

**BOARD OF ECONOMIC DEVELOPMENT  
GOED CONFERENCE ROOM, 711 E WELLS AVE, PIERRE, SD  
TUESDAY, JANUARY 7, 2025, 10:00 A.M., CT**

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**BOARD OF ECONOMIC DEVELOPMENT  
GOED CONFERENCE ROOM, 711 E WELLS AVE, PIERRE, SD  
TUESDAY, JANUARY 7, 2025, 10:00 A.M., CT**

Please note times:

Call To Order: \_\_\_\_\_

Executive Session \_\_\_\_\_

Regular Session \_\_\_\_\_

Adjournment \_\_\_\_\_

**Board  
Members:**

**Motion Sheet**

**Jeff Erickson**

**Matt Judson**

(STAFF RECOMMENDATIONS)

**Sharon  
Casey**

**Agenda**

Motion to approve the agenda as presented.

**Mike Luken**

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

**Don  
Kettering**

**Minutes**

**Tom Jones**

Motion to approve the minutes of the meeting held December 11, 2024 and December 30, 2024 as presented.

**Reed Kessler**

**Joy Nelson**

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

**Eric Yunag**

**REDI and SD Works Forms**

Motion to approve the REDI and SD Works forms as presented.

**Kevin  
Tetzlaff**

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

**David Emery**

**Conflicts of Interest Disclosures**

**Craig  
Christianson**

**Public Comments**

**Brad Moore**

**Commissioners Comments**

**Non-Voting**

**Executive Session**

**Senator  
Reynold  
Nesiba**

Motion to enter into executive session to discuss contract matters and commercial and financial information relating to loan and other assistance to applicants. SDCL 1-16G-11

**Senator  
Casey  
Crabtree**

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

**Chairman: The Chairman declared the board out of executive session at [        a.m.].**

**Representative  
Kameron  
Nelson**

**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 was taken.**

**Representative  
Neal Pinnow**

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

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

**Reviews**

**South Dakota Division of Banking - Report from Examination**

Motion to accept the exam as presented.

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

**Old Business**

**City of Hartford**

Motion to approve the LIIP grant agreement extension to June 30, 2025.

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

**Centerville Manufacturing, LLC**

Motion to approve changing Centerville Manufacturing, LLC to Riverview Manufacturing, LLC.

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

**City of Lake Norden**

Motion to approve the LIIP grant agreement extension to March 31, 2025.

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

**City of North Sioux City**

Motion to approve the LIIP grant agreement extension to December 31, 2026.

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

**Dakota Protein Solutions, LLC**

Motion to approve a REDI commitment extension to March 8, 2025 and changing a corporate guaranty.

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

**GF Buche Co.**

Motion to approve a SD Works commitment extension to March 13, 2025.

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

**MaSco 8, LLC**

Motion to approve a SD Works commitment extension to March 13, 2025.

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

**IMP Properties, LLC**

Motion to approve a REDI and SD Works commitment extension to April 9, 2025.

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

**Turner County**

Motion to approve the LIIP grant agreement extension to April 30, 2025.

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

**New Business**

**Stay' N' Play, LLC**

Motion to approve a SD Works loan request from Stay' N' Play, LLC in the amount up to \$500,000. Secured by a sole second position on real estate, a sole second UCC during the construction phase and personal guaranties from all principals with ownership.

The loan is approved according to the terms and conditions of the commitment letter; all documents may be executed on behalf of the Board by the Commissioner of the Governor's Office of Economic Development or the Commissioner's designee.

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

**Reinvestment Payment Program**

**Plainview Dairy, LLC**

Motion to approve the Reinvestment Payment Program grant application to Plainview Dairy, LLC recommended by staff.

Based on the representations and project description contained in the application for reinvestment payment, including but not limited to the representations concerning jobs created or retained and wages and benefits to be paid, a new or expanded facility reinvestment payment of up to 51% of the actual State Sales/Use Tax but not to exceed \$1,530,000, paid on eligible project costs which are not to exceed \$84,750,000, is approved for Plainview Dairy, LLC. The project as completed must be substantially similar to the project described in the application and must comply with the deadlines set out SDCL Ch. 1-16G and ARSD Ch. 68:02:07. The board has considered the factors set out in SDCL 1-16G-59 and ARSD 68:02:07:04 and the likelihood the project would not be located in South Dakota absent the reinvestment payment. Staff is authorized to issue a permit consistent with the application, this approval, and the applicable provisions of SDCL Ch. 1-16G and ARSD Ch. 68:02:07.

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

**Adjourn**

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

A

**BOARD OF ECONOMIC DEVELOPMENT  
GOED CONFERENCE ROOM, 711 E WELLS AVE, PIERRE, SD  
TUESDAY, JANUARY 7, 2025, 10:00 A.M., CT**

***The public may participate by the following:***

Call In Number: (669) 900-9128    Meeting ID: 96677988449    Participant Id: #    Passcode: 421401  
[www.zoom.com](http://www.zoom.com)    Meeting ID: 96677988449    Passcode: 421401

**REGULAR SESSION AGENDA**

10:00 A.M.                    Call to Order, Chairman Jeff Erickson

10:05 A.M.                    **Agenda**  
RECOMMENDED ACTION: Motion to approve the agenda as provided or amended.

**Minutes**  
RECOMMENDED ACTION: Motion to approve the minutes of December 11, 2024 and December 30, 2024, as presented.

**REDI and SD Works Forms**  
RECOMMENDED ACTION: Motion to approve the REDI and SD Works forms as presented.

**Conflicts of Interest Disclosures**

**Public Comments**

10:15 A.M.                    **Commissioner's Comments**

10:20 A.M.                    **Executive Session**  
RECOMMENDED ACTION: Motion to enter into executive session to discuss contractual matters, and to discuss commercial and financial information relating to loan and other assistance applicants. SDCL 1-16G-11

11:00 A.M.                    **Report from Executive Session**  
RECOMMENDED ACTION: Approve Chairman's report from Executive Session.

**Other Motions**  
South Dakota Division of Banking Exam  
City of Hartford  
Centerville Manufacturing, LLC  
City of Lake Norden  
City of North Sioux City  
Dakota Protein Solutions, LLC  
GF Buche Co. and MaSco 8, LLC  
IMP Properties, LLC  
Turner County

Stay' N' Play, LLC  
Reinvestment Payment Program  
Plainview Dairy, LLC

### **Adjournment**

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.

B



**BOARD OF ECONOMIC DEVELOPMENT  
GOED CONFERENCE ROOM, 711 E WELLS AVE, PIERRE, SD  
WEDNESDAY, DECEMBER 11, 2024, 10:00 A.M., CT**

Members Present

Chairman Jeff Erickson, Don Kettering, Matt Judson, Sharon Casey, Mike Luken, Tom Jones, Kevin Tetzlaff, David Emery, Craig Christianson and Brad Moore

Staff Present

Commissioner Joe Fiala, Deputy Commissioner Jesse Fonkert, Ashley Moore, Jack Valentine, Stephanie Deyo, Lexxy Phillips, Nick Rabern, Nadine Agneau, Dale Knapp, Adam Molseed, Alex Kahnke, Jake Salmen and Alissa Sendelbach

Other Staff Present

Shawn Hofer – BankWest, Inc.

Others Present

Bob Mercer – Keloland News

Call to Order

Chairman Erickson called the meeting to order at 10:00 a.m.

Agenda

A motion was made by Brad Moore and seconded by Matt Judson to approve the agenda as presented.

Motion passed by a voice vote.

Minutes

A motion was made by Don Kettering and seconded by Sharon Casey to approve the minutes of the meeting held November 13, 2024 and November 26, 2024 and December 2, 2024, as presented.

Motion passed by a voice vote.

REDI and SD Works Application and Forms

A motion was made by Mike Luken and seconded by Don Kettering to approve the REDI and SD Works application and forms as presented.

Motion passed by a voice vote.

Bill

A motion was made by Craig Christianson and seconded by Brad Moore to approve the bill payable to Department of Legislative Audit in the amount of \$35,786 with the Board's acknowledgement and GOED's disclosure that this bill was prepaid contradicting SDCL 1-16G-16.1

Motion passed by a voice vote.

Conflicts Disclosure

Chairman Erickson opened the floor for board members to identify potential conflicts under SDCL Chapter 3-23. Jeff Erickson declared a potential conflict with Roto Mold, LLC due to banking relations and would not partake in the discussion or vote on the project. Sharon Casey

declared a potential conflict with the Howard Building due to family relations and would not partake in the discussion or vote on the project. The Chairman opened up the floor for questions and discussion concerning the potential conflicts; there were none from the board members and no objection to proceeding with the agenda.

Public Comments – none

#### Executive Session

A motion was made by Sharon Casey and seconded by Kevin Tetzlaff to enter into Executive Session at 10:21 a.m. to discuss contractual matters, and to discuss commercial and financial information relating to loan and other assistance applicants. SDCL 1-16G-11  
Motion passed by a voice vote.

#### Executive Session Report

The Chairman declared the board out of Executive Session at 10:48 a.m. The Chairman reported that the Board of Economic Development entered into Executive Session to discuss contract matters, commercial and financial information relating to loan and other assistance to applicants. No action was taken.

A motion was made by Mike Luken and seconded by Don Kettering to approve the Chairman's report from Executive Session.  
Motion passed by a voice vote.

#### Grant Reviews

Local Infrastructure Improvement Program (Grant County Development Corporation, City of Hartford), Reinvestment Payment Program (Brightmark Full Circle RNG, LLC, Brightmark Mill Valley RNG, LLC, Moody Biogas, LLC, Solventum and High Plains Processing, LLC) and South Dakota Jobs Program (Red's All Natural, LLC)

A motion was made by Matt Judson and seconded by Brad Moore to approve the grant reviews as presented.  
Motion passed by a voice vote.

#### Old Business

##### CCLLA, LLC

A motion was made by Mike Luken and seconded by Don Kettering to approve increasing the percentage of the SD works project.  
Motion passed by a voice vote.

#### Howard Building

A motion was made by David Emery and seconded by Tom Jones to accept an offer for the purchase of the property at 606 Industrial Ave., Howard, SD.  
Motion passed by a voice vote with Sharon Casey abstaining.

#### Lake Area Improvement Corporation

A motion was made by Craig Christianson and seconded by Sharon Casey to approve the LIIP grant agreement expiration date to June 30, 2025.  
Motion passed by a voice vote.

#### Maxwell Construction, LLC

A motion was made by Brad Moore and seconded by Kevin Tetzlaff to approve the SD Works commitment extension to April 11, 2025.

Motion passed by a voice vote.

Roto Mold, LLC

A motion was made by Craig Christianson and seconded by Mike Luken to approve the collateral changes as presented.

Motion passed by a voice vote with Jeff Erickson abstaining.

