

# KEWAUNEE COUNTY

## BUSINESS DEVELOPMENT LOAN

### PROGRAM MANUAL



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Date: 11/01/2019

Approved By: Finance Committee & County Board  
Date: 01/03/2020 & 03/17-2020

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## **FOREWORD**

Kewaunee County received a donation in 2018 from Dominion Energy, the operator of the former Kewaunee Nuclear Power Plant for the purpose of providing economic development in the County after the power plant closed. The donated funds have been set aside in a Kewaunee County Economic Development Fund. A portion of these funds have been allocated to create the Business Development Loan Program (BDLP).

These economic development funds may be provided as a loan to a business. The business, in return for use of the public funds, provides private investment towards the assisted activity and creates increases in the tax base, job opportunities, or other benefits to the community.

When a business repays the community the loan (principal and interest payments), these payments are deposited back into the BDLP. The BDLP can then make additional loans to businesses wishing to expand or locate in the community. When successfully administered, the County's BDLP can expand the amount in its BDLP to an amount in excess of the original amount donated, as well as help provide growth to the community. BDLP loans should not be the primary financing, but provide 'gap' financing to allow a project to take place. The County should exercise due diligence by performing a thorough credit analysis to determine business viability and adequately securing and servicing the loan.

Policies and procedures contained in this manual govern the use of the BDLP Funds.

## **SECTION 1. GENERAL PROVISIONS**

### **1.1 TITLE**

These policies and procedures shall hereafter be referred to as the Kewaunee County Business Development Loan Program Manual.

### **1.2 PURPOSE**

These policies and procedures have been established to set forth the criteria which will govern economic development activities assisted with funds made available through the County's Economic Development Fund.

### **1.3 OBJECTIVES**

Economic development activities assisted with funds made available through this Program are intended to meet the following objectives:

- (1) To encourage the creation and retention of permanent jobs which represent a range of wage scales appropriate to the skills and experience of the local labor force.
- (2) To encourage the leveraging of new private investment into Kewaunee County.
- (3) To maintain a positive and proactive business climate which encourages the retention and expansion of existing business and industry and helps to attract desirable new business.
- (4) To help implement Kewaunee County economic goals and objectives.
- (5) To maintain and promote a diverse mix of employment opportunities, and to minimize seasonal or cyclical employment fluctuations.
- (6) To encourage the development of modern technology and safe, healthful work environments.
- (7) To increase the equalized value of the County and our local municipalities.

### **1.4 AMENDMENTS**

Kewaunee County may from time to time amend the provisions imposed by this manual; however, any such amendments are subject to prior approval by the County Board.

The fund shall exist no less than five years from the date of inception. After that the fund may be dissolved by a 2/3 majority vote of the County Board with the remaining funds transferred as designated by the vote. If no fund is designated by the Board at the time of dissolution, any remaining funds shall be transferred to the General Fund.

## **SECTION 2. ADMINISTRATION**

### **2.1 PROGRAM**

#### ***Program Administrator***

- (1) Kewaunee County shall designate an administrator for the EDF and establish a formal

loan review committee which shall consist of individuals representative of broad community interests, and having special expertise and knowledge of loan procedures and economic development processes. As the County's Revolving Loan Committee provided a very similar function, the RLF Revolving Loan Committee shall function as the BDLP Review Committee.

- (2) The administrator shall explain the Program to prospective applicants, provide written information, assist applicants in completing applications, and process requests for funding.
- (3) The administrator shall review all financial statements and loan amortization schedules, review and approve documentation of expenditures, record security instruments, and maintain the program accounting records.
- (4) Kewaunee County Corporation Counsel shall prepare all loan agreements, review all promissory notes and mortgage or lien instruments, and counsel the County on default matters.
- (5) The administrator shall be responsible for the verification of the use of the funds, such as equipment, etc., financed with program funds.

***BDLP Review Committee***

- (6) The BDLP Review Committee shall have the authority to review, select and recommend loan applications to the governing body for final approval. The Committee shall also have the authority to make policy recommendations for the administration of the program. Periodic activity reports prepared by the administrator shall be provided to members of the Kewaunee County Board as requested.

