

**BOARD OF ECONOMIC DEVELOPMENT- CREDIT COMMITTEE  
GOED CONFERENCE ROOM, 711 E WELLS AVE, PIERRE, SD  
TUESDAY, JULY 5, 2016, 2:00 P.M. CT**

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**BOARD OF ECONOMIC DEVELOPMENT- CREDIT COMMITTEE  
GOED CONFERENCE ROOM, 711 E WELLS AVE, PIERRE, SD  
TUESDAY, JULY 5, 2016, 2:00 P.M. CT**

*Board  
Members:*

*Jeff Erickson*

*Dale Clement*

*Don Kettering*

*Pat Prostrollo*

*Norbert  
Sebade*

*Reed Kessler*

**Motion Sheet**

**Agenda**

Motion to approve the agenda as presented.

Motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_

**Assignment of Lease and Rents Memo**

Motion to approve the changes of the assignment of lease and rents template as presented.

Motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_.

**Executive Session**

Motion to enter into executive session to discuss contract matters and commercial and financial information relating to loan and other assistance to applicants.

Motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_.

**Chairman: Declare board out of executive session. [      p.m.]. Chairman: The BED entered into executive session to discuss contract matters and commercial and financial information relating to loan and other assistance to applicants. No action taken.**

**Motion to approve the chairman's report from executive session.**

Motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_.

**Loan Reviews**

**DBI Holdings, LLC eyeBrain Medical, Inc. and Weisser Properties, LLC**

Credit Committee recommends to the Board accepting the loan reviews as presented.

Motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_.

**PEDCO/Pulse Processors**

Credit Committee recommends to the Board approving a commitment extension to August 20, 2016.

Motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_.

**RTI Holdings, LLC/RTI, LLC**

Credit Committee recommends to the Board approving a release of collateral as presented.

Motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_.

**Adjourn**

Motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_.

Please note times:
Call To Order: _____
Executive Session: _____
Regular Session: _____
Adjournment: _____

**A**

**CREDIT COMMITTEE**  
**GOED CONFERENCE ROOM, 711 E WELLS AVE, PIERRE, SD**  
**TUESDAY, JULY 5, 2016, 2:00 P.M. CT**

**REGULAR SESSION AGENDA**

- 2:00 P.M.                    Call To Order, Chairman Jeff Erickson
- 2:05 P.M.                    **Agenda**  
RECOMMENDED ACTION: Motion to approve the agenda as provided or amended.
- Conflicts of Interest Disclosures**
- Assignment of Lease and Rents Memo**  
RECOMMENDED ACTION: Motion to approve the changes of the assignment of lease and rents template as presented.
- 2:15 P.M.                    **Executive Session**  
RECOMMENDED ACTION: Motion to enter into executive session to discuss contract matters and commercial and financial information relating to loan and other assistance applicants.
- 2:40 P.M.                    **Report from Executive Session**  
RECOMMENDED ACTION: Approve Chairman's report from Executive Session
- Other Motions  
                                  DBI Holdings, LLC  
                                  eyeBrain Medical, Inc.  
                                  Weisser Properties, LLC  
                                  PEDCO/Pulse Processors  
                                  RTI Holdings, LLC/RTI, LLC

Notice is further given to persons with disabilities that this meeting is being held in a physically accessible place. Please notify the above mentioned office within 48 hours of the public hearing if you have special needs for which this agency will make the necessary arrangements.

Participation in the meeting can be at GOED at 711 E Wells Ave, Pierre, South Dakota, or the GOED office at the Zeal Center for Entrepreneurship at 2329 N. Career Avenue, Sioux Falls, South Dakota.



**Memorandum**

Date: July 12, 2012  
To: Board of Economic Development  
From: Cassidy Kulesa, Assistant Finance Director  
Re: Assignments of Lease and Rents Template

Currently, when a REDI loan is awarded to a borrower for the purposes of purchasing or improving real estate and then subsequently leased to a related operating company, included in the collateral is an Assignment of Leases and Rents. The current form of the document does not include a requirement that the tenant's lease be subordinate to the BED mortgage. Legal counsel and staff recommend to insert this requirement into the "Assignment of Lease and Rents" template. Staff would consult with the Board to consider removing the subordination requirement on a case-by-case basis should it be determined a specific deal structure may necessitate the lease having priority over the BED mortgage.

The updated Assignment of Lease and Rents template, as proposed, is attached for review.

