connection with the facility, including snow plowing. The direct costs of all District employees who provide these duties will be calculated in the same manner as that described in paragraph 3.2. The City will reimburse the District for 29% of these direct employee costs and 29% of all other costs incurred in maintaining and operating the facility and the associated parking areas.

3.4. The District will be responsible for the accounting of the costs for the operation and capital replacement for the facility. The District and the City will jointly approve an annual budget for these costs coextensive with the District's fiscal year.

3.5. In addition to the cost-sharing provided above, each party will be responsible individually for the extra out-of-pocket expenses, such as equipment rental, extra custodial time, extra supervision, and food service costs, which are incurred as the result of a special event sponsored by that party. Extra out-of-pocket expenses are defined as additional expenses above and beyond normal operations. Except as otherwise agreed, neither party may charge the other party any other fee for use of the facility.

3.6. The parties intend to have the facility and adjoining building used to the greatest extent possible by both parties and the community for activities and programs. The parties agree to prepare an annual calendar of activities and events for the facility. The parties intend that the annual calendar be as complete as possible by approximately August 1, with adjustments made on or about November 1 and February 1.

3.7. The use of the facility will be scheduled in accordance with the following, in descending order of priority:

	6:00 a.m. to 6:00 p.m.		6:30 p.m. to midnight
1.	District-sponsored and jointly-sponsored programs	1.	City-sponsored and jointly-sponsored programs
2.	City-sponsored programs	2.	District-sponsored programs
3.	Other programs	3.	Other programs

The ending time for District priority will be scheduled at 6:00 p.m. and the beginning time for City priority will be scheduled at 6:30 p.m. The intent of the time between 6:00-6:30 p.m. is to be used for set-up and transition from school district activities to City use. District use is permitted between 6:00-6:30 p.m. while the courts are set-up for City use. While flexibility with this time is at the discretion of the facility manager, the City will gain access for programming use no later than 6:30 p.m.

Jointly-sponsored programs are ones in which both parties agree to share the development, supervision, promotion, expense, and revenues. The walking/jogging track and the fitness area are defined as jointly sponsored programs. All other jointly-sponsored programs are officially recognized as such when approved in writing by the operating committee.

The District has the right to preempt a City program during the City's priority hours for scheduled District-sponsored events such as athletic contests, tournaments, concerts, graduation exercises, and other such pre-planned and pre-scheduled activities. Such events shall be included as part of the annual calendar.

Preempted City activities must be scheduled into alternative locations which will reasonably accommodate the City's programs. A preemption is defined as any request by the District that requires loss of City programming space at the Lindbergh Center and/or closure of normally scheduled public use spaces (i.e. walk/run track, weight room, etc.). For a District event which is not scheduled in advance as part of the annual calendar, District preemption must take place more than seven days before the event. However, the City may agree to a shorter period of time for unexpected events. The total number of preemptions by the District for both unscheduled events and those which are part of the annual calendar cannot exceed 32 evenings or times per year unless approved by the operating committee.

3.8. In exchange for this right of preemption, the District will make available five basketball courts for City-sponsored programs on every Saturday from 8:00 a.m. to 4:00 p.m. November-February. The five basketball courts will be located at the Lindbergh Center or Hopkins West Junior High School except for three Saturdays in February which will be located in the Lindbergh Center.

The only exceptions to the above paragraph as it refers to February are if the District has scheduled a varsity basketball game, varsity basketball practice or elementary athletics (one Saturday) on any

of the three Saturdays in February. In the case of a game, the City will elect to either schedule around the District varsity basketball game (i.e. the City will play games before, after or before and after the scheduled game) or use five basketball courts at Hopkins West Junior High School 8:00 a.m. to 4:00 p.m. In the case of a practice, the District will make available courts 1, 4 and 5 8:00 a.m. to 6:00 p.m., courts 2 and 3 12:00 p.m. to 6:00 p.m. and the High School gym 8:00 a.m. to 6:00 p.m. In the case of elementary athletics, the City will, at its discretion, use courts 1-5 12:00 p.m. to 6:00 p.m. or five basketball courts at Hopkins West Junior High 8:00 a.m. to 4:00 p.m.