**2.2 MEETINGS**

Meetings shall be held on an as-needed basis. Pursuant to Section 19.84, Wisconsin Statutes, all Committee members shall be given prior notice of each meeting. A majority of the Committee constituting a quorum shall be required for official Committee action.

**2.3 CONFLICT OF INTEREST**

A conflict of interest refers to situations when a Board Member, Alternate, or Loan Committee member's personal financial interests or fiduciary duties owed to third parties, such as immediate family, may compromise, or have the appearance of compromising, an Alternate, BDLP Review Committee or County Board member's professional judgment or behavior in carrying out his or her obligation to Kewaunee County Business Development Loan Program and/or Kewaunee County.

Examples of conflicts of interest include but are not limited to situations in which a Board Member, BDLP Review Committee member or Alternate:

- (1) Involvement in any activity or holding any outside interests that conflict or suggest a potential conflict with the Kewaunee County Business Development Loan Program.
- (2) Involvement in or own any business investments which are related to or connected with the BDLP, its programs, departments, or enterprises.
- (3) Presently involved in or contemplating any legal action against the BDLP.

- (4) Applying for, or receiving, any special services, grants, loans or other programs provided by the BDLP, or have pending contracts with the BDLP.

It is the policy of Kewaunee County to address how issues of actual, potential and perceived conflicts of interest involving Board members should be identified, disclosed and managed. County Board Members, BDLP Review Committee members, and Alternates having voting authority will complete a Conflict of Interest form annually. The forms will be reviewed for conflicts by the Administrator and remedial actions identified. Most concerns about conflicts of interest may be resolved and appropriately addressed through prompt and complete disclosure.

## **2.4 RECORDS**

Written records of all Program activities, including Program meetings, loan applications, and related documents, shall be maintained in appropriate files. All files shall be maintained as confidential records with limited access by authorized personnel. Kewaunee County Corporation Counsel shall be consulted in regard to compliance with state and municipal open records laws.

The following files shall be established and maintained for each loan and project recipient as applicable:

- (1) Loan Package: All credit and loan information submitted to Kewaunee County, including all applicable correspondence, shall be placed in a file and retained and destroyed according to the County's Record retention and Disposal Policy.
- (2) Loan Approval/Denial: The file will contain any action taken on the loan (approval/denial and loan maintenance) and will include recommendations and evidence of said action.
- (3) Loan Closing: Kewaunee County will be responsible for all loan closings. The administrator will assist in assembling the legal documentation for the loan closings, as well as recording all loan closing documents. All legal documents from the loan closing, including all applicable correspondence, shall be placed in a properly secured location.

All loan recipients will be required to enter into a loan agreement with Kewaunee County. The collateral requirements will be determined on an individual basis and may include: mortgages on land and buildings, liens on machinery and equipment, and liens on accounts receivable and inventory. This collateral may be subordinated to private sector financial institutions participating in the project to a reasonable extent, if required. Personal guarantees from the principals of the business usually will be required. In addition, key-person life insurance coverage naming Kewaunee County as a beneficiary, with a declining balance equal to the outstanding loan balance, and junior liens on all corporate assets may be used where appropriate. Finally, businesses receiving loans for fixed assets will be required to obtain property-casualty insurance for the appraised value of the property being financed, and have Kewaunee County listed as an additional insured or loss payee or mortgagee, whichever is applicable.

Copies of the loan closing documents will be provided to the loan recipient, along with an invoice, if applicable, for loan closing and servicing fees and an amortization schedule.

