NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

EDA REVOLVING LOAN FUND

MANAGEMENT PLAN

May 24, 2017

PART I: REVOLVING LOAN FUND STRATEGY

A. ECONOMIC ADJUSTMENT OVERVIEW

The Niagara County, New York Comprehensive Economic Development Strategy dated June 2015 (CEDS) identifies goals and objectives intended to build on the strengths, address the weaknesses, capitalize on opportunities and mitigate threats to the local and regional economy. Specifically, the CEDS has among its goals and objectives, (i) the strengthening of the competitive position of businesses within Niagara County by reducing the costs of doing business through the provision of financial assistance (including through the establishment of revolving loan funds), (ii) expanding key sectors of the economy, such as manufacturing, tourism, agriculture, commerce and transportation, (iii) diversifying the County's economic base by attracting foreign businesses, helping to identify and expand markets for existing businesses, promoting local assets such as the Niagara Falls International Airport and water resources and (iv) improving the quality of life for the people of Niagara County by promoting sustainable development, attracting higher paying jobs to reduce poverty rates and protecting natural resources.

The Niagara County Industrial Development Agency (NCIDA) formed the Niagara County Development Corporation (NCDC) for the purpose of making affordable loans to businesses within Niagara County. NCIDA formed the Niagara County Center for Economic Development (NCCED) to serve as an umbrella for economic development services and provides staffing to NCDC. NCDC operates the EDA Revolving Loan Fund (RLF), which plays an integral part in advancing the goals and objectives of the CEDS by providing financial resources to support new and expanding businesses. The primary goal of the RLF is to fill the gap in existing private and public sector sources of financing, thereby facilitating investment decisions, making projects financially feasible and expediting new construction or expansion of operations. The RLF is not intended to be a primary lending institution or a bank of last resort, and is not a source of venture capital. The availability of RLF funds serves as a catalyst to encourage private lenders to extend credit to local businesses or businesses seeking to locate in Niagara County, contributing to economic growth within the County, and provides a source of funding for small-to-medium sized businesses and new businesses who face difficulty in obtaining affordable financing in amounts and in a timeframe needed to meet their requirements.

B. BUSINESS DEVELOPMENT STRATEGY

1. Objectives of the RLF:

a. Stimulate the Niagara County economic base in order to create new job opportunities for its structurally unemployed and low and moderate income residents.

b. Retain and expand the real property tax base.

c. Provide employment for persons with incomes below the poverty level.

d. Encourage the formation and/or expansion of local enterprise in order to stabilize, expand and diversify its economic base.

e. Stabilize and expand the tax base in order to relieve the symptoms of severe fiscal distress.

f. Encourage economic development by providing affordable financing to local firms and encourage private investment.

g. Assist in the creation and stimulation of private sector capital formation.

h. Aid small business development.

i. Redevelop blighted or vacant land and facilities in order to put them in productive use.

j. Stabilize and diversify the Niagara County economy by providing employers with capital for start-up and/or expansion of locally owned businesses.

k. Foster and support loan programs by the Empire State Development Corporation, the Job Development Authority, Brownfields Revolving Loan Fund, local development corporations in the cities of Lockport, North Tonawanda, and Niagara Falls, as well as other local organizations.

l. Aid businesses owned and operated by minorities, women or by persons who are economically disadvantaged.

m. Provide capital for manufacturing and service companies using new technologies with an emphasis on growth industries.

n. Provide working capital and financing for export companies.

o. Provide financing for economic adjustment efforts when conventional lenders may hesitate.

2. Targeted Businesses:

The RLF will be targeted to areas meeting the goals and objectives identified above and also areas where industries have a financial need. Specific targeting criteria include the following:

a. Assist the growth sectors of the County economy.

b. Promote the expansion of industries in areas of the County having high unemployment and/or low per capita income.

c. Assist local industries in the export of their products.

d. Encourage international firms to locate within the County and in the County's incubator facility.

e. Support projects that assist in stabilizing and/or expanding the economy.

f. Assist projects which aid minority and women-owned business, or disadvantaged persons.

g. Assist projects creating the types of jobs appropriate to the existing local labor force.

h. Assist firms who can demonstrate they are unable to obtain sufficient capital at reasonable rates to allow for expansion.

3. Business Needs:

Through interaction with local businesses and work with their economic development partners, NCIDA and NCDC have identified other types of assistance needed by targeted businesses, including (i) site location assistance, (ii) incubator facilities for start-up businesses, (iii) Foreign Trade Zone facilities, (iv) business counseling services with respect to business organization, marketing and financial matters, (v) workforce training and workforce recruitment services, and (vi) identification of additional or alternative funding sources.

4. Other Programs and Activities:

Many public, quasi-public, and private organizations are involved in economic development related activities within the County. These include Federal and State agencies, local development corporations, tourism groups, utilities, and a host of other organizations. Such groups are typically involved in planning, promotion, project generation and implementation, or financing of projects. The following are organizations which provide services intended to meet the needs of targeted businesses.

Niagara County Industrial Development Agency (NCIDA)

Functions and Responsibilities

Under the provisions of the New York State Industrial Development Agency Act, the NCIDA is empowered to actively retain, attract, and develop economically sound commerce and industry, thereby fostering job opportunities, general prosperity, and economic welfare for all residents of Niagara County. The Agency facilitates economic growth and expansion through financial incentives and a variety of other support services.

Specific Programs:

- Industrial Revenue Bonds & Leaseback Transactions

- Revolving Loan Funds through the Niagara County Development Corporation (NCDC) and the Niagara Economic Development Fund (NEDF) to finance working capital and fixed assets
- Brownfield Revolving Loan Fund for environmental remediation
- Site Location assistance
- Foreign Trade Zone #34 facility for office, warehousing, and light industrial activities, including the Vantage Center, a 50,000 square foot business incubator and multi-tenant "smart" facility.
- Microenterprise Assistance Program which provides education, technical assistance and loan funds to entrepreneurs and businesses with 5 employees or less
- Coordination of New York State and Federal programs relating to economic development.

Niagara County Department of Economic Development

Functions and Responsibilities

- Provide information support for business to assist in marketing, including demographic, economic, geographic and related socio-economic data.

- Provide technical data related to land use, zoning, and other planning matters.

- Provide natural resource and environmental data.

- Provide geographic information systems (GIS) analysis.

- Provide technical assistance and information regarding wetland and floodplain regulations.

- Provide economic development technical referral services.

- Identify, assess and implement redevelopment initiatives that can return Brownfield sites to appropriate and creative new uses.

