

SOUTH DAKOTA BOARD OF REGENTS

Budget and Finance

AGENDA ITEM: 6 – Q
DATE: December 5-7, 2017

SUBJECT

USD Inman House Lease

CONTROLLING STATUTE, RULE, OR POLICY

[SDCL § 13-49-11](#)

The Board of Regents is, and it and its successors in office shall continue to be, a corporation, or body corporate, with power to sue and be sued, to hold, lease, and manage, for the purposes for which they were established, any property belonging to the educational institutions under its control, collectively or severally, of which it shall in any manner become possessed.

BACKGROUND / DISCUSSION

The University of South Dakota requests Board approval of a property lease to the University of South Dakota Foundation to permit the Foundation to renovate the Inman House, which is a facility that provides both a residence for the USD President and a center appropriate for a variety of university functions. Under the terms of the lease, the USD President will continue to reside in the Inman House in exchange for USD being responsible for all costs associated with maintaining and operating the Inman House.

The Inman House, which is located at 415 East Main Street in Vermillion, has served as the USD President’s home since 1941. It has become increasingly clear in recent years that substantial improvements are needed to keep the Inman House in good repair, and to make it an attractive and viable university facility to fulfill all of its functions.

(Continued)

DRAFT MOTION 20171205_6-Q:

I move to approve the request by the University of South Dakota to 1.) Authorize the Executive Director to execute the proposed lease with the University of South Dakota Foundation on behalf of the Board once the General Counsel confirms that negotiations over its final details have been completed and that the final document is in substantially the form reviewed by the Board; 2.) Direct the Executive Director to include the final version of the lease as an attachment to his report to the Board at the March 27-29, 2018 Board meeting; 3.) Delegate to the University of South Dakota President the power to exercise the powers reserved to the Lessor under the proposed lease insofar as these concern approval of facility designs and specifications and the ordinary supervision of the lease administration.

The USD Foundation will oversee and manage the renovation process, and will engage necessary third parties to ensure that the renovations are performed appropriately, especially considering that the property is listed in the National Register of Historic Places. Anticipated major improvements include: adding a catering kitchen to accommodate campus events held in the house, a master bedroom suite, including closet, bathroom, and kitchenette, a three-car garage, and an updated ADA ramp.

The term of the lease is 30 years, with an annual lease payment of \$1.00. The USD Foundation will provide up to \$1.5 million worth of renovations.

IMPACT AND RECOMMENDATIONS

By approving this lease, the USD Foundation will be responsible for the costs of needed renovations to the Inman House, which will still be utilized by USD's president. USD will remain responsible for all costs associated with maintaining and operating the Inman House.

ATTACHMENTS

Attachment I – Proposed Lease

LEASE AGREEMENT

(December 6, 2017)

THIS LEASE AGREEMENT (“Lease”), made this ____ day of _____, 20____, by and between the SOUTH DAKOTA BOARD OF REGENTS, as the governing board of the University of South Dakota (“Lessor”), and the UNIVERSITY OF SOUTH DAKOTA FOUNDATION, INC. (“Lessee”).

NOW, THEREFORE, in consideration of the mutual benefits to be enjoyed by the parties hereto, the Lessee and the Lessor hereby agree as follows:

ARTICLE I

PROPERTY AND TERM

Section 1.1. Leased Property: The real property being leased is located at 415 East Main Street Vermillion, Clay County, South Dakota (“Premises”). The Premises are used as the residence of the University of South Dakota (“University”) President and for University gatherings. Title to the land and all improvements thereon that is the subject of this Lease is held by the State of South Dakota, and Lessor warrants that, pursuant to SDCL § 13-49-11, it has been empowered to control the land and all improvements thereon and authorized to lease it.

Section 1.2. Purpose of the Lease and Permission: The purpose of the Lease for the described Premises is to provide for periodic renovations to the structure and facilities on the Premises to ensure that the Premises remain viable for its intended uses. Under this Lease, the Lessee shall periodically renovate the structure and facilities on the Premises under the terms and conditions hereof and also as set forth specifically in Article IV. Lessor hereby permits use of the Premises by Lessee for the purposes of this Lease subject to all the terms and conditions stated herein. Lessee agrees to allow the University President to continue to reside on the Premises and for USD to continue to use the Premises for University gatherings, without payment.

