

**Livingston County Development Corporation
Revolving Loan Fund
Policy Guidelines and Operating Plan**

Section 1. GENERAL

1.1 Policy Guidelines and Operating Plan – The Policy Guidelines and Operating Plan (the “Plan”) is adopted by the Board of Directors of the Livingston County Development Corporation (“LCDC”) and is intended to serve as the primary administrative document for all activities of the Livingston County Revolving Loan Fund (the “Program”) that are funded in whole or in part with Community Development Block Grant (“CDBG”) funds provided by Livingston County. Any revisions or amendments to the Plan will require the approval of the LCDC Board of Directors.

1.2 Objectives – The primary objectives of the Program are to facilitate the expansion and retention of business activity within Livingston County, create and retain employment opportunities and maintain and expand the County’s commercial and industrial tax base.

1.3 Form of Assistance – The Program will provide assistance only in the form of secured commercial loans.

Section 2. ELIGIBILITY REQUIREMENTS

2.1 Eligible Activities

- (a) The principal business activity that will be primarily impacted by the Program financing must be located within Livingston County.
- (b) Program financing may be used to assist any form of business activity that the LCDC Board determines to be consistent with the purposes of the Program, and that is not specifically ineligible pursuant to Section 2.2 of this Plan.
- (c) The business activity to be undertaken with assistance from the Program must directly result in the creation and/or retention of employment positions.
- (d) The business activity must be consistent with General Municipal Law and the Strategic Plan of Livingston County Development.

2.2 Ineligible Activities – The following business activities, as further defined by the US Small Business Administration, may not be assisted with Program financing:

- (a) Speculative activities, defined as a business that derives profits from fluctuations in prices;

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- (b) Lending activities, including those conducted by banks, finance companies, factor leasing companies, insurance companies (but not insurance agencies), and similar firms;
- (c) Pyramid sales plans;
- (d) Gambling activities; and
- (e) Illegal activities.

2.3 Eligible Borrowers

- (a) Eligible borrowers include sole proprietorships, partnerships, corporations, limited liability companies, limited liability partnerships, professional service corporations, cooperatives and any other legally recognized form of business.
- (b) Loans may be provided to individuals acting as principals of an eligible entity and who will rent or lease assets to an otherwise eligible borrower.

2.4 Eligible Uses of Program Funds – Program funds may be used for any justifiable purpose including, but not limited to fixed assets, current assets including inventory and receivables, permanent working capital and lines of credit, and refinancing of existing debt where such refinancing is a required element of the project financing and is not indicative of imprudent management.

Where determined appropriate by the LCDC Board of Directors, funds may also be used as a forgivable loan (grant) for workforce development, training, small business programming, or other Board approved use.

Section 3. PROGRAM STANDARDS

3.1 Employment – For the purposes of calculating employment opportunities the following will apply:

- (a) Only permanent jobs will be counted; temporary and construction jobs will not be counted.
- (b) Jobs of 35 hours or more per week will be considered as one full-time job. Part time permanent jobs of less than 35 hours per week will be converted to full time equivalent jobs by dividing the number of part time hours by 40.

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- (c) Seasonal jobs will be considered to be permanent jobs if the duration of the working period is long enough to classify the job as the employee's principal occupation.
- (d) Projected employment must be reasonably expected to occur as a direct result of the expanded business activity, and such projection may in no instance extend beyond 36 months from the completion of the financed activities.

3.2 Program Financing Amount – Program assistance must be no greater than the amount necessary to affect the business activity. Applicants must therefore demonstrate that all other private and public sources of debt equity have either been maximized or are inappropriate, unaffordable, or otherwise available.

3.3 Minimum Amount of Program Assistance – Program assistance will not be considered where the amount of such assistance is less than \$10,000. Exceptions to this Section 3.3 may be granted by the LCDC Board on a case-by-case basis where such exception is determined to be in the best interest of the Program and where the reason for such exception is approved by the Board.

3.4 Maximum Amount of Program Assistance – Program assistance provided to a single business enterprise may not exceed the aggregate amount of \$100,000. However, the LCDC may, from time to time at its discretion, establish maximum amounts of assistance based on the total amount of Program funds available, the demand for such funds and such other factors as may be appropriate.

