SUBJECT:  BHSU Foundation Master Lease

Black Hills State University requests that the Board approve execution of the attached lease between the Board and the Black Hills State University Foundation. Since 2010, the BHSU Foundation, in close conjunction with BHSU leadership, has undertaken a capital campaign to secure resources for the purpose of constructing and operating a Foundation and Alumni Center.

The facility will occupy a site comprising approximately 1.58 acres (68,800 SF) previously used by BHSU for outdoor tennis courts. The design places the building in the center of the site with 35 paved parking spaces to the south and east, and a large concrete patio area to the west. The building consists of offices, shared work areas, gathering space and support functions. The main level is 6,536 square feet and the lower support space is 778 square feet in size.

The facility design and appurtenances are detailed in Attachment III of this item.

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RECOMMENDED ACTION OF THE EXECUTIVE DIRECTOR

Approve the facility design as submitted and authorize the President of the Board of Regents execute the attached lease between the Board and the Black Hills State University Foundation presented in Attachment I.
GROUND LEASE AGREEMENT

THIS GROUND LEASE AGREEMENT (“Lease”), made this ____ day of __________, 2012, by and between the SOUTH DAKOTA BOARD OF REGENTS (“Lessor”), and the BLACK HILLS STATE UNIVERSITY FOUNDATION (“Lessee”).

Lessor is the governing board for Black Hills State University, established pursuant to section 3, article XIV, of the South Dakota Constitution and charged with the control of the institution and all property belonging to the university, including state-owned land occupied by the university. Pursuant to SDCL § 13-49-11, Lessor may lease university lands when it determines that doing so will advance the purposes for which the university was established.

Lessee is a duly established, private South Dakota nonprofit corporation, created to raise, manage, and distribute resources to support the various missions of Black Hills State University, and exempt from federal income taxation by virtue of its dedication to advancing scientific, literary and educational purposes through support of the university. In discharging these functions, the Lessee acts as fiduciary for the university, holding assets in trust and operating only for the benefit of the university.

Lessee wishes a tract of unimproved land situated on the campus of Black Hills State University for purposes of constructing and operating a facility to house the administrative offices of Lessee and the Black Hills State University Alumni Association and to conduct a variety of functions in furtherance of the mission of the university, lessee and affiliated entities.

Lessor is willing to enter into a long-term lease to further Lessee’s efforts to enlarge the assets dedicated to the support the university, its students, faculty and staff and to enhance the university’s standing with its alumni and supporters and with the public at large.

ARTICLE I

PROPERTY AND TERM

Section 1.1: Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, subject to the terms and conditions stated and referred to herein, certain unimproved land located in the City of Spearfish, Lawrence County, South Dakota, together with and subject to easements appertaining thereto (including without limitation utility and construction easements for culinary water, telephone, natural gas, electric power, sanitary sewer, storm water, fire hydrants or similar services), as described or more particularly stated in Attachment A. The foregoing, collectively are hereinafter referred to as the “Leased Premises”.

Section 1.2: Lessee agrees to construct upon the Leased Premises a facility based upon and in substantial compliance with the designs and specifications set forth in Attachment B to this agreement, and to occupy, to operate and to maintain the facility, on the terms provided in this agreement, as the site for the administrative offices of Lessee and to conduct a variety of functions in furtherance of the mission of the university, lessee and affiliated entities.
Section 1.3: The facility described in Attachment B will be and will remain as personalty even though attached and affixed to real property and will be the separate personal property of Lessee, subject to the terms of this Lease.

Section 1.4: Lessee agrees that, upon execution of this Lease, Lessee will be obligated for the payment of One Dollar ($1.00) for the first year of occupancy of the Leased 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 will be made to Lessor. Lessee may, upon execution of this Lease, prepay the Annual Rent in full for the duration of the Term.

Section 1.5: Other than as stated below, Lessee takes and accepts the Leased Premises in its “as is” condition and subject to any zoning, covenants, conditions, restrictions, uses or easements, whether known or unknown, affecting the Leased Premises.