- (4) Tickler File System: A tickler file system shall be established and maintained to ensure that financial information, loan agreement and collateral review requirements, and UCC continuations are tracked and obtained as required. The system should include the following monthly coded index files for:
  - (a) expiration dates for property, casualty and life insurance policies;
  - (b) due dates for all financial statements;
  - (c) expiration dates for UCC financing statements, with a check three months before expiration;
  - (d) dates of annual loan performance and covenant reviews;
  - (e) annual dates of field visits;
  - (f) due dates for property tax payments and notification from borrower for documentation of property tax payments;
  - (g) review dates for job monitoring; and
  - (h) dates on which loan recipients will be notified of changes in repayment amounts.
- (5) Financial Statements: Loan recipients may be required to submit periodic financial statements to Kewaunee County. The administrator will provide a financial analysis and compare the statement with historical trends and budget.
- (6) Progress Reports: Loan recipients may be required to submit periodic progress reports during the outstanding term of the loan (Schedule D). The administrator will provide progress reports to the Committee.
- (7) Field Visits: Site visits may be conducted periodically to each loan recipient, the scheduling of which depends on the nature of the project. A summary of the site visits will be placed in the file, particularly highlighting any information that can help in rating the overall condition/risk of the loan.
- (8) Repayment Monitoring: All loan payments must be paid within 30 days of the due date. Late payment penalties will be levied for payments that are overdue. Kewaunee County will notify the loan recipient in writing of the deficiency and the action that will be taken should the payment not be made. Should a late payment penalty be levied, Kewaunee County will contact the loan recipient to determine the reason for the delayed payment. All payments shall be applied first to accrued late payment penalties, then to interest accrued, and then to principal.
- (9) Loan Assessments: All loans may be assessed periodically (Schedule B) at such times as may be deemed necessary by Kewaunee County. The annual assessment will follow receipt of the fiscal year-end financial statement, the year-end progress report, and the annual field visit. The following criteria will be used to determine the status of all loans: 1) timeliness of monthly payments; 2) maintenance of collateral securing the loan; 3) overall financial condition of the business; 4) presence of material liens or lawsuits; and 5) violations of loan covenants. If the business is experiencing problems with any of the above criteria, Kewaunee County will work with

the loan recipient to determine the actions that are needed to correct the identified deficiencies, including possible restructuring of the loan. If appropriate, Kewaunee County may arrange for counseling assistance either through the University of Wisconsin-Extension, Small Business Development Center (SBDC) the Service Corp of Retired Executives (SCORE), or other services available.

Should the loan recipient default on the EDF loan, the account will be turned over to the Kewaunee County Corporation Counsel for legal action in order to recover loan proceeds through the liquidation of collateral and the exercising of personal guarantees.

## **2.5 ADMINISTRATION / COSTS**

The administrator will be responsible for day-to-day administration of the BDLP portfolio, including establishment and maintenance of record keeping preparing and submitting progress reports, collecting and analyzing financial statements, conducting field visits, monitoring repayments on BDLP loans, and working with problem loans.

- (1) Direct administrative costs of the BDLP may be charged to the program. Direct costs include the following:
  - (a) Legal costs for preparing loan documents.
  - (b) Administration time to collect and review applications, review loan materials and requirements, file necessary security agreements, receipt and disburse funds, review progress reports and all other loan monitoring activities.
  - (c) Consulting fees to review business plans and to provide technical assistance.
  - (d) Office supplies and expense such as copying, mailing, etc.
  - (e) Training costs related to the administration of the BDLP.
- (2) If necessary for the successful administration of the program, Kewaunee County may establish a loan origination fee or other fees as needed. Fees would be one-time fees and may vary with the complexity of the loan package.

## **2.6 ADMINISTRATION FUNDING**

Funds may be withdrawn from the loan fund to cover reasonable administrative expenses. Administrative expenses shall include, but not be limited to the following:

- (1) Contracted costs associated with hiring an administrative provider.
- (2) Costs incurred by participating community BDLP staff. Administrative costs incurred by participating community BDLP staff shall be documented and shall be submitted to the Kewaunee County for approval.

Up to three percent of managed capital may be used for administrative costs. Managed capital is defined as the total cash on hand and all outstanding loan balances. Other funds may be used in situations when funds are insufficient to cover administrative costs. To generate additional revenue to cover administrative costs, the County Board may also establish loan

origination fees, closing fees, servicing fees, and other fees to cover charges directly related either to processing an application or to servicing a loan.