In addition, the District will make available the aerobics room for City-sponsored programs three days per seven-day week for two hours per day after 6:30 p.m., but starting no later than 8:00 p.m.

City compensation for requests beyond 32 preemptions will be negotiated at the time of request if approved.

The City understands the need to accommodate overlapping needs of District winter and spring sports in March and will limit use of the facility to allow such use by the District. In exchange, the City will be entitled to the use of at least three (3) courts on two (2) Sunday afternoons 12:00 p.m.-6:30 p.m. in March.

3.9. The District agrees to make space in the adjoining District-owned building available to the City as follows:

(a) The aerobics room will be available for City use in accordance with the priorities established for the facility in paragraph 3.8 above.

(b) The remaining space in the High School will be available for City use in accordance with District Board Policy KG which is in effect on the date of this agreement. Any changes to that policy will not be effective with respect to City use of the adjoining building unless approved by the operating committee.

3.10. Standard equipment for activities offered at the facility, such as basketballs, volleyballs, volleyball standards, weights, and exercise equipment, will be jointly purchased and owned by the parties in the same percentages as specified in paragraph 2.1. Specialized equipment required by either party for its own use will be purchased and maintained by the respective party. Designated storage will be provided for shared equipment and specialized equipment required by either party.

3.11. The parties may make the facility available for use by other groups, either on a rental or rent-free basis, in accordance with District Board Policy KG. Any changes to that policy will not be effective with respect to the facility unless approved by the operating committee. The parties must place any revenues received from renting the facility in the current operating account to reduce costs of operating the facility. Each party may retain for its own use revenue received from program fees, concessions and ticket sales for events sponsored solely by such party.

3.12. The joint use of the space contemplated by this agreement does not eliminate or diminish any other joint use arrangements which currently exist between the parties for other facilities.

4. DISPUTE RESOLUTION.

4.1. If a dispute arises between the parties regarding this agreement or the operation or maintenance of the facility, the members of the operating committee must promptly meet and attempt in good faith to negotiate a resolution of the dispute.

4.2. If the parties have not negotiated a resolution of the dispute within 30 days after this meeting, the parties may jointly select a mediator to facilitate further discussion.

4.3. If a mediator is not used or if the parties are unable to resolve the dispute within 30 days after first meeting with the selected mediator, the dispute will be submitted to binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association, except that disputes involving an amount less than $25,000 will be submitted to a single arbitrator.

4.4. The parties will equally share the costs of conducting any mediation or arbitration, excluding each party's cost for preparation of its own case.

4.5. In addition to the dispute resolution mechanisms contained in this section, each party may seek specific performance of the other party's obligations under this agreement.

5. LIABILITY, INSURANCE.

5.1. The District employees who provide services or programs in the facility will be considered employees of the District alone and in no way will be considered employees of the City. City employees who provide services or programs in the facility will be considered employees of the City alone and in no way will be considered employees of the District. Except for the cost sharing provided in paragraphs 3.2 and 3.3 above, each party will be responsible for all costs associated with their own employees.

5.2. The District will be solely responsible for all claims resulting from programs which it sponsors. The City will be solely responsible for all claims resulting from programs which it sponsors. The District and City will be responsible equally for all claims resulting from programs which they jointly sponsor. Responsibility for all claims resulting from operation and maintenance of the facility and the jointly used parking area identified on Exhibit A will be shared 71% by the District and 29% by the City. "Claims" as used in this paragraph means all third-party claims, losses, damages, and expenses, including attorneys' fees, resulting from personal injury, death,

violation of civil rights, and/or property damage. Each party agrees to defend and indemnify the other for all claims that are the sole responsibility of the indemnifying party.

5.3. The parties agree that one attorney may represent both parties in any third-party claim arising under paragraph 5.2, even though there is a dispute regarding the parties' respective shares of that liability. If a dispute regarding the parties' respective shares still exists after the third-party claim has been resolved, that dispute will be resolved in accordance with the dispute resolution mechanisms contained in Section 4 above.