Section 1.6: The term of the Lease will be ninety-nine (99) years, commencing on the ____ day of ________, 2012 and terminating on the ____ day of ________, 2111. Lessor and Lessee 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, at least one-hundred-and eighty (180) days prior to the end of the term of this Lease.

Section 1.7: Lessor agrees to deliver possession of the Leased Premises to Lessee upon delivery of this Lease by Lessor to Lessee.

Section 1.8: Lessee will at all times during the term of the Lease have quiet enjoyment and full and uninterrupted use of the Leased Premises or in the facility described in Attachment B subject only to such agreements, limitations and restrictions herein contained.

Section 1.9: Lessor reserves all deposits or 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

PERMITTED USES

Section 2.1: The Leased Premises and facility described in Attachment B may be used only for the purposes of providing administrative offices and facilities for social, educational or fundraising activities of the kinds commonly undertaken from time to time by foundations, alumni organizations and other organizations affiliated with institutions of higher education, provided that such activities are consistent with the policies of Black Hills State University and Lessor.

Section 2.2: The Leased Premises and facility described in Attachment B may be used for purposes other than those listed in Section 2.1, above, with the prior written consent of Lessor.
**Section 2.2:** Additionally, and without limiting, the foregoing, the Lessee will comply with all applicable federal, state and local laws, ordinances and regulations relating to the Leased Premises and facility described in Attachment B, and use and operation thereof by the Lessee; and Lessee will not use or knowingly permit any part of the Leased Premises and facility described in Attachment B to be used for any unlawful purpose.

**Section 2.3:** Except as may be approved during the building plan review process herein described, Lessee will not place or permit to be placed any loud speaker or sound amplifier, or other devices similar to any of the foregoing on the outside of any building or in any place where the same may be seen or heard outside of the Leased Premises. Lessee will keep the Leased Premises and facility described in Attachment B clean and free from rubbish at all times, and will store all trash and garbage in trash receptors on the Leased Premises. Lessee will not burn or allow to be burned any trash or garbage at any time on the Leased Premises.

**Section 2.4:** During the term of this Lease, Lessee will comply with all environmental laws, ordinances, rules or regulations, and Lessee will not permit the generation, creation, treatment, incorporation, discharge, escape, release or threat of release of any contaminant above, upon, under, within or from the Leased Premises or the facility described in Attachment B, and will not permit any underground storage tanks containing any contaminant to be located upon the Leased 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 MSDS for each applicable substance maintained on the Leased Premises or in the facility described in Attachment B. Lessee chemical or waste contractors will name Lessor as an additional insured on any insurance they carry. Lessee will not use, store or disposed of any radioactive materials on the Leased Premises or in the facility described in Attachment B. Lessee will indemnify Lessor against environmental injury or liability.

**Section 2.5:** For the purpose of this Lease, a 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 surrenders possession of the Leased 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 will be controlling.

Section 2.6: Lessee will, at its own expense, abate, remedy and remove any contaminant discovered on the Leased Premises or in the facility described in Attachment B which was located, generated, created, stored, treated, incorporated, discharged, disposed of, allowed to escape, released or about to be released by Lessee.

Section 2.7: Lessor and Lessee agree that, for purposes of this Lease, Lessee will 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 this article. The provisions of this section survive the termination of this agreement.

Section 2.8: Lessee will not, without Lessor’s prior written consent, conduct any auction or bankruptcy sales in or about the Leased Premises or in the facility described in Attachment B.

ARTICLE III

UTILITIES

Section 3.1: Lessee will be responsible and pay for all utility hook-up charges necessary to bring utilities to the Leased Premises and to the facility described in Attachment B.

Section 3.2: Lessee will pay for all heating, air conditioning, electricity, gas, water, sewer, cable, telephone, telecommunications, garbage collection and or other like charges used on the Leased Premises and in the facility described in Attachment B throughout the term of this Lease.

Section 3.3: Lessor will not be liable in damages or otherwise if the furnishing by the Lessor, or by any other supplier of any utility or other service to the Leased Premises or to the facility described in Attachment B, should be interrupted of impaired by fire, repairs, accident, or by any causes beyond the Lessor’s control.