## **SECTION 3. ELIGIBILITY**

### **3.1 ELIGIBLE AREA**

Eligible activities shall take place within the corporate limits of Kewaunee County.

### **3.2 ELIGIBLE APPLICANTS**

- (1) Applications may be submitted by the sole proprietor, managing partner or member, or Chief Executive Officer of any business wishing to establish a new operation or expand an existing operation in Kewaunee County.
- (2) Applicants must agree to remain physically located in Kewaunee County during the term of the loan.
- (3) To qualify for funding, eligible businesses must complete an application and submit all relevant supporting documentation. Only when all the necessary documentation has been submitted will the application be processed and presented for formal action.
- (4) No member of the governing body, review committee, or any other official, employee, or agent of Kewaunee County who exercises decision-making functions or responsibilities in connection with the implementation of this program, is eligible for financial assistance under this program.
- (5) No program loans will be made which are in conflict with Section 946.13 of the Wisconsin Statutes (Private Interest in Public Contract Prohibited).
- (6) Applicant shall not be discriminated against on the basis of age, race, religion, color, handicap, sex, physical condition, development disability as defined in s. 51.01(5), sexual orientation or national origin.

### **3.3 ELIGIBLE ACTIVITIES**

Program loans shall be available to eligible applicants for the following activities:

- (1) The acquisition of land, buildings and fixed equipment.
- (2) The site preparation and construction, reconstruction or installation of buildings (including building expansion), and fixed equipment.
- (3) The clearance, demolition, removal or rehabilitation of buildings and improvements.
- (4) The payment of assessments for sewer, water, street, and other public utilities if the provision of the facilities will directly create or retain jobs.
- (5) Working capital.

### **3.4 INELIGIBLE ACTIVITIES**

Program loans shall not be available for the following activities:

- (1) Refinancing or consolidating of existing debt.
- (2) Reimbursement for expenditures prior to loan approval.
- (3) Equipment that is not essential to the business operation.
- (4) Routine maintenance.
- (5) Professional services such as feasibility and marketing studies, accounting, management services, and other similar services. Legal services incurred in the closing of a RLF loan are eligible.
- (6) Other activities that the Review Committee may identify during the administration of the program.

### **3.5 INELIGIBLE BUSINESS**

Program loans shall not be available for the following businesses:

- (1) Speculative investment companies.
- (2) Real estate investment companies.
- (3) Lending institutions.
- (4) Gambling operations.
- (5) Non-public recreation facilities.
- (6) Other businesses not serving the interests of the Community.

### **3.6 MINIMUM REQUIREMENTS**

To be eligible for loan funding, the proposed project must meet all of the following minimum requirements:

- (1) Private Funds Leveraged. The applicant must leverage a minimum of one (\$1.00) dollar of private funds for every one (\$1.00) dollar of loan funds requested. Higher leverage may be required at the discretion of the Review Committee. The BDLF therefore can provide no more than 50% of the project funding. If the is the recipient of funds through the BDLP, the total amount of funds received from both funds cannot exceed 50% of the project funding.
- (2) Job Creation/Retention OR Property Tax Base Creation.
  - (a) Funding per Job Created/Retained: At least one (1) full-time equivalent must be created or retained for every %=\$50,000 of program funds requested.
  - (b) Property Tax Base Creation: The project will create newly assessed property value at 100% of the amount loaned by the BDLP.

- (c) Business Retention: Receipt of a signed and dated personal statement that thoroughly explains the circumstances behind the loan request as it relates to the retention of the business operation. The Program Administrator shall determine if the statement is sufficient in explanation and detail.
- (3) Financial Feasibility and Business Viability. The applicant must demonstrate that the proposed project is viable and the business will have the economic ability to repay the funds.
- (4) Compliance with Applicable Laws. Applicant shall comply with all applicable local, state, and federal laws and codes.
- (5) Project Completion. Projects shall be completed within 24 months from the date of the loan approval. Applicant shall provide Kewaunee County a schedule not exceeding 24 months for project completion. Timetable should include a hiring schedule, construction completion schedule and any pertinent information and dates relating to the proposed project.

