

Resolution Authorizing The Execution And Delivery Of An Amendment To  
Installment Purchase Contract And A Supplement To Declaration Of Trust  
And Approving The Issuance, Sale And Delivery Of  
\$12,801,327 Full Term Capital Appreciation Certificates Of Participation, Series 2012a

BE IT RESOLVED, by the School Board (the "School Board") of Independent School District No. 709 (Duluth), St. Louis County, Minnesota (the "District"), as follows:

Section 1. A. Pursuant to the authority contained in Minnesota Statutes, Section 126C.40, Subd. 6 (the "Act"), the District is authorized to purchase real or personal property under an installment contract or may lease real or personal property with an option to purchase under a lease purchase agreement upon application to, and approval by, the Minnesota Commissioner of Education.

B. The District has approved a Long-Range Facilities Plan (the "Plan") and the Commissioner of Education has approved the District's borrowing of \$111,442,577 under the Act to finance the purchase of real and personal property for the projects set forth in the Plan as described in the Original Contract, as hereinafter defined (the "Original Project").

C. By Resolution No. B-5-08-2541, adopted May 29, 2008, the School Board determined that it was necessary, expedient and in the best educational interests of the District's pupils and residents that the District enter into an installment purchase contract pursuant to the Act to finance the costs of the Original Project and issuing full term certificates of participation in the installment payments under the installment purchase contract in the maximum principal amount of \$111,440,000 pursuant to a declaration of trust.

D. Pursuant to the Act, the District applied to the Commissioner of Education for permission to make an additional levy for the installment payments under the Original Contract to finance the Original Project and the Commissioner authorized the Original Project and the levy.

E. The District selected U.S. Bank National Association, St. Paul, Minnesota (the "Trustee") to act as vendor and the trustee as follows: the Trustee, as vendor, entered into an Installment Purchase Contract (the "Original Contract") with the District regarding the acquisition, construction and equipping of the Original Project, and the District and the Trustee entered into a Declaration of Trust dated as of June 1, 2008 (the "Original Declaration"), pursuant to which Full Term Certificates of Participation in the installment payments under the Original Contract in the principal amount of \$111,440,000 (the "2008 Certificates"), were executed and delivered by the Trustee.

F. The District has approved an amendment to the Plan and modified the projects to be financed under the Original Contract and the Commissioner of Education approved the amendment to the Plan and the modification to the Original Project and has approved the District's borrowing of an additional \$5,000,000 under the Act to finance the Original Project, as modified, and as described in the First Amendment to Contract, as hereinafter defined.

G. By Resolution No. B-9-10-2819 adopted September 13, 2010, the School Board determined that it was necessary, expedient and in the best educational interests of the District's pupils and residents that the District enter into an amendment to the Original Contract to provide additional funds to purchase the real and personal property described in the Plan, as amended, and issuing full term certificates of participation in the installment payments under a supplement to the Original Declaration in the maximum principal amount of \$5,000,000.

H. The Trustee, as vendor, and the District, as vendee, entered into an Amendment to Installment Purchase Contract dated as of October 1, 2010 (the "First Amendment to Contract") to revise and restate the installment payments, modify the description of the Original Project and amend other related matters, such amendment shall modify the Original Contract. The District and the Trustee entered into a Supplement to Declaration of Trust dated as of October 1, 2010 (the "First Supplement to Declaration"), pursuant to which the Full Term Certificates of Participation, Series 2010C, in the installment payments under the Contract in the principal amount of \$5,000,000 (the "2010C Certificates") were executed and delivered by the Trustee.

I. Pursuant to the Act, the District applied to the Commissioner of Education for permission to make an additional levy for the Installment Payments under the Original Contract, as amended, to finance a portion of the costs of the acquisition and improvements to Congdon Elementary and Grant Elementary (now Myers-Wilkins Elementary).

J. By Resolution No. B-4-12-3007 adopted April 24, 2012, the School Board determined that it was necessary, expedient and in the best educational interests of the District's pupils and residents that the District enter into an amendment to the Original Contract, as amended, to provide additional funds to purchase real and personal property for Congdon Elementary and Grant Elementary (now Myers-Wilkins Elementary) which are a portion of the Project and issuing full term capital appreciation certificates of participation in the Installment payments under a supplement to the Original Declaration, as supplemented, in the original principal amount of \$12,801,327 and a total accreted account at maturity of \$\_\_\_\_\_.