ARTICLE IV

CONSTRUCTION, REPAIR AND RENOVATION

Section 4.1: The facility described in Attachment B, together with any repairs, expansions or renovations, will comply with the requirements fixed by applicable law for
improvements and will be in conformance with design standards for accessible university-related facilities, and upon completion of the facility described in Attachment B, copies of all plans, specifications and construction documents will be retained throughout the term of the Lease. Such plans, specifications and construction documents shall be maintained in a format acceptable to the Lessor, as provided by Lessor in writing to Lessee.

Plans for the original construction, as well as for any major repair, renovation or expansion projects, shall be approved in advance by Lessor. 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.

**Section 4.2:** All costs associated with landscaping the Leased Premises and maintaining the grounds and appurtenances, including snow removal, will be borne by Lessee.

**Section 4.3:** All parking areas and exterior lighting associated with the Leased Premises and the facility described in Attachment B must be built in conformance to applicable law.

**Section 4.4:** Lessee will be responsible for obtaining all required government permits, approvals, and compliance with all statues, ordinances and regulations relating to the construction of the facility described in Attachment B on the Leased Premises.

**Section 4.5:** Lessee will obtain and will maintain a developer’s bond satisfactory to assure that the property leased hereunder will be free from mechanic’s materialmen’s, municipal, mortgagee’s or any other form of lien. Lessee will promptly pay all contractors and materialmen, so as to avoid the possibility of a lien attaching to the Leased Premises.

**Section 4.6:** 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 Leased 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 Black Hills State University, Lessor or the State of South Dakota, within any constitutional or statutory limitation, and neither the taxing power nor the general credit of Black Hills State 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.

**Section 4.7:** Lessee will 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, will make modifications or replacements thereof, and Lessee will repair, modify, replace or renovate such improvements to restore or to maintain their good condition.

**Section 4.8:** To assure that Lessee will be able to comply with the requirements of the Article, it will establish a Repair and Replacement Reserve Sinking Fund within its corporate accounts.
Annually, Lessee will deposit a minimum of $10,000 into the account until the account holds an amount equal to 5% of the cost of construction, furnishing and equipping of the facility described in Attachment B. All moneys and investments held in the Repair and Replacement Reserve Sinking Fund will be used and held for use to pay the cost of unusual or extraordinary maintenance or repairs, renewals, renovations and replacements, and renovating or replacement of the furniture and equipment not paid as part of the ordinary maintenance and operation of the facility.

On January 1, 2022, and every ten years thereafter, the required balance in the Repair and Replacement Reserve Sinking Fund will be adjusted to reflect the inflation in construction costs as measured by the Building Cost Index reported by the Engineering News Record, or in such comparable index as may replace it during the term of this Lease.

In the event that the improved square footage of the facility is expanded, whether as part of a renovation or otherwise, an amount equal to 5% of the cost of the expansion will be added to the Repair and Replacement Reserve Sinking Fund requirements.

Whenever the Repair and Replacement Reserve Sinking Fund requirements are adjusted, the rate of minimum required annual deposits will also be adjusted to assure that deposits will be made at a rate that would suffice to generate an amount equal to the fund requirement within the space of seven years.

Expenditures from the Repair and Replacement Reserve Sinking Fund will be replaced through additional annual deposits to be made at the rates required under this section.

ARTICLE V

INDEMNITY

Section 5.1: Absent willful misconduct or gross negligence by the Lessor or its agents, Lessee will indemnify and hold the State of South Dakota, the Lessor, Black Hills State University, and their officers, agents, and employees harmless from all liabilities associated with the Leased Premises and its use and operation thereof, including specifically liabilities arising under environmental laws.

