

STATE BOARD OF EDUCATION

RESOLUTION (i) AUTHORIZING THE EXECUTION, DELIVERY AND PERFORMANCE OF AN OMNIBUS AMENDMENT RELATING TO (A) THE ELEVENTH SUPPLEMENTAL INDENTURE OF TRUST, (B) THE THIRTEENTH SUPPLEMENT TO LEASE PURCHASE AGREEMENT, (C) SUPPLEMENTS TO SUBLEASE AGREEMENTS RELATING TO MITCHELL AND LAKE AREA TECHNICAL INSTITUTES; AND (ii) APPROVING CERTAIN RELATED MATTERS IN CONNECTION THEREWITH

Adopted March __, 2011

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RECITALS

WHEREAS, Rapid City Area School District No. 51-4 (the "*Rapid City School District*"), Sioux Falls School District No. 49-5 (the "*Sioux Falls School District*"), Watertown School District 14-4 "*Watertown School District*") and Mitchell School District No. 17-2 (the "*Mitchell School District*" and together with the Rapid City School District, Sioux Falls School District, and Watertown School District, the "*Participating Institutions*") are authorized pursuant to Title 13, South Dakota Codified Laws to operate post-secondary vocational technical education institutes under the general supervision of the State Board of Education (the "*Board*"); and

WHEREAS, the South Dakota Health and Educational Facilities Authority (the "*Authority*") is authorized pursuant to Chapter 1-16A, South Dakota Codified Laws, to issue bonds to finance the acquisition and improvement of post-secondary vocational technical education facilities for use by the Participating Institutions and the Board; and

WHEREAS, Title 1-16A and Title 13, South Dakota Codified Laws, permits the Board to lease purchase post-secondary vocational technical education facilities from the Authority and permits the Board to sublease such facilities to the Participating Institutions; and

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 the Participating Institutions; and

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 November 1, 2010 (collectively, as so supplemented the "*Lease*") pursuant to which the Board is leasing with an option to purchase certain facilities the acquisition and/or improvement and equipping of which was financed or refinanced in part or in whole with the proceeds derived from the issuance and sale by the Authority of its Vocational Education Program Revenue Bonds, Series 1988 in the original principal amount of \$11,120,000 (the "*Series 1988 Bonds*"), its Vocational Education Program Revenue Bonds, Series 1990 in the original principal amount of \$1,315,000 (the "*Series 1990 Bonds*"), its Vocational Education Program Revenue Bonds, Series 1992 in the original principal amount of \$8,785,000 (the "*Series 1992 Bonds*"), its Vocational Education Program Revenue Bonds, Series 1993 in the original principal amount of

\$9,780,000 (the "*Series 1993 Bonds*"), its Vocational Education Program Revenue Bonds, Series 1997 in the original principal amount of \$10,365,000 (the "*Series 1997 Bonds*"), its Vocational Education Program Revenue Bonds, Series 1998 in the original principal amount of \$4,705,000 (the "*Series 1998 Bonds*"), its Vocational Education Program Revenue Bonds, Series 1999 in the original principal amount of \$7,135,000 (the "*Series 1999 Bonds*"), its Vocational Education Program Revenue Bonds, Series 2004 in the original principal amount of \$6,265,000 (the "*Series 2004 Bonds*"), its Vocational Education Program Revenue Bonds, Series 2007 in the original principal amount of \$8,805,000 (the "*Series 2007 Bonds*"), its Vocational Education Program Revenue Bonds, Series 2008 in the original principal amount of \$19,465,000 (the "*Series 2008 Bonds*"), its Vocational Education Program Revenue Bonds, Series 2010A and Series 2010B in the original principal amount of \$23,590,000 (collectively, the "*Series 2010AB Bonds*") and its Vocational Education Program Revenue Bonds, Series 2010C in the original principal amount of \$12,605,000 (the "*Series 2010C Bonds*" and, collectively with the Series 1988 Bonds, Series 1990 Bonds, Series 1992 Bonds, Series 1993 Bonds, Series 1997 Bonds, Series 1998 Bonds, Series 1999 Bonds, Series 2004 Bonds, Series 2007 Bonds, Series 2008 Bonds, Series 2010AB Bonds and any parity bonds issued in the future, the "*Bonds*");

WHEREAS, the Authority issued the Series 1988 Bonds pursuant to an Indenture of Trust dated as of August 1, 1988 (the "*Original Indenture*") between the Authority and The First National Bank in Sioux Falls, as Trustee (the "*Trustee*"). The Authority issued the Series 1990 Bonds pursuant to the Original Indenture as amended and supplemented by the First Supplemental Indenture of Trust dated as of May 1, 1990 between the Authority and the Trustee (the "*First Supplemental Indenture*"). The Authority issued the Series 1992 Bonds pursuant to the Original Indenture as amended and supplemented by the Second Supplemental Indenture of Trust dated as of December 15, 1992 between the Authority and the Trustee (the "*Second Supplemental Indenture*"). The Authority issued the Series 1993A Bonds pursuant to the Original Indenture as amended and supplemented by the Third Supplemental Indenture of Trust dated as of August 1, 1993 between the Authority and the Trustee (the "*Third Supplemental Indenture*"). The Authority issued the Series 1993B Bonds pursuant to the Original Indenture as amended and supplemented by the Fourth Supplemental Indenture of Trust dated as of August 1, 1993 between the Authority and the Trustee (the "*Fourth Supplemental Indenture*"). The Authority issued the Series 1997 Bonds pursuant to the Original Indenture as amended by the Fifth Supplemental Indenture of Trust dated as of December 1, 1997 between the Authority and the Trustee (the "*Fifth Supplemental Indenture*"). The Authority issued the Series 1998 Bonds pursuant to the Original Indenture as amended and supplemented by the Sixth Supplemental Indenture of Trust dated as of May 1, 1998 between the Authority and the Trustee (the "*Sixth Supplemental Indenture*"). The Authority issued the Series 1999 Bonds pursuant to the Original Indenture as amended and supplemented by the Seventh Supplemental Indenture of Trust dated as of June 1, 1999 between the Authority and the Trustee (the "*Seventh Supplemental Indenture*"). The Authority issued the Series 2004 Bonds pursuant to the Original Indenture as amended and supplemented by the Eighth Supplemental Indenture of Trust dated as of December 1, 2004 between the Authority and the Trustee (the "*Eighth Supplemental Indenture*"). The Authority issued the Series 2007 Bonds pursuant to the Original Indenture as amended and supplemented by the Ninth Supplemental Indenture of Trust dated as of November 1, 2007 between the Authority and the Trustee (the "*Ninth Supplemental Indenture*"). The Authority issued the Series 2008 Bonds pursuant to the Original Indenture as amended and supplemented by the Tenth Supplemental Indenture of Trust dated as of September 1, 2008 between the