Royal Canin, US

A motion was made by Mike Luken and seconded by Kevin Tetzlaff to approve extending the RPP permit extension to June 20, 2025.

Motion passed by a voice vote.

Harris Machine Company

A motion was made by Don Kettering and seconded by Sharon Casey to approve the SD Works commitment extension to February 8, 2025.

Motion passed by a voice vote.

New Business

Harris Machine Company

A motion was made by Craig Christianson and seconded by Kevin Tetzlaff to approve a SD Works loan request from Harris Machine Company in the amount up to \$1,326,749. Secured by a sole first position on specific equipment, personal guaranties from principals with 10% or more ownership and a corporate guaranty.

The loan is approved according to the terms and conditions of the commitment letter; all documents may be executed on behalf of the Board by the Commissioner of the Governor's Office of Economic Development or the Commissioner's designee.

Motion passed by a voice vote.

HuHu, LLC

A motion was made by Mike Luken and seconded by David Emery to approve a SD Works loan request from HuHu, LLC in the amount up to \$760,000. Secured by a sole second lien position on real estate, a UCC filing, personal guaranties from principals with 10% or more ownership, a corporate guaranty and equity contribution as presented.

The loan is approved according to the terms and conditions of the commitment letter; all documents may be executed on behalf of the Board by the Commissioner of the Governor's Office of Economic Development or the Commissioner's designee.

Motion passed by a voice vote.

Adjourn

A motion was made by Don Kettering and seconded by Kevin Tetzlaff to adjourn the meeting at 10:57 a.m.

Motion passed by a voice vote.

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Matt Judson, Treasurer

**CREDIT COMMITTEE  
GOED CONFERENCE ROOM, 711 E WELLS AVE, PIERRE, SD  
MONDAY, DECEMBER 30, 2024, 11:00 A.M. CT**

Members Present

Chairman Jeff Erickson, Matt Judson and Craig Christianson

Staff Present

Commissioner Joe Fiala, Deputy Commissioner Jesse Fonkert, Ashley Moore, Jack Valentine, Nick Rabern, Lexxy Phillips, Nadine Agneau, Adam Molseed and Curtis Egan

Call to Order

Chairman Erickson called the meeting to order at 11:00 a.m.

Agenda

A motion was made by Craig Christianson and seconded by Matt Judson to approve the agenda as presented.

Motion passed by a voice vote.

Conflicts Disclosure

Conflicts Disclosure – Chairman Erickson opened the floor for board members to identify potential conflicts under SDCL Chapter 3-23. Jeff Erickson declared a potential conflict with Dakota Protein Solutions, LLC due to banking relations and he would not partake in the discussion or vote on the project. The Chairman opened up the floor for questions and discussion concerning the potential conflicts; there were none from the board members and no objection to proceeding with the agenda.

Public Comments- none

Executive Session

A motion was made by Matt Judson and seconded by Craig Christianson to enter into Executive Session at 11:02 a.m. to discuss contract matters and commercial and financial information relating to loan and other assistance to applicants. SDCL 1-16G-11.

Motion passed by a voice vote.

Executive Session Report

The Chairman declared the Credit Committee out of Executive Session at 11:17 a.m. The Chairman reported that the Board of Economic Development Credit Committee entered into Executive Session to discuss contract matters and commercial and financial information relating to loan and other assistance to applicants. No action was taken.

A motion was made by Craig Christianson and seconded by Matt Judson to approve the Chairman's report from executive session.

Motion passed by a voice vote.

Old Business

Centerville Manufacturing, LLC

Credit Committee recommends to the board approving changing Centerville Manufacturing, LLC to Riverview Manufacturing, LLC, adding a corporate guaranty and collateral changes as presented.

A motion was made by Craig Christianson and seconded by Matt Judson.  
Motion passed by a voice vote.

Dakota Protein Solutions, LLC

Credit Committee recommends to the board approving a REDI commitment extension to March 8, 2025.

A motion was made by Craig Christianson and seconded by Matt Judson.  
Motion passed by a voice vote with Jeff Erickson abstaining.

GF Buche Co.

Credit Committee recommends to the board approving a SD Works commitment extension to March 13, 2025.

A motion was made by Craig Christianson and seconded by Matt Judson.  
Motion passed by a voice vote.

MaSco 8, LLC

Credit Committee recommends to the board approving a SD Works commitment extension to March 13, 2025.

A motion was made by Craig Christianson and seconded by Matt Judson.  
Motion passed by a voice vote.

IMP Properties, LLC

Credit Committee recommends to the board approving a SD Works and REDI commitment extension to April 9, 2025.

A motion was made by Craig Christianson and seconded by Matt Judson.  
Motion passed by a voice vote.

New Business

Stay' N' Play, LLC

Credit Committee recommends to the board approving the SD Works application as presented.

A motion was made by Craig Christianson and seconded by Matt Judson.  
Motion passed by a voice vote.

Adjourn

A motion was made by Craig Christianson and seconded by Matt Judson to adjourn the meeting at 11:21 a.m.

Motion passed by a voice vote.

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Matt Judson, Treasurer

C



**SOUTH DAKOTA**  
GOVERNOR'S OFFICE OF ECONOMIC DEVELOPMENT

COMMITMENT LETTER

REDI FUND LOAN NO. \_\_\_\_\_

[DATE]

[APPLICANT NAME]

Attn: [APPLICANT REP, INCLUDING TITLE (E.G., MEMBER)]

[ADDRESS]

[ADDRESS]

Dear \_\_\_\_\_:

The Application of [APPLICANT NAME] ("Applicant") for a loan from the Revolving Economic Development and Initiative Fund (REDI) dated [DATE OF APPLICATION] has been approved by the Board of Economic Development ("BED") pursuant to SDCL Chapters 1-16G and 1-33, as amended, and ARSD Article 68:02 (the "BED Loan"). BED agrees to make a BED Loan to Applicant upon the following terms and conditions:

1. The total principal amount of the BED Loan shall not exceed the lesser of \$[MAX DOLLAR AMOUNT] or [MAX PERCENTAGE]% of total Project costs as described in the Application. The principal amount shall be repaid, together with interest thereon at the rate of [INTEREST RATE IN WORDS] percent per annum([INTEREST RATE IN NUMBERS])% , in fifty-nine (59) equal installments (based on a level amortization of \_\_\_ months) beginning thirty (30) days from the date of closing, with the final payment of principal and interest due at the end of sixty (60) months from the date of closing.

2. 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. Under that Loan Servicing Agreement, 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. The Applicant or an authorized representative must, prior to disbursement of any funds, properly execute and return to BankWest or, as applicable, provide to BankWest the following documents (the "Loan Documents"), together with such other documents as BED may require.

- Loan Agreement
- Promissory Note
- Mortgage
- Security Agreement - Applicant
- UCC-1 Financing Statement
- UCC-1 Rider
- Severance Agreement, if applicable
- Personal Guaranty from [GUARANTOR NAME]
- Corporate Guaranty from [GUARANTOR NAME]
- Assignment of Life Insurance
- Mortgage - Personal Guaranty
- Security Agreement - Personal Guaranty
- Financing Statement - Personal Guaranty
- Title Insurance Policy
- Survey of Real Property
- Appraisal of Real Property
- Mechanics & Materialmen Lien Waivers/Proof of Payment
- Environmental Assessment of Real Property
- Assignment of Lease (Acceptable lease with a minimum term of sixty months from the date of loan closing)
- Other

The documents will, as applicable, be prepared or requested by BankWest and will be forwarded by BankWest to the Applicant for execution after BED receives a copy of this Commitment Letter signed by the Applicant or an authorized representative and the Applicant notifies BankWest the Applicant is ready to close the loan. No disbursements will be made until all BED Loan Documents and other documents required by BED are properly executed and returned. Documents should be sent to BankWest at the following address:

BankWest, Inc.  
 Attn: Shawn Hofer  
 P.O. Box 998  
 Pierre, S.D. 57501  
 (605) 945-3703

**3. PLEASE NOTE THE BURDEN IS ON THE APPLICANT TO NOTIFY BANKWEST IN WRITING WHEN THE APPLICANT IS READY TO CLOSE THE BED LOAN. THE APPLICANT MUST PROVIDE SUCH NOTIFICATION AT LEAST THIRTY (30) DAYS PRIOR TO THE PROPOSED LOAN CLOSING DATE AND, IN ANY EVENT, AT LEAST THIRTY (30) DAYS PRIOR TO THE EXPIRATION OF THE LOAN COMMITMENT DESCRIBED HEREIN. THE COMMITMENT TO MAKE THE LOAN WILL EXPIRE IF THE LOAN DOES NOT CLOSE WITHIN THE DEADLINE SET FORTH HEREIN.**



4. The Employment Agreement will require the creation and or retention of not less than \_\_\_ full-time employee positions as described in the Application.

5. If Applicant is a corporation or limited liability company, Applicant must also prior to disbursement of any funds provide the following documents to BankWest:

(a) A certificate of good standing or similar instrument, certified by the Secretary of State of the state of incorporation or organization, as well as a copy of the Articles of Incorporation, Articles of Organization, or similar document, with amendments, on file in that office;

(b) If Applicant was incorporated or organized under the laws of another State of the United States or a foreign nation, applicant must provide a Certificate of Authority certified by the Secretary of State of South Dakota;

(c) A certified copy of the By-Laws or Operating Agreement of the Applicant presently in force; and

(d) A certified copy of the resolution of the board of directors, members or other governing entity of the Applicant authorizing the execution of the Loan Documents.

If the Applicant is a general partnership or a limited partnership, all of the Loan Documents must be executed by all of the general partners, or Borrower must provide proof of authority acceptable to BED. If the Borrower is a corporation, the Borrower must also provide proof reasonably acceptable to BED that the Borrower has, to the extent applicable, complied with the notice and meeting requirements of SD Constitution Art. XVII, Sec. 8.

6. The BED Loan must be secured by the following (the “Collateral”):

A [sole][shared] [INSERT REQUIRED LIEN PRIORITY] lien position on real property generally described as [PROPERTY LEGAL OR ADDRESS]. The amount secured by the commercial lender’s [shared][first priority] lien position may not exceed principal in the amount of \$\_\_\_\_\_, plus interest, protective advances, reasonable attorney fees, and other costs of collection.

A [sole][shared] [INSERT REQUIRED LIEN PRIORITY] lien position on [all chattel

assets][DESCRIBE SPECIFIC CHATTEL ASSETS, E.G., EQUIPMENT PURCHASED FOR THE PROJECT]. The amount secured by the commercial lender's [shared][first priority] lien position may not exceed principal in the amount of \$ \_\_\_\_\_, plus interest, protective advances, reasonable attorney fees, and other costs of collection.