ARTICLE VI

INSURANCE

Section 6.1: Lessee will maintain at its own cost and expense, fire and extended coverage, vandalism, malicious mischief and special extended coverage insurance in an amount adequate to cover the cost of replacement of the facility described in Attachment B, including alterations, changes, furnishings, decorations, additions, fixtures and improvements in the Leased Premises in the event of a loss, in companies and in form acceptable to the Lessor, and they will also provide comprehensive liability insurance coverage of not less than $2,000,000, such policy to contain an endorsement naming
Lessor as additional insured. The minimum liability coverage is based upon the value of
the United States dollar in 2012, and the minimum will be adjusted at five year intervals
throughout the term of the Lease to reflect fluctuations in the Consumer Price Index, or
such successor index as may be employed by the United States government to track
changes of consumer goods and services.

Section 6.2: Lessee will not store any equipment or personal property or do anything in
or about the Leased Premises which will in any way tend to increase insurance rates
payable on the Leased Premises upon which the property is located without the consent
of the Lessor, which will not unreasonably be withheld. If Lessee installs any electrical
equipment that overloads the power lines to the Leased Premises, Lessee will provide for
whatever changes are necessary to avoid such overload and to comply with the
requirements of insurance underwriters and insurance rating bureaus and governmental
authorities having jurisdiction.

Section 6.3: If Lessee fails to comply with the requirements of this Article VI, the
Lessor may obtain such insurance and keep the same in effect and demand as additional
rent a sum that reflects the additional premium costs to Lessor.

Section 6.4: Anything in this Lease to the contrary notwithstanding, to the extent of
insurance proceeds recoverable, the Lessor and Lessee hereby waive any and all rights of
recovery, claim, action or cause-of-action against the other, its agents, officers, directors,
members or employees, for any loss or damage that may occur to the Leased Premises or
to the facility described in Attachment B, by reason of fire, the elements, or any other
cause which could be insured against under the terms of standard fire and extended
coverage insurance policies, regardless of cause or origin, including negligence of the
other party hereto, its agents, officers or employees, and covenants that no insurer will
hold any right of subrogation against such other party.

ARTICLE VII

FIRE OR OTHER CASUALTY

Section 7.1: Unless otherwise approved in writing by Lessor, in a case of partial or total
loss or damage to the facility described in Attachment B, or its improvements, alterations,
additions and repairs, all proceeds of any applicable insurance will be used with all
reasonable speed by Lessee for rebuilding, repairing or otherwise reinstating the same
improvements and other improvements in a good and substantial manner according to the
original plan and elevation thereof, or such modified plan conforming to the laws and
regulations then in effect if it will be first approved by Lessor. Notwithstanding the
foregoing, Lessee may elect not to rebuild or repair in the event the casualty occurs in the
last five (5) years of this Lease.

ARTICLE VIII
ACCESS TO PROPERTY

Section 8.1. Access and Inspection: The Lessor will have the right to enter the Leased Premises as necessary to obtain access to other parts of the Black Hills State University campus or other property or facilities used by the Lessor or, provided that such access to the Leased Premises will not unreasonably interfere with Lessee rights under this Lease. Lessor will notify Lessee when access is required.

The Lessor will have reasonable access to view the use and condition of the facility described in Attachment B.

ARTICLE IX

REMEDIES

Section 9.1: In the event of any breach hereunder by Lessee, after ninety (90) day written notice to Lessee and barring Lessee’s initiation of good faith efforts to cure such breach, the Lessor may cure such breach for the account and at the expense of Lessee. If Lessor at any time by reason of such breach is compelled to pay, or elects to pay, any sum of money or do 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 Leased Premises or the enforcement of any of the terms and provisions of this Lease, the sum or sums so paid by Lessor will be deemed to be due from Lessee to Lessor.

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

ARTICLE X

EXPIRATION OF LEASE

Section 10.1: This Lease will terminate upon (i) the expiration of the Term, (ii) cancellation by mutual agreement of parties, or (iii) failure by Lessee to perform any obligation of Lessee under this Lease which failure is not cured after ninety (90) days written notice to Lessee (or if such failure cannot be cured within ninety (90) 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, will, surrender the facility described in Attachment B, as repaired, renovated or expanded, together with its appurtenances in good order, condition and repair, ordinary wear and tear and damage by condemnation and casualty excepted and in broom clean condition unless previously demolished or removed by Lessee or Lessor under the terms of this Lease. All improvements will
remain on the Leased Premises at the end of the Term unless removal is expressly 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.