Specific Programs:

- Niagara County Business Growth & Retention Program
- Local Affiliate Data Center for the U.S. Census Bureau
- Staff and Coordinator for Niagara County Planning Board
- Coordination Center for the Niagara County Economic Development Alliance (NCEDA)
- USEPA Brownfields PILOT Demonstration Program
- USEPA Showcase Community Program
- USEPA Brownfields Cleanup Revolving Loan Fund
- Waterfront/Watershed/Habitat Restoration

Niagara County Community College (NCCC)

NCCC sponsors and administers the following economic development programs and services:

Small Business Development Center

Functions and Responsibilities:

Provides management and technical assistance to start-up and existing small business firms in New York State. Services include counseling entrepreneurs in resolving organizational, financial, marketing, technical, and other problems they might encounter. Assistance is also provided in identifying private and public sources of financing. Special emphasis is placed upon providing counseling services for women, veterans, handicapped and minority entrepreneurs.

Specific Programs:

- Small Business Start-up Assistance
- Business Counseling and Business Planning Assistance
- Business Law Proposal Assistance
- Business Marketing Assistance
- Export Assistance
- International Trade Seminars, Services, and Conferences

Workforce Training & Community Development

Functions and Responsibilities:

NCCC's Workforce Training and Community Development Department provides an umbrella for educational services for Niagara Region youth and adults. Foundational instruction, life skills, employment readiness, vocational training, career development, professional preparation and testing as well as technology education are available in a variety of formats. Workshops, as well as short term and long term training sessions, provide new computer skills and a path to direct entry into a GED, certificate or college program, immediate employment and continuing education to obtain a certificate or academic degree.

Niagara County Employment and Training Department/NYS Department of Labor

Local training and employment services providers help insure that permanent jobs created by RLF assistance are made available to the long-term unemployed and low income persons. NCIDA works with the Niagara County Employment and Training Department which provides local administration of the Workforce Investment Act ("WIA") for Niagara County residents and businesses. Under the WIA, the County Employment and Training Department provides job seeker services, on-the-job training, customized training, and linkages to partner and community resources.

Additionally, the NCIDA coordinates with the New York State Department of Labor, Division of Employment Services, which provides businesses with a no-fee labor exchange recruitment service with local and statewide employment pools of qualified candidates.

<u>Other Agencies and Programs</u>

The **U.S. Small Business Administration** provides counseling and technical assistance through its Score Program to small and medium businesses.

U.S. Economic Development Administration – Trade Adjustment Center provides technical assistance to firms and localities that have experienced declines in employment and sales caused by increased imports.

Empire State Development provides tax incentive programs, training to increase competitiveness, funds, loans and other means of financial support to stimulate growth, and incentives to foster research and innovation.

The Niagara County Center for Economic Development, an entity formed by NCIDA and the Niagara County Department of Economic Development, provides a "one stop shop" for economic development County-wide.

C. FINANCING STRATEGY

1. Financing Needs:

Small-to-medium sized firms and newer businesses, which are most likely to increase investments in the community and create new jobs, require financing at affordable rates. In addition, viable firms with growth potential and relatively small asset holdings often find themselves unable to put forward sufficient capital to obtain adequate financing. In this type of situation, a credit-worthy borrower is restricted from obtaining the total amount of the loan requested resulting in a shortfall which may hinder or prohibit expansion opportunities. Many smaller firms have difficulty accepting the terms and conditions of government financing programs, and projecting cash flow on the basis of government funds to be received. Smaller companies are often in need of expedited financing if there is a surge in the demand for their product and machinery and equipment has to be purchased, or an expansion made, to accommodate the order. Production schedules for smaller industries are usually less flexible due to production cost variations. A smaller industry's profitability may be undermined if proper funding is not available when needed.

2. Local Capital Market:

Due to market conditions, both domestic and global, tighter credit standards have resulted in increased rates for small to medium size businesses and industries, effectively placing the cost of capital beyond the affordable reach of many borrowers. The volatile nature of smaller businesses, the unproven status of entrepreneurial ventures, the lack of credit history and unusual financing requirements often conflict with the prudent lending policies of most financial institutions. The net effect is to exclude the smaller, newer companies from access to the capital needed to initiate or expand operations.

Existing public programs are oriented toward larger, more established enterprises. New York State Job Development Authority (JDA) and Industrial Revenue Bonds (IRB's) funding is available for larger industries. These sources of financing often require substantial investment and processing fees. Consequently, there is a gap in the existing array of financing programs for smaller and newer firms. In addition, other financing sources such as private placements, pension funds and insurance companies are available for established medium/large privately held businesses and businesses seeking financing over $1,000,000, and often involve conservative lending policies which preclude their participation in a typical small and medium-sized business expansion.

An extreme increase in global competition within certain industries, including the automotive manufacturing sector and related industries, has drastically influenced the availability of funds thus making capital funding a critical factor.

3. RLF Financing Niche:

The RLF will provide funding to fill the gap in financing available to small and medium-sized companies and new companies, with an emphasis on the creation and retention of jobs in industrial, light manufacturing and related commercial services businesses. Loan activities will provide support for job creation and retention and for area revitalization by providing financing for start-up businesses and for the expansion and retention of existing businesses. While the RLF will have a County-wide focus, a particular emphasis will be placed on assisting businesses in areas of chronic high unemployment, who employ residents with incomes below the poverty level, and which intend to redevelop and utilize vacant or blighted industrial facilities. Loans will be provided for fixed asset acquisition or improvement and for working capital. The terms of the loans will vary depending on the use of the loan proceeds and the borrower's projected ability to repay. RLF loans will bear interest at a fixed rate. Collateral requirements will vary depending on the nature of the available collateral and assets financed, the risk of default, and collateral required by other lenders.

D. FINANCING POLICIES

1. Eligible Lending Area: Niagara County, New York

2. Allowable Borrowers:

(a) Eligible borrowers include individuals, sole proprietorships, partnerships, corporations (for profit and not-for-profit), 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.

3. Allowable Lending Activities:

(a) RLF financing may be used to assist any form of business activity that the NCDC Board determines to be consistent with the purposes of the RLF, that is eligible for funding pursuant to EDA regulations, and that is not specifically ineligible pursuant to this Management Plan.

(b) RLF funds may be used for any justifiable business purpose including, but not limited to acquisition of fixed assets and current assets including inventory and receivables, permanent working capital, and lines of credit.

(c) RLF funds may be used for the refinancing of existing debt where (i) there is demonstration of sound economic justification as further detailed at 13 CFR 307.17((b)(6)(i), or (ii) RLF funds will be used to finance the acquisition of lien rights when necessary to preclude a significant loss on an existing RLF loan as further detailed at 13 CFR 307.17(b)(6)(ii). Such refinancing must be demonstrated to be a required element of the project financing and not be indicative of imprudent or ineffective management.

The following activities, as further described at 13 CFR 307.17, may not be assisted with RLF financing:

(a) Acquisition of an equity position in a private business;

(b) Subsidization of interest payments on an existing RLF loan;

(c) Equity contributions required for other Federal loan programs:

(d) Acquisition of an interest in an existing business either through the purchase of stock or the acquisition of assets, except where the NCDC Board determines there is sufficient economic justification as further detailed at 13 CFR 307.17(b)(4).