- A [sole][shared] [INSERT REQUIRED LIEN PRIORITY] Assignment of Lease and Rents from all tenants (acceptable lease with a minimum term of sixty months from the date of loan closing). The amount secured by the commercial lender's shared first lien position may not exceed principal in the amount of \$ \_\_\_\_\_, plus interest, protective advances, reasonable attorney fees, and other costs of collection.

BED may require the commercial lender to execute an Intercreditor Agreement or similar agreement to document the lien positions and amounts secured for the respective lenders.

7. The Applicant must comply with the following special conditions:

- Provide BED with evidence of property insurance coverage on the Collateral in amounts sufficient to protect the interests of BED with lien holder and LENDER LOSS PAYABLE provisions in favor of:

South Dakota Board of Economic Development  
Governor's Office of Economic Development  
711 Wells Ave.  
Pierre, S.D. 57501-3369.

- Provide BED with the proper legal description of any real property being mortgaged as collateral, to include a survey performed by a surveyor licensed in the State of South Dakota if requested by BED, and an itemized list of personal property being taken as collateral, including serial numbers if applicable.

- Provide proof of access to the subject real estate and, if necessary, an easement from the adjoining landowner.

- Provide BED with evidence of the equity contribution of at least [PERCENTAGE OF TOTAL PROJECT COSTS][SPECIFIC DOLLAR AMOUNT] and payment of the total Project costs. The BED Loan will not close or fund until the Project is complete.

Provide BED with serial numbers of all chattel collateral with a value of \$5,000.00 or more.

Provide BED with mechanic's and materialmen lien waivers, and such other lien waivers as BED and Lender may require.

Provide BED with a commitment letter or other satisfactory evidence of other funding sources.

Provide BED with updated financial information for Applicant within 60 days prior to closing.

[FOR TRADITIONAL REDI-TAKE OUT FINANCING] Within 90 days of the one-year anniversary of closing the BED Loan, provide a financial analysis comparing the projected income and expenses for the first year of the BED Loan (as provided with the Application) with actual income and expenses for the same period, including an explanation of any material differences between projected and actual income and expenses.

[FOR REDI LOANS THAT ARE NOT TRADITIONAL TAKE-OUT FINANCING] Within 90 days of the one-year anniversary of the Project becoming operational, provide a financial analysis comparing the projected income and expenses for the first year of Project operations (as provided with the Application) with actual income and expenses for the same period, including an explanation of any material differences between projected and actual income and expenses. As used in this paragraph, the term "operational" means the Project is regularly engaged in the business activities described in the Application.

Provide BED with non-standard covenants put in place by the participating commercial lender, which covenants may, at BED's discretion, be incorporated into the BED Loan documents.

8. No condition or covenant stated herein may be waived without the prior written consent of BED. BED shall have no obligation to make any disbursement to Applicant unless and until all of the conditions set forth above, as well as any other conditions which BED in its sole and exclusive discretion may see fit to impose, have been met to BED's satisfaction.

9. By execution of this letter, Applicant agrees, upon demand by BED, to reimburse BED for any and all expenses incurred, or which may hereafter from time to time be incurred, by BED or its agents, including reasonable attorney's fees, appraisal fees or lender's title insurance policy, in connection with or by reason of Applicant's application for, and the making and administration of, the BED Loan. Applicant agrees to be responsible for such costs and expenses whether or not the BED Loan contemplated by this Commitment Letter closes. Applicant further

agrees to pay an origination fee equal in an amount equal to one percent (1%) of the actual loan amount.

10. This Commitment Letter is good for a period of 180 days from the date hereof, and will lapse at that time if not accepted in writing by the Applicant. **In any event, unless extended by BED, the commitment to make the loan will lapse one year from the date hereof if the loan has not funded. Requests for extensions must be in writing and submitted prior to the loan application deadline established by BED that is prior to the date this commitment would otherwise expire.** BED reserves the right to withdraw this Commitment Letter at any time if any of the conditions of this Commitment Letter or those conditions set forth in ARSD 68:02:01:43 have not been met to BED's satisfaction.

If you wish to proceed with the BED Loan upon the terms and conditions set forth above, please indicate the acceptance of the Applicant by a duly authorized signature below. If the Applicant is a corporation, limited liability company or partnership, please attach appropriate proof of authority.

If you have any questions, please contact [LOAN OFFICER NAME/PHONE/EMAIL]. Thank you for your interest in the REDI Fund program and in South Dakota's future.

Sincerely yours,

SOUTH DAKOTA BOARD OF ECONOMIC DEVELOPMENT

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

Applicant agrees to the terms above set forth.

[APPLICANT NAME]

(SEAL)

BY: \_\_\_\_\_  
ITS: \_\_\_\_\_  
DATE: \_

ATTEST:

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

Upon execution return to GOED at 711 E. Wells Ave., Pierre, SD, 57501.

SOUTH DAKOTA GOVERNOR'S OFFICE OF ECONOMIC DEVELOPMENT

711 EAST WELLS AVENUE PIERRE SOUTH DAKOTA 57501 | P 605 773 4633 | T 800 872 6190 | SDGOED.COM

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

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

**STATE OF SOUTH DAKOTA  
BOARD OF ECONOMIC DEVELOPMENT  
REVOLVING ECONOMIC DEVELOPMENT  
AND INITIATIVE FUND (REDI)**

**LOAN AGREEMENT**

LOAN AGREEMENT made and entered into this \_\_\_\_ day of December, 20\_\_, by and between the South Dakota Board of Economic Development, 711 Wells Avenue, Pierre, South Dakota 57501 (herein "BED"), and [COMPANY], [ADDRESS] (herein the "Borrower").

WHEREAS, the South Dakota Board of Economic Development is a board created pursuant to SDCL 1-16G-1 for the purpose of promoting economic development in South Dakota, and the South Dakota Governor's Office of Economic Development acting pursuant to ARSD 68:02:01:23, provides administrative support to BED in the application, processing, monitoring, and servicing of loans made by BED; and,

WHEREAS, the Borrower made an application (the "Application") dated \_\_\_\_\_, 20\_\_ to BED for a loan from the Revolving Economic Development and Initiative Fund (REDI), which Application was approved by BED pursuant to SDCL Chapters 1-53 and 1-16G, as amended, and ARSD Article 68:02 (the "BED Loan"); and,

WHEREAS, BED has by duly adopted resolution designated one of the members of the Board of Economic Development to execute this Loan Agreement; has designated the Commissioner, Governor's Office of Economic Development (the "Commissioner"), and BankWest, Inc., a state chartered financial institution, of Pierre, South Dakota (BankWest), as its representatives hereunder; has authorized the Commissioner to act on its and the State's behalf hereunder; has empowered the Commissioner to delegate his duties in connection herewith to those persons under his supervision as he deems appropriate; has entered into a Loan Servicing Agreement with 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 has authorized BankWest to act on behalf of BED consistent with the terms of the Loan Servicing Agreement and the Borrower's BED Loan Documents;

NOW THEREFORE it is mutually agreed as follows:

1. In consideration of the Borrower's execution and delivery of a Promissory Note dated the date hereof, and observance and performance of the covenants, terms and conditions hereof, and in reliance on the Borrower's representations made herein, BED, through its duly designated agent, agrees to loan to Borrower, from the Revolving Economic Development and Initiative Fund the principal sum of [WRITTEN AMOUNT] (\$NUMERIC AMOUNT), according to the terms

and conditions set forth in this Loan Agreement and the Promissory Note of even date herewith, which is incorporated herein by reference.

2. In consideration of BED's agreement to loan said funds to the Borrower, the Borrower has made, executed and delivered to BED a Promissory Note dated the date hereof, in the principal sum of [WRITTEN AMOUNT] (\$NUMERIC AMOUNT), due and payable, together with interest thereon at the rate of two percent (NUMERIC %) per annum, simple interest, according to the terms and conditions set forth therein and in this Loan Agreement.

3. As security for the repayment of the BED Loan above described, the Borrower agrees as follows:

- a. To mortgage to BED the real property, buildings, and improvements owned by the Borrower as described with particularity in the Mortgage of even date which is incorporated herein by reference; and
- b. To grant to BED a security interest in and to the Collateral described with particularity in the Security Agreement of even date which is incorporated herein by reference; and,
- c. To provide BED with Guaranty Agreements from [PERSONAL GUARANTORS], [CORPORATE GUARANTORS] of even date, which are incorporated herein by reference.

4. Borrower warrants and represents as follows:

- a. The Borrower is duly organized and existing under the laws of the State of South Dakota, or under the laws of another state or country and is authorized to transact business in the State of South Dakota; has taken all proper action, including the adoption of a resolution, to authorize the execution, delivery and performance of its obligations under this Loan Agreement, the Promissory Note, and any other Loan Documents (hereinafter referred to jointly as the "Loan Documents"), and the incurring of the debt represented by the Promissory Note; and has the power and authority to enter into and consummate all transactions contemplated by the Loan Documents, and to carry out its obligations hereunder and thereunder.
- b. There is no action, suit, proceeding, inquiry or investigation at law or equity, by or before any judicial or administrative court, agency or body, pending or threatened against the Borrower wherein an unfavorable decision, ruling, or finding would materially and adversely affect the validity or enforceability of any of the Loan Documents.
- c. Neither the execution and delivery of the Loan Documents, the consummation of the transactions contemplated thereby, nor the fulfillment of, or compliance with the provisions of the Loan Documents will conflict with or result in the breach of any restriction, agreement or instrument to which the Borrower is a party, or by which it is bound, or result in the creation or imposition of any lien of any nature upon any of the

property of the Borrower under the terms of any such instrument or agreement, nor will such action result in the violation of any provision of any law, ordinance, governmental order to which the Borrower, its property or operations are subject.

