

**RESOLUTION authorizing the release, reconveyance, substitution and exchange of certain property among the South Dakota Board of Education, Watertown School District No. 14-4 and the South Dakota Health and Educational Facilities Authority and authorizing execution, performance and delivery of other documents, certificates and instruments in connection therewith.**

## **RECITALS**

**WHEREAS**, the South Dakota Health and Educational Facilities Authority (the "Authority") has been created by the South Dakota Health and Educational Facilities Authority Act, as amended (the "Act");

**WHEREAS**, the Authority is authorized pursuant to the Act to issue revenue bonds and acquire vocational education facilities to be leased to and purchased by the State Board of Education (the "Board") and/or certain participating institutions under Chapter 13-39, SDCL;

**WHEREAS**, the Authority has established a program (the "Program") whereby the Board may lease purchase post-secondary vocational technical education facilities from the Authority and sublease such facilities to various school districts operating technical institutes ("*the Participating Institutions*");

**WHEREAS**, the Authority and the Board have heretofore entered into a Lease Purchase Agreement dated as of August 1, 1988 as supplemented by various Supplements through and including a Fourteenth Supplement to Lease Purchase Agreement dated as of December 1, 2010 (collectively, as so supplemented, the "*Lease*") and to finance improvements (collectively, "*Projects*") subject to the Lease, the Authority has issued various series of Vocational Education Program Revenue Bonds (the "*Bonds*") from time to time pursuant to an Indenture of Trust dated as of August 1, 1988 (the "*Indenture*") between the Authority and The First National Bank in Sioux Falls, as Trustee (the "*Trustee*") as supplemented from time to time by supplemental indentures through and including that certain Twelfth Supplemental Indenture of Trust dated as of December 1, 2010 between the Authority and the Trustee.

**WHEREAS**, terms not defined in this resolution shall have the meanings assigned thereto in the Lease or the Indenture, as applicable and as the context shall require.

**WHEREAS**, pursuant to Eleventh Supplemental Indenture, the Authority issued its Series 2010A Bonds and Series 2010B Bonds and a portion of the proceeds thereof were deposited into a project subaccount (the "*Lake Area Project Subaccount*") for the purpose of paying the costs of acquisition and improvement of a project (the "*Lake Area Project*") for lease to the Board pursuant to the Thirteenth Supplement to Lease and for sublease by the Board to the Watertown School District No. 14-4 ("*Lake Area District*") pursuant to the Ninth Supplement to Sublease Agreement (the "*Ninth Supplemental Sublease*").

**WHEREAS**, Section 3.06 I of the Ninth Supplemental Sublease provides:

*Notwithstanding any provision of the Indenture, the Lease or the Sublease, including, without limitation Section 5.09 of the Lease, the District shall have the absolute right to exchange the property described on Exhibit B hereto for another parcel of land adequate, in the District's reasonable judgment, to accommodate the building and other improvements which are to be included in the Series 2010 Project (herein, the "New Parcel"), subject, in all events, to the other requirements of Section 3.05 hereof. Upon notice from the District to the Board and Authority, the Authority and Board shall quit claim and release all of their right, title and interest in and to the property described in Exhibit B hereto in exchange for a deed conveying the New Parcel.*

**WHEREAS**, the Authority is in receipt of a written request from the Lake Area District consistent with Section 3.06 I of the Ninth Supplemental Sublease, a copy of which is attached hereto as Exhibit A (herein, the "*Section 3.06 Request*"), which identifies the New Parcel and the parcel to be released (the "*Release Parcel*") and the New Parcel to the satisfaction of the Authority;

**NOW, THEREFORE, Be It Resolved by the South Dakota Health and Educational Facilities Authority as follows:**

Section 1. Findings. The Authority hereby makes the following findings and determinations:

- (a) The Section 3.06 Request received by the Authority is consistent with the Ninth Supplemental Sublease;
- (b) The Authority has been advised that the Board has or will promptly consent to the Section 3.06 Request; and
- (c) The release and reconveyance of the Release Parcel from the Lease and the Lake Area Sublease (herein, the "*Release*") in exchange for subjecting the New Parcel to provisions of the Lease and the Lake Area Sublease (the "*Substitution*") will not result in any diminution of collateral, Revenues or security which could have an adverse effect on the Authority, the Board, the Trustee or the Bondholders.

Section 2. Authorization of Exchange and Related Actions. The Authority also hereby authorizes and approves:

- (a) The Release and the Substitution as described herein.
- (b) The Authority also hereby authorizes execution and delivery by any of the Authorized Officers (as defined below) of any and all documents or supplemental instruments required to complete the Release and Substitution (the "*Exchange Documents*").

Section 3. Designation of Authorized Officers. The Chairman or the Vice Chairman or other member of the Authority or the Executive Director of the Authority (each, an "Authorized Officer" and collectively, the "Authorized Officers") be and hereby are each authorized, empowered and directed (provided only one such signature shall be required) to

execute the Exchange Documents and any other change, revision, deletion or addition to any such document or instrument contemplated by this Resolution.

Section 4. Authorization and Ratification of Subsequent Acts. The Members, agents and employees of the Authority, general counsel to the Authority and Perkins Coie LLP acting in the capacity as Bond Counsel to the Authority are hereby authorized and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of these resolutions and the documents approved hereby and to develop and all of the acts and doings of the members, agents and employees of the Authority which are in conformity with the intent and purposes of these resolutions, whether heretofore or hereafter taken or done, shall be and are hereby ratified, confirmed and approved.

Section 5. Effective Date. This Resolution shall take effect immediately. If any one or more of the covenants or agreements provided in this Resolution on the part of the Authority or any fiduciary to be performed should be contrary to law, then such covenant or covenants or agreement or agreements shall be deemed severable from the remaining covenants and agreements, and shall in no way affect the validity of the other provisions of this Resolution.

Adopted this \_\_\_th day of \_\_\_\_\_, 2010.

## **EXHIBIT A**

[Request of Watertown School District (the "School District") to Exchange Property Pursuant to Section 3.06 I of the Ninth Supplemental Sublease Agreement between the School District and the South Dakota Board of Education.]