(e) Investment in interest-bearing accounts, certificates of deposit, or any investment unrelated to the RLF; or

(f) Refinancing of existing debt unless (i) there is demonstration of sound economic justification as further detailed at 13 CFR 307.17((b)(6)(i); or (ii) RLF funds will be used to finance the acquisition of lien rights when necessary to preclude a significant loss on an existing RLF loan as further detailed at 13 CFR 307.17(b)(6)(ii).

The following business activities, as further defined by the U. S. Small Business Administration, may not be assisted with RLF financing:

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

(b) Lending activities, including those conducted by banks, finance companies, factors, leasing companies, insurance companies (but not insurance agents or agencies), and similar firms;

(c) Pyramid sales plans;

(d) Gambling activities; or

(e) Illegal activities.

4. Loan Size:

RLF assistance must be no greater than the minimum amount necessary to affect the business activity. Applicants must therefore demonstrate that all other private and public sources of debt and equity have either been maximized or are inappropriate, unaffordable, or otherwise unavailable. Consistent with the provisions of 13 CFR 307.15(b)(2)(vii), where institutional debt is included as part of the financing, the NCDC will determine whether such institutional financing has been maximized. Where there is no institutional debt included as part of the financing, the NCDC will require written documentation that an application for such financing has been declined and, in addition, the NCDC will determine whether such financing is unavailable or unaffordable based on its underwriting analysis.

RLF assistance will not be considered where the amount of such required assistance is less than $50,000. Exceptions may be granted by the NCDC Board on a case-by-case basis where such exception is determined to be in the best interests of the RLF and where the reason for such exception is stated in a Board resolution.

No maximum amount of RLF assistance available to an applicant is established on either a one-time or aggregate basis. However, the NCDC may, from time to time at its discretion, establish maximum amounts of assistance based on the total amount of RLF funds available and the demand for such funds.

5. Interest Rates:

(a) RLF loans will bear interest at a fixed rate to be determined on a case-by-case basis by the NCDC Board based on such factors as the risk of default, the value of security, the projected cash flow, and the prevailing commercial lending rates.

(b) The minimum interest rate is four (4) percentage points (400 basis points) below the lesser of (i) the current money center prime interest rate quoted in the *Wall Street*

Journal, or (ii) the maximum interest rate allowed under New York State law.

(c) In no event shall the interest rate be less than the lower of (i) four percent (4%), or (ii) seventy-five percent (75%) of the prime interest rate listed in the *Wall Street Journal*.

(d) Should the prime interest rate listed in the *Wall Street Journal* exceed fourteen percent (14%), the minimum RLF interest rate may be fixed at ten percent (10%) if the NCDC Board determines that a higher rate would compromise the RLF's financing strategies.

6. Terms:

(a) For fixed asset loans, the RLF loan term will generally be consistent with the life of the assets being financed, with such periods being consistent with standard commercial lending policies and in no instance exceeding twenty (20) years for real estate uses and ten (10) years for all other uses. For all loans, the term will be determined by the NCDC 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.

(b) The NCDC 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 RLF. Repayment terms may involve standard forms of loan amortization, periods of accruing interest or interest only payments, extended amortization schedules with balloon payments of principal, and/or such other terms as may be determined by the NCDC to be appropriate.

(c) In consideration of the public funding source of RLF capital and the RLF goal of encouraging targeted industry development by maximizing available capital, the NCDC may apply early call provisions that would allow it to accelerate loan repayments at such time as the borrower has the ability to refinance the RLF debt with institutional financing.

7. Fees:

(a) A fee of one hundred dollars ($100.00) must accompany all RLF loan applications. Such fee will be in consideration of loan processing costs incurred by the NCDC, will become the property of the NCDC, will not be considered as or accounted for as RLF Capital or Income, and will be unrestricted in its use by the NCDC.

(b) In consideration of the reservation of funds for approved loan applications, the loan applicant will be charged a commitment fee equal to one percent (1%) of the approved loan amount. The commitment fee will be nonrefundable and will become due and payable concurrent with the applicant's executed acceptance of the loan commitment.

(c) The commitment fee will be credited to the loan applicant at the time of the loan closing to offset any costs and/or fees associated with the loan closing. Any balance of the commitment fee remaining after all closing costs are paid will be become the property of the NCDC, will not be considered as or accounted for as RLF Capital or Income, and will be unrestricted in its use by the NCDC.

(d) Commitment fees for loans that do not close through no fault of or action by the NCDC will become the property of the NCDC, will not be considered as or accounted for as RLF Capital or Income, and will be unrestricted in their use by the NCDC. Exceptions to this policy that will allow the return of all or a portion of the commitment fee to the loan applicant may be granted by the NCDC Board on a case-by-case basis in consideration of the reason(s) that the loan did not close.

(e) Commitment fees for loans that do not close as the result of actions or circumstances solely within the control of the NCDC will be returned in whole to the loan applicant.

(f) In all other circumstances where a loan does not close, the return of all or a portion of the commitment fee will be at the discretion of the NCDC Board based on the nature of the circumstances.

(g) Borrowers will be required to pay the NCDC's legal fees associated with a loan closing.

(h) Borrowers will pay all of the NCDC's third-party costs for documents, instruments, and services associated with the loan closing including, but not limited to surveys, title and lien searches, filing and recording fees, and appraisals.

8. Equity and Collateral:

Equity investments by borrowers may be required to meet the Private Sector Leveraging requirements described below.

The NCDC 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 RLF in relation to other lenders. In determining the appropriate security, the following will apply:

(a) The NCDC will generally require a security interest in all assets financed with RLF funds. Other assets of the borrower may be required as additional security at the NCDC's option.

(b) The NCDC may require the personal guarantee of persons having an ownership interest in the borrowing entity.

(c) The NCDC may, at its discretion, require additional security including, but not limited to additional collateral, guaranties, and the assignment of life insurance.

9. Moratoria:

Requests to accrue interest, defer principal payments, or otherwise temporarily modify the repayment schedule may be approved by the RLF Loan Committee for a period not to exceed 90 days. Extensions for any longer period will require the approval of the NCDC Board.

10. Start-Ups:

Loan applications submitted by start-up companies are subjected to greater scrutiny and require the submission of a business plan which is reviewed as part of the credit analysis and underwriting process. All start-up businesses are offered the services of the Small Business Development Center for assistance in generating a business plan and overall business counseling.

11. Working Capital:

Working capital loans are allowed up to a five (5) year term.

12. Credit not otherwise available:

RLF loan funds will not be used as a substitute for available private capital. Borrowers will be required to document that financing is not otherwise available on terms and conditions that permit the completion or successful operation of the activity to be financed, either because bank financing is not available or because a bank will only finance a portion of the amount required.

