SOUTH DAKOTA BOARD OF REGENTS

Committee on Budget and Finance

AGENDA ITEM: III – S

DATE: December 12-13, 2012

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SUBJECT: Resolution requesting the grant of a perpetual easement property occupied by the University Center, Black Hills, in Pennington County, South Dakota to provide for joint access to contiguous properties.

BACKGROUND: Black Hills State University requests that the Board adopt a request to the Governor to approve the grant of a perpetual easement over a strip of land twenty feet wide and eighty feet long that underlies the western access to the University Center, Rapid City, parking lot (Attachment II). The entryway was placed to serve as a joint access from Cheyenne Boulevard to the University Center and to a neighboring commercial site that is being developed as a hotel. The entryway exceeded the platted joint access easement on the adjacent property by approximately forty feet, so the grant of the easement is necessary to cure the encroachment.

The owner of the adjacent facility has already granted and recorded an easement benefitting the Board over that portion of its property that underlies the entryway (Attachment III), and that granted easement provides appropriate consideration for the grant by the Board.

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RECOMMENDED ACTION OF THE EXECUTIVE DIRECTOR

Adopt the attached resolution pursuant to the power vested in the Board under SDCL § 5-2-10, requesting the commissioner of school and public lands to draw up all necessary documents and to request that the Governor approve the grant of a perpetual easement on 1,600 square feet of real property occupied by the University Center, Black Hills, in Pennington County, South Dakota, to Monte Vista Properties, LLC, a South Dakota limited liability company, of 3600 Sheridan Lake Road, Rapid City, South Dakota 57702 (“Grantor”), owner of record of real property located at 4040 Cheyenne Boulevard, Rapid City, South Dakota 57703, with the legal description Heartland Retail Center, Block 1, Lot 3, in consideration of reciprocal easement to be granted by the State of South Dakota for the Benefit of the property described as Heartland Retail Center, Block 1, Lot 3, as shown on an engineering document set forth as Exhibit A to the resolution and incorporated therein as though fully set forth, for the purpose of providing the benefited property access across the burdened property through both properties joint access point.
Resolution requesting the grant of a perpetual easement to Monte Vista Properties, LLC, over property occupied by the University Center, Black Hills, in Pennington County, South Dakota to provide for joint access to contiguous properties.

The South Dakota Board of Regents (hereinafter referred to as “Grantor”), on behalf of University of , in consideration for one dollar ($1) and other good and valuable consideration, and pursuant to the authority vested in Grantor under SDCL § 5-2-11, hereby requests the commissioner of school and public lands to draw up all necessary documents and to forward them to the Governor to request their execution in order to effect the grant a perpetual easement on 1,600 square feet of real property occupied by the University Center, Black Hills, in Pennington County, South Dakota, to the Monte Vista Properties, LLC, a South Dakota limited liability company, of 3600 Sheridan Lake Road, Rapid City, South Dakota 57702 (“Grantor”), owner of record of real property located at 4040 Cheyenne Boulevard, Rapid City, South Dakota 57703, with the legal description Heartland Retail Center, Block 1, Lot 3, in consideration of reciprocal easement to be granted by the State of South Dakota for the Benefit of the property described as Heartland Retail Center, Block 1, Lot 3, as shown on an engineering document set forth as Exhibit A to the resolution and incorporated therein as though fully set forth, for the purpose of providing the benefited property access across the burdened property through both properties joint access point, which burdened property lies within the property described as:

That part of the Northeast Quarter of the Southwest Quarter (NE1/4SW1/4) and that part of the South Half of the Southwest Quarter (S1/2SW1/4) of Section 27, Township 2 North, Range 8 East of the Black Hills Meridian, in the City of Rapid City, Pennington Count, South Dakota, lying south of Lot H7 as conveyed to the Chicago and North Western Railway Company in Deed Book 145, Page 192 and as shown on the plat filed in highway Plat Book 4, Page 90, EXCEPTING therefrom Lot A of Tract B, as shown on the plat filed in Plat Book 10, Page 4; EXCEPTING therefrom that portion of Lots 1,2, and 3 in Block 1 of Heartland Retail Center located in the Southwest Quarter of the Southwest Quarter (SW1/4SW1/4) of Section 27, as shown on the plat file in plat book 31, page 111;