Authority and the Trustee (the "*Tenth Supplemental Indenture*"). The Authority issued the Series 2010AB Bonds pursuant to the Original Indenture as amended and supplemented by the Eleventh Supplemental Indenture of Trust dated as of July 1, 2010 between the Authority and the Trustee (the "*Eleventh Supplemental Indenture*"). The Authority issued the Series 2010C Bonds pursuant to the Original Indenture as amended and supplemented by the Twelfth Supplemental Indenture of Trust dated as of November 1, 2010 between the Authority and the Trustee (the "*Twelfth Supplemental Indenture*").

WHEREAS, pursuant to the Authority's Program in order to provide a credit against Lease Rentals owed by the Board under the Lease Purchase Agreement as heretofore amended and supplemented:

- A. All Participating Institutions have heretofore entered into the Amended and Restated Facility Fee Tuition Collection and Deposit Agreement dated as of September 1, 2008 (the "*Collection Agreement*") with the Board, the South Dakota Treasurer (the "*Treasurer*") and The First National Bank in Sioux Falls, as Escrow Holder (the "*Escrow Holder*") providing for the collection of Facility Fees on a current basis (no less frequently than quarterly) and the deposit of such Facility Fees to the Tuition Subaccount (an account of the Treasurer's maintained with the Escrow Holder);
- B. The Treasurer pledged the earnings on the statutorily created Vocational Education Facility Fund (the "*Trust Fund Earnings*") to the Tuition Subaccount pursuant to a certain General Pledge and Escrow Agreement (the "*Pledge Agreement*") among the Authority, the Escrow Holder, the Board, and the Treasurer; and
- C. Certain other Program Revenues (as defined in the Indenture) have been pledged;

WHEREAS, executed counterparts or copies of the Lease, the Original Indenture and all Supplemental Indentures described above, the Pledge Agreement, the Collection Agreement, all Supplements to the Lease described above and all related documents and instruments heretofore executed and delivered in connection with the Program are on file with the Board; and

WHEREAS, the Authority issued and sold its Series 2010AB for various purposes, including to finance a portion of the costs of various improvements, including the "Lake Area Project" and the "Mitchell Project" as each term is defined in the Eleventh Supplemental Indenture and the Thirteenth Supplement To Lease Purchase Agreement dated as of July 1, 2010 between the Board and the Authority (the "*Thirteenth Supplement*"); and

WHEREAS, the Board, Mitchell School District and Watertown School District have agreed that it is necessary and appropriate to transfer \$750,000 of proceeds of the Series 2010A Bonds from the "Series 2010 Project Account – Mitchell" to the "Series 2010 Project Account – Lake Area Build America Bond Subaccount" (as each term is defined in the Eleventh Supplemental Indenture) and to amend make certain conforming amendments to reflect such

transfer in the Eleventh Supplemental Indenture, the Thirteenth Supplement, the Mitchell Sublease and the Lake Area Sublease (collectively, the "Series 2010AB Bond Documents"); and

WHEREAS, in furtherance of the foregoing, it shall be necessary for the Board and other parties to execute, deliver and approve an Omnibus Amendment to the Series 2010AB Bond Documents (herein the "Omnibus Amendments").

NOW THEREFORE, BE IT RESOLVED, by the South Dakota Board of Education as follows:

THE PROGRAM

Section 1.1 This Board hereby determines that it is necessary and appropriate (i) to transfer \$750,000 from the "Series 2010 Project Account – Mitchell" to the "Series 2010 Project Account – Lake Area Build America Bond Subaccount" (as each term is defined in the Eleventh Supplemental Indenture) and (ii) enter into the Omnibus Amendments to reflect such transfer and any and all conforming changes to reflect such transfer.

Section 1.2 The President of the Board, any Vice President of the Board and the Secretary of the Department of Education (herein, the "*Secretary*" and, collectively with the President of the Board and the Vice President of the Board, the "*Authorized Officers*") are hereby authorized and directed on behalf of this Board to do all things reasonably necessary and appropriate to enter into and perform the Omnibus Amendment as provided herein. In furtherance of the foregoing, this Board hereby approves the execution and delivery of the Omnibus Amendment with such other, further provisions that are not inconsistent with law, as may be approved by the officer executing the same, which approval shall be conclusively evidenced by the execution thereof.