## **SECTION 4. TERMS AND CONDITIONS**

### **4.1 DEFINITION**

Direct loans are available to eligible applicants meeting all the minimum program requirements.

The BDLP shall provide direct loans and may participate in loans with other lenders. It will not issue guarantees, letters of credit, or other contingent financing arrangements.

### **4.2 CONDITIONS**

Loan proposals should be based on need and ability to repay. Minimum standards include the following:

- (1) Loan Amount. Loan amounts are subject to the availability of program funds.
- (2) Interest Rate. The interest rate shall be negotiable, depending on the need of the company, no less than the average annual investment earnings of the County plus some measure of risk.
- (3) Terms for Loans.
  - (a) Working capital shall have a maximum term of seven years.
  - (b) Machinery, equipment and fixtures shall have a maximum term of ten years.
  - (c) Real estate loans shall have a maximum term of 10 years which can be amortized on a 20-yr basis with the option of refinancing for an additional 10 years.
  - (d) But in any case, not longer than the term of private financing.
  - (e) Balloon payments may be utilized for all loan types.

- (4) Period of Payment. The repayment schedule shall be set up for monthly payments. Monthly ACH payments are required and will be scheduled on the first of each month.
- (5) Repayment. Payments may be deferred up to 1 year, and payments of principal may be deferred up to one additional year if justified in the loan application. Interest shall accrue during the deferment period and shall be added to the principal amount of the loan. Thereafter, interest and principal shall be collected for the remaining term of the loan.
- (6) Prepayment. No loan shall be subject to any penalty for prepayment prior to the term of the project.
- (7) Owner Equity. A minimum of 10% equity injection of total project cost is required. For new businesses a minimum of 10% must be cash injection.
- (8) Collateral. Reasonable security will be required for each loan. Collateral may consist of a first or second lien on all assets to be purchased with loan proceeds, and liens on all other assets owned and used in the business. Personal guarantees will be required on all new loans.

Where ideal conditions allow loans to be fully collateralized the following table is a general guide for advance ratios on collateral:

	<b>Collateral Type</b>	<b>Ideal Advance Limit Guidelines</b>
1	Real Estate (except fallow, recreational, or restricted land)	80% of the lowest of the appraised value, the assessed value, and the purchase price. Case-by-case consideration if advance ratio is over 80% for home buyer loans and over 90% for business loans.
	Fallow, recreational, or restricted land	60% of the lower of face or market value if it is fallow, recreational, or restricted land.
2	Equipment (medium to large size)	75% of market value
3	Hand held tools and small Equipment	50% of market value, special consideration up to 75% if newly purchased
4	Furniture, Fixtures and Office Equipment	Up to 50% of market value
5	Inventory and Raw Materials	Up to 50%
6	Vehicles (cars & trucks)	75% of blue book value
7	Recreational vehicles	Considered on case-by-case basis, typically no more than 50%
8	Depository accounts	100% if held in reserve for CWED as the lender otherwise considered unsecured
9	Agreements to deliver	Considered unsecured
10	Renewal commissions	Considered unsecured

## **SECTION 5. APPLICATION PROCEDURES**

### **5.1 DISCUSSION OF REQUIREMENTS**

Prior to submitting an application, the applicant shall discuss the program with the EDF administrator. The administrator shall assist the applicant, as is reasonably necessary, in completing the application. All financial information shall be kept confidential with limited access by authorized personnel only.

### **5.2 TIMING**

Applications may be submitted at any time during the calendar year.

### **5.3 PRIORITY**

Applications shall be reviewed in the order received. In the event that funds requests exceed available funds, the following criteria will be used to determine which business(es) will be awarded the loan(s):

- (1) Eligibility of the applicants.
- (2) Eligibility of the project to be undertaken, including reasonableness of project costs.
- (3) The extent to which private funds are to be leveraged.
- (4) The extent to which jobs are to be created or tax base increased.
- (5) The extent to which the loan can be secured.
- (6) Evidence of ability to repay the loan.
- (7) Size of the loan requested.
- (8) Timing of the proposed expenditures.
- (9) Completeness of application.
- (10) Other factors as deemed appropriate.