-AND-that portion of the Northeast Quarter of the Northwest Quarter (NW1/4NW1/4) of Section 34, Township 2 North, Range 8 East of the Black Hills Meridian, in the City of Rapid City, Pennington County, South Dakota, lying north of Lot H3 (Cheyenne Boulevard), as shown on the plat filed in Highway Plat Book 11, Page 126 and lying north of Cheyenne Boulevard, as shown on the plat filed in Plat Book 31, Page 111, EXCEPTING therefrom Lots 1,2, and 3 in Block 1 Heartland Retail Center, all as shown on the plate filed in Plat Book 31, Page 111.

Grantor requests that any grant of easement provide that Grantor shall not be liable for any personal injury, property damage, or other liability to Grantee, its agents, employees, invitees, or to any other party caused by or related to Grantee’s use of the premises, irrespective of how such injury or damage may be caused, whether by action of the elements or acts of negligence of Grantee or any other party, and that Grantee further agree to reimburse Grantor for any judgment against it arising from Grantee’s use of the property.
Dated this thirteenth Day of December 2012
SOUTH DAKOTA BOARD OF REGENTS

By _________________________________
Kathryn O. Johnson
President

Certification:
I have compared the foregoing with an action taken by the Board of Regents at a regular meeting of the Board in Spearfish, South Dakota, on the thirteenth day of December 2012, and I hereby certify that the same is a true, correct, and complete copy thereof and that the same has not been rescinded.

Dated this thirteenth Day of December 2012
SOUTH DAKOTA BOARD OF REGENTS

By
___________________________

Randy Schaefer
Secretary
EXHIBIT 'A'

20' X 80' SHARED ACCESS EASEMENT
IN THE SW1/4 OF THE SW1/4 OF SECTION 27 AND
THE NW1/4 OF THE NW1/4 OF SECTION 34 OF
T2N, R8E, BHM
RAPID CITY, PENNINGTON COUNTY, SOUTH DAKOTA

UNPLATTED PORTION OF
SECTION 27
SE1/4 OF THE SW1/4
OF THE SW1/4

20' X 80' SHARED
ACCESS EASEMENT TO BE
CREATED THIS DOCUMENT

CHEYENNE BOULEVARD
100' WIDE R.O.W. OF RECORD

LOT 2
UNPLATTED PORTION OF SECTION 34

Rennyer & Associates, LLC.
616 Sixth St., Rapid City, SD 57701
Phone: 605/721-7310 Fax: 605/721-7313
Eric@RennerAssso.com

SEPTEMBER 20, 2012
SCALE 1" = 60'

Registered Professional Land Surveyor

#2586
November 28, 2012

Dr. Jack Warner  
Executive Director  
306 E. Capitol Ave.  
South Dakota Board of Regents  
Pierre, SD 57501

Dear Dr. Warner,

On behalf of the University Center – Rapid City, I formally request Board of Regents approval of a shared access easement with Monte Vista Properties for the Baymont Hotel. The new hotel and the UCRC will share access to both properties off of Cheyenne Boulevard as per City of Rapid City guidelines. The easement will be located in the UC-RC parking lot entrance at the southwest corner of the parking lot. The requested property consists of a 20’ x 80’ entry and is equal to the access currently granted to the UC-RC with both properties valued equally.

After review, I believe this easement is in the best interest of the State of South Dakota, the Board of Regents, the University Center – Rapid City and its students, and the City of Rapid City.

If you need any additional information, please let me know.

Sincerely,

Dr. Kay Schallenkamp  
President
ACCESS EASEMENT AGREEMENT

Monte Vista Properties, LLC, a South Dakota limited liability company, of 3600 Sheridan Lake Road, Rapid City, South Dakota 57702 ("Grantor") acknowledges that the Company is owner of record of real property located at 4040 Cheyenne Boulevard, Rapid City, South Dakota 57703, with the legal description Heartland Retail Center, Block 1, Lot 3.

Monte Vista Properties, LLC grants a private and perpetual access easement twenty (20) feet by forty (40) feet, on, over, and across its property as set forth on attached exhibit A.