- d. No event of default has occurred in any agreement or instrument as to any outstanding indebtedness of the Borrower for money borrowed and no condition, event or act exists which, with the lapse of time or the giving of notice, would constitute an event of default under any such agreement or instrument. The Borrower is not in violation of any term of any restriction, agreement, indenture, ordinance, resolution, charter, or other instrument to which it is a party or which it or its property may be bound, which violation would materially and adversely affect the transactions contemplated hereby or the compliance by the Borrower with the terms of the Loan Documents.
- e. The Borrower has obtained or made all permits, filings and approvals required to the date of this Loan Agreement by any governmental body or officer for the making and performance by the Borrower of its obligations under the Loan Documents or for the Project, the financing thereof or the reimbursement of the Borrower for the costs thereof. No consent, approval or authorization of, or filing, registration or qualification with, any governmental authority (other than those, if any, already obtained) is required on the part of the Borrower as a condition to entering into the Loan Documents and the performance of the Borrower's obligations hereunder and thereunder.
- f. The Loan Documents to which the Borrower is a party are legal, valid and binding obligations and agreements of the Borrower, enforceable against the Borrower according to their terms, except as the enforceability thereof may be limited by laws relating to bankruptcy, insolvency or other similar laws affecting creditors' rights generally and general principles of equity.
- g. The Project consists of the facilities, improvements and activities described in Exhibit A, attached hereto, and by this reference incorporated herein, as such Exhibit may be amended from time to time.
- h. The funds provided pursuant to this Loan Agreement do not exceed 37.5 percent of the total Project cost as described in the Borrower's Application.
- i. There is no fact that the Borrower has not specifically disclosed in writing to BED that materially and adversely affects or will materially and adversely affect the properties, operations and finances of the Borrower, its status as a legal entity in good standing, or its ability to perform its obligations under the Loan Documents, or to pledge any revenues or property to the repayment of the BED Loan
- j. The Borrower certifies that there has been no material adverse change since the date of the Borrower's Application in the financial condition, organization, operation, business prospects, property, or the personnel of the Borrower; and that the information contained in the Application, and other information the Borrower provided to BED does not contain any material misrepresentations or misstatements of fact.



k. The Borrower further warrants and represents that it:

- (1) has not received any notice or otherwise learned of any environmental liability which would individually or in the aggregate constitute a Material Adverse Occurrence arising in connection with (i) any non-compliance with or violation of the requirements of any Environmental Law as defined in Section 12 or (ii) the release or threatened release of any toxic or hazardous waste, contaminant, constituent or other substance into the environment;
- (2) does not have any knowledge of any threatened or actual liability in connection with the release or threatened release of any toxic or hazardous waste, contaminant, constituent, or other substance in the environment which would individually or in the aggregate constitute a Material Adverse Occurrence; and
- (3) has not received any notice or otherwise learned of any federal or state investigation evaluating whether any remedial action is needed to respond to a material release or threatened release on any toxic or hazardous waste, contaminant, constituent or other substance into the environment for which the Borrower is or may be liable. The Borrower is in substantial compliance with all Environmental Laws in the respective jurisdictions where it is presently doing business or conducting operations.

Material Adverse Occurrence shall mean any occurrence of whatsoever nature (including, without limitation, any adverse determination in any litigation, arbitration or governmental investigation or proceeding) which the BED shall reasonably determine materially adversely affects: (i) the then present or prospective financial condition or operations of any party to the Loan; (ii) the ability of any such Party to perform its obligations under any of the Loan Documents; or (iii) the value of the Collateral securing the Loan.

5. To further induce BED to make this BED Loan, Borrower agrees to the following conditions:

- a. Borrower will execute the Loan Documents and any supplements or additions thereto, and such other documents in connection with this BED Loan as BED may from time to time request which are reasonably necessary to effectuate to the fullest extent possible the terms of this Loan Agreement and the Loan Documents.
- b. Borrower will, on demand, reimburse BED for any and all expenses, including reasonable attorney fees, incurred, or which may be hereafter incurred, by BED or its agents from time to time in connection with or by reason of Borrower's Application for, and the making and administration, of the BED Loan.
- c. Borrower will at all times keep proper books of account in a manner satisfactory to BED. Borrower authorizes BED to make or cause to be made, during regular business

- hours, at Borrower's expense and in such manner and at such times as BED may require, (i) inspections and audits of any books, records and papers in the custody or control of Borrower or others, relating to Borrower's financial or business conditions, including the making of copies thereof and extracts therefrom, and (ii) inspections and appraisals of any of Borrower's assets. Borrower will furnish to BED quarterly financial statements within 60 days of quarter-end and an annual report within 90 days of the Borrower's fiscal year end. The annual report must contain at a minimum the Borrower's unaudited financial statements (including a balance sheet, income statements and cash flow statement), and upon request of BED will include Borrower's federal tax returns or audited financial statements. Borrower hereby authorizes all federal, state and municipal authorities to furnish reports, examination, records, and other information relating to the conditions and affairs of Borrower and any desired information from such reports, returns, files, and records of such authorities upon request therefore by BED.
- d. Borrower agrees to comply with those federal, state and local laws, regulations, ordinances and permits applicable to the Project, as well as the provisions of SDCL Chapter 1-16G, SDCL Chapter 1-53, and ARSD Chapter 68:02, and shall furnish to BED such reports and information and provide such access required by those statutes and rules.
  - e. Borrower agrees to pay in a timely manner the principal and interest on the Promissory Note, and on any other indebtedness now or hereafter at any time due to BED or any other Lender.
  - f. The Borrower will promptly pay all taxes, charges, liens, assessments and encumbrances which now affect, or which may in the future affect, the Project or the security for the payment of the Promissory Note as herein provided, or BED's interest therein for which it is legally liable.
  - g. 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 (including costs and attorney's fees) arising from or connected with the Borrower's Project funded herein. 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.
  - h. Borrower agrees that it will notify BED in writing within 30 days of the occurrence of any of the following: (i) if Borrower is an individual, a change in the place of Borrower's principal residence; (ii) if Borrower is an organization, a change in Borrower's place of business, the opening of any new place of business or the closing of any existing place of business; (iii) if Borrower is an organization, a change in the location of its chief executive office; (iv) any other change in the Borrower's "location" as that term is defined and used in Article 9 of the Uniform Commercial Code as adopted in South Dakota and as amended from time to time. Failure to do so shall constitute a material default upon the terms of this Loan Agreement.

- i. [CHOOSE ONE]  
[FOR TRADITIONAL REDI-TAKE OUT FINANCING] Within 90 days of the one-year anniversary of closing the BED Loan, Borrower shall provide a financial analysis comparing the projected income and expenses for the first year of the BED Loan (as provided with the Application) with actual income and expenses for the same period, including an explanation of any material differences between projected and actual income and expenses.

[ ] [FOR REDI LOANS THAT ARE NOT TRADITIONAL TAKE-OUT FINANCING] Within 90 days of the one-year anniversary of the Project (as described in the Application) becoming operational, Borrower shall provide a financial analysis comparing the projected income and expenses for the first year of Project operations (as provided with the Application) with actual income and expenses for the same period, including an explanation of any material differences between projected and actual income and expenses. As used in this paragraph, the term “operational” means the Project is regularly engaged in the business activities described in the Application.

- j. Beginning effective with the fiscal year ending in 20\_\_, Borrower agrees to maintain an annual Debt Service Coverage Ratio before distributions to members of not less than 1.\_\_. Beginning effective with the fiscal year ending in 20\_\_, Borrower agrees to maintain an annual Debt Service Coverage Ratio after distributions to members payment of income taxes of not less than 1.0. As used in this subsection, “Debt Service Coverage Ratio” means the following (all as calculated for the most current year-end financial information, in accordance with GAAP consistently applied): NOI / Debt Service. NOI is defined as Net Income + Amortization & Depreciation + Term Interest Expense + Other Non-cash Items (must be approved by bank prior to calculation, otherwise non-cash items will not be considered in the calculation). Debt Service is defined as: All current portion of regularly scheduled intermediate and long-term debt for the prior period + Term Interest Payments + Lease Payments. The figures used for the DSC ratio calculation will be extracted from the annual financial statements as required to be submitted by the borrower.

6. On or prior to the disbursement of funds pursuant to this Loan Agreement, the Borrower shall submit to BankWest all documents required by the Commitment Letter, the Loan Documents and the applicable statutes and regulations. In addition, the Borrower shall submit the following items:

- a. the executed Promissory Note;
- b. an executed counterpart of this Loan Agreement;
- c. an executed Employment Agreement with BED agreeing to create and retain not less than \_\_\_\_ full time employee positions, as set forth in the Borrower’s Application dated \_\_\_\_\_, 20\_\_;
- d. a certified resolution of the Borrower's governing body approving the BED Loan, this Loan Agreement, the Promissory Note, and the Loan Documents;

- e. any certificate of insurance required by the Loan Agreement or the Loan Documents, including , if applicable, a title insurance policy; and
- f. such other certificates, documents and other information as BED may require.

Once the documents listed above have been executed and delivered, the BED Loan will be deemed closed.

7. (a) In the event Borrower fails to make any payment or any part thereof as provided in the Promissory Note described herein, within fifteen (15) days of the due date thereof, or in the event that the Borrower fails or refuses to perform any covenants or agreements hereunder on the Borrower's part made and entered into, or under any agreement between the Borrower and the BED made in connection with the BED Loan, or in the event of failure of the Borrower to promptly pay, when due, any taxes, charges, liens, assessments, or encumbrances, or in the event of the insolvency of the Borrower, BED may at its option (i) declare this Agreement and the Promissory note to be in default and the total indebtedness owed by the Borrower to BED, including principal and interest, shall at the option of BED immediately become due and payable, upon twenty (20) days' written notice to the Borrower, (ii) upon written notice to the Borrower increase the interest rate to the default rate provided for herein, said default rate to thereafter apply to the entire unpaid principal balance until the default is cured to BED's satisfaction or (iii) take such other action as BED deems necessary and appropriate, consistent with the terms of the Loan Documents and applicable law. Anything in the foregoing or in any of the other Loan Documents to the contrary notwithstanding, BED may in the event of a default not capable of cure immediately declare a default and immediately take action to realize upon the Collateral by whatever means allowed by law.

(b) In the event of any default by Borrower upon the terms of this Loan Agreement, the Promissory Note, or any of the Loan Documents, then the entire outstanding principal balance of the Loan shall thereafter bear interest until paid or until the default is cured to BED's satisfaction at the default rate out in the promissory note.

(c) In the event that Borrower defaults in providing the financial information required by Section 5(c), the reports required under Section 5(d), or proof of the insurance required by Section 11 of this Loan Agreement, then the Borrower shall pay to BED the sum of \$200 for each such default. This sum is intended by the parties and shall be considered and treated as liquidated damages due to BED, and not as a penalty. The parties specifically agree that due to the nature of the BED Loan made to the Borrower it is impracticable or extremely difficult to fix the actual damages resulting from the Borrower's breach of those provisions of this Loan Agreement because failure to provide the information in a timely manner prevents BED from having complete and accurate data concerning the status of its economic development program for the purpose of preparing its annual report, assessing the success of its economic development strategies and developing future strategies; from assessing the financial strength of the businesses BED assists, and the success of its assistance efforts; and it makes it difficult for BED to protect the continued viability of its revolving loan program. In addition, in the case of repeated or prolonged defaults in providing financial information, BED may in its sole and exclusive discretion upon written notice to the Borrower increase the interest rate to the default rate provided for herein, which

default interest rate shall apply to the entire unpaid principal balance until such time as the default is cured to BED's satisfaction.

8. If an event of default occurs, BED, at its sole option, 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 Project, and add any amounts so paid to the principal sum due hereunder. 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 attorney's fees, incurred by BED in enforcing its rights under this Loan Agreement or the other Loan Documents.

9. 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 the Loan Documents or any other agreements between the parties hereto or by any applicable law. The failure of BED to enforce strict performance of any covenant, promise, or condition herein contained, including timely payments due hereunder, 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.