### **5.4 LOAN APPLICATION PACKAGE**

Applicants shall submit a loan package consisting of the following information:

- (1) Application. A completed application form as provided by the administrator. The EDF application will include a checklist of information required for the application to be considered complete.
- (2) Business Description. A written description of the business, including the following:
  - (a) A brief history of the existing or proposed business, including when it started or is to start, type of operation, legal structure, markets, and products.
  - (b) Key customers and clients.

- (c) A personal resume of each principal associated with the business, including: number of years of experience; educational background; and personal involvement in the proposed or existing business.
  - (d) The Administrator shall require, depending on the size of the business or the proposed project, three years of federal income tax statements (if applicable) or three years of financial history (if applicable) reviewed or audited in accordance with generally accepted accounting principles by an independent accountant and including balance sheets, profit/loss statements and accountant notes.
- (3) Project Description. Explain how the business plans to use the requested funds.
- (4) Commitments from Private Lenders. Include documentation of commitments from all private lenders making loans to the project. Lender commitment letters should include:
- (a) Description of the type of loan being made by the lender (first mortgage, permanent financing, construction financing, etc.)
  - (b) The amount of the loan, interest rate, term, and security.
- (5) Projections. Provide a balance sheet, income statement, and cash flow statement to show clearly that the requested loan is necessary to make the project work. These should cover a three-year period and should be based on the assumption that the business will receive the requested loan. The administrator may require that the projected financial statements be signed by an independent accountant.
- (6) Additional Information. Additional information as may be required by the Loan Review Committee, or the BDLP Administrator.

## **5.5 REVIEW PROCESS**

Specific steps in the review process include the following:

- (1) Preliminary Review. The EDF administrator will review the application for completeness and verify that the proposed project meets the minimum requirements provided in Section 3.6. If the application is not complete, the Administrator will inform the applicant of the deficiencies.
- (2) Formal Review. The Loan Review Committee will meet for formal review of the application within 30 days of the receipt of a completed application. Once the review is completed and the proposal is acceptable for funding, the Loan Review Board will forward the proposal to the Finance committee for approval, and then to the County Board for final approval.
- (3) Notice of Award. If the application is approved, a meeting will be arranged to execute the necessary loan documents.
- (4) Rejection of Award. If the application is not approved, the Administrator will send a letter to the applicant stating the reasons for rejection.

## **5.6 TRIGGERS TO REVIEW AND REVOTE PRIOR TO CLOSING**

If details presented to Loan Review Committee during the approval process change

significantly prior to loan closing, the loan request will be brought back to the Committee for reconsideration of the approval. Any of the following changes with approved loans up to the time of closing will trigger a re-review and revote by the Board:

- (1) Change in cash flow (+ or -),
- (2) Change in lender or lender's terms.
- (3) Change in location for borrowers purchasing real estate for the project,
- (4) A material event (including circumstances that cause the Program Director to be uncomfortable).

## **SECTION 6. DISTRIBUTION OF FUNDS**

### **6.1 LOAN PROCEDURES**

Prior to releasing funds, the following terms and conditions must first be met:

- (1) Notice of Award. The Review Committee must have reviewed and approved a complete application for an eligible applicant. The Finance Committee and County Board must have approved the loan.
- (2) Loan Agreement. Kewaunee County shall prepare a loan agreement which shall be executed by the County and the owners or appropriate officers of the business.
- (3) Promissory Note. A promissory note shall be prepared by Kewaunee County. The promissory note must be signed by the owners or appropriate officers of the business at the time of loan closing. The note must be dated; it must reference the agreement between Kewaunee County and the business; and, it must specify the amount and terms of the loan funds delivered.
- (4) Security. Mortgage or lien instruments or personal guarantees provided as security for all loans must be prepared by the Kewaunee County Corporation Counsel and executed at the time of the loan closing. Kewaunee County Corporation Counsel shall record the instrument and place a copy in the project file to include:
  - (a) Mortgage and/or security agreement.
  - (b) UCC searches and filing.
  - (c) Guarantee agreement.
  - (d) Title insurance or Abstract
  - (e) Assignment of Life Insurance.
  - (f) Casualty Insurance binder.
  - (g) Personal guarantee.
  - (h) Other as may be appropriate.
- (5) Repayment Schedule. A loan repayment schedule shall be prepared by the EDF administrator. At closing, the repayment schedule shall be provided to the owners or officers of the business. At that time, the repayment schedule shall be attached to both parties copies of the agreement.
- (6) Evidence of Permits, etc. Documentation must be provided by the applicant that all