Section 10.2: Demolition, disassembly and removal of the facility described in Attachment B, as repaired, renovated or expanded, together with its appurtenances, from the Leased Premises will be required, unless waived, in the sole discretion of Lessor, where (1) Lessee offers to convey title to the same to State of South Dakota at no cost and Legislature approves acceptance of the conveyance, or (2) where a successor Lessee (which may be Lessee), acceptable to Lessor, agrees to take ownership of the facility described in Attachment B, as repaired, renovated or expanded, together with its appurtenances and enter into a lease with Lessor.

Section 10.3: In the event Lessee remains in possession of the Leased Premises after the expiration of the tenancy created hereunder with the consent of Lessor and without execution of a new lease, it will be deemed to be occupying the Leased 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 will be in writing and will 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

The Lessee hereby designates its address as:

Black Hills State University Foundation
1532 North Saint Joe Street
Spearfish, South Dakota 57783

ARTICLE XII
GENERAL

Section 12.1: Lessor will have the right to install, maintain, use, 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 Leased Premises and serving other parts of the Black Hills State University campus in locations that will not materially interfere with the Lessor’s use thereof. Lessor will give Lessee reasonable notice before performing such work.

Section 12.2: 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 Leased Premises or the facility described in Attachment B. 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 Leased Premises, or facility described in Attachment B or improvements owned by Lessee thereon (inclusive of all real and personal property).

Section 12.3: Nothing contained herein will 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 12.4: Neither this Lease nor any interest therein, will pass to any trustees or receiver in bankruptcy, or any assignee for the benefit of creditors, or by operation of law.

Section 12.5: The covenants, agreements, obligations, and limitations on use herein contained, except as herein otherwise specifically provided, will extend to, bind and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors and assigns. The 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, the Lessor and its successors and assigns (other than the assignee of this Lease) will be released from any and all liability hereunder.

Section 12.6: The various rights and remedies contained in this Lease will not be considered as exclusive of any other right or remedy, but will be as cumulative and will 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 will impair any such right or power, or will 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 will 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 will not be
deemed to waive or render unnecessary consent to approval of any subsequent similar act.

Section 12.7: 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 12.8: The covenants, agreements and obligations herein contained, except as herein otherwise specifically provided, will extend to, bind and insure 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) will be released from any and all liability hereunder.

Section 12.9: This Lease may be amended at any time upon the mutual agreement in writing of the parties.

Section 12.10: Whenever a period of time is herein provided for either party to do or perform any act or thing, that party will not be liable or responsible for any delays, and applicable periods for performance will be extended accordingly, due to strikes, lockouts, riots, acts of God, shortages or labor or materials, national emergency, acts of a public enemy, pandemic emergency, 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 will 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 12.11: Lessee will not record this Lease without the written consent of the Lessor, which will not unreasonably be withheld. Lessor and Lessee agree to execute a Short Form Lease containing the name of parties, the legal description of the land, and the term of the Lease for purpose of recording and Lessor’s approval of such recordation will not be unreasonably withheld.

Section 12.12: No payment by Lessee or receipt by the Lessor of a lesser amount than the amount then due under this Lease will be deemed to be other than on account of the earliest portion thereof due, nor will any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and the Lessor may accept such check or payment without prejudice to the Lessor’s right to recover the balance due or pursue any other remedy in this Lease provided.

Section 12.13: Time is to be of the essence of this Lease and of each and every covenant, term, condition and provision hereof.

Section 12.14: If any term, covenant, condition or provision of this Lease Agreement will be invalid or unenforceable at any time or to any extent, the remainder of this Lease
Agreement will not be affected thereby, and each remaining term, covenant, condition and provision of this Agreement will remain valid and enforceable to the fullest extent permitted by law.