Section 4 LENDING POLICIES

4.1 Term of Loans – For fixed asset loans, the Program loan terms will generally be consistent with the depreciable life of the assets being financed, with such periods being consistent with standard commercial lending policies. For all loans, the term will be determined by the LCDC based upon such factors as the structure of other related loans, the nature of the collateralized assets, and the borrower's projected ability to repay the loan.

4.2 Interest Rate – Program loans will bear interest at a fixed rate at the time of the loan closing at a rate determined by the LCDC Board, such rate not to exceed the lowest prime rate as published in the Wall Street Journal on the day of the loan closing. The maximum interest rate charged on a loan will be 9%. The interest rate shall remain fixed throughout the term of the loan unless a default rate is applied pursuant to the Note and loan documents. Exceptions to the interest rate policy may be applied by the Board on a case-by-case basis based on such factors as the risk of default, the value of the security, and the prevailing commercial lending rates. The reason for the application of any such exception shall be determined by the Board.

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4.3 Repayment Terms – The LCDC will determine the schedule of loan repayments on a case-by-case basis based on the applicant’s projected ability to repay the loan, the projected value of the collateral and other security, and the overall risk assumed by the Program. Repayment terms may involve standard forms of loan amortization, and/or such other terms as may be determined by the LCDC to be appropriate.

4.4 Security – The LCDC will determine the required security for each loan on a case-by-case basis based on such factors as the risk of default, the nature and value of the security, and the position of the Program in relation to other lenders. In determining the appropriate security, the following will apply:

- (a) The LCDC will generally require a security interest in all assets financed with Program funds. Other assets of the borrower may be required as additional security at the LCDC’s option.
- (b) The LCDC may require the personal guarantee of persons having an ownership interest in the borrowing entity.
- (c) The LCDC may, at its discretion, require additional security including but not limited to additional collateral, guarantees, and the assignment of life insurance.

4.5 Subordination

- (a) Program promissory notes shall not be subordinated to any other lending interest except where the Board determines that such subordination is a reasonable and non-negotiable requirement of the senior lender. Any such subordination shall be subject to terms and conditional acceptable to the Board.
- (b) The LCDC will generally allow a subordination of Program collateral interests to private institutional lenders where necessary to facilitate the maximum financial participation by the private lenders.
- (c) The standing of the LCDC’s financing relative to other public or quasi-public lenders will be negotiated on a case-by-case basis.
- (d) The LCDC will generally require the subordination to Program financing of all notes payable to any officer, owner, or similarly affiliated party to the borrower where such subordination is appropriate and feasible. The terms and conditions of any such subordination shall be established by the Board on a case-by-case basis.
- (e) The LCDC’s use of and/or participation in inter-creditor agreements shall be at the discretion of the LCDC Board.

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4.6 Financial Statement Requirements – Borrower requirements to provide annual financial statements will be at the discretion of the LCDC Board and will be communicated to the borrower in the Commitment Letter.

Section 5 APPLICATION PROCESSING

5.1 Loan Applications - Application for Program financing must include all of the information required by the Program Application Form (attached hereto as Appendix A) and any additional information as may be reasonably requested by the LCDC.

5.2 Application Fee - A fee of \$250 must accompany all Program loan applications. Such fee will be in consideration of loan processing costs incurred by the LCDC, will become property of the LCDC, will not be considered as or accounted for as CDBG Program Income, and will be unrestricted in its use by the LCDC.

5.3 Application Processing

- (a) The processing of loan applications will generally consist of the following:
 - (i) Review of applications for completeness and procurement of appropriate additional information.
 - (ii) Review for Program eligibility criteria.
 - (iii) Determination of economic feasibility, performance of credit analysis, and assessment of risk.
 - (iv) Determination of amount and terms of Program financing, including appropriate security.
 - (v) Preparation of a written report to the Board summarizing the review process and providing recommendations as appropriate.

5.4 Loan Approvals – The LCDC Board shall have sole authority to approve Program loans. Such authority shall include the commitment to lend Program funds, the interest rate(s) charged, the repayment terms, the requisite security for the loan, and other appropriate conditions of lending and covenants of the borrower.