K. The Trustee, as vendor, and the District, as vendee, shall enter into an Amendment to Installment Purchase Contract dated as of June 1, 2012 (the "Second Amendment to Contract"), to revise and restate the Installment Payments, modify the description of the Original Project, as amended (the "Project"), and amend other matters, such amendment shall modify the Original Contract, as amended (the Original Contract, as amended, and as amended by the Second Amendment to Contract, is herein referred to as the "Contract"). The District and the Trustee shall enter into a Supplement to Declaration of Trust dated as of June 1, 2012 (the "Second Supplement to Declaration"), pursuant to which Full Term Capital Appreciation Certificates of Participation, Series 2012A, in the Installment Payments under the Contract in the original principal amount of \$12,801,327 and a total accreted amount at maturity of \$\_\_\_\_\_ (the "2012A Certificates"), shall be executed and delivered by the Trustee (the Original Declaration, as supplemented by the First Supplement to Declaration and the Second Supplement to Declaration, are herein referred to as the "Declaration").

L. Pursuant to the Act, the District has applied to the Commissioner of Education for permission to make an additional levy for the additional installment payments under the Second Amendment to Contract to finance a portion of the Congdon Elementary and Grant Elementary (now Myers-Wilkins Elementary), which is a portion of the Project, and the Commissioner has authorized the modified Original Project and the levy.

M. Forms of the following documents relating to the financing have been prepared and submitted to the School Board:

- (1) The Second Amendment to Contract proposed to be made and entered into between the District and the Trustee; and
- (2) The Second Supplement to Declaration proposed to be made and entered into between the District and the Trustee.

Section 2. A. Northland Securities, Inc., financial consultant to the District, has given notification to at least five firms determined by Northland Securities, Inc. to be prospective bidders on the Certificates at least two days (omitting Saturdays, Sundays, and legal holidays) before the date set for receipt of bids on the 2012A Certificates.

B. The District has solicited bids for the sale of the Certificates and an offer has been received from \_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_ (the “Purchaser”), to purchase the 2012A Certificates at a cash price of \$\_\_\_\_\_, plus accrued interest on the total principal amount from June 6, 2012, to the date of delivery and upon condition that the 2012A Certificates are payable at the times and on the terms set forth in the Contract and the Declaration.

C. The 2012A Certificates shall be issued as capital appreciation obligations which shall mature on February 1 in the years and in the total accreted amounts at maturity set forth in the following table, which table also sets forth, for each maturity, the total original Principal Portion of the Installment Payments thereof, the total accreted amount at maturity (which accreted amount at maturity is also referred to herein as “accreted maturity amount”), and the approximate yield to maturity applicable to each accreted maturity amount, as follows:

| Payment Date<br>(February 1) | Total Accreted<br>Amount at Maturity | Total Original<br>Principal Portion | Approximate Yield<br>To Maturity |
|------------------------------|--------------------------------------|-------------------------------------|----------------------------------|
| 2021                         |                                      |                                     |                                  |
| 2022                         |                                      |                                     |                                  |
| 2023                         |                                      |                                     |                                  |
| 2024                         |                                      |                                     |                                  |
| 2025                         |                                      |                                     |                                  |
| 2026                         |                                      |                                     |                                  |
| 2027                         |                                      |                                     |                                  |
| 2028                         |                                      |                                     |                                  |
| TOTAL                        |                                      |                                     |                                  |

D. The 2012A Certificates shall bear interest from the date of original issue at the yield to maturity stated therefore in Section 2.C. above. The Interest Portion of the Installment Payment on the 2012A Certificates of each maturity shall be compounded at the yield to maturity applicable to that maturity, as set out in Section 2.C. above, on each February 1 and August 1 (each referred to herein as a “Compounding Date”), commencing on August 1, 2012. The Interest Portion of the Installment Payment on the 2012A Certificates shall be payable, together with the Principal Portion, only at maturity, upon optional redemption thereof, or on a Calamity Prepayment. The 2012A Certificates, the accreted amount of each 2012A Certificate as of a Compounding Date shall be the original principal amount thereof plus interest compounded in accordance with the foregoing provisions and accrued to said Compounding Date. As of any other date, it shall be the accreted amount as of the most recent Compounding Date prior to said date (or the principal amount if such date precedes the first Compounding Date), plus simple interest thereon at a rate equal to the yield to maturity set forth in Section 2.C. (calculated upon the basis of a 360-day year of twelve 30-day months and rounded pursuant to the rules of the Municipal Securities Rulemaking Board) accrued from and after said Compounding Date (or the date of original issue if such date precedes the first Compounding Date) to the redemption date.