E. PORTFOLIO STANDARDS AND TARGETS

1. Target Percentages:

The RLF loan portfolio will be structured as a whole to achieve the objectives of the loan fund and address the economic and financial demands of the lending area. No targeted percentages for types of loans have been established.

2. Private Sector Leverage:

At all times, private investment leveraged by RLF loans for the portfolio as a whole must not be less than two dollars for each dollar of RLF funds disbursed. Private leverage means (i) capital invested by borrowers or others; (ii) financing from private entities; or (iii) the non-guaranteed portions and ninety percent (90%) of the guaranteed portions of the U.S. Small Business Administration's 7(a) loans and 504 debenture loans.

RLF loans may generally not exceed forty percent (40%) of the total project cost as determined by the NCDC. The NCDC Board may grant exceptions to the private leveraging limit for individual loans where it determines that (i) the project to be financed will directly address one of the RLF's high priority objectives; (ii) the project will result in extraordinary public benefit to Niagara County and its residents; and (iii) the project cannot be implemented without RLF financing. The reasons for granting any such exceptions must be stated in the authorizing resolution of the NCDC Board.

3. Job Cost Ratio:

The amount of RLF financing may not exceed the ratio of $40,000 for each employment opportunity to be created or retained. 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 or more hours 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.

(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.

(e) The limit of $40,000 of RLF financing per employment position may be exceeded in instances where the NCDC Board determines that the expanded business activity will directly and positively impact one or more priority goals of the RLF and will result in an extraordinary degree of other public benefit. Such determination shall be in the form of an approved NCDC Board resolution.

4. Job Cost Ratio (Criteria, if any)

The types of jobs to be created/retained will generally involve moderate income, skilled or semi-skilled and general industrial laborer positions. However, with an objective of supporting businesses using new technologies, the RLF will also be used to support the creation of high technology, skilled and managerial positions.

F. RLF LOAN SELECTION CRITERIA

RFL financing may be used to assist any form of business activity that the NCDC Board determines to be consistent with the purposes and objectives of the RLF, as outlined in this Management Plan, that is eligible for funding pursuant to EDA regulations and that is not specifically ineligible under EDA regulations and this Management Plan. Consideration will be given to such factors as job creation and retention, acquisition and reuse of vacant or abandoned structures, whether the activity to be funded will contribute to the attraction or retention of a major employer or a foreign business or will otherwise contribute to the economic development or stabilization of the lending area.

G. PERFORMANCE ASSESSMENT PROCESS

NCCED staff will conduct an annual review of the status and performance of all loans, including a financial review of all borrowers based on the annual financial statements submitted by the borrower. The results of the annual review of loans will be presented to the RLF Loan Committee. The NCCED staff will also review annually the management and administrative procedures for the RLF. Proposed revisions or amendments to the RLF Management Plan shall be submitted in writing to the NCIDA/NCDC Board with a detailed description of the proposed change and why such change is necessary or appropriate. Upon approval of any changes to the Management Plan by NCIDA/NCDC, NCIDA/NCDC shall notify EDA of the changes and, to the extent required pursuant to 13 CFR 307.9(c)(2), will request EDA approval of the change. Pursuant to 13 CFR 307.9(c)(1), NCIDA/NCDC shall submit an updated Management Plan to EDA every five (5) years.

PART II: REVOLVING LOAN FUND OPERATIONAL PROCEDURES

(A complete copy of the Operational Procedures for the RLF is attached as Exhibit I)

A. ORGANIZATION STRUCTURE

1. Critical Operational Functions:

An Organizational Chart for NCIDA and NCDC is attached as Exhibit II.

Prospective borrowers will be identified through staff outreach, referrals from economic development partners or lending institutions and from direct inquiries by businesses. Staff, along with a representative from the Small Business Development Center (SBDC), where appropriate, will conduct an initial meeting with the prospective borrower to determine financing requirements and eligibility and to identify sources and uses for funding. Where appropriate, SBDC will be available to assist in preparation of a business plan and loan application and pro forma financial statements. NCCED staff or a third-party service provider will review the application and financial information, conduct any required environmental review, and underwrite the loan. A loan report, which will include a credit analysis, the proposed use of loan proceeds and loan terms, and a recommendation as to approval or denial of the loan, will be presented to the RLF Loan Committee, which will review the loan and make a recommendation to the NCDC Board, which will have sole authority to approve a loan application. If approved, NCCED staff will coordinate the preparation of a commitment letter and appropriate loan documentation with NCDC counsel. The loan closing will be handled by NCDC counsel. Loan servicing, maintenance of loan files and annual loan reviews will be conducted by NCCED staff. The RLF Loan Committee will make recommendations to the NCDC

Board regarding loan portfolio management issues, including loan defaults and modifications. Collection actions will be referred, as appropriate, to NCDC counsel.

2. Loan Administration Board:

Final responsibility for RLF decisions is vested in the NCDC Board of Directors. The NCDC Board of Directors is comprised of the nine (9) members of the NCIDA Board. NCIDA Board members are appointed by the Niagara County Legislature and serve at the pleasure of the Legislature and continue to hold office until his or her successor is appointed and qualified. A majority of the entire NCDC Board constitutes a quorum for the transaction of business.

3. Conflicts of Interest:

NCIDA and NCDC shall comply with the conflict-of-interest rules as set forth in the EDA regulations.

As used herein, the term "Interested Party" shall mean any officer, employee, or member of the Board of Directors or other governing body of the NCIDA or NCDC, including any other parties that advise, approve, recommend or otherwise participate in the business decisions of NCIDA or NCDC, such as agents, advisors, consultants, attorneys, accountants or shareholders. An Interested Party also includes the Interested Party's "Immediate Family" and other persons directly connected to the Interested Party by law or through a business arrangement. "Immediate Family" shall mean as a person's spouse (or domestic partner or significant other), parents, grandparents, siblings, children and grandchildren, but does not include distant relatives, such as cousins, unless the distant relative lives in the same household as the person.

An Interested Party shall not receive any direct or indirect, financial or personal benefits in connection with the EDA grant award or its use for payment or reimbursement of costs of NCIDA or NCDC. An Interested Party also shall not, directly or indirectly, solicit or accept any gift, gratuity, favor, entertainment or other benefit having monetary value, for himself or herself or for another person or entity, from any person or organization which has obtained or seeks to obtain an RLF loan.

In addition:

a. An Interested Party shall not receive, directly or indirectly, any personal or financial benefits resulting from the disbursement of an RLF loan.
b. No RLF loan funds shall be lent to an Interested Party.
c. Former board members of the NCIDA or NCDC and members of his or her Immediate Family shall not receive a loan from the RLF for a period of two (2) years from the date the board member last served on the NCIDA or NCDC board of directors.

In addition to the foregoing, members of the NCDC Board are subject to the provisions of the NCDC Code of Ethics and the conflict of interest provisions set forth in NCDC's by-laws and in the New York Not-For-Profit Corporation Law.