5.5 Loan Declinations

- (a) Loan applications may be declined by the LCDC Executive Director, Board or such other person as may be designated by the LCDC Board to oversee the daily operations of the Program, based on lack of application completeness or

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a failure to meet the eligibility criteria pursuant to Section 2 of this Plan. In such instances, the applicant will be notified in writing of the reason(s) for the disapproval.

- (b) Loan applications may be declined by the LCDC Board for any reason or reasons that represent a reasonable determination that the approval of the Program application would not meet the objectives of the Program and/or would not represent an appropriate or prudent use of Program funds. In such instances, the applicant will be notified in writing of the reason(s) for disapproval.
- (c) Loan applications may be declined in the event that sufficient program funding does not exist.

Section 6 POST- APPROVAL PROCESS

6.1 Commitment Letter – Within 10 business days from the date of the LCDC Board’s approval of a Program loan, a commitment letter shall be sent to the applicant that, at the minimum includes the following information:

- (a) The amount of the approved loan, the applicable interest rate, the terms of the loan, the terms of the repayment, and the expiration date of the commitment.
- (b) The required use of the funds.
- (c) The LCDC’s requirements for collateral and additional security – including guarantees, pledges of assets, assignment of life insurance, etc.
- (d) Summary information regarding employment requirements.
- (e) Any other conditions of lending
- (f) A listing and explanation of any fees to be charged and other closing costs that will be the responsibility of the borrower.
- (g) A listing of those conditions and requirements of the borrower that must be fulfilled precedent to a loan closing.
- (h) Any other information that could reasonably be expected to influence the borrower’s decision to accept the terms of the loan commitment.

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6.2 Commitment Fee

- (a) In consideration of the reservation of funds to approved loan application, the loan applicant will be charged a commitment fee of \$250. The commitment fee will be nonrefundable and will become due and payable concurrent with the applicant's executed acceptance of the loan commitment.
- (b) Commitment fees for loans that do not close through no fault of or action by the LCDC will become the property of the LCDC, will not become part of the Program funds and will be unrestricted in their use.
- (c) Commitment fees for loans that do not close as a result of actions or circumstances solely within the control of the LCDC will be returned in whole to the loan applicant.

6.3 Loan Closing Fees and Costs

- (a) Borrowers will be required to pay the LCDC's legal fees associated with the loan closing.
- (b) Borrowers will pay all of the LCDC's third party costs for documents, instruments, and services associated with the loan closing including, but not limited to survey's, title and lien searches, filing and recording fees, and appraisals.

6.4 Loan Closings – The LCDC's attorney will have the responsibility to prepare and/or require the preparation of all appropriate closing documents. The LCDC attorney will determine the appropriate closing documents to be executed based upon the terms and conditions of the loan approval and standard commercial lending policies. Such documents generally include the following:

- (a) A loan agreement that includes a description of the loan terms and security, appropriate representations and warranties, the conditions of lending, affirmative and negative covenants (including compliance with applicable federal laws and regulations), requirements regarding employment creation and reporting, default provisions, and any other provisions that may be appropriate.
- (b) A note or notes to evidence the indebtedness and terms of repayment.
- (c) The appropriate documents to evidence and record mortgages, liens, guarantees, and such other security as may be required by the terms of the loan.

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- (d) Other appropriate documents as determined by the LCDC attorney.

6.5 Security - The LCDC's attorney will be responsible for perfecting all of the LCDC security interests including, where appropriate, the execution of security agreements, the filing of financing statements, the execution and filing of mortgage documents, the execution of guarantees, and any other appropriate actions to adequately protect the LCDC's security interests. Intercreditor agreements may be executed where appropriate to further protect the LCDC's interest and to facilitate the processing of defaults and foreclosures.