5.4. Each party will obtain a policy of public liability insurance, either from a reputable insurance company authorized to do business in Minnesota or through a self-insurance pool organized pursuant to Minnesota Statutes §471.981. Each party will name the other as an additional insured with respect to the facility. The limits of liability must cover each parties' exposure under Minnesota Statutes Chapter 466. The insurance of the party which has sole responsibility for a claim will be primary. When a claim results from a matter of shared responsibility or when there is a dispute about the respective amounts of responsibility, the District's insurance will be primary with a right of contribution from the City's insurance. Any claim for contribution between the respective insurance carriers will be resolved by the procedure in Section 4 above. An insurance carrier which seeks contribution from the second insurance carrier may not settle the subject claim without the consent of the second insurance carrier. Failure to obtain such consent voids the first insurance carrier's right to contribution. However, the consent may not be unreasonably withheld. If the second carrier refuses to give its consent to a reasonable settlement proposal, then the second carrier's insurance will become primary with a right of contribution against the first insurance carrier.

5.5. The District will obtain sufficient property and casualty insurance (in accordance with prevailing community standards) to cover the replacement cost of the facility and its contents. This insurance and payment of any deductibles will be a cost of operating the facility, covered by the cost-sharing provision in paragraph 3.2.

5.6. Upon request, each party will provide to the other a certificate of insurance verifying that the insurance policies required by this agreement are in effect.

6. SALE OF FACILITY.

6.1. The parties may at any time agree to jointly sell the facility to a third party.

6.2. Unless both parties agree, no one party may sell its interest until November 1, 2011 Subject to that limitation, if one party ("the selling party") wishes to sell its interest in the facility, the selling party must give notice to the other party ("non-selling party") of its intent to sell its interest. Within 60 days after receiving that notice, the non-selling party will have the right, but not

the obligation, to purchase the selling party's interest. The non-selling party may exercise this right by delivering written notice to the selling party within that 60-day period. If the non-selling party exercises this right, the purchase price for the selling party's interest will be determined as follows, as of the sale date:

(a) The parties will attempt in good faith to mutually agree on an independent real estate appraiser to determine the value of the facility. If the parties cannot agree on an acceptable appraiser, each party will select its own appraiser, and those two appraisers will mutually select a third. The three appraisers will constitute a panel to determine the value of the facility. The parties will share equally the cost of a mutually chosen appraiser or the third appraiser on the panel of appraisers. Each party will bear sole responsibility for the cost of its own appraiser on the panel of appraisers.

(b) In determining the value of the facility (but not the ground lease under paragraph [d] below), the single appraiser or the panel of appraisers must base their opinions on continued use of the facility as an activity center and must make reasonable efforts to use more than just the replacement cost approach to value. If a majority of the appraisers cannot agree upon a value, then each will issue separate opinions of value, and the three values will be averaged to determine the value of the facility. The value of the facility will be multiplied by the selling party's ownership share to determine the purchase price.

(c) In no event can the purchase price be greater than the selling party's initial investment. The District's initial investment was $ 5.5 million dollars; the City's initial investment was $ 2.2 million dollars.

(d) If the District is the selling party, the parties must also obtain an independent appraisal of the value of the ground lease in the same manner as in paragraphs (a) and (b) above. The City must pay this amount to the District, in addition to the purchase price of the facility.

(e) If, after receiving the determination of the appraiser(s) as provided above, the non-selling party determines that it does not wish to purchase the selling party's interest in the facility, the non-selling party may, by written notice delivered to the selling party within 30 days after receipt of the appraisers' determination, withdraw the exercise of its option. In such event, the non-selling party's exercise of its option shall be null and void, and neither party will have any further liability under this Section 6.2.

(f) Nothing in this Section 6.2 shall be interpreted to signify any party's expectation that it will earn a return on its investment or that the facility will appreciate in value.

6.3. If a selling party wishes to sell, and the non-selling party chooses not to buy the selling party's interest, the selling party may offer to sell its interest to a third party. Any purchase agreement with a third party must be subject to a right of first refusal in favor of the non-selling party to purchase the selling party's interest under the same terms and conditions. Upon entering into any such purchase agreement, the selling party must deliver to the non-selling party written notice attaching a copy of the signed purchase agreement. Within 60 days after receiving the notice, the non-selling party may by written notice to the selling party exercise its right to purchase the selling party's interest under the same terms and conditions as in the purchase agreement. If the non-selling party elects not to purchase under these conditions, the selling party may proceed to sell its interest to the third party. The third party must be approved by the non-selling party, but this approval must not be unreasonably withheld.