B. LOAN PROCESSING PROCEDURES

1. Standard Loan Application Requirements:

SECTION ONE

a. History and nature of business
b. Ownership structure
c. Management resumes
d. List of professional advisors (legal, accounting, banking)

SECTION TWO

a. Project description
b. Project dollar amounts required (Sources and Uses of Funds form)
c. Employment Schedule
d. Environmental Assessment questionnaire

SECTION THREE

a. Products
b. Competition
c. Market area
d. Main customers
e. Main suppliers
f. Union relationships
g. Description of plants and facilities
h. Business real estate and insurance

SECTION FOUR

a. Last 3 years financial statements (reviewed or audited)
b. Last 3 years Federal tax returns with supporting schedules (if compiled statements)
c. Interim financial statement (less than 90 days old)
d. Personal financial statement of all stockholders (holding 20% or more of common stock))
e. Credit Authorization Letter from primary lender
*f. Pending litigation
*g. Bankruptcy or receivership
*h. Charge or conviction record

SECTION FIVE

a. Three years projected year-end profit and loss statement
b. Pro forma balance sheet - after financing
c. Cash flow statements - monthly/yearly

d. 3 years projected year-end balance sheet
e. Other financial information as deemed necessary
f. Agreements and Certifications * if applicable

2. Credit and Financial Analysis:

(a) The processing of loan applications will be the responsibility of NCCED staff and/or procured third-party service provider and will generally consist of the following:

(i) Review of applications for completeness and procurement of appropriate additional information.

(ii) Review for RLF eligibility criteria.

(iii) Determination of economic feasibility, performance of credit analysis, and assessment of risk, including review of credit reports, financial statements and tax returns.

(iv) Determination of amount and terms of RLF financing, including appropriate collateral and equity requirements, if any.

(v) Preparation of a written report to the RLF Loan Committee summarizing the review process and providing recommendations as appropriate.

(b) The NCDC and/or NCDC counsel, or such other person as the Board may, from time to time, designate for such purpose, shall determine (i) the completeness and eligibility of a loan application, and (ii) whether a loan application and associated loan review are appropriate for presentation the RLF Loan Committee for consideration.

3. Environmental Reviews:

Each applicant shall be required to submit an Environmental Assessment Form as part of its application. Environmental reviews will be conducted by an NCCED staff member or procured third-party service providers, who will determine if the project being funded will have a significant adverse environmental impact. Where a loan application involves a construction project, the following procedures shall apply:

(a) No activity will be financed that would result in an adverse environmental impact unless that impact is to be mitigated to the point of insignificance. When necessary to ensure compliance, the required mitigation will be made part of the loan conditions.
(b) Any development to be financed will be reviewed against FEMA Insurance Rate Maps to determine if the project is within a floodplain. No activity shall be financed which would result in new above-ground development in a 100-year floodplain. When applicable, loan recipients shall be required to obtain and maintain flood insurance coverage.

(c) It shall be determined if the project will be located within or adjacent to any wetland area. No activity shall be financed which would result in alteration of any wetland or in any adverse impact on any wetland without consultation with the U.S. Department of the Interior Fish and Wildlife Service and, if applicable, the issuance of a Section 404 permit by the Army Corps of Engineers.

(d) The State Historic Preservation Office (SHPO) shall be notified of each approved loan which involves significant new construction and expansion. SHPO shall be given the opportunity to comment on the effect of the proposed activity on historic and archaeological resources prior to the loan closing. If SHPO recommends action or has determined that an adverse impact will occur, NCDC and the borrower will work with SHPO and EDA to address any issues identified before the loan is closed.

In addition, with respect to any property which is being acquired or improved with loan proceeds or which will serve as collateral for the loan, all applicants shall provide information as to whether there are any hazardous materials on or adjacent to such property that have been improperly handled and have the potential of endangering public health. Such information shall be reviewed by NCDC counsel, who shall determine, in conjunction with the NCDC, if additional information (including a site assessment) is required. No activity shall be financed which involves unresolved site contamination issues.

4. Loan Write-up:

A loan report shall be prepared as part of the credit and financial analysis.

5. Procedures for Loan Approvals:

The NCDC Board has established the RLF Loan Committee to review RLF Loan applications and make recommendations to the NCDC Board. The NCDC Board appoints the members of the RLF Loan Committee. No loan application may be presented to the NCDC Board for action without a review and recommendation from the RLF Loan Committee.

The NCDC RLF Loan Committee shall review the loan report as prepared by staff or third party service provider and shall recommend approval/declination to the NCDC Board of Directors for Board action.

The Loan Review Committee consists of seven members, including the following:

- Two (2) voting members of the Niagara County Industrial Development Agency (NCIDA).
- Two (2) representatives of the banking or other financial institutions not currently on the NCIDA Board.
- One (1) independent private sector business-person.
- One (1) real estate professional experienced in the County’s commercial real estate market.
- One (1) outside financial advisor.

All actions of the RLF Loan Committee and the NCDC Board must be approved by a majority of the members of the committee or board present (if a quorum is present), and shall be documented in the minutes of the committee or board meeting.

All recommendations of the RLF Loan Committee and loan approvals by the NCDC Board shall be consistent with the policies and guidelines set forth in this Management Plan.

C. LOAN CLOSING AND DISBURSEMENT PROCEDURES

1. Loan Closing Documents:

Loan Documents Required for RLF Loans are as Follows:
Loan Application
Commitment letter
Loan Agreement
Board Meeting Minutes Approving the RLF loan
Promissory Note
Security Agreement
Mortgage, if applicable
Intercreditor Agreement with other Lender(s), if applicable
Evidence that other financing is not available or is not sufficient
Guaranties or other documents to evidence security for the loan, if applicable
Other appropriate documents as determined by NCDC Counsel

2. Loan Agreement Provisions:

The loan agreement shall include the use of loan proceeds, a description of the loan terms and security, any requirements for drawing loan proceeds, appropriate representations and warranties, the conditions of lending, disbursement procedures, 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. The loan agreement shall, if applicable, include provisions that protect and hold the Federal government harmless from and against all liabilities that the Federal government may incur as a result of providing RLF grant proceeds to assist directly or indirectly in site preparation or construction, as well as the direct or indirect renovation or repair of any facility or site.

3. Loan Disbursements:

The following guidelines shall generally apply to the disbursement of RLF 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, the NCDC may disburse loan proceeds upon the borrower's presentation of vouchers and other such evidence satisfactory to the NCDC that represent paid or accrued expenses of the borrower and which are eligible costs as determined by the NCDC.

(b) Where RLF loan funds will be used by the borrower as working capital, the NCDC Board will establish an appropriate disbursement schedule and the NCDC or its agent will be responsible for ensuring that appropriate documentation of the use of the loan funds is procured.