6.6 Loan Disbursements - The following guidelines shall generally apply to the disbursement of the LCDC loan proceeds:

- (a) Subject to the borrower's compliance with the terms and conditions of the loan agreement, all documents evidencing and securing the loan, and other guidelines for disbursement as detailed in this Section 6.6, the LCDC may disburse loan proceeds upon the borrower's presentation of vouchers and other such evidence satisfactory to the LCDC that represent paid or accrued expenses of the borrower and which are eligible costs as determined by the LCDC.
- (b) Where the LCDC loan funds will be used by the borrower as working capital, the LCDC Board will establish an appropriate disbursement schedule and the LCDC Executive Director will be responsible for ensuring that appropriate documentation of the use of the loans funds is secured.
- (c) Where other debt, equity, or grant funding is to be used in conjunction with the Program financing, such financing must, in the opinion of the LCDC, be firmly committed for such use. Evidence of the commitment(s) must be submitted by the borrower.
- (d) Where other debt, equity, or grant funding is to be used in conjunction with the Program financing, the LCDC will, at its discretion, determine an appropriate draw schedule for Program funding based on such factors as the nature and magnitude of risk assumed by the LCDC, the nature of the activities being financed, and the draw schedule for the other financing. The manner and terms of the disbursement of the Program financing should normally be included as part of the written report and should be included in the approval of the financing by the LCDC Board. However, in instances where the LCDC Board has not prescribed a draw schedule, the LCDC Executive Director may establish a draw schedule.

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Section 7 LOAN MANAGEMENT

7.1 General - The LCDC will establish and use appropriate systems for the accounting and collection of Program loan repayments and shall procure and maintain appropriate documents and records associated with Program assistance in a manner consistent with the rules and requirements of standard commercial lending policies.

7.2 Delinquencies – For loan repayments that are 15 days past due, the LCDC will notify the borrower of the delinquency and encourage prompt payments. Delinquencies that continue for 60 days will be referred to the Board for appropriate action. Notwithstanding the above, the LCDC Executive Director or such other person charged with the responsibility of monitoring the activity of borrowers, shall immediately notify the LCDC of any bankruptcy or other serious event that would negatively affect the financial status of a Program borrower.

7.3 Late Fees – If any payment is not received within 15 days of the due date a late fee equal to the greater of twenty-five dollars (\$25.00) or one percent (1%) of the delinquent amount, whichever is greater.

7.4 Defaults – Loan defaults occur due to noncompliance with loan covenants included in the Loan Agreement. LCDC will notify the borrower of the event of default and encourage cure of default although failure of the LCDC to notify the borrower does not relieve the borrower of their obligations under the Loan Agreement. Further action will be taken as necessary and as outlined under the Loan Agreement. Notwithstanding the above, the LCDC Executive Director, or such other person charged with the responsibility of monitoring compliance with the terms of the loan agreement shall immediately notify the LCDC Board of any event of default when identified.

7.5 Adjustment of Terms and Conditions – Requests by the borrower for adjustment of any of the terms and conditions of a closed Program loan will be reviewed to determine whether the adjustment is in the best interests of the LCDC. Requests will be processed in accordance with the following:

- (a) Requests to adjust the interest rate, term of the loan, or security for the loan will be presented to the LCDC Board. Any such adjustments will require approval of the LCDC Board.
- (b) Requests to temporarily modify the repayment schedule must be approved by the LCDC Board. No temporary modification will be granted without the LCDC Board approval.
- (c) Requests for changes respecting any covenants or conditions of a financial nature must be approved by the LCDC Board as to content and the LCDC Attorney as to form.

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- (d) Requests for any other changes to the covenants or conditions of the loan including, but not limited to such areas as reporting requirement, cost documentation, and maintenance of records must be approved by the LCDC Board.
- (e) Any and all legal fees and disbursements that the LCDC incurs in connection with requests are payable by the Borrower.

7.6 Annual Financial Review – the LCDC may conduct a financial review of Borrowers with outstanding Program loans, based on the financial statements or other information submitted by the borrower. Additional information may be required from the borrower to complete the review. The review may be submitted to the LCDC Board.

Section 8 EXCEPTIONS

8.1 Exceptions

- (a) The LCDC may deviate from the Eligibility Requirements (Section 2) Program Standards (Section 3), Lending Policies (Section 4), and Commitment Fee (section 6.2) sections of the Plan only where such deviation is determined by the LCDC Board to result in an extraordinary public benefit to Livingston County. The nature of the deviation and the nature and extent of public benefit to result must be stated in an approved LCDC Board Resolution. In no instance shall such deviation be inconsistent with the laws, regulations, rules, or policies of the program.
- (b) Any other deviations from the Plan will require the authorization of the LCDC Board.

Adopted September 11, 2015