10. If BED participates in this loan with a bank, credit union, savings and loan, a federal or state agency, or other lender ("the Lender"), the Borrower agrees to cooperate and abide by all terms and conditions of any and all loan documents involving any loan from the Lender to the Borrower for the Project, including the Lender Agreement. A default in any provision of any such loan documents with the Lender shall constitute a default under this Loan Agreement and the Promissory Note. Borrower further agrees to cooperate with BankWest as closing agent and loan servicing agent, to facilitate the performance of the duties of BankWest pursuant to the Loan Servicing Agreement.

11. The Borrower shall at all times during the term of this Loan Agreement, and while the Promissory Note is outstanding, keep and maintain, or provide evidence acceptable to BED that it has obtained, property and casualty insurance, workers compensation, and liability insurance with insurers licensed to do business in the State, against such risks and in such amounts as are customary in the State for entities of the same or similar size and type as the Borrower, and similarly situated with facilities of the Project's type, and provide proof of such coverage to BED. Each policy (except workers' compensation insurance) shall be lender loss payable, and name BED as an additional insured or loss payee, as its interests may appear. Any policy provided pursuant to this section must provide that it cannot be canceled without 30 days prior written notice of cancellation to BED. In the event of cancellation the Borrower will promptly obtain replacement insurance with the same or substantially similar coverage and provide proof of such coverage to BED. In the event of renewal, replacement, or changes in coverage, the Borrower will promptly provide written notice of such changes to BED.

12. The Borrower covenants and agrees to comply with all present and future environmental laws, ordinances, permits, rules and regulations. Borrower shall not permit the generation, creation, treatment, incorporation, discharge, disposal, escape, release or threat of release of any contaminant above, upon, under, within, or from the Project site which is not in compliance with any applicable laws, ordinances, permits, rules and regulations. Borrower



Notices required or permitted under this Loan Agreement shall be given by and to Commissioner, Governor's Office of Economic Development and Chief Credit Officer of BankWest on behalf of BED, and the Borrower, 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.

14. Time is of the essence in the performance of the covenants, terms and conditions contained in this BED Loan Agreement. This Loan Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective transferees, successors and assigns except that the Borrower may not assign or transfer its rights under the Loan Documents without prior written consent of BED.

15. All other prior discussions, communications and representations concerning the subject matter of the Loan Documents are superseded by the terms of the Loan Documents, and except as specifically provided herein, the Loan Documents constitute the entire agreement with respect to the subject matter hereof.

16. This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Loan Agreement shall 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.

17. All representations contained in the Borrower's Application, and all representations, terms, conditions and covenants contained in the Commitment Letter executed in conjunction with this Loan Agreement are hereby incorporated by reference herein. To the extent there is a conflict between the terms of the Application or Commitment Letter and this Loan Agreement, the terms of this Loan Agreement shall prevail.

18. This Loan Agreement and the Loan Documents 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. No provision stated herein shall be waived without the prior written consent of BED.

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

[DOCUMENT CONTINUES ON FOLLOWING PAGES]

IN WITNESS WHEREOF the parties hereto have set their hands and seals effective the day and year above first written.

South Dakota Board  
Economic Development

(SEAL)

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

Matt Judson

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

[COMPANY NAME]

(SEAL)

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

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

ATTEST:

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

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

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



**EXHIBIT A  
TO  
LOAN AGREEMENT  
PROJECT DESCRIPTION**

<b>SOURCES</b>		<b>USES</b>	
REDI		Real estate	
		Equipment	
Equity			
<b>Total</b>		<b>Total</b>	

ACKNOWLEDGEMENT OF EXHIBIT A  
TO LOAN AGREEMENT

[COMPANY NAME]

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

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



**SOUTH DAKOTA**  
GOVERNOR'S OFFICE OF ECONOMIC DEVELOPMENT

COMMITMENT LETTER

SOUTH DAKOTA WORKS LOAN NO. \_\_\_\_\_

[DATE]

[APPLICANT NAME]

Attn: [APPLICANT REP, INCLUDING TITLE (E.G., MEMBER)]

[ADDRESS]

[ADDRESS]

Dear \_\_\_\_\_:

The Application of [APPLICANT NAME] ("Applicant") for a loan from the South Dakota WORKS 2.0 ("SD Works") dated [DATE OF APPLICATION] has been approved by the Board of Economic Development ("BED") pursuant to SDCL 1-53-15, et. seq. BED agrees to make a South Dakota Works Loan (the "Works Loan") to Applicant upon the following terms and conditions:

1. The total principal amount of the Works Loan shall not exceed the lesser of \$[MAX DOLLAR AMOUNT] or [MAX PERCENTAGE]% of the total Project costs as described in the Application. The principal amount shall be repaid, together with interest thereon at the rate of [INTEREST RATE IN WORDS] percent per annum ([INTEREST RATE IN NUMBERS]%) per annum, in the following manner: [INSERT PAYMENT TERMS]

[COMMON PAYMENT TERMS FOR CONSTRUCTION/PERMANENT LOAN:

a. Monthly interest-only payments calculated based on the daily outstanding principal balance for respective month. The interest-only payments shall begin thirty (30) days from the date the Works Loan closing and end upon the earlier of the end of twelve (12) months from the date of the Works Loan closing or completion of the acquisition, construction, and installation period of the Project.

b. Fifty-nine (59) blended monthly payments of principal and interest (based on a level 240 month amortization, which amortization shall begin as the date of the loan closing), beginning the earlier of thirteen (13) months from the date of loan closing or one month after the completion of the acquisition, construction, and installation period of the Project, followed by a final, balloon payment of all principal, interest, and amounts then due at the end of sixty (60) months from the last of the interest-only payments.]

2. 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 Works Loan with the Borrower. Under that Loan Servicing Agreement, 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 Works Loan Documents. The Applicant or an authorized representative must, prior to disbursement of any funds, properly execute and return to BankWest, or, as applicable, provide to BankWest the following documents (the "Loan Documents"), together with such other documents as BED may require.

- Loan Agreement
- Promissory Note
- Mortgage
- Security Agreement – Applicant
- UCC-1 Financing Statement
- UCC-1 Rider
- Severance Agreement, if applicable
- Personal Guaranty from [GUARANTOR NAME]
- Corporate Guaranty from [GUARANTOR NAME]
- Assignment of Life Insurance
- Mortgage – Personal Guaranty
- Security Agreement – Personal Guaranty
- Title Insurance Policy
- Survey of Real Property
- Appraisal of Real Property
- Mechanics & Materialmen Lien Waivers/Proof of Payment
- Environmental Assessment of Real Property
- Assignment of Lease and Rents (Acceptable lease with a minimum term of sixty months from the date of loan closing)
- Borrower Certification(s)
- Other

The documents will, as applicable, be prepared or requested by BED and will, as applicable, be forwarded to the Applicant for execution after BED receives a copy of this Commitment Letter signed by the Applicant or an authorized representative. The Loan Documents must be signed by the Applicant and returned to the BankWest within thirty (30) days after the date of their respective issuances. If the Applicant fails to return signed documents within thirty (30) days, then the BED must re-approve the Project. No disbursements will be made until all BED documents and other documents required by BED are properly executed and returned. Documents must be sent to BankWest at the following address:

BankWest, Inc.  
Attn: Shawn Hofer

P.O. Box 998  
Pierre, S.D. 57501  
(605) 945-3703

**3. PLEASE NOTE THE BURDEN IS ON THE APPLICANT TO NOTIFY BANKWEST IN WRITING WHEN THE APPLICANT IS READY TO CLOSE THE WORKS LOAN. THE APPLICANT MUST PROVIDE SUCH NOTIFICATION AT LEAST THIRTY (30) DAYS PRIOR TO THE PROPOSED LOAN CLOSING DATE AND, IN ANY EVENT, AT LEAST THIRTY (30) DAYS PRIOR TO THE EXPIRATION OF THE LOAN COMMITMENT DESCRIBED HEREIN. THE COMMITMENT TO MAKE THE WORKS LOAN WILL EXPIRE IF THE WORKS LOAN DOES NOT CLOSE WITHIN THE DEADLINE SET FORTH HEREIN.**

4. If Applicant is a corporation or limited liability company, Applicant must also prior to disbursement of any funds provide the following documents to BankWest:

- a. A certificate of good standing or similar instrument, certified by the Secretary of State of the state of incorporation or organization, as well as a copy of the Articles of Incorporation, Articles of Organization, or similar document, with amendments, on file in that office;
- b. If Applicant was incorporated or organized under the laws of another State of the United States or a foreign nation, applicant must provide a Certificate of Authority certified by the Secretary of State of South Dakota;
- c. A certified copy of the By-Laws or Operating Agreement of the Applicant presently in force; and
- d. A certified copy of the resolution of the board of directors, members or other governing entity of the Applicant authorizing the execution of the Loan Documents.

If the Applicant is a general partnership or a limited partnership, all of the Loan Documents must be executed by all of the general partners, or Borrower must provide proof of authority acceptable to GOED. If the Borrower is a corporation, the Borrower must also provide proof reasonably acceptable to GOED that the Borrower has, to the extent applicable, complied with the notice and meeting requirements of SD Constitution Art. XVII, Sec. 8.

5. The Works Loan must be secured by the following (the "Collateral"):

- A [sole][shared] [INSERT REQUIRED LIEN PRIORITY] lien position on real property generally

**SOUTH DAKOTA GOVERNOR'S OFFICE OF ECONOMIC DEVELOPMENT**

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described as [PROPERTY LEGAL OR ADDRESS].  
The amount secured by the commercial lender's  
[shared][first priority] lien position may not exceed  
principal in the amount of \$ \_\_\_\_\_, plus interest,  
protective advances, reasonable attorney fees, and other  
costs of collection.

[X] A [sole][shared] [INSERT REQUIRED LIEN  
PRIORITY] lien position on [all chattel  
assets][DESCRIBE SPECIFIC CHATTEL ASSETS,  
E.G., EQUIPMENT PURCHASED FOR THE  
PROJECT]. The amount secured by the commercial  
lender's [shared][first priority] lien position may not  
exceed principal in the amount of \$ \_\_\_\_\_, plus  
interest, protective advances, reasonable attorney fees,  
and other costs of collection.

[X] A [sole][shared] [INSERT REQUIRED LIEN  
PRIORITY] Assignment of Lease and Rents from all  
tenants (acceptable lease with a minimum term of sixty  
months from the date of loan closing). The amount  
secured by the commercial lender's shared first lien  
position may not exceed principal in the amount of  
\$ \_\_\_\_\_, plus interest, protective advances,  
reasonable attorney fees, and other costs of collection.

BED may require the commercial lender to execute an Intercreditor Agreement or similar agreement to document the lien positions and amounts secured for the respective lenders. The commercial lender must be a qualified lender under applicable regulations.