6.4. Upon consummation of a sale to a third party, the selling party and the third party purchaser must execute an assignment and assumption agreement, under which the selling party assigns, and the third party assumes, all of the selling party's rights, obligations, and limitations under this Agreement and the ground lease issued pursuant to Section 2 above, as they may be amended. No such assignment and assumption will relieve the selling party from liability for any obligation arising prior to the date of the assignment and assumption.

6.5. At its option, the non-selling party may elect to pay the purchase price to the selling party in equal annual installments over a period of 15 years, pursuant to a standard form of contract for deed (Minnesota Uniform Conveyancing Blank No. 56-M or a successor form which contains substantially the same terms and conditions) or pursuant to a promissory note and standard form of mortgage (Minnesota Uniform Conveyancing Blank No. 43-M or a successor form which contains substantially the same terms and conditions). The unpaid balance of principal of such purchase price shall bear interest at a rate of six percent per annum and shall be repayable without premium or penalty.

6.6. If the non-selling party purchases the selling party's interest and subsequently sells the facility or any portion or share of it within five years after the sale date, the non-selling party must provide written notice to the selling party of the later sale and its terms, within 30 days after consummation of the later sale. If the non-selling party makes a profit on the later sale, the non-selling party must pay to the selling party a share of the profit. This will be determined as follows:

(a) The later sale price will first be reduced by the cost of any capital expenditures made for the facility by the non-selling party after the date of the sale from the selling party. This is the net sale price.

(b) If the net sale price for the entire facility is greater than the value of the facility determined under Section 6.2 (a) and (b) ("the value"), the selling party is entitled to a percentage of the difference, based on its ownership share specified in Section 2.2.

(c) If the later sale involves only a portion or share of the facility, the selling party is entitled to all of the profit from that part which is equal to or less than its ownership share specified in Section 2.2. For example, if the selling party's ownership share was 21% and a 40% share is sold later, the later sale price is compared to 40% of the value. If the sale price is greater, then the selling party is entitled to a percentage of the difference determined by dividing 21 by 40.

6.7. A waiver by the non-selling party of its right to purchase the selling party's interest in the facility on any one occasion shall not be deemed a waiver by the non-selling party of its right to purchase the selling party's interest on any other occasion.

6.8. Any dispute regarding matters covered by this Section 6 will be resolved pursuant to the dispute resolution procedures in Section 4.

7. GENERAL PROVISIONS.

7.1. All amounts due to the District from the City will be paid within 30 days after a written notice of the amount due has been provided to the City. The District will allow the City to review all of the District's records regarding a payment demand at reasonable times during normal business hours. The City's share of on-going operation and maintenance costs will be paid in four quarterly installments as scheduled by the operating committee in advance, at the beginning of each quarter.

7.2. All notices under this agreement must be sent by first class mail addressed to:

If to the District:	Superintendent I.S.D. No. 270 1001 State Highway 7 Hopkins, MN 55343
If to the City:	City Manager City of Minnetonka 14600 Minnetonka Blvd. Minnetonka, MN 55345

7.3. This agreement shall continue in duration until terminated pursuant to the provisions above.

7.4. The parties agree that no later than ten years after this amended and restated agreement is approved by both the District and the City, the parties will review this agreement to determine if any changes are appropriate.

7.5. This agreement may be amended only in writing, executed by the proper representatives of both parties.

7.6. The parties may supplement this agreement with additional written policies or agreements approved in writing by both parties which are not inconsistent with the terms of this agreement.

7.7. This agreement must be interpreted under the laws of the state of Minnesota.

Date: _____ INDEPENDENT SCHOOL DISTRICT NO. 270

By _____
Its Board Chair

And _____
Its Superintendent

Date: _____ CITY OF MINNETONKA

By _____
Its Mayor

And _____
Its City Manager