The easement shall benefit property owned by the State of South Dakota legally described as:

That part of the Northeast Quarter of the Southwest Quarter (NE1/4SW1/4) and that part of the South Half of the Southwest Quarter (S1/2SW1/4) of Section 27, Township 2 North, Range 8 East of the Black Hills Meridian, in the City of Rapid City, Pennington County, South Dakota, lying south of Lot H7 as conveyed to the Chicago and North Western Railway Company in Deed Book 145, Page 192 and as shown on the plat filed in
highway Plat Book 4, Page 90, EXCEPTING therefrom Lot A of Tract B, as shown on the plat filed in Plat Book 10, Page 4; EXCEPTING therefrom that portion of Lots 1, 2, and 3 in Block 1 of Heartland Retail Center located in the Southwest Quarter of the Southwest Quarter (SW1/4SW1/4) of Section 27, as shown on the plat file in plat book 31, page 111;

-AND-that portion of the Northwest Quarter of the Northwest Quarter (NW1/4NW1/4) of Section 34, Township 2 North, Range 8 East of the Black Hills Meridian, in the City of Rapid City, Pennington County, South Dakota, lying north of Lot H3 (Cheyenne Boulevard), as shown on the plat filed in Highway Plat Book 11, Page 126 and lying north of Cheyenne Boulevard, as shown on the plat filed in Plat Book 31, Page 111, EXCEPTING therefrom Lots 1, 2, and 3 in Block 1 Heartland Retail Center, all as shown on the plat filed in Plat Book 31, Page 111.

-AND-that portion of the Northeast Quarter of the Northwest Quarter of Section 34, Township 2 North, Range 8 East of the Black Hills Meridian, in the City of Rapid City, Pennington County, South Dakota, lying north of Lot H3 (Cheyenne Boulevard), as shown on the plat filed in Highway Plat Book 11, Page 162.

The easement shall be for the purpose of providing the benefited property access across the burdened property through both properties joint access point.

The easement shall also serve as consideration for an intended reciprocal easement to be granted by the State of South Dakota for the Benefit of the property described as Heartland Retail Center, Block 1, Lot 3. Such easement to be considered by the State of South Dakota pursuant to policy and statute.

The easement shall be an easement appurtenant. Carol Enterprises, Inc. and Monte Vista Properties, LLC intend the covenants to run with the land.
The duration of the easements shall be perpetual.

Grantor, its successors and assigns, have the joint and nonexclusive right to use such Easement with the owners of the dominant tenement. The Easement shall include the right to reconstruct, maintain, replace and repair the easement roadway so as to allow access and the ingress and egress of vehicles and for utilities. The roadway has been previously constructed, and the Grantor retains the right to modify the roadway as necessary to obtain access to the roadway from the parking lot to be built in the future.

Dated this 16th day of November, 2012.

GRANTOR:

MONTE VISTA PROPERTIES, LLC

By: [Signature]

Chris Connelly, Member

STATE OF SOUTH DAKOTA )
COUNTY OF PENNINGTON )

On this 16th day of November, 2012, before me, the undersigned officer, personally appeared Chris Connelly, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

[Signature]

Notary Public, South Dakota
My commission expires: 3-22-13

LYNETTE K. SEFRNA
NOTARY PUBLIC
EXHIBIT 'A'
20' X 40' SHARED ACCESS EASEMENT
LOT 3, BLOCK 1 OF
HEARTLAND RETAIL CENTER
LOCATED IN THE SW1/4 OF THE SW1/4 OF SECTION 27, AND
IN THE NW1/4 OF THE NW1/4 OF SECTION 34
ALL IN T2N, R8E, BHM
RAPID CITY, PENNINGTON COUNTY, SOUTH DAKOTA

LOT 3

20' X 40' SHARED ACCESS EASEMENT TO BE CREATED THIS DOCUMENT

20' X 40' SHARED ACCESS EASEMENT AS SHOWN IN PLAT BOOK 31, PAGE 111.

CHEYENNE BOULEVARD
100' WIDE R.O.W. OF RECORD

Renner & Associates, LLC.
616 Sixth St. * Rapid City, SD 57701
Phone: 605/721-7310 Fax: 605/721-7313
ERIC@RENNERASSOC.COM

Registered Professional Land Surveyor
Reg. No.: 9213
ERIC D. HOWARD
9-21-12