Section 1.3. Property Rights: In conjunction with the Lease, Lessor hereby appoints Lessee as its agent in its name to execute such agreements and licenses on the Premises as may be consistent with law and necessary to achieve the purposes of the Lease; provided that, notwithstanding any other provision of law to the contrary, any right or interest so created, or arising therefrom, may be exercised only in a manner consistent with the restrictions on use set forth in this Lease; and provided, further, that no such right or interest may burden Lessor’s reversionary interests in the Premises, including any improvements thereto, upon the expiration of its stated term.

Section 1.4. As Is Acceptance: Lessee takes and accepts the Premises in its “as is” condition and subject to any zoning, covenants, conditions, restrictions, uses or easements, whether known or unknown, affecting the Premises. Lessor warrants and represents the property, to the best of its knowledge, is free from environmental hazard.

Section 1.5. Term: The term of the Lease shall be thirty (30) years, commencing on the ____ day of _____, 20____ and terminating on the ____ day of _____, 20____. Lessor and Lessee may

mutually agree to renegotiate new terms of this Lease consistent with all statutes in place at the time the Lease is renegotiated for an additional term of years.

Section 1.6. Delivery of Possession of Premises: Lessor agrees to deliver possession of the Premises to Lessee upon delivery of this fully executed Lease by Lessor to Lessee.

Section 1.7. Reservation of Mineral Rights: Lessor reserves all deposits of coal, ores, metals, and other minerals, asphaltum, oil, gas, geothermal resources, and other like substance in such lands, as required by SDCL § 5-2-12 and subject to the conditions stated therein.

ARTICLE II

LESSEE RENOVATIONS

Section 2.1. Renovations: Lessee shall provide for the design, financing, and renovation of the Premises, as often as Lessee determines is needed.

Section 2.2. Conditions of Renovations: Any and all renovations of the Premises by Lessee shall be subject to the following:

2.2.1. Lessee acknowledges that the Premises is part of the National Register of Historic Places and Lessee agrees to engage necessary third parties to ensure that the design plan of any renovations (i) will comply with the requirements fixed by applicable laws and ordinances as they may be promulgated from time to time for improvements, and (ii) will be in conformance with the Architecture and Landscape Guidelines for the specific facility, and that any renovations are performed appropriately and in conformance to all applicable laws and regulations.

2.2.2. Copies of all plans, specifications and renovation documents will be delivered to Lessee and held to be delivered to Lessor at such time as the Lease terminates. Such plans, specifications and renovation documents shall be provided in a format reasonably acceptable to the Lessor, as provided by Lessor in writing to Lessee. **Such plans shall be approved in advance by Lessor or its designated advisory groups, if any. No project may be bid nor bid documents approved, nor, in the absence of a bidding process, may any substantive construction contract be let, until Lessor has approved the plans and specifications for the project.**

2.2.3. Lessee agrees that any renovations made to the Premises will be designed to incorporate accessibility, fire and life safety systems, security systems, heating, ventilation and air conditions systems, waste emission and handling systems, and information or communications technology systems comparable with those required under then-current design criteria for similar buildings or other occupied structures located on the University campus. Lessee will, and will require its agents to, at all times, oversee work performed to keep all such safety and security systems in good working order and to assure their repair and replacement.

2.2.4. All costs associated with any renovation of the Premises will be borne by Lessee.

2.2.5. Lessee will be responsible for obtaining all required government permits, approvals, and compliance with all statutes, ordinances and regulations relating to renovations of the Premises.

2.2.6. Lessee, to the extent that it contracts with a third party for construction or related development services as part of renovations, shall obtain and shall maintain a payment bond satisfactory to assure that the Premises shall be free from mechanic's, materialmen's, municipal, or any other form of lien. Lessee shall promptly pay all contractors and materialmen, so as to avoid the possibility of a lien attaching to the Premises.

2.2.7. Nothing in this Lease shall be construed as consent on the part of the Lessor so as to subject the Lessor's estate in the Premises to any lien or liability under applicable law. Nor shall any provision of this Lease be construed to constitute or to authorize creation of obligations that might constitute an indebtedness of University, the Lessor, or the State of South Dakota, within any constitutional or statutory limitation, and neither the taxing power nor the general credit of University, Lessor or the State of South Dakota is pledged to the performance of any obligation assumed by, or devolving upon, Lessor hereunder. Nothing in this Lease shall constitute debt to the State of South Dakota.