6. The Applicant must comply with the following special conditions:

[X] Provide BED with evidence of property insurance coverage on the Collateral in amounts sufficient to protect the interests of BED with lien holder and LENDER LOSS PAYABLE provisions in favor of:

South Dakota Board of Economic Development  
Governor's Office of Economic Development  
711 Wells Ave.  
Pierre, S.D. 57501-3369.

[X] Provide BED with the proper legal description of any real property being mortgaged as collateral, to include a survey performed by a surveyor licensed in

the State of South Dakota (if requested by BED), and an itemized list of personal property being taken as collateral, including serial numbers if applicable.

Provide proof of access to the subject real estate and, if necessary, an easement from the adjoining landowner.

Provide BED with evidence of the equity contribution of at least [PERCENTAGE OF TOTAL PROJECT COSTS][SPECIFIC DOLLAR AMOUNT] and payment of the total Project costs. [Funding will not be disbursed until Project completion][Funding will be disbursed during the outfitting and equipment purchase phase on a last-in basis. Works Loan funding must be disbursed before the conversion of any other lenders' interim financing to permanent financing.]

Provide BED with serial numbers of all equipment with a value of \$5,000.00 or more.

Provide BED with a commitment letter, or other satisfactory evidence of other funding sources.

Provide BED with mechanic's and materialmen lien waivers, and such other lien waivers as BED and the commercial lender may require.

Provide BED with updated financial information within 60 days for Applicant prior to closing.

[FOR WORKS FINANCING WITHOUT ANY CONSTRUCTION OR OTHER INTERIM FINANCING BY WORKS] Within 90 days of the one-year anniversary of closing the Works Loan, provide a financial analysis comparing the projected income and expenses for the first year of the Works Loan (as provided with the Application) with actual income and expenses for the same period, including an explanation of any material differences between projected and actual income and expenses.

[FOR WORKS LOANS THAT INCLUDE INTERIM FINANCING] Within 90 days of the one-year anniversary of the Works Loan transitioning to permanent financing or of the Project becoming operational, whichever is sooner, provide a financial analysis comparing the projected income and expenses for the first year of Project operations (as provided with the Application) with actual income and expenses for the same period, including an explanation of any material differences between projected and actual income and expenses. As used in this paragraph, the term "operational" means the Project is regularly engaged in the business activities described in the Application.

[X] Provide BED with non-standard covenants put in place by participating commercial lender, which covenants may, at BED’s discretion, be incorporated into the Works Loan documents to the extent permissible under applicable regulations.

7. No condition or covenant stated herein may be waived without the prior written consent of BED. BED shall have no obligation to make any disbursement to Applicant unless and until all of the conditions set forth above, as well as any other conditions which BED in its sole and exclusive discretion may see fit to impose, have been met to BED's satisfaction.

8. By execution of this letter, Applicant agrees, upon demand by BED, to reimburse BED for any and all expenses incurred, or which may hereafter from time to time be incurred, by BED or its agents, including reasonable attorney's fees, appraisal fees or lender’s title insurance policy, in connection with or by reason of Applicant's application for, and the making and administration of, the Works Loan. Applicant agrees to be responsible for such costs and expenses whether or not the Works Loan contemplated by this Commitment Letter closes. Applicant further agrees to pay an origination fee equal in an amount equal to one percent (1%) of the actual loan amount.

9. This Commitment Letter is good for a period of 180 days from the date hereof and will lapse at that time if not accepted in writing by the Applicant. **In any event, unless extended by BED, the commitment to make the loan will lapse one year from the date hereof if the loan has not funded. Requests for extensions must be in writing and submitted prior to the loan application deadline established by BED that is prior to the date this commitment would otherwise expire.** BED reserves the right to withdraw this Commitment Letter at any time if any of the conditions of this Commitment Letter have not been met to BED’s satisfaction, or in the event of a material adverse change in Applicant’s financial condition or the projections provided in connection with Applicant’s loan application.

If you wish to proceed with the South Dakota Works Loan upon the terms and conditions set forth above, please indicate the acceptance of the Applicant by a duly authorized signature below. If the Applicant is a corporation, limited liability company or partnership, please attach appropriate proof of authority.

If you have any questions, please contact [LOAN OFFICER NAME/PHONE/EMAIL]. Thank you for your interest in the South Dakota Works Loan program and in South Dakota's future.

Sincerely yours,

SOUTH DAKOTA BOARD OF ECONOMIC DEVELOPMENT

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

Applicant agrees to the terms above set forth.

[APPLICANT NAME]

(SEAL)

BY: \_\_\_\_\_  
ITS: \_\_\_\_\_  
Date: \_\_\_\_\_

ATTEST:

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

Upon execution return to GOED at 711 E. Wells Avenue, Pierre, SD, 57501.

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



South Dakota Works Loan Number \_\_\_\_\_

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

**SOUTH DAKOTA WORKS LOAN PROGRAM**

**LOAN AGREEMENT**

LOAN AGREEMENT made and entered into this \_\_\_\_ day of December 20\_\_, by and between the South Dakota Board of Economic Development, 711 Wells Avenue, Pierre, South Dakota, 57501 (herein "BED") and [COMPANY NAME] of [ADDRESS] (herein the "Borrower").

WHEREAS, BED is a state agency created for the purpose of promoting economic development in South Dakota; and,

WHEREAS, the Borrower made an application (the "Application") dated \_\_\_\_\_, 20\_\_, to BED for a loan from the South Dakota Works Loan Program ("South Dakota Works") to finance the Project described in the Application, which Application was approved by BED (the "Works Loan"); and

WHEREAS, BED has designated BankWest, Inc., a state chartered financial institution, of Pierre, South Dakota ("BankWest"), as its representative hereunder; has entered into a Loan Servicing Agreement with BankWest, whereby BankWest will act as BED's agent for purposes of closing, funding, receiving payment and servicing the Works Loan with the Borrower: and has authorized BankWest to act on behalf of BED consistent with the terms of the Loan Servicing Agreement and the Borrower's Works Loan Documents;

NOW, THEREFORE, it is mutually agreed as follows:

1. In consideration of the Borrower's execution and delivery of a Promissory Note dated the date hereof, and observance and performance of the covenants, terms and conditions hereof, and in reliance on the Borrower's representations made herein and in the Borrower Certification of even date herewith, BED, through its duly designated agent, agrees to loan to Borrower from the South Dakota Works Loan Program the principal sum of [WRITTEN AMOUNT] (\$NUMERIC AMOUNT), according to the terms and conditions set forth in this Loan Agreement and the Promissory Note of even date herewith, which is incorporated herein by reference.

2. In consideration of BED's agreement to loan said funds to the Borrower, the Borrower has made, executed and delivered to BED a Promissory Note dated the date hereof, in the principal sum of [WRITTEN AMOUNT] (\$NUMERIC AMOUNT) due and payable, together with interest thereon at the rate of three percent (PERCENTAGE %) per annum, according to the terms and conditions set forth in this Loan Agreement and the Promissory Note of even date herewith, which is incorporated herein by reference.

3. As security for the repayment of the Works Loan above described, the Borrower agrees as follows:

a. To mortgage to BED the real property, buildings, and improvements owned by the Borrower as described with particularity in the Mortgage of even date which is incorporated herein by reference;

b. To grant to BED an assignment of lease for the real property owned by the Borrower as described with particularity in the Assignment of Lease & Rents of even date, which is incorporated herein by this reference;

c. To provide BED with Guaranty Agreements from [PERSONAL GUARANTORS] , [CORPORATE GUARANTORS] of even date, which are incorporated herein by reference; and

d. [INTENTIONALLY LEFT BLANK]

4. Borrower warrants and represents as follows:

a. The Borrower has the authority to enter into and consummate all transactions contemplated by the Promissory Note, this Loan Agreement, and the other Loan Documents (hereinafter referred to jointly as the "Loan Documents"), to execute and to deliver the Loan documents, to incur the debt represented by the Promissory Note; and to carry out its obligations thereunder.

b. Unless otherwise disclosed to BED in writing, the Borrower's headquarters are located in South Dakota.

c. The Works Loan proceeds will be used for the Project described in the Application. The foregoing notwithstanding, the Works Loan proceeds will only be used for a Business Purpose. For the purposes of this Loan Agreement, the term "Business Purpose" includes, but is not limited to, start-up costs; working capital; franchise fees; the acquisition of equipment, inventory, or services used in the production, manufacturing, or delivery of a businesses' goods or services; or for the purchase, construction, renovation, or tenant improvements of or to a place of business that is not used or intended to be used for passive real estate investment purposes. The term "business purpose" specifically excludes activities that relate to acquiring or holding passive investments such as commercial real estate ownership; the purchase of securities; and lobbying activities as defined in Section 3(7) of the Lobbying Disclosure Act of 1995, P.L. 104-65, as amended. The term "passive investments" does not include certain real estate as described on Exhibit "B" hereto.

d. The Works Loan proceeds will not be used to: (i) repay delinquent federal or state income taxes unless Borrower has a repayment plan in place with the relevant taxing authority; (ii) repay taxes held in trust or escrow, including payroll or sales taxes; (iii) reimburse funds owed to any owner of the Borrower, including any equity injection or

injection of capital to keep the Borrower in operation; or (iv) purchase any portion of the ownership interest of any owner or principal of the Borrower.

- e. Neither the Borrower nor any owner or principal of the Borrower is (i) an executive officer, director or principal shareholder of any financial institution participating in the Works Loan or providing a loan in conjunction with the Works Loan; (ii) a member of the immediate family of any such executive officer, director or principal shareholder; or (iii) has a related interest to any such executive officer, director, principal shareholder or immediate family member as those terms are described in 12 C.F.R. Part 215, as amended.
- f. The Borrower is not:
  - (i). a business engaged in speculative activities that develop profits from fluctuations in price rather than normal course of trade, such as wildcatting for oil and dealing in commodities futures, unless those activities are incidental to the regular activities of the Borrower's business and part of a legitimate and generally-recognized risk management strategy to guard against price fluctuations related to the regular activities of the Borrower's business or through the normal course of trade;
  - (ii). a business that earns more than one-half of its annual net revenue from lending activities, unless the Borrower is (A) a non-bank or non-bank holding company certified as a Community Development Financial Institution, or (B) a Tribal enterprise lender that is not a depository bank or bank holding company;
  - (iii). a business engaged in pyramid sales, where a participant's primary incentive is based on the sales made by an ever-increasing number of participants;
  - (iv). a business engaged in activities prohibited by federal or South Dakota law, including but not limited to the production, servicing or distribution of otherwise legal products that are to be used in connection with illegal activity, such as selling drug paraphernalia or operating a motel that knowingly permits prostitution; without limiting the generality of the foregoing, the Borrower is not a direct or indirect marijuana business, as defined in US Small Business Administration Standard Operating Procedure ("SOP") 50 10 6; or
  - (v). a business deriving more than one-third of its gross annual revenue from legal gambling activities, unless the business is a Tribal State Small Business Credit Initiative ("SSBCI") participant, in which case the Tribal SSBCI participant is prohibited from using the Works Loan for gaming activities, but is not restricted from using the Works Loan for non-gaming activities merely due to an organizational tie to a gaming business.
- g. No Principal of the Borrower has been convicted of a sex offense against a minor (as such term is defined in 34 USC 20911. For the purposes of this subparagraph f, the term "Principal" is defined as follows: If a sole proprietorship, the proprietor; if a partnership,

each partner; and if a corporation, limited liability company, association or a development company, each director, each of the five most highly compensated executives, officers, or employees of the entity, and each natural person who is a direct or indirect holder of 20% or more of the ownership stock, membership or equivalent ownership interest of the entity.