(c) Where other debt, equity, or grant funding is to be used in conjunction with the RLF financing, such funding must, in the opinion of the NCDC, 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 RLF financing, the NCDC will, at its discretion, determine an appropriate draw schedule for RLF funding based on such factors as the nature and magnitude of risk assumed by the NCDC, the nature of the activities being financed, the draw schedule for the other financing, and applicable Federal regulations for the use of EDA funds. The manner and terms of the disbursement of the RLF financing should normally be included as part of the written report to the Loan Committee and should be included in the approval of the financing by the NCDC Board. However, in instances where the NCDC Board has not prescribed a draw schedule, the NCDC counsel may establish a draw schedule.

D. LOAN SERVICING PROCEDURES

1. Repayment:

(a) The schedule of loan repayments will be determined 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 RLF. Repayment terms may involve standard forms of loan amortization, periods of accruing interest or interest only payments, extended amortization schedules with balloon payments of principal, and/or such other terms as may be determined by the NCDC to be appropriate.

(b) In consideration of the public funding source of RLF capital and the RLF goal of encouraging targeted industry development by maximizing available capital, the NCDC may apply early call provisions that would allow it to accelerate loan repayments at such time as the borrower has the ability to refinance the RLF debt with institutional financing.

2. Monitoring:

NCCED staff shall be responsible for collecting and maintaining evidence of ongoing compliance with loan requirements including insurance, financial reporting, special conditions (affirmative action, CETA, minority business enterprises) and regulatory compliance. NCCED staff shall work with NCDC counsel for the monitoring and continuation of UCC filings and continued perfection of other liens, as applicable. Initial job creation projections are reviewed by NCCED's third party service provider as part of the credit analysis and are reconciled with the project information submitted by the applicant. The loan documents require the delivery of annual employment data reports in a form acceptable to NCDC, which are reviewed and compiled by NCCED staff. The Loan Agreement further permits NCDC, or its agents, to inspect and audit the books and records of the borrower to verify compliance with loan requirements. In the event of a material shortfall in job creation, NCCED staff and/or its third party service provider will meet with the borrower.

3. **Loan Files:**

Loan files shall be maintained by NCCED staff and shall include the loan application, closing documents, evidence of any private financing, annual financial statements, updated insurance certificates, employment reporting and the results of any other monitoring. All loan documents are stored in fireproof cabinets.

4. **Job Creation:**

Initial job creation projections are reviewed by NCCED's third party service provider as part of the credit analysis and are reconciled with the project information submitted by the applicant. The loan documents require the delivery of annual employment data reports in a form acceptable to NCDC, which are reviewed and compiled by NCCED staff. The Loan Agreement further permits NCDC, or its agents, to inspect and audit the books and records of the borrower to verify compliance with loan requirements. In the event of a material shortfall in job creation, NCCED staff and/or its third party service provider will meet with the borrower.

5. **Defaulted Loans:**

For loan repayments that are 15 days past due, the NCDC will notify the borrower of the delinquency and encourage prompt payment. Delinquencies that continue for 60 days will be referred to the RLF Loan Committee for appropriate action. Notwithstanding the above, the NCDC's agent, or such other person charged with the responsibility of monitoring the activity of borrowers, shall immediately notify the NCDC Board of any bankruptcy or other serious event that would negatively affect the financial status of an RLF borrower. If an event of default shall occur and continue beyond any applicable notice and cure period, interest shall, in the discretion of NCDC, accrue at a default rate of interest, in accordance with the terms of the promissory note. In the event a collection action is commenced, amounts recovered shall be applied in the following order of priority: first, to costs of collection; second, toward outstanding penalties and fees; third, toward accrued interest to the extent due and payable; and fourth, toward the outstanding principal balance.

6. **Write-Offs:**

A determination that a loan is uncollectible will be made after consultation with NCDC counsel and will be based on the circumstances of the particular loan transaction, including the availability and value of any collateral, a review of any actions taken to collect the debt, any amount recovered to date, the existence of any additional remedies or avenues for payment and the likelihood of any additional recovery. After such a determination is made, NCCED staff will coordinate with NCDC's auditors to insure proper accounting of the write-off.

E. ADMINISTRATIVE PROCEDURES

1. New RLF's: Not applicable

2. Accounting:

The NCDC will maintain an interest-bearing checking account or accounts in which all RLF Capital and Income cash-on-hand will be maintained. All loan repayments and other cash receipts and all disbursements will be deposited to, withdrawn from, or drawn on such account(s) as applicable. The NCDC will implement appropriate procedures for cash management consistent with applicable Federal regulations. The RLF shall be operated in accordance with generally accepted accounting principles as in effect from time to time in the United States.

3. Administrative Costs:

RLF Income may be used to offset the direct administrative costs of the RLF, in accordance with 13 CFR 307.12. Administrative costs not paid from RLF Income shall be paid from the unrestricted funds of the NCDC. For the payment of administrative expenses, the following will apply:

(a) For costs incurred for third-party goods or services, NCCED staff will be responsible for reviewing invoices, bills, receipts, or other appropriate evidence of the expense and for processing and paying such costs to the extent they are eligible pursuant to the RLF program and appropriately documented. Any such requests for payment will be processed and paid consistent with the standard operating procedures of the NCDC.

(b) Direct NCCED staff costs must be documented by timesheets, invoices, or other appropriate information to evidence the nature of the cost. Such costs may include, but are not limited to employee salaries, benefits, and other compensation at rates not to exceed those paid by NCDC for work not provided in connection with the RLF. Any requests for the payment of RLF funds for NCCED staff costs will be processed and paid consistent with the standard operating procedures of the NCDC.

4. Capital Utilization and Sequestration:

The NCIDA Treasurer monitors RLF activity on an on-going basis and provides monthly reports to the NCIDA/NCDC Board. The Treasurer generates the semi-annual reports required by the EDA which confirms the capital utilization. NCCED staff actively markets the RLF with the intent of achieving and maintaining appropriate levels of loan activity and capital utilization.

5. **EDA Reporting:**

   NCIDA/NCDC shall file semi-annual reports with the EDA in accordance with 13 CFR 307.14, including an Income and Expense statement if required pursuant to 13 CFR 307.14 (c).

6. **Audits:**

   NCIDA and NCDC engage an independent auditor to conduct annual financial audits in accordance with generally accepted accounting standards in the United States and applicable government standards and requirements for Federal awards and major Federal programs. EDA RLF funds shall be subject to audit on an annual basis and the full value of the RLF (including outstanding loans and available cash) shall be shown on NCIDA's Schedule of Federal Expenditures.

EXHIBIT I
RLF OPERATIONAL PROCEDURES

PART II – REVOLVING LOAN FUND OPERATIONAL PROCEDURES

Section 1. GENERAL

1.01 Approving Authority. The Operational Procedures are adopted by the Board of Directors of the Niagara County Development Corporation (the "NCDC") and are intended to serve as the primary administrative guidelines for all activities of the Niagara County Revolving Loan Fund (the "RLF") that are financed in whole or in part with funding provided by the Economic Development Administration of the U. S. Department of Commerce (the "EDA"). Any revisions or amendments to the Operational Procedures will require the approval of the NCDC Board by an adopted resolution and must be submitted to and approved by the EDA.