ARTICLE III

CONSIDERATION

Section 3.1. Rent: Lessee agrees that, upon execution of this Lease, Lessee shall be obligated for the payment of One Dollar (\$1.00) for the first year of the Premises, and the payment of One Dollar (\$1.00) on each anniversary thereof throughout the term of this Lease or any extensions thereof as fixed Annual Rent. Such payment shall be made to Lessor. Lessee may, upon execution of this Lease, prepay the non-refundable Annual Rent in full for the duration of the Term.

ARTICLE IV

PERMITTED USES

Section 4.1. Permitted Use: The Premises may be used by Lessee only for the following purposes:

4.1.1. Renovations to the Premises, together with such other uses as may be required under the circumstances to renovate the Premises. However, Lessee must provide reasonable notice to the University prior to engaging in any renovations that would disrupt the uses outlined in 4.1.2 and 4.1.3.

4.1.2. The Lessee agrees to allow the University President to reside on the Premises without payment.

4.1.3. Lessee agrees to allow the University to use the Premises for University gatherings, without payment.

4.1.4. The University shall remain responsible for all costs associated with maintaining and operating the Premises.

Section 4.2. Other Uses: The Premises may be used by Lessee for purposes other than those listed in Section 4.1 above, only upon the prior written consent of Lessor.

Additionally, and without limiting, the foregoing, the Lessee shall comply with all applicable federal, state and local laws, ordinances and regulations relating to the Premises; and Lessee shall not use or knowingly permit any part of the Premises to be used for any unlawful purpose.

Section 4.3. Environmental Laws: During the term of this Lease, Lessee shall comply with all environmental laws, ordinances, rules or regulations, and Lessee shall not permit the generation, creation, treatment, incorporation, discharge, escape, release or threat of release of any contaminant above, upon, under, within or from the Premises, and shall not permit any underground storage tanks containing any contaminant to be located upon the Premises.

Lessee must comply with all laws and maintain all relevant permits regarding storage, handling and disposal of all chemicals, including “select agents” and wastes, including bio-hazardous ones, using licensed contractors. Lessee will maintain an updated Material Safety Data Sheet (MSDS) for each applicable substance maintained on the Premises. Lessee chemical/waste contractors shall name Lessor as an additional insured on any insurance they carry. Lessee shall not use, store or dispose of any radioactive materials on the Premises. Lessee shall indemnify Lessor and Lessee against environmental injury or liability.

Section 4.4. Contaminants: For the purpose of this Lease, contaminants includes a “Petroleum Product” as described in SDCL § 37-2-5, asbestos, or a “regulated Substance” as described in SDCL § 34A-12-1(8) or substances regulated under and defined in the provisions of 15 U.S.C. 2601-2671 (1989) (FWCPA) or 42 U.S.C. 6901-6999(i) (1989) (RCRA) or 42 U.S.C. 9601-9675 (1989) (CERCLA) or 42 U.S.C. 7401-7642 (1989) (CAA), and any corresponding federal and state regulations promulgated under the above federal and state statutes as well as amendments, deletions or corrections to such laws, ordinances, rules or regulations and further including laws, ordinances, rules or regulations concerning substances harmful to the environment which are passed subsequent to the commencement of this Lease and which will become effective during the term of this Lease and until Lessee surrender possession of the Premises. For illustrative purposes only and not by way of limitation, a partial listing of contaminants includes asbestos containing materials, gasoline, waste oil, lubricating oil, fuel oil, petroleum product distillates, solvents, paints, enamels, paint or enamel thinners, acetones, acids, pesticides, rodenticides, herbicides, fungicides, mercury, lead, cyanide, and polychlorinated biphenyl’s, or any combination of these substances, but does not include common household cleaning supplies. To the extent that any of

the above referenced laws, ordinances, rules and regulations are consistent, Lessor and Lessee agree that the interpretation favoring the classification of a substance as harmful to the environment shall be controlling.

Section 4.5. Removal of Contaminants: Lessee will, at its own expense, abate, remedy and remove any contaminant discovered on the Premises which was located, generated, created, stored, treated, incorporated, discharged, disposed of, allowed to escape, released or about to be released by Lessee.

Section 4.6. Lessee Operator: Lessor and Lessee agree that, for purposes of this Lease, Lessee shall hold harmless and indemnify the Lessor for any loss or damage caused thereby during or after the expiration of the Lease for loss or damage arising from violation of law, ordinance, rule or regulation as described in Sections 4.3, 4.4, and 4.5. The provisions of this section survive the termination of this agreement.