necessary permits, licenses, and any other registrations required have been obtained by the applicant prior to the release of program funds.

- (7) Evidence of Program Expenditures. Documentation must be provided by the business to evidence program expenditures prior to the release of funds. Documentation shall include invoices, receipts for materials, approved requests for payment, final bills of sale or canceled checks. All documentation shall be reviewed and approved by the administrator.
- (8) Title opinion by Kewaunee County attorney when necessary.
- (9) Miscellaneous documents from business may include:
  - (a) Good standing certificate from the Department of Financial Institutions.
  - (b) Articles of Incorporation and By-Laws.
  - (c) Board resolution and Secretary's certificate.
  - (d) Current financial statement.
  - (e) Evidence of private funds.
  - (f) Environmental Assessment for real estate loans that will meet the Kewaunee County requirements.
- (10) Loan Closing: The administrator will schedule a loan closing. All documents will be executed before funds are disbursed. Mortgages and UCC Statements shall be recorded with the Register of Deeds and the Secretary of State.

## **SECTION 7. POST APPROVAL REQUIREMENTS**

### **7.1 OBLIGATION OF LOAN RECIPIENT**

In addition to the above-mentioned terms and conditions, all applicants shall agree to comply with the following:

- (1) The applicant is expected to create or retain the obligated number of jobs or construct the stipulated property value increase within 24 months of the date of the execution of the loan agreement with Kewaunee County or the County may elect to enforce any clawback provisions contained within the loan or development agreement.
- (2) The applicant shall not discriminate on the basis of age, race, religion, color, handicap, sex, physical condition, development disability as defined in s. 51.01(5), sexual orientation or national origin in any employment or construction activity related to the use of industrial or business loan funds.
- (3) The applicant shall use the loan money only to pay the cost of services and materials necessary to complete the economic development activities for which the loan funds were awarded and shall permit Kewaunee County the right of audit/inspection to verify compliance.
- (4) The applicant shall permit inspections by persons authorized by Kewaunee County of all projects and properties assisted with loan funds. Related project materials shall also be open to inspections which include, but may not be limited to, contracts, materials, equipment, payrolls, and conditions of employment. Requests for

inspection shall be complied with by the applicant within four (4) working days of the request.

- (5) The applicant shall keep such records concerning the economic development work as may be requested by Kewaunee County. These files shall be maintained for at least three (3) years after completion of the work for which the loan has been obtained.
- (6) The applicant shall submit periodic progress reports to the administrator if requested. These reports shall give an update on the project and shall include minimum current and projected employment levels and the financial statements.
- (7) The applicant shall maintain fire and extended coverage insurance on the project property required during the term of the business loan. Kewaunee County shall be listed as Loss Payee, Mortgagee, or "additional" insured on the policy. Term life insurance may be required of the applicant to cover the loan balance through the life of the loan.
- (8) To abide by all federal and state laws, when applicable. These include, but may not be limited to: The Civil Rights Act of 1964; the Age Discrimination Act of 1975; the Davis-Bacon Act, as amended; the Contract Work Hours and Safety Standards Act; the Copeland "Anti- Kickback" Act; and, all regulations pursuant to these Acts.
- (9) Applicant must abide by all federal laws, when applicable. These include, but may not be limited to: The Civil Rights Act of 1964; the Age Discrimination Act of 1975; the Davis-Bacon Act, as amended; the Contract Work Hours and Safety Standards Act; the Copeland "Anti- Kickback" Act; and, all regulations pursuant to these Acts.