E. For purposes of complying with Minnesota Statutes, Section 475.54, Subd. 1, the maturity schedule for the 2012A Certificates shall be combined with the other full term certificates of participation of the District issued and outstanding.

F. Redemption. (i) The 2012A Certificates maturing in the years 2021 through 2022 shall not be subject to redemption and prepayment before maturity, but those maturing in the year 2023 and in subsequent years shall each be subject to redemption and prepayment at the option of the District on February 1, 2022, and on any date thereafter, in whole or in part, and if in part, at the option of the District and in such manner as the District shall determine at a price of par plus the accreted amount calculated under the Declaration to the date of redemption, as provided for in the Declaration.

(ii) In the event of damage to all or a portion of the Project and the District makes the certification and election at the times and in the manner set forth in the Contract, the 2012A Certificates, or a portion thereof, shall be subject to prepayment on any date, at par plus the accreted amount calculated under the Declaration to the date of redemption, as provided for in the Declaration.

G. The District, after due consideration, finds such offer reasonable and proper and the offer of the Purchaser is hereby accepted. The Chair and the Clerk are authorized to execute on the part of the District a contract for the sale of the Certificates in accordance with the Purchaser's proposal.

Section 3. It is hereby found, determined and declared by the School Board that:

A. It is desirable and in the best interests of the District to enter into the Second Amendment to Contract and the Second Supplement to Declaration;

B. The terms of the Second Amendment to Contract and the Second Supplement to Declaration are found to be advantageous to the District and are hereby approved; and

C. The Installment Payments under the Contract are absolute and unconditional as provided for in Article III of the Contract and are not subject to annual appropriation of the District.

Section 4. A. For the prompt and full payment of the installment payments under the Contract when due, there is hereby levied a direct, annual, ad valorem tax, as an additional levy pursuant to Minnesota Statutes, Section 126C.40, and other laws, upon all taxable property within the District which shall be extended upon the tax rolls and collected with and as part of the other general property taxes in the District for the years and in the amounts set forth on Exhibit A hereto.

B. The District maintains a Debt Service Fund on its books and records. A separate account was created within the Debt Service Fund and is designated as the "Installment Purchase Contract Account" (the "Contract Account"). The tax levies provided for in this Section 4 are hereby pledged to, and shall be used for no purpose other than, the payment of Installment Payments under the Contract; provided, however, that if any such Installment Payment shall become due when there is not sufficient money in the Contract Account, the Treasurer may pay the same from any other funds of the District and said funds shall be reimbursed for such advance out of the proceeds of the taxes herein levied or appropriated.

C. Except as permitted by Minnesota Statutes, Section 475.61, Subd. 3, such tax levies shall be irrevocable as long as the Contract remains in effect.

Section 5. The Second Amendment to Contract and the Second Supplement to Declaration are hereby approved. The Chair and the Clerk are hereby authorized and directed to execute and deliver the Second Amendment to Contract and the Second Supplement to Declaration substantially in the forms now on file with the Clerk, with such necessary and appropriate omissions, modifications, insertions and additions as do not materially affect the substance of the transaction, consistent with the Act, as the Chair in his discretion shall determine. The execution of the Second Amendment to Contract and the Second

Supplement to Declaration by the Chair, with the advice of the Attorney for the District, shall be conclusive evidence of such determination. All of the provisions of the Second Amendment to Contract and the Second Supplement to Declaration, when executed and delivered as authorized herein, shall be deemed to be a part of this Resolution as fully and to the same extent as if incorporated herein and shall be in full force and effect from the date of execution and delivery thereof. The District approves the 2012A Certificates being registered as depository obligations with The Depository Trust Company, New York, New York, as set forth in the Declaration.

Section 6. The Chair and the Clerk are hereby authorized to execute and deliver, on behalf of the District, such other documents as are necessary or appropriate in connection with the Second Amendment to Contract and the Second Supplement to Declaration, and the issuance, sale and delivery of the 2012A Certificates.

Section 7. All covenants, stipulations, obligations and agreements of the District contained in this Resolution and the Contract and the Declaration shall be deemed to be the covenants, stipulations, obligations and agreements of the District to the full extent authorized or permitted by law, and all such covenants, stipulations, obligations and agreements shall be binding upon the District upon execution and delivery of the Second Amendment to Contract and the Second Supplement to Declaration. Except as otherwise provided in this Resolution, all rights, powers and privileges conferred and duties and liabilities imposed upon the District or its officers by the provisions of this Resolution or of the aforementioned documents to be executed and delivered by the District shall be executed or performed by the District or by such officers of the District, or such board, body, authority or agency thereof as may be required by law to exercise such powers and to perform such duties.