ARTICLE V

REPAIRS

Section 5.1. Repairs and Modifications: Lessor shall keep the property including all components and systems comprising its infrastructure, buildings, structures and grounds, in good repair and in clean, sanitary and safe condition, ordinary wear and tear excepted, and if necessary, or if required by proper governmental authority, shall make modifications or replacements thereof, and Lessor shall repair, modify, or replace such improvements to restore or to maintain their good condition.

ARTICLE VI

INDEMNITY

Section 6.1. Indemnification: Absent willful misconduct or gross negligence by the Lessor or its agents, Lessee shall indemnify and hold the State of South Dakota, the Lessor, the University, and their officers, agents, and employees harmless from all liabilities associated with the renovations to the Premises, including specifically liabilities arising under environmental laws. This Section does not require the Lessee to be responsible for or defend against claims or damages arising solely from acts or omissions of the State of South Dakota, the University, or their officer's agents or employees.

ARTICLE VII

ASSIGNMENT AND SUBLETTING

Section 7.1. Assignments and Subletting: Lessee may not assign or transfer interests in the Premises leased hereunder and subject to this Lease without the prior written consent of the Lessor.

Section 7.2. Limitation of Rights of User: All rights of users of the Premises shall be subordinate to that of the Lessor under this Lease and shall not survive the termination of this Lease.

Section 7.3. Trustees or Receivers: Neither this Lease nor any interest therein, shall pass to any trustees or receiver in bankruptcy, or any assignee for the benefit of creditors, or by operation of law.

Section 7.4. Binding on Successors: The covenants, agreements, obligations, and limitations on use herein contained, except as herein otherwise specifically provided, shall extend to, bind and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors, and assigns.

ARTICLE VIII

ACCESS TO PROPERTY

Section 8.1. Access and Inspection: The Lessor shall have the right to enter the Premises provided that such access to the Premises shall not unreasonably interfere with Lessee rights under this Lease.

ARTICLE IX

REMEDIES

Section 9.1. Lessor's Right If Lessee Breaches: In the event of any breach hereunder by Lessee, after thirty (30) day written notice to Lessee and barring Lessee's initiation of good faith efforts to cure such breach, the Lessor may terminate this Lease. If Lessor at any time by reason of such breach is compelled to pay, or elects to pay, any sum of money or does any act which will require the payment of any sum of money, or incurs any expense, including reasonable, actual attorneys' fees and costs incurred by Lessor in connection with the recovery of possession of the Premises or the enforcement of any of the terms and provisions of this Lease, the sum or sums so paid by Lessor shall be deemed to be due from Lessee to Lessor.

Section 9.2. Lessor Default: Should the Lessor be in default under the terms of this Lease, the Lessor shall have a reasonable time in which to cure the same after written notice to the Lessor by Lessee.

ARTICLE X

TERMINATION OR EXPIRATION OF LEASE

Section 10.1. Termination of Lease: This Lease shall terminate upon (i) the expiration of the Term, (ii) cancellation by mutual agreement of parties, (iii) termination pursuant to Section 9.1, (iv) failure by Lessee to perform any obligation of Lessee under this Lease which failure is not cured after thirty (30) days written notice to Lessee (or if such failure cannot be cured within thirty (30) days, then within such reasonable period of time, provided Lessee proceeds promptly and diligently to cure such breach), whichever occurs first.

Lessee, at any time when Lessee is not in default hereunder may, and upon termination of this Lease if so requested in writing by Lessor, shall, surrender any renovations constructed by Lessee in good order, condition and repair, ordinary wear and tear and damage by condemnation and casualty excepted and in broom clean condition. All improvements shall remain on the land at the end of the Term unless removal is expressly allowed under this Lease or required pursuant to 10.2 of this Lease due to a failure to obtain legislative authorization for Lessor to take title or otherwise to pass title under a new lease, should such legislative authorization be required. Annual rent payments shall cease upon termination or expiration of lease.

Section 10.2. Acquisition of Property by State or Successor Lessee or Sublessee: Demolition, disassembly and removal of any improvements from the Leased Premises may be waived, in the sole discretion of Lessor, if: (1) no legislative authorization is required to accept any improvements made to the Premises, or (2) at any time during term of the Lease, the Lessee offers to convey title of the improvements made to the Premises at no cost to the State, and Legislature approves acceptance of the improvements in the Premises, should such legislative authorization be required; or (3) if successor Lessee (which may be Lessee), acceptable to Lessor, agrees to take ownership of the improvements in the Premises and enter into a lease with Lessor.