This will ensure that the issue is addressed each time an assignment of lease is taken as collateral.

**Recommendation**

Staff recommends approval of the revision of the "Assignment of Lease" template.

This document has been prepared by:  
South Dakota Board of Economic Development  
c/o BankWest, Inc.  
PO Box 998,  
Pierre, SD 57501  
605/945-3823  
Attn: Sam Helma

**STATE OF SOUTH DAKOTA  
BOARD OF ECONOMIC DEVELOPMENT**

**REVOLVING ECONOMIC DEVELOPMENT AND INITIATIVE FUND  
(ARSD 68:02:01)**

**ASSIGNMENT OF LEASE & RENTS**

**REDI Loan Number** \_\_\_\_\_

ASSIGNMENT, made and entered into this \_\_\_ day of \_\_\_\_\_, 200\_\_, by and among the State of South Dakota, Board of Economic Development, 711 East Wells Avenue, Pierre, South Dakota 57501 (herein "BED"), \_\_\_\_\_ of \_\_\_\_\_ (herein the "Borrower"); and \_\_\_\_\_, of \_\_\_\_\_ (herein the "Lessee").

WHEREAS, the Borrower made an application (the "Application") dated the \_\_\_ day of \_\_\_\_\_, for a loan from the Revolving Economic Development and Initiative Fund (REDI), for the purposes of Borrower's business expansion or relocation in the State of South Dakota (the "Project"), as described with particularity in the Application and in the Loan Documents, which are by this reference incorporated herein; and,

WHEREAS, the Application was approved by BED and the Borrower and BED entered into a certain Revolving Economic Development and Initiative Fund (REDI) Loan Agreement dated the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, (the "Loan Agreement"), whereby BED loaned to Borrower the sum of \$ \_\_\_\_\_ together with interest thereon at \_\_\_% per annum, due and payable as set forth in the Promissory Note of even date, and pursuant to the terms and conditions of the other Loan Documents executed by Borrower and BED in connection with this Loan and Project, all pursuant to SDCL Chapter 1-53 and 1-16G, as amended, and ARSD Article 68:02 (the "BED Loan"); and,

WHEREAS, the Borrower as Lessor and the Lessee have entered into a real estate lease dated the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, (the "Lease"), whereby the Lessee leases from the Borrower the premises pledged by the Borrower to BED as Collateral for the BED Loan, a copy of which Lease is attached hereto and by this reference incorporated herein; and,

WHEREAS, part of the inducement and consideration for BED to make the BED Loan to Borrower is the Borrower's assignment of the Lease as additional security for the BED Loan as described herein; and,

WHEREAS, BED has entered into a Loan Servicing Agreement with BankWest, Inc., a state chartered financial institution, of Pierre, South Dakota (BankWest), whereby BankWest will act as BED's agent for purposes of closing, funding, receiving payment and servicing the BED Loan with the Borrower, and under which BankWest may take any and all such action on behalf of BED consistent with the terms of the Loan Servicing Agreement and the Borrower's BED Loan Documents;

NOW, THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. In consideration of the approval of the BED Loan to Borrower as above described, for the purpose of inducing BED to make the loan, and as additional Collateral to secure the BED Loan, the Borrower hereby assigns, transfers and conveys to BED Borrower's entire interest as Lessor in the lease of real property located in \_\_\_\_\_ County, South Dakota, and described as follows:

**LEGAL DESCRIPTION HERE.**

In addition, Borrower assigns, transfers and conveys to BED Borrower's right to any and all rents, income, profits, and other sums payable by Lessee pursuant to, and for the use and occupation of the premises described in, the Lease on the above described property, and the right to receive the same for and during the remainder of the term of the Lease, including extensions and renewals thereof, as set forth herein.

2. Borrower warrants and represents as follows:

a. That it is the sole owner of the Lease assigned hereby and of all the leasehold rights which the Lease purports to create, with full right to convey the same;

b. That the Lease is valid, and in full force and effect, and the Lease, the real property, Borrower's interest therein, and the right to receive the payments pursuant to the Lease are free from liens, encumbrances, claims and setoffs of every kind, except as otherwise disclosed in writing to BED; and,

c. That the Lessee is not in default under any of the terms, conditions, or covenants of the Lease;