Section 8. Except as herein otherwise expressly provided, nothing in this Resolution or in the Contract and the Declaration, expressed or implied, is intended or shall be construed to confer upon any person or firm or corporation, other than the District, the Trustee, the Purchaser, or any holder of the 2012A Certificates issued under the provisions of this Resolution, any right, remedy or claim, legal or equitable, under and by reason of this Resolution or any provision hereof, that the aforementioned documents and all of their provisions being intended to be and being for the sole and exclusive benefit of the District, the Trustee, the Purchaser, and any holder from time to time of the 2012A Certificates issued under the provisions of this Resolution.

Section 9. The officers and other agents or employees of the District are hereby authorized to do all acts and things required of them by or in connection with this Resolution, the Second Amendment to Contract and the Second Supplement to Declaration, and the 2012A Certificates, without further action of the Board, for the full, punctual and complete performance of all the terms, covenants and agreements contained in the 2012A Certificates, the aforementioned documents and this Resolution, including but not limited to the execution and delivery of amendments to the Contract to add real property to the Contract and the execution and delivery of deeds and ground leases as provided for in the Contract.

Section 10. In the event any of the officers of the District authorized to execute the documents on behalf of the District under this Resolution shall for any reason be unable to do so, any other officer of the District authorized to act for such designated officer is hereby directed and authorized to do so on behalf of the District with the same effect as if executed by the officer authorized to do so in this Resolution.

Section 11. All actions of the members, officers, employees and staff of the District heretofore taken and in furtherance of this financing are hereby approved, ratified and confirmed.

Section 12. A. The Clerk of the District is directed to file in the office of the County Auditor of St. Louis County a certified copy of this Resolution and such other information as the County Auditor may require, and to obtain from the County Auditor a certificate stating that the 2012A Certificates herein authorized have been duly entered on his register.

B. The Chair, the Clerk, the Treasurer and other officers of the District are authorized and directed to prepare and furnish, with regard to the issuance of the 2012A Certificates, certified copies of all proceedings and records of the District relating to the 2012A Certificates and such other affidavits, certificates and opinions as may be required to show the facts relating to the legality, tax exemption and marketability of the 2012A Certificates as such facts appear from the books and records in the officers' custody and control or as otherwise known to them; that all such certified copies, certificates, affidavits and opinions, including and heretofore furnished, shall constitute representations of the District as to the truth of all statements made by the District and contained herein.

Section 13. The School Board has covenanted and has obligated itself in Resolution No. B-4-12-3007 adopted April 24, 2012, to be bound by the provisions of Minnesota Statutes, Section 126C.55. The School Board hereby reaffirms such covenants and obligations.

Section 14. The District hereby authorizes the circulation of the final Official Statement in connection with the sale and delivery of the 2012A Certificates.

Section 15. Tax Covenants.

A. The District covenants and agrees with the holders of the 2012A Certificates that the District will (i) take all action on its part necessary to cause the interest on the 2012A Certificates to be exempt from federal income taxes including, without limitation, restricting, to the extent necessary, the yield on investments made with the proceeds of the 2012A Certificates and investment earnings thereon, making required payments to the federal government, if any, and maintaining books and records in a specified manner, where appropriate, and (ii) refrain from taking any action which would cause interest on the 2012A Certificates to be subject to federal income taxes, including, without limitation, refraining from spending the proceeds of the 2012A Certificates and investment earnings thereon on certain specified purposes.

B. No portion of the proceeds of the 2012A Certificates shall be used directly or indirectly to acquire higher yielding investments or to replace funds which were used directly or indirectly to acquire higher yielding investments, except (i) for a reasonable temporary period until such proceeds are needed for the purpose for which the 2012A Certificates were issued, and (ii) in addition to the above, in an amount not greater than the lesser of five percent of the proceeds of the Certificates or \$100,000. To this effect, any proceeds of the 2012A Certificates and any sums from time to time held in the Contract Revenue Fund or the Prepayment Fund by the Trustee (or any other District fund or account which will be used to pay principal and interest to become due on the 2012A Certificates) in excess of amounts which under the applicable federal arbitrage regulations may be invested without regard as to yield shall not be invested at a yield in excess of the applicable yield restrictions imposed by the arbitrage regulations on such investments after taking into account any applicable temporary periods of minor portion made available under the federal arbitrage regulations. In addition, the proceeds of the 2012A Certificates and money in the Contract Revenue Fund shall not be invested in obligations or deposits issued by, guaranteed by or insured by the United States or any agency or instrumentality thereof if and to the extent that such investment would cause the 2012A Certificates to be federally guaranteed within the meaning of Section 149(b) of the Internal Revenue Code of 1986, as amended (the "Code").