- h. There is no action, suit, proceeding, inquiry or investigation at law or equity, by or before any judicial or administrative court, agency or body, pending or threatened against the Borrower wherein an unfavorable decision, ruling, or finding would materially and adversely affect the validity or enforceability of any of the Loan Documents.
- i. Neither the execution and delivery of the Loan Documents, the consummation of the transactions contemplated thereby, nor the fulfillment of, or compliance with the provisions of the Loan Documents will conflict with or result in the breach of any restriction, agreement or instrument to which the Borrower is a party, or by which it is bound, or result in the creation or imposition of any lien of any nature upon any of the property of the Borrower under the terms of any such instrument or agreement, nor will such action result in the violation of any provision of any law, ordinance, governmental order to which the Borrower, its property or operations are subject.
- j. No event of default has occurred in any agreement or instrument as to any outstanding indebtedness of the Borrower for money borrowed and no condition, event or act exists which, with the lapse of time or the giving of notice, would constitute an event of default under any such agreement or instrument. The Borrower is not in violation of any term of any restriction, agreement, indenture, ordinance, resolution, charter, or other instrument to which it is a party or which it or its property may be bound, which violation would materially and adversely affect the transactions contemplated hereby or the compliance by the Borrower with the terms of the Loan Documents.
- k. The Borrower has obtained or made all permits, filings and approvals required to the date of this Loan Agreement by any governmental body or officer for the making and performance by the Borrower of its obligations under the Loan Documents or for the Project, the financing thereof or the reimbursement of the Borrower for the costs thereof. No consent, approval or authorization of, or filing, registration or qualification with, any governmental authority (other than those, if any, already obtained) is required on the part of the Borrower as a condition to entering into the Loan Documents and the performance of the Borrower's obligations hereunder and there under.
- l. The Loan Documents to which the Borrower is a party are legal, valid and binding obligations and agreements of the Borrower, enforceable against the Borrower according to their terms, except as the enforceability thereof may be limited by laws relating to bankruptcy, insolvency or other similar laws affecting creditors' rights generally and general principles of equity.
- m. The Project is described in Exhibit A, attached hereto, and by this reference incorporated herein, as such Exhibit may be amended from time to time.

- n. The funds provided pursuant to this Loan Agreement do not exceed [WRITTEN] percent (NUMERIC %) of the total Project cost as described in the Borrower's Application. At least [WRITTEN] percent (NUMERIC %) of the total Project cost will be provided through a loan from a qualified lender other than BED.
- o. The Borrower has made, or will make as a condition of advances under the Works Loan, an equity contribution to the cost of the Project of not less than \$NUMERIC AMOUNT.
- p. There is no fact that the Borrower has not specifically disclosed in writing to BED that materially and adversely affects or will materially and adversely affect the properties, operations and finances of the Borrower, its status as a legal entity in good standing, or its ability to perform its obligations under the Loan Documents, or to pledge any revenues or property to the repayment of the Works Loan.
- q. The Works Loan proceeds will not be used to increase a pool of funds that generates New Markets Tax Credits or Historic Preservation Tax Credits.
- r. The Borrower certifies that there has been no material adverse change since the date of the Borrower's Application in the financial condition, organization, operation, business prospects, property, or the personnel of the Borrower; and that the information contained in the Application, and other information the Borrower provided to BED does not contain any material misrepresentations or misstatements of fact.
- s. The Borrower further warrants and represents that it:
  - (1) has not received any notice or otherwise learned of any environmental liability which would individually or in the aggregate constitute a Material Adverse Occurrence arising in connection with (i) any non-compliance with or violation of the requirements of any Environmental Law as defined in Section 12 or (ii) the release or threatened release of any toxic or hazardous waste, contaminant, constituent or other substance into the environment;
  - (2) does not have any knowledge of any threatened or actual liability in connection with the release or threatened release of any toxic or hazardous waste, contaminant, constituent, or other substance in the environment which would individually or in the aggregate constitute a Material Adverse Occurrence; and
  - (3) has not received any notice or otherwise learned of any federal or state investigation evaluating whether any remedial action is needed to respond to a material release or threatened release on any toxic or hazardous waste, contaminant, constituent or other substance into the environment for which the Borrower is or may be liable. The

Borrower is in substantial compliance with all Environmental Laws in the respective jurisdictions where it is presently doing business or conducting operations.

Material Adverse Occurrence shall mean any occurrence of whatsoever nature (including, without limitation, any adverse determination in any litigation, arbitration or governmental investigation or proceeding) which the BED shall reasonably determine materially adversely affects: (i) the then present or prospective financial condition or operations of any party to the Loan; (ii) the ability of any such Party to perform its obligations under any of the Loan Documents; or (iii) the value of the Collateral securing the Loan.

5. To further induce BED to make this Works Loan, Borrower agrees to the following conditions:

- a. Borrower will execute the Loan Documents and any supplements or additions thereto, and such other documents in connection with this Works Loan as BED may from time to time request which are reasonably necessary to effectuate to the fullest extent possible the terms of this Loan Agreement and the Loan Documents.
- b. Borrower will, on demand, reimburse BED for any and all expenses, including reasonable attorney fees, incurred, or which may be hereafter incurred, by BED or its agents from time to time in connection with or by reason of Borrower's Application for, and the making and administration, of the Works Loan.
- c. Borrower will at all times keep proper books of account in a manner satisfactory to BED. Borrower authorizes BED to make or cause to be made, during regular business hours, at Borrower's expense and in such manner and at such times as BED may require, (i) inspections and audits of any books, records and papers in the custody or control of Borrower or others, relating to Borrower's financial or business conditions, including the making of copies thereof and extracts therefrom, and (ii) inspections and appraisals of any of Borrower's assets. . Borrower hereby authorizes all federal, state and municipal authorities to furnish reports, examination, records, and other information relating to the conditions and affairs of Borrower and any desired information from such reports, returns, files, and records of such authorities upon request therefore by BED.
- d. Borrower agrees to comply with those federal, state and local laws, regulations, ordinances and permits applicable to the Project, and shall furnish to BED such reports and information and provide such access as BED may reasonably require.
- e. Borrower agrees to pay in a timely manner the principal and interest on the Promissory Note, and on any other indebtedness now or hereafter at any time due to BED or any other Lender.
- f. The Borrower will promptly pay all taxes, charges, liens, assessments and encumbrances which now affect, or which may in the future affect, the Project or the security for the

payment of the Promissory Note as herein provided, or BED's interest therein for which it is legally liable.

- g. 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 (including costs and attorney's fees) arising from or connected with the Borrower's Project funded herein. 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.
- h. Borrower agrees that it will notify BED in writing within 30 days of the occurrence of any of the following: (i) if Borrower is an individual, a change in the place of Borrower's principal residence; (ii) if Borrower is an organization, a change in Borrower's place of business, the opening of any new place of business or the closing of any existing place of business; (iii) if Borrower is an organization, a change in the location of its chief executive office; (iv) any other change in the Borrower's "location" as that term is defined and used in Article 9 of the Uniform Commercial Code as adopted in South Dakota and as amended from time to time. Failure to do so shall constitute a material default upon the terms of this Loan Agreement.
- i. No later than the first anniversary of the closing of the Works Loan, and annually thereafter, Borrower shall provide an annual employment report. BED will provide that to the Borrower to be completed no later than January 30th each year.
- j. [CHOOSE ONE]  
[FOR WORKS FINANCING WITHOUT ANY CONSTRUCTION OR OTHER INTERIM FINANCING BY WORKS] Within 90 days of the one-year anniversary of closing the Works Loan, Borrower shall provide a financial analysis comparing the projected income and expenses for the first year of the Works Loan (as provided with the Application) with actual income and expenses for the same period, including an explanation of any material differences between projected and actual income and expenses.

[ ] [FOR WORKS LOANS THAT INCLUDE INTERIM FINANCING] Within 90 days of the one-year anniversary of the Works Loan transitioning to permanent financing or of the Project becoming operational, whichever is sooner, Borrower shall provide a financial analysis comparing the projected income and expenses for the first year of Project operations (as provided with the Application) with actual income and expenses for the same period, including an explanation of any material differences between projected and actual income and expenses. As used in this paragraph, the term "operational" means the Project is regularly engaged in the business activities described in the Application.

6. On or prior to the disbursement of funds pursuant to this Loan Agreement, the Borrower shall submit to BankWest all documents required by the Commitment Letter, the Loan Documents

and the applicable statutes and regulations. In addition, the Borrower shall submit the following items:

- a. the executed Promissory Note;
- b. an executed counterpart of this Loan Agreement;
- c. any certificate of insurance required by the Loan Agreement or the Loan Documents, including, if applicable, a title insurance policy; and
- d. such other certificates, documents and other information as BED may require.

Once the documents listed above have been executed and delivered, the Works Loan will be deemed closed.

7. (a) In the event Borrower fails to make any payment or any part thereof as provided in the Promissory Note described herein, within fifteen (15) days of the due date thereof, or in the event that the Borrower fails or refuses to perform any covenants or agreements hereunder on the Borrower's part made and entered into, or under any agreement between the Borrower and the BED made in connection with the Works Loan, or in the event of failure of the Borrower to promptly pay, when due, any taxes, charges, liens, assessments, or encumbrances, or in the event of the insolvency of the Borrower, BED may at its option (i) declare this Agreement and the Promissory note to be in default and the total indebtedness owed by the Borrower to BED, including principal and interest, shall at the option of BED immediately become due and payable, upon twenty (20) days' written notice to the Borrower, (ii) upon written notice to the Borrower increase the interest rate to the default rate provided for herein, said default rate to thereafter apply to the entire unpaid principal balance until the default is cured to BED's satisfaction or (iii) take such other action as BED deems necessary and appropriate, consistent with the terms of the Loan Documents and applicable law. Anything in the foregoing or in any of the other Loan Documents to the contrary notwithstanding, BED may in the event of a default not capable of cure immediately declare a default and immediately take action to realize upon the Collateral by whatever means allowed by law.