3. Borrower agrees:

a. To observe and perform all obligations imposed on Borrower as Lessor, and to indemnify BED from all consequences of any failure to do so;

b. To preserve the leased property free and clear from all liens, encumbrances, claims and setoffs of every kind, except as otherwise agreed in writing by BED;

c. Not to alter, extend or modify the terms of the Lease, or give any consent or exercise any renewal or option required by the terms of the Lease without the express, prior written consent of BED;

d. Not to terminate, cancel or accept the surrender of the Lease, or transfer, convey, or permit the transfer or conveyance of the premises so as to cause a termination or change of the obligations of the Lessee;

e. Not to enter into a lease with a new lessee unless the lessee is notified that the lease will be assigned pursuant to this Assignment, and the new lessee provides written consent to and acceptance of this Assignment;

f. Not to agree or consent to any assignment of or subletting under the Lease, whether or not in accordance with its terms, without the express, prior written consent of BED; and,

g. Not to execute any other assignment of the Borrower's interest in the Lease, or the rental payments due thereunder.

4. Until such time as Borrower may default in the payment of the BED Loan, or in the performance of any other obligation under the Loan Documents or this Assignment, Borrower may collect and retain all rents, income and profits arising under the Lease, when such rents, income and profits are due and payable. Borrower agrees not to collect any such rents, income and profits until they shall become due, without the express, prior written consent of BED.

5. In the event Borrower defaults in the payment of the BED Loan, or in the performance of any other obligation under the Loan Documents, the Lease, or this Assignment, BED may, at its option, without notice to Borrower, and, with or without taking possession of the premises, notify Lessee, or any other lessee then in possession under the Lease to pay all future payments under the Lease to BED, and BED shall be entitled to collect the same and exercise any other rights of the Borrower under the Lease. Borrower hereby appoints BED its attorney-in-fact for such purposes. Lessee agrees upon receipt of such notice to make all future payments to BED, until notified otherwise by BED. BED may apply all such rents, income and profits to the Borrower's indebtedness under the BED Loan, and to the payment of all expenses to operate, manage or maintain the leased premises, in such priority as BED may in its sole discretion determine.

6. At its sole option, BED, in event of default by Borrower, has the right, but not the duty, to incur and pay any reasonable expenses, for the account of the Borrower, for the payment of any taxes, charges, liens, assessments and encumbrances with relation to the

Lease, and add any amounts so paid to the principal sum due under the BED Loan. Borrower agrees that if an event of default occurs, in addition to any other amounts that may be due from the Borrower, it will pay BED an amount equal to the costs and expenses, including reasonable expert and attorneys fees, incurred by BED in enforcing its rights under this Assignment or the Lease.

7. In the event of default by the Lessee under the terms of the Lease, Borrower has the right to terminate the Lease in accordance with its terms, provided, however, that Borrower shall first give BED sixty (60) days written notice of such default, and the right, at BED's sole option, during such period to cure such default. Borrower agrees that during such period, Borrower will take no action to enforce its claims arising from Lessee's default without the prior written consent of BED.

8. The exercise or nonexercise of the options granted to BED in this Assignment shall not be considered a waiver of any default by the Borrower under the Loan Documents. The rights and remedies herein conferred upon BED shall be cumulative and not alternative and shall be in addition and not in substitution of or in derogation of rights and remedies conferred by this Assignment, the Loan Documents or any other documents between the parties thereto or hereto or by any applicable law. The failure of BED to enforce strict performance of any covenant, promise, or condition herein contained shall not operate as a waiver of the right of BED thereafter to require that the terms hereof be strictly performed according to the tenor thereof. No delay or failure by BED in the exercise of any right or remedy shall constitute a waiver thereof, and no single or partial exercise by BED of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy.

9. Borrower agrees to indemnify and hold BED, its officers, agents and employees, harmless from and against any and all actions, suits, damages, liability or other proceedings arising from or connected with this Assignment and to pay any costs and reasonable attorney fees incurred by BED, its officers, agents (including BankWest) and employees in connection with any such action, suit, claim for damages or liability. This section does not require the Borrower to be responsible for or defend against claims or damages arising solely from errors or omissions of BED, its officers, agents or employees.

10. This Assignment shall cease upon payment in full of the BED Loan.

11. The Borrower and Lessee specifically acknowledge and agree that nothing in this Assignment of Lease & Rents is intended to create any duty or obligation on the part of BED to perform any of Borrower's duties or obligations pursuant to the Lease as Lessor.