## **7.2 APPROVAL OF LOAN MODIFICATIONS**

On occasion circumstances arise that prompt the borrower to request a modification to the loan terms, collateral or security. It is understood that time is of the essence with loan modification requests; however, all requests should have at least 2 weeks lead time for preparation and presentation to the appropriate level of authority. Loan modifications will be approved or denied by the same authority based on the balance of the loan at the time of the Modification Request.

- (1) Collateral Substitutions can be approved by Program Director.
- (2) Subordinations and Collateral Releases can be approved by Loan Review Committee.
- (3) Payment and Terms modifications will be approved by Loan Review Committee, Finance Committee and County Board.

## **SECTION 8. PERFORMANCE MONITORING**

### **8.1 PRIVATE LEVERAGE COMMITMENTS**

The administrator shall monitor the use of the funds and expenditure of private leverage commitments. Documentation may include invoices or receipts for materials and supplies, letters from lenders, final bills of sale, and canceled checks.

### **8.2 DEVELOPMENT GOALS**

#### **(1) DEVELOPMENT OF PROPERTY**

- (a) The Administrator shall monitor the borrower's progress in meeting agreed upon property development goals. Failure of the business to provide the goals

may be a condition for default unless the business can show it made a good faith effort to meet property development goals but did not succeed due to reasons beyond its control.

**(2) JOB CREATION/RETENTION**

The Administrator shall monitor the borrower's progress in meeting agreed upon job creation or retention goals. Job creation must be documented using payroll records. Before-project and after-project payroll records should be provided by the borrower to document job creation. Failure of the business to provide the targeted number of jobs may be a condition for default unless the business can show it made a good faith effort to create the targeted number jobs but did not succeed due to reasons beyond its control.

**8.3 DEFAULT**

(1) In addition to other grounds specified in the loan agreement, the following may be considered a default:

- (a) Failure of the business to make any payment of principal or interest within 30 days after the payment is due and payable.
- (b) Defaulting on other loans with private lenders.
- (c) Cessation of operations or movement of the business from Kewaunee County.
- (d) Death of Owner
- (e) The business is sold.

(2) In the event of a default, all sums due and owing, including penalties, Kewaunee County shall, at Kewaunee County's option, become immediately due and payable. To exercise this option, the Kewaunee County attorney shall prepare a written notice to the company. The notice shall specify the following:

- (a) The default.
- (b) The action required to cure the default.
- (c) A date, not less than forty-five (45) days from the date of the notice, by which the default must be cured to avoid foreclosure or other collective action.
- (d) Any penalties incurred as a result of the default, jobs, etc.

**SECTION 9. REUSE OF FUNDS**

**9.1 ACTIVE PROGRAM**

Repaid funds shall be deposited into the Business Development Loan Fund and used in a manner consistent with the policies and procedures manual. A separate accounting record shall be kept so that a clear auditable account can be maintained to show how funds have been collected. The BDLP shall be audited on an annual basis during the County's annual audit. Reports may be submitted to the Finance Committee on annual basis.

## **SECTION 10. LOAN SERVICING**

### **10.1 SERVICING FILES**

The Administrator shall obtain information on the continuing operations of the borrowers to ensure compliance with the loan to adequately protect Kewaunee County's security interest in all loans granted (Schedule A). The servicing will also ensure that all requirements are met on the ongoing filing and recording of documents needed to perpetuate the secured position of Kewaunee County.

A loan servicing file shall be established and maintained for each loan recipient that includes all written correspondence; a record of important communications; a list of applicable loan covenants; certificates of insurance for builder's risk, property- casualty, and life insurance, as applicable; and documentation for meeting of project goals contained in the development agreement.

### **10.2 RECORD KEEPING**

In addition to the above financial management records must include a comprehensive system designed to provide the following EDF information for each loan recipient:

- Loan amounts disbursed
- Loan interest and principal collected
- Loan balances
- Balance of EDF funds available for new loans or projects
- Disbursements for administration costs
- Loan repayment schedule