(b) In the event of any default by Borrower upon the terms of this Loan Agreement, the Promissory Note, or any of the Loan Documents, then the entire outstanding principal balance of the Works Loan shall thereafter bear interest until paid or until the default is cured to BED's satisfaction at a fixed rate six percentage points higher than the non-default rate set out in the Promissory Note.

(c) In the event that Borrower defaults in providing the financial information required by Section 5(c), the reports required under Section 5(d), or proof of the insurance required by Section 11 of this Loan Agreement, then the Borrower shall pay to BED the sum of \$200 for each such default. This sum is intended by the parties and shall be considered and treated as liquidated damages due to BED, and not as a penalty. The parties specifically agree that due to the nature of the Works Loan made to the Borrower it is impracticable or extremely difficult to fix the actual damages resulting from the Borrower's breach of those provisions of this Loan Agreement because failure to provide the information in a timely manner prevents BED from having complete and accurate data concerning the status of its economic development program for the purpose of preparing its annual report, assessing the success of its economic development strategies and



developing future strategies; from assessing the financial strength of the businesses BED assists, and the success of its assistance efforts; and it makes it difficult for BED to protect the continued viability of its revolving loan program. In addition, in the case of repeated or prolonged defaults in providing financial information, BED may in its sole and exclusive discretion upon written notice to the Borrower increase the interest rate to the default rate provided for herein, which default interest rate shall apply to the entire unpaid principal balance until such time as the default is cured to EDD's satisfaction.

8. If an event of default occurs, BED, at its sole option, 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 Project, and add any amounts so paid to the principal sum due hereunder. 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 Loan Agreement or the other Loan Documents.

9. 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 the Loan Documents or any other agreements between the parties hereto or by any applicable law. The failure of BED to enforce strict performance of any covenant, promise, or condition herein contained, including timely payments due hereunder, 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.

10. BED will participate in this loan with a bank, credit union, savings and loan, a federal or state agency, or other lender ("the Lender"). The Borrower agrees to cooperate and abide by all terms and conditions of any and all loan documents involving any loan from the Lender to the Borrower for the Project. A default in any provision of any such loan documents with the Lender shall constitute a default under this Loan Agreement and the Promissory Note. Borrower further agrees to cooperate with BankWest as closing agent and loan servicing agent, to facilitate the performance of the duties of BankWest pursuant to the Loan Servicing Agreement.

11. The Borrower shall at all times during the term of this Loan Agreement, and while the Promissory Note is outstanding, keep and maintain, or provide evidence acceptable to BEDD that it has obtained, property and casualty insurance, workers compensation, and liability insurance with insurers licensed to do business in the State, against such risks and in such amounts as are customary in the State for entities of the same or similar size and type as the Borrower, and similarly situated with facilities of the Project's type, and provide proof of such coverage to BED. Each policy (except workers' compensation insurance) shall be lender loss payable, and name BED as an additional insured or loss payee, as its interests may appear. Any policy provided pursuant to this section must provide that it cannot be canceled without 30 days prior written notice of cancellation to BED. In the event of cancellation the Borrower will promptly obtain replacement insurance with the same or substantially similar coverage and provide proof of such coverage to BED. In the event of renewal, replacement, or changes in coverage, the Borrower will promptly provide written notice of such changes to BED.

12. The Borrower covenants and agrees to comply with all present and future environmental laws, ordinances, permits, rules and regulations. Borrower shall not permit the generation, creation, treatment, incorporation, discharge, disposal, escape, release or threat of release of any contaminant above, upon, under, within, or from the Project site which is not in compliance with any applicable laws, ordinances, permits, rules and regulations. Borrower represents that there are no underground storage tanks containing any contaminant located on the Project site, or property assigned as Collateral for this Works Loan, and that no new tanks will be located on such property unless the Borrower complies with any applicable laws, ordinances, rules and regulations, and obtains all necessary permits.

- a. For purposes of this Loan Agreement, “contaminant” is a “Petroleum Product” as described in SDCL 37-2-5; “Asbestos” as described in SDCL 34-44-1(2); a “Regulated Substance” as described in SDCL 34A-12-1(8); substances regulated under and defined in the provisions of 15 U.S.C. 2601-2671, 33 U.S.C. 1251-1387, 42 U.S.C. 6901-6999(I), or 42 U.S.C. 7401-7642; or any corresponding federal or state regulations promulgated under the above federal or state statutes, as well as any amendments, deletions, or corrections to any such laws, ordinances, rules and regulations, including any laws, ordinances, rules and regulations which may be enacted or adopted subsequent to the date of, and which become effective during the term of, and while the Premises remains subject to the terms and conditions of this Loan Agreement.
- b. Borrower agrees to indemnify and hold BED, its officers, agents, employees, assigns and successors in interest harmless from any and all claims, demands, judgments, penalties, costs, damages, expenses or liability of any kind or character whatsoever, including costs and reasonable attorneys’ fees, arising or resulting from or connected with a breach of the foregoing covenant, it being the intent of BED and the Borrower that BED shall have no liability for damage to the environment or natural resources, for abatement, removal, or cleanup of, or otherwise with respect to, any contaminants either by virtue of any interest of BED in the property, or created as a result of BED’s exercise of any of its rights or remedies under this Loan Agreement or any of the Loan Documents.
- c. Borrower shall, for the purposes of this Loan Agreement, be designated the “Owner” or “Operator” of the property.

13. 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  
c/o Governor’s Office of Economic Development  
711 East Wells Avenue  
Pierre, SD 57501-3369

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

If to Borrower: [NAME]  
[ADDRESS]

Notices required or permitted under this Loan Agreement shall be given by and to the Commissioner, Governor's Office of Economic Development, and Chief Credit Officer of BankWest on behalf of BED and \_\_\_\_\_ on behalf of the Borrower, 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.

14. Time is of the essence in the performance of the covenants, terms and conditions contained in this Works Loan Agreement. This Loan Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective transferees, successors and assigns except that the Borrower may not assign or transfer its rights under the Loan Documents without prior written consent of BED.

15. All other prior discussions, communications and representations concerning the subject matter of the Loan Documents are superseded by the terms of the Loan Documents, and except as specifically provided herein, the Loan Documents constitute the entire agreement with respect to the subject matter hereof.

16. This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Loan Agreement shall 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.

17. All representations contained in the Borrower's Application, and all representations, terms, conditions and covenants contained in the Commitment Letter executed in conjunction with this Loan Agreement are hereby incorporated by reference herein. To the extent there is a conflict between the terms of the Application or Commitment Letter and this Loan Agreement, the terms of this Loan Agreement shall prevail.

18. This Loan Agreement and the Loan Documents 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. No provision stated herein shall be waived without the prior written consent of BED.

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

IN WITNESS WHEREOF the parties hereto have set their hands and seals effective the day and year above first written.

SOUTH DAKOTA BOARD  
OF ECONOMIC DEVELOPMENT

(SEAL)

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

Matt Judson

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

[COMPANY NAME]

\_\_\_\_\_  
[SIGNATORY NAME] [DATE]

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

**EXHIBIT A  
TO  
LOAN AGREEMENT**

**PROJECT DESCRIPTION**

<b>SOURCES</b>		<b>USES</b>	
Bank	\$	Building & Improvements	\$
SD Works 2.0 Loan	\$	Land	\$
Equity	\$	Other Cost	\$
<b>Total</b>	<b>\$</b>	<b>Total</b>	<b>\$</b>

ACKNOWLEDGEMENT OF EXHIBIT A  
TO LOAN AGREEMENT

[BORROWER NAME]

\_\_\_\_\_  
[TYPED NAME]

**EXHIBIT B  
TO  
LOAN AGREEMENT**

**PERMITTED PASSIVE REAL ESTATE INVESTMENT**

Loan proceeds are used for passive real estate investment purposes when the proceeds of the loan are used to invest in real estate acquired and held primarily for sale, lease, or investment. Passive real estate investment includes most real estate development (including construction) in which the developer does not intend to occupy or actively use the resulting real property. A small business owner can deliver the assurance regarding passive real estate investment if the small business leases any portion of a building constructed, acquired, or improved with proceeds of a Works Loan if such proceeds are used in the construction of a new building and the small business occupies and uses at least sixty percent (60%) of the total rentable property following issuance of an occupancy permit or other similar authorization. Alternatively, if Works Loan proceeds are used in the acquisition, renovation, or reconstruction of an existing building, the borrower may permanently lease up to forty-nine percent (49%) of the rentable property to one or more tenants, if the small business occupies and uses at least fifty-one percent (51%) of the total rentable property within twelve (12) months following the acquisition, renovation, or reconstruction. Works Loan proceeds may not be used to improve or renovate any portion of a rentable property that is leased to a third party. "Rentable property" means the total square footage of all buildings or facilities used for business operations, which (1) excludes vertical penetrations, stairways, elevators, and mechanical areas that are designed to transfer people or services vertically between floors) and all outside areas and (2) includes common areas (e.g., lobbies, passageways, vestibules, and bathrooms).

There are two exceptions to the general prohibition on the use of Works Loan proceeds for passive real estate investment. An eligible business purpose may include the financing of real estate investments in the following limited circumstances.

First, a passive company such as a holding company that acquires real property using a Works Loan may have an eligible business purpose where one hundred percent (100%) of the rentable property is leased to the passive company's affiliated operating companies that are actively involved in conducting business operations. To meet this exception, the following criteria must also be met: The passive company must be an eligible small business; The operating company must be subject to the same sublease restrictions as the owner affiliate; The operating company must be a guarantor or co-borrower on the Works Loan to the eligible passive company; Both the passive company and the operating company must execute Works borrower use-of-proceeds certifications and sex-offender certifications covering all principals; Each natural person holding an ownership interest constituting at least twenty percent (20%) of either the passive company or the operating company must provide a personal guarantee for the SSBCI-supported loan; and, The passive company and the operating company have a written lease with a term at least equal to the term of the Works Loan (which may include options to renew exercisable solely by the operating company).

Second, a construction loan with an original principal amount of \$500,000.00 or less may have an eligible business purpose if (1) the building will not serve as a residence for the owner, their

relatives, or affiliates; (2) the building will be put into service immediately; (3) the loan is underwritten and made for the purpose of constructing or refurbishing a structure; and (4) the building has not been and will not be financed by another State Small Business Credit Initiative (“SSBCI”)-supported loan. Excluded from eligible business purpose are loans that automatically convert into permanent financing, except if the converted loans would no longer rely on SSBCI support. The term “construction loan” means a loan secured by real estate made to finance (1) land development (e.g., the process of improving land, such as laying sewers or water pipes) preparatory to erecting new structures or (2) the on-site construction of industrial, commercial, residential, or farm buildings. For purposes of this paragraph, “construction” includes not only construction of new structures, but also additions or alterations to existing structures and the demolition of existing structures to make way for new structures.