1.02 Objectives. The primary objectives of the RLF are to facilitate the expansion and retention of business activity within Niagara County, create and retain employment opportunities, and maintain and expand the County's commercial and industrial tax base, all such objectives to be consistent with the Revolving Loan Fund Strategy as set forth in Part I of the Revolving Loan Fund Plan.

1.03 Form of Assistance. The RLF will provide assistance only in the form of secured commercial loans.

Section 2. ELIGIBILITY REQUIREMENTS

2.01 Eligible Activities.

(a) The principal business activity that will be primarily impacted by the RLF financing must be located within Niagara County.

(b) RLF financing may be used to assist any form of business activity that the NCDC Board determines to be consistent with the purposes of the RLF, that is eligible for funding pursuant to EDA regulations, and that is not specifically ineligible pursuant to Section 2.02.

2.02 Eligible Uses of RLF Funds.

(a) RLF funds may be used for any justifiable business purpose including, but not limited to fixed assets, current assets including inventory and receivables, permanent working capital, and lines of credit.

(b) RLF funds may be used for the refinancing of existing debt where (i) there is demonstration of sound economic justification as further detailed at 13 CFR 307.17((b)(6)(i), or (ii) RLF funds will be used to finance the acquisition of lien rights when necessary to preclude a significant loss on an existing RLF loan as further detailed at 13 CFR 307.17(b)(6)(ii). Such refinancing must be demonstrated to be a required element of the project financing and not be indicative of imprudent or ineffective management.

2.03 Ineligible Activities.

(a) The following activities, as further described at 13 CFR 307.17, may not be assisted with RLF financing:

(i) Acquisition of an equity position in a private business;

(ii) Subsidization of interest payments on an existing RLF loan;

(iii) Equity contributions required for other Federal loan programs:

(iv) Acquisition of an interest in an existing business either through the purchase of stock or the acquisition of assets, except where the NCDC Board determines there is sufficient economic justification as further detailed at 13 CFR 307.17(b)(4).

(v) Investment in interest-bearing accounts, certificates of deposit, or any investment unrelated to the RLF; or

(vi) Refinancing of existing debt unless (A) there is demonstration of sound economic justification as further detailed at 13 CFR 307.17((b)(6)(i); or (B) RLF funds will be used to finance the acquisition of lien rights when necessary to preclude a significant loss on an existing RLF loan as further detailed at 13 CFR 307.17(b)(6)(ii).

(b) The following business activities, as further defined by the U. S. Small Business Administration, may not be assisted with RLF financing:

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

(ii) Lending activities, including those conducted by banks, finance companies, factors, leasing companies, insurance companies (but not insurance agents or agencies), and similar firms;

(iii) Pyramid sales plans;

(iv) Gambling activities; or

(v) Illegal activities.

2.04 Eligible Borrowers.

(a) Eligible borrowers include individuals, sole proprietorships, partnerships, corporations (for profit and not-for-profit), 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.

Section 3. RLF STANDARDS

3.01 Employment/Cost Ratio. The amount of RLF financing may not exceed the ratio of $40,000 for each employment opportunity to be created or retained. 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 or more hours 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.

(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.

(e) The limit of $40,000 of RLF financing per employment position may be exceeded in instances where the NCDC Board determines that the expanded business activity will directly and positively impact one or more priority goals of the RLF and will result in an extraordinary degree of other public benefit. Such determination shall be in the form of an approved NCDC Board resolution.

3.02 RLF Financing Amount. RLF assistance must be no greater than the minimum amount necessary to affect the business activity. Applicants must therefore demonstrate that all other private and public sources of debt and equity have either been maximized or are inappropriate, unaffordable, or otherwise unavailable. Consistent with the provisions of 13 CFR 307.15(b)(2)(vii), where institutional debt is included as part of the financing, the NCDC will determine whether such institutional financing has been maximized. Where there is no institutional debt included as part of the financing, the NCDC will require written documentation that an application for such financing has been declined and, in addition, the NCDC will determine whether such financing is unavailable or unaffordable based on its underwriting analysis.

3.03 Minimum Amount of RLF Assistance. RLF assistance will not be considered where the amount of such required assistance is less than $50,000. Exceptions to this Section 3.03 may be granted by the NCDC Board on a case-by-case basis where such exception is determined to be in the best interests of the RLF and where the reason for such exception is stated in a Board resolution.

3.04 Maximum Amount of RLF Assistance. The Operational Procedures do not establish a maximum amount of RLF assistance available to an applicant on either a one-time or aggregate basis. However, the NCDC may, from time to time at its discretion, establish maximum amounts of assistance based on the total amount of RLF funds available and the demand for such funds.

3.05 Private Leveraging

(a) Loan Portfolio Requirement

At all times, private investment leveraged by RLF loans for the portfolio as a whole must not be less than two dollars for each dollar of RLF funds disbursed. For the purposes of this Section 5.02, private leverage means (i) capital invested by borrowers or others; (ii) financing from private entities; or (iii) the non-guaranteed portions and ninety percent (90%) of the guaranteed portions of the U.S. Small Business Administration's 7(a) loans and 504 debenture loans.

(b) Individual Loans

RLF loans may generally not exceed forty percent (40%) of the total project cost as determined by the NCDC. The NCDC Board may grant exceptions to the private leveraging limit for individual loans where it determines that (i) the project to be financed will directly address one of the RLF's high priority objectives; (ii) the project will result in extraordinary public benefit to Niagara County and its residents; and (iii) the project cannot be implemented without RLF financing. The reasons for granting any such exceptions must be stated in the authorizing resolution of the NCDC Board.

Section 4. LENDING POLICIES

4.01 Term of Loans. For fixed asset loans, the RLF loan term will generally be consistent with the life of the assets being financed, with such periods being consistent with standard commercial lending policies and in no instance exceeding twenty (20) years for real estate uses and ten (10) years for all other uses. For all loans, the term will be determined by the NCDC 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.

4.02 Interest Rate.

(a) RLF loans will bear interest at a fixed rate to be determined on a case-by-case basis by the NCDC Board based on such factors as the risk of default, the value of security, the projected cash flow, and the prevailing commercial lending rates.

(b) The minimum interest rate is four (4) percentage points (400 basis points) below the lesser of (i) the current money center prime interest rate quoted in the *Wall Street Journal*, or (ii) the maximum interest rate allowed under State law.

(c) In no event shall the interest rate be less than the lower of (i) four percent (4%), or (ii) seventy-five percent (75%) of the prime interest rate listed in the *Wall Street Journal*.

(d) Should the prime interest rate listed in the *Wall Street Journal* exceed fourteen percent (14%), the minimum RLF interest rate may be fixed at ten percent (10%) if the NCDC Board determines that a higher rate would compromise the RLF's financing strategies.