Section 10.3. Effect of Hold Over: In the event Lessee remains in possession of the Premises after the expiration of the tenancy created hereunder with the consent of Lessor and without execution of a new lease, it shall be deemed to be occupying the Premises as a Lessee from year-to-year, subject to all the other conditions, provisions and obligations of this Lease insofar as the same are applicable to year-to-year tenancy.

ARTICLE XI

NOTICES

Section 11.1. Delivery of Notice: Whenever under this Lease a provision is made for notice of any kind, such notice shall be in writing and shall be deemed sufficient to Lessee if actually delivered to Lessee, return receipt requested, postage prepaid, to the last Post Office address of Lessee furnished to Lessor for such purpose; and to Lessor if actually delivered to Lessor or if sent by registered or certified mail, return receipt requested, postage prepaid, to the Lessor at the addresses furnished for such purpose, or to the place then fixed for the payment of rent.

The Lessor designates its address as:

South Dakota Board of Regents
306 East Capital Avenue
Suite 200
Pierre, SD 57501-2545

With a copy to:

University of South Dakota

The Lessee hereby designates its address as:

University of South Dakota Foundation, Inc.

ARTICLE XII

TITLE

Section 12.1. Right and Authority to Lease: Lessor covenants that it has full right and authority to enter into this Lease for the full term hereof. Lessor further covenants that Lessee, upon performing the covenants and agreements of this Lease to be performed by said Lessee, will have, hold and enjoy quiet possession of the Premises for the full duration of the term consistent with Article IV.

Section 12.2. Lessor Appointment of Lessee as Agent for Execution of Documents. Lessor authorizes Lessee to execute such other and further documents as are necessary to carry out the terms of this agreement and any renovations.

ARTICLE XIII

GENERAL

Section 13.1. Right to Repair: Subject to the easements referred to, and subject to prior conveyance by sublease, Lessor shall have the right to install, maintain, sue, repair and replace pipes, ducts, conduits, and wires, and any such systems, now in existence or hereafter developed and installed to handle power, communications, water or waste or like facilities support infrastructure, leading through the Premises in locations that will not materially interfere with the Lessee’s use thereof. Lessor shall give Lessee reasonable notice before performing such work.

Section 13.2. Taxes: Lessee will be solely responsible for any property taxes or assessments or any other applicable taxes arising because of its lease or use of the Premises. Lessee covenants and agrees to bear, pay and discharge promptly as the same become due and before delinquency, all taxes, assessments (whether special or general), fees or other charges levied, assessed, or

imposed on or with respect to the Premises, or any buildings or improvements owned by Lessee thereon (inclusive of all real and personal property).

Section 13.3. Relationship of Parties: Nothing contained herein shall be deemed or construed by anyone as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto.

Section 13.4. Cumulative Remedies and Nonwaiver: The various rights and remedies contained in this Lease shall not be considered as exclusive of any other right or remedy, but shall be as cumulative and shall be in addition to every other remedy now or hereafter existing at law, in equity, or by statute. No delay or omission of the right to exercise any power by either party shall impair any such right or power, or shall be construed as a waiver of any default or as acquiescence therein. One or more waivers of any covenant, term or condition of this Lease by either party shall not be construed by the other party as a waiver of a subsequent breach of the same covenant, term or condition. The consent or approval by either party to or of any act by the other party of a nature requiring consent or approval shall not be deemed to waive or render unnecessary consent to approval of any subsequent similar act.

Section 13.5. Headings: The headings of the several articles contained herein are for convenience only and do not define, limit or construe the contents of such articles.

Section 13.6. Binding Effect of Lease: The covenants, agreements and obligations herein contained, except as herein otherwise specifically provided, shall extend to, bind and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors and assigns. Lessor, at any time and from time to time, may make an assignment of its interest in this Lease, and, in the event of such assignment and the assumption by the assignee of the covenants and agreements to be performed by Lessor herein, Lessor and its successors and assigns (other than the assignee of this Lease) shall be released from any and all liability hereunder.

Section 13.7. Amendment: This Lease may be amended at any time upon the mutual agreement in writing of the parties.

In the event that Lessee is under an obligation to notify lenders of prospective certain amendments in this Lease, the Lessee shall have sixty (60) days, from the time that the parties agree in writing to the terms of an amendment, in which to consult with the lender. The proposed amendment will become effective on the sixty-first (61st) day after the date of the parties written agreement, absent an objection from such a lender.