**Section 12.15:** The laws of the state of South Dakota will 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: ________________________________________________  
Its: _________________________________________________

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:

My Commission Expires: ____________________________

BLACK HILLS STATE UNIVERSITY FOUNDATION
By ____________________________________

CHAIR, BOARD OF DIRECTORS

ACKNOWLEDGEMENT

STATE OF SOUTH DAKOTA COUNTY
OF ______________________

I, _________________________________________, a Notary Public in and for said County and State, do hereby certify that ___________, __________ of the Black Hills State University Foundation, 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 Chair of the Black Hills State University Foundation 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:

My Commission Expires: ____________________ EXHIBITS
ATTACHMENT A

WELCOME CENTER
BHSU ALUMNI CENTER

LEGAL DESCRIPTION FOR LEASE AGREEMENT

COMMENCING at the southeast corner of Lot 5 of Block 2 of West Addition to Spearfish, South Dakota, a found 5/8” rebar with cap located on the west right of way line of St. Joe Street, thence N 01° 31’ 09” E, a distance of 50.00 feet, to the northeast corner of Lot 5 of Block 2 of West Addition to Spearfish, South Dakota, the point of beginning;

THENCE FIRST COURSE:  N 39° 34’ 58” W, a distance of 323.76 feet;

THENCE SECOND COURSE:  N 35° 37’ 01” W, a distance of 191.59 feet;

THENCE THIRD COURSE:  S 86° 52’ 17” E, a distance of 343.75 feet to a point on a non-tangent curve concave to the southwest, having a radius of 990.00 feet, through which a radial line bears S 88° 16’ 27” W.  Said point being on the west right of way line of St. Joe Street;

THENCE FOURTH COURSE:  Southeasterly along said curve on the west right of way line of St. Joe Street, through an angle of 03° 14’ 43”, a distance of 56.07 feet to a tangent line;

THENCE FIFTH COURSE:  S 01° 31’ 09” W, a distance of 111.48 feet along the west right of way line of St Joe Street to a found 5/8” rebar with a cap marked “AAE”;

THENCE SIXTH COURSE:  N 88° 24’ 32” W, a distance of 16.70 feet along the west right of way line of St. Joe Street to a found 5/8” rebar with cap;

THENCE SEVENTH COURSE:  S 01° 31’ 09”W, a distance of 219.55 feet along the west right of way line of St. Joe Street to the point of beginning.

SAID parcel of land contains 1.574 acres, more or less.

Located in portions of Lots 1,2,3,4,12 in Block 2, vacated alley, and vacated “E” Avenue in West Addition to Spearfish, South Dakota; and in a portion of College Addition to the City of Spearfish, South Dakota.
BLACK HILLS STATE UNIVERSITY

Alumni and Welcome Center Description

SITE

The Black Hills State University Alumni and Welcome Center is to be located on a site situated south of Lyle Hare Stadium and east of Pangburn Hall on St. Joe Street. This site previously accommodated tennis courts. The site is approximately 1.58 acres (68,800 SF). The design places the building in the center of the site with 35 paved parking spaces to the south and east, and a large concrete patio area to the west. The patio area will accommodate a special events tent to supplement interior gatherings.

BUILDING DESIGN

The overall exterior design will be residential in scale to provide a comfortable and approachable setting.

The building consists of offices, shared work areas, gathering space and support functions. The main level is 6,536 square feet and the lower support space is 778 square feet in size.

The building is to be wood frame construction with a complete fire suppression sprinkler system.

The exterior materials are to be brick wainscot with Exterior Insulation Finish System (EIFS) above, heavy asphalt shingles and clad wood windows. The wall insulation will be in excess of R-19 and roof insulation in excess of R-50. The HVAC system is to be accommodated by five high-efficiency furnaces providing heating and cooling.

The interior finishes will include wood, carpet and tile floors, painted gypsum board walls, 2x2 acoustical ceilings, and significant wood trim. A fireplace and display cabinets will highlight the entry welcome area.
NEW ALUMNI / WELCOME CENTER
BLACK HILLS STATE UNIVERSITY

BASEMENT PLAN
SCALE: 1/8" = 1'-0"

MAIN FLOOR PLAN
SCALE: 1/8" = 1'-0"

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