12. Anything in the Lease to the contrary notwithstanding, Lessee acknowledges and agrees that Lessee's rights under the Lease, including the leasehold interest granted thereunder and any rights of first refusal, options to purchase, or other, similar rights granted thereunder, are hereby made subordinate to the lien and/or security interest in the real and/or personal property subject to the Lease granted to BED by Lessor as security for the BED Loan, as well as any renewals, extensions or re-financing of the BED Loan. The subordination provided for

in this paragraph 12 is self-executing, but in the event BED so requests, Lessee will execute and deliver to BED whatever additional instruments may be requested for the purpose of further documenting the subordination provided for herein. If Lessee fails to do so within ten (10) days after demand in writing, Lessee does hereby make, constitute and irrevocably appoint BED as Lessee's attorney-in-fact and in its name, place and stead so to do.

13. This Assignment shall be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit arising out of related to this Agreement must be brought in Circuit Court in and for Hughes County, South Dakota, or, at BED's option, any other court of the Unified Judicial System of the State of South Dakota. Each of the parties hereby irrevocably consents and submits to the jurisdiction of the courts of the Unified Judicial System of the State of South Dakota.

14. This Assignment may not be amended except in writing, which writing shall be expressly identified as a part hereof or thereof, and which writing will be signed by an authorized representative of each of the parties.

15. In the event that any provision of this Assignment shall be held unenforceable or invalid by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

16. Any required or permitted notice or other communication under this Agreement shall be in writing and addressed as follows:

If to BED:                   State of South Dakota  
                                  Board of Economic Development  
                                  Governors Office of Economic Development  
                                  711 East Wells Avenue  
                                  Pierre, SD 57501-3369

BankWest, Inc.  
P.O. Box 998  
Pierre, S.D. 57501

If to Borrower:

If to Lessee:

Notices required or permitted under this Assignment shall be given by and to the Commissioner, Governor's Office of Economic Development and Mark Litton, Senior Vice President of BankWest on behalf of BED, to the Borrower or \_\_\_\_\_ on behalf of the Borrower, and to the Lessee or \_\_\_\_\_ on behalf of the Lessee, or such authorized designees as either party may from time to time designate in writing. Any such notice or other communication, if mailed, shall be sent by registered or certified mail, return receipt requested. Notices or communications to or between the parties

shall be deemed to have been delivered when mailed by registered or certified mail or, if personally delivered, when received by such party

17. Terms used herein and defined in the Loan Agreement between Borrower and BED shall have the same meaning in this Assignment unless the context clearly requires otherwise.

18. Time is of the essence in the performance of the covenants, terms and conditions contained in this Assignment. This Assignment shall be binding upon and inure to the benefit of the parties hereto and their respective transferees, successors and assigns except that neither Borrower or Lessee may assign or transfer their respective rights or obligations hereunder without prior written consent of BED.

IN WITNESS WHEREOF, BED, Borrower and Lessee have caused this Assignment to be duly executed the date first above written.

SOUTH DAKOTA BOARD OF  
ECONOMIC DEVELOPMENT

BY: \_\_\_\_\_

Tony Klein

TTS: Treasurer

(SEAL)

ACKNOWLEDGMENT

STATE OF SOUTH DAKOTA)

) SS

COUNTY OF HUGHES )

On this the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me, the undersigned, personally appeared Tony Klein known to me to be the Treasurer of the South Dakota Board of Economic Development that is described in and that executed the within instrument, having authority to execute such instrument and acknowledged to me that such public entity executed the same.

In witness whereof I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

(SEAL)

Notary Print Name: Sam Helma

My Commission Expires: \_\_\_\_\_



Lessee

(SEAL)

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

ATTEST:

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

*NOTE: Corporate parties must execute this Assignment, in corporate name, by duly authorized officer, and seal must be affixed and duly attested; Limited Liability Company parties must execute this Assignment by duly authorized Manager or by all members; Partnership parties must execute this Assignment in firm name, together with signature of an authorized general partner.*

CORPORATE ACKNOWLEDGMENT

STATE OF SOUTH DAKOTA )

) SS

COUNTY OF \_\_\_\_\_ )

On this the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me, the undersigned, personally appeared \_\_\_\_\_ and \_\_\_\_\_ known to me to be the \_\_\_\_\_ and \_\_\_\_\_ respectively, of the corporation that is described in and that executed the within instrument, having authority to execute such instrument and acknowledged to me that such corporation executed the same.

In witness whereof I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

(SEAL)

Notary Print Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_