C. The School Board covenants and certifies to and for the benefit of the owners of the 2012A Certificates that no use will be made of the proceeds of the Certificates, which will cause the 2012A Certificates to be arbitrage bonds within the meaning of Section 148(a) of the Code and the Treasury Regulations promulgated thereunder. Pursuant to such covenant, the School Board hereby agrees to comply throughout the term of the issue of the 2012A Certificates with the requirements of Section 148 of the Code and any Treasury Regulations promulgated thereunder and Article V of the Declaration.

Section 16. Continuing Disclosure. The District acknowledges that the 2012A Certificates are subject to the continuing disclosure requirements of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934 (17 C.F.R. § 240.15c2-12) (the "Rule"). The Rule governs the obligations of certain underwriters to require that issuers of municipal bonds enter into agreements for the benefit of the bondholders to provide continuing disclosure with respect to the bonds. To provide for the public availability of certain information relating to the 2012A Certificates and the security therefor and to permit underwriters of the 2012A Certificates to comply with the Rule, which will enhance the marketability of the 2012A Certificates, the Chair and the Clerk are hereby authorized and directed to execute a Continuing Disclosure Certificate substantially in the form of the Certificate currently on file in the office of the District.

Adopted this 15<sup>th</sup> day of May, 2012.

Motion made by Member \_\_\_\_\_, seconded by Member \_\_\_\_\_, to approve Resolution #B-5-12-\_\_\_\_, as presented. Upon a vote taken, the same was approved as follows:

Yeah:

Nay:

\_\_\_\_\_  
Clerk

\_\_\_\_\_  
Chair

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**EXHIBIT A**

**Tax Levy Schedule**

| Levy Year | Collection Year | 2008 Certificates Tax Levy | 2010C Certificates Tax Levy | 2012A Certificates Tax Levy | Total Tax Levy |
|-----------|-----------------|----------------------------|-----------------------------|-----------------------------|----------------|
| 2007      | 2008            | \$5,633,908.33*            | ---                         |                             |                |
| 2008      | 2009            | \$6,120,462.50             | ---                         |                             |                |
| 2009      | 2010            | \$6,530,937.50             | ---                         |                             |                |
| 2010      | 2011            | \$7,780,312.50             | \$413,450.00**              |                             |                |
| 2011      | 2012            | \$7,933,662.50             | \$403,387.50                |                             |                |
| 2012      | 2013            | \$8,097,737.50             | \$398,287.50                |                             |                |
| 2013      | 2014            | \$8,257,487.50             | \$398,187.50                |                             |                |
| 2014      | 2015            | \$8,415,887.50             | \$397,987.50                |                             |                |
| 2015      | 2016            | \$8,581,487.50             | \$392,025.00                |                             |                |
| 2016      | 2017            | \$8,753,487.50             | \$395,400.00                |                             |                |
| 2017      | 2018            | \$8,946,087.50             | \$392,150.00                |                             |                |
| 2018      | 2019            | \$9,147,887.50             | \$388,750.00                |                             |                |
| 2019      | 2020            | \$9,357,887.50             | \$390,200.00                |                             |                |
| 2020      | 2021            | \$9,577,187.50             | \$391,350.00                |                             |                |
| 2021      | 2022            | \$9,793,187.50             | \$392,200.00                |                             |                |
| 2022      | 2023            | \$10,027,725.00            | \$391,962.50                |                             |                |
| 2023      | 2024            | \$10,279,287.50            | \$391,400.00                |                             |                |
| 2024      | 2025            | \$10,473,150.00            | \$388,000.00                |                             |                |
| 2025      | 2026            | \$10,693,750.00            | \$389,200.00                |                             |                |
| 2026      | 2027            | \$10,904,250.00            | \$384,800.00                |                             |                |

\* Anticipatory Levy

\*\* Such amount shall be reduced by \$50,888.77, the amount of accrued interest, unused discount and rounding