Section 13.8. Force Majeure: Whenever a period of time is herein provided for either party to do or perform any act or thing, that party shall not be liable or responsible for any delays, and applicable periods for performance shall be extended accordingly due to strikes, lockouts, riots, acts of God, shortages of labor or materials, national emergency, acts of a public enemy, governmental restrictions, laws or regulations, or any other cause or causes, whether similar or dissimilar to those enumerated, beyond its reasonable control. The provisions of this Section shall not operate to excuse Lessee from prompt payment of Annual Rent, additional rent or other monetary payments required by the terms of this Lease.

Section 13.9. Recording of Lease: Lessee shall not record this Lease without the written consent of the Lessor, which shall not unreasonably be withheld.

Section 13.10. Acceptance of Payment: No payment by a party or receipt by the of the other party of a lesser amount than the amount then due under this Lease shall be deemed to be other than on account of the earliest portion thereof due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and the party may accept such check or payment without prejudice to the party's right to recover the balance due or pursue any other remedy provided in this Lease.

Section 13.11. Lessee Receipt of Charitable Donations: Should the Lessee fund its responsibilities under this Lease with charitable donations, Lessee shall ensure that said donations are consistent with the terms of this Lease and any actions taken under this Lease and also specifically under Article X are consistent with the terms and conditions of the charitable donation used by the Lessee for performance of this Lease.

Section 13.12. Lessor's Designee: Lessor hereby designates as Lessor's Designee for any approvals of plans, specifications, bid, and renovation documents the University President, or designee, to the extent allowed by applicable law and South Dakota Board of Regents policies. The University President is the Lessor's representative for approval of agreements for operational, general grounds maintenance and custodial services of the Premises and is authorized to execute such agreements within the delegated authority set forth by Lessor's policies and applicable law.

Section 13.13. Time of the Essence: Time is to be of the essence of this Lease and of each and every covenant, term, condition and provision hereof.

Section 13.14. Partial Invalidity: If any term, covenant, condition or provision of this Lease shall be invalid or unenforceable at any time or to any extent, the remainder of this Lease shall not be affected thereby, and each remaining term, covenant, condition and provision of this Lease shall remain valid and enforceable to the fullest extent permitted by law.

Section 13.15. Funding Out Provision: This Lease depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds restrictions, this Lease will be terminated by the State or Lessor. Termination for any of these reasons is not a default by the State, Lessor, or University nor does it give rise to a claim against the State, Lessor, or University.

Section 13.16. Governing Law: The laws of the State of South Dakota shall govern the validity, performance and enforcement of this Lease.

TO HAVE AND TO HOLD the aforesaid rights, privileges and easements unto said Lessee, its successors and assigns for the term of this Lease as outlined above.

IN WITNESS HEREOF, the Lessor and Lessee have signed and sealed this lease as of the day and year first above written.

SOUTH DAKOTA BOARD OF REGENTS

By: _____
Mike Rush

Its: Executive Director and CEO

ACKNOWLEDGEMENT

STATE OF SOUTH DAKOTA

COUNTY OF _____

I, _____, a Notary Public in and for said County and State, do hereby certify that _____, of the South Dakota Board of Regents, to be the person whose name is subscribed to the within instrument, and personally came before me this day and acknowledged that he/she is President of the South Dakota Board of Regents, and that by authority duly given and as the act and deed of said entity.

IN WITNESS HEREOF, I have hereunto set my hand and official Notarial Seal, this the _____ day of _____, 20__.

Notary Public: _____

Print Name: _____

(SEAL)

My Commission Expires: _____

UNIVERSITY OF SOUTH DAKOTA FOUNDATION, INC.:

By: _____
Steve Brown

Its: President & CEO

ACKNOWLEDGEMENT

STATE OF SOUTH DAKOTA

COUNTY OF _____

I, _____, a Notary Public in and for said County and State, do hereby certify that _____, President of the University of South

Dakota Foundation, Inc., to be the person whose name is subscribed to the within instrument, and personally came before me this day and acknowledged that he is President of the University of South Dakota Foundation, Inc. and that by authority duly given and as the act and deed of said entity.

IN WITNESS HEREOF, I have hereunto set my hand and official Notarial Seal, this the ____ day of _____, 20____.

Notary Public: _____

Print Name: _____

(SEAL)

My Commission Expires: _____