4.03 <u>Repayment Terms</u>.

(a) The NCDC 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 RLF. Repayment terms may involve standard forms of loan amortization, periods of accruing interest or interest only payments, extended amortization schedules with balloon payments of principal, and/or such other terms as may be determined by the NCDC to be appropriate.

(b) In consideration of the public funding source of RLF capital and the RLF goal of encouraging targeted industry development by maximizing available capital, the NCDC may apply early call provisions that would allow it to accelerate loan repayments at such time as the borrower has the ability to refinance the RLF debt with institutional financing.

4.04 <u>Security</u>. The NCDC 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 RLF in relation to other lenders. In determining the appropriate security, the following will apply:

(a) The NCDC will generally require a security interest in all assets financed with RLF funds. Other assets of the borrower may be required as additional security at the NCDC's option.

(b) The NCDC may require the personal guarantee of persons having an ownership interest in the borrowing entity.

(c) The NCDC may, at its discretion, require additional security including, but not limited to additional collateral, guaranties, and the assignment of life insurance.

4.05 <u>Subordination</u>.

(a) RLF 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 conditions acceptable to the Board.

(b) The NCDC will generally allow a subordination of RLF collateral interests to private institutional lenders where necessary to facilitate the maximum financial participation by the private lenders.

(c) The standing of the RLF financing relative to other public or quasi-public lenders will be negotiated on a case-by-case basis.

(d) The NCDC will generally require the subordination to RLF 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 use of and/or participation in intercreditor agreements shall be at the discretion of the NCDC Board.

Section 5. APPLICATION PROCESSING

5.01 Loan Applications. Applications for RLF financing must include all of the information required by the RLF Application Form (attached hereto as Appendix A), and any additional information as may be reasonably requested by the NCDC.

5.02 Application Fee. A fee of one hundred dollars ($100.00) must accompany all RLF loan applications. Such fee will be in consideration of loan processing costs incurred by the NCDC, will become the property of the NCDC, will not be considered as or accounted for as RLF Capital or Income, and will be unrestricted in its use by the NCDC.

5.03 Application Processing.

(a) The processing of loan applications will be the responsibility of Niagara County Center for Economic Development (the "NCCED") staff and/or procured third-party services and will generally consist of the following:

   (i) Review of applications for completeness and procurement of appropriate additional information.

   (ii) Review for RLF eligibility criteria.

   (iii) Determination of economic feasibility, performance of credit analysis, and assessment of risk.

   (iv) Determination of amount and terms of RLF financing, including appropriate security.

   (v) Preparation of a written report to the RLF Loan Committee summarizing the review process and providing recommendations as appropriate.

(b) The NCDC/RLF attorney, or such other person as the Board may, from time to time, designate for such purpose, shall determine (i) the completeness and eligibility of a loan application, and (ii) whether a loan application and associated loan review are appropriate for presentation the Loan Committee for consideration.

5.04 Loan Committee.

(a) The NCDC Board has established a Loan Committee to review RLF loan applications and to make recommendations to the NCDC Board. No loan application may be presented to the NCDC Board for action without a review and recommendation(s) by the Loan Committee. The Loan Committee will also be responsible for reviewing and making recommendations to the NCDC Board as appropriate regarding loan portfolio management issues.

(b) The Loan Review Committee will consist of seven members, each appointed by the NCDC Board to a one-year term and to include the following:

- Two voting members of the Niagara County Industrial Development Agency (NCIDA);
- Two representatives of banking or other financial institutions who not currently on the board of the NCIDA;
- One independent private sector business-person;
- One real estate professional experienced in the County’s commercial real estate market; and
- One outside financial advisor

Vacancies occurring prior to the expiration of a term will be filled for the remainder of the term by an NCDC Board appointment as soon as practicable.

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

5.06 Loan Declinations.

(a) Loan applications may be declined by the Loan Committee, the NCDC Executive Director, or such other person as may be designated by the NCDC Board to oversee the daily operations of the RLF, based on a lack of application completeness or a failure to meet the eligibility criteria pursuant to Section 2. In such instances, the applicant will be notified in writing of the reason(s) for disapproval.

(b) Loan applications may be declined by the Loan Committee for reasons relating to credit issues and financial feasibility. The occurrence of any such disapproval shall be conveyed to the NCDC Board for informational purposes, and the applicant will be notified in writing of the reason(s) for disapproval.

(c) Loan applications may be declined by the NCDC Board for any reason or reasons that represent a reasonable determination that the approval of the RLF application would not meet the objectives of the RLF and/or would not represent an appropriate or prudent use of RLF funds. In such instances, the applicant will be notified in writing of the reason(s) for disapproval.

Section 6. POST-APPROVAL PROCESS

6.01 Commitment Letter. Within ten (10) calendar days from the date of the NCDC Board's approval of a RLF loan, the NCDC attorney shall issue a commitment letter to the applicant that includes, at a minimum, the following information:

(a) The amount of the approved loan, the applicable interest rate, the term of the loan, the terms of repayment, and the expiration date of the commitment.

(b) The required use of the loan funds.

(c) The NCDC'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.

6.02 Commitment Fee.

(a) In consideration of the reservation of funds for approved loan applications, the loan applicant will be charged a commitment fee equal to one percent (1%) of the approved loan amount. The commitment fee will be nonrefundable and will become due and payable concurrent with the applicant's executed acceptance of the loan commitment.

(b) The commitment fee will be credited to the loan applicant at the time of the loan closing to offset any costs and/or fees associated with the loan closing. Any balance of the commitment fee remaining after all closing costs are paid will be become the property of the NCDC, will not be considered as or accounted for as RLF Capital or Income, and will be unrestricted in its use by the NCDC.

(c) Commitment fees for loans that do not close through no fault of or action by the NCDC will become the property of the NCDC, will not be considered as or accounted for as RLF Capital or Income, and will be unrestricted in their use by the NCDC. Exceptions to this policy that will allow the return of all or a portion of the commitment fee to the loan applicant may be granted by the NCDC Board on a case-by-case basis in consideration of the reason(s) that the loan did not close.

(d) Commitment fees for loans that do not close as the result of actions or circumstances solely within the control of the NCDC will be returned in whole to the loan applicant.

(e) In all other circumstances where a loan does not close, the return of all or a portion of the commitment fee will be at the discretion of the NCDC Board based on the nature of the circumstances.

6.03 Loan Closing Fees and Costs.

(a) Borrowers will be required to pay the NCDC's legal fees associated with a loan closing.

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

6.04 Loan Closings. The NCDC attorney will have the responsibility to prepare and/or require the preparation of all appropriate closing documents. The NCDC 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 will 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 the terms of repayment.

(c) The appropriate documents to evidence and record mortgages, liens, guaranties, and such other security as may be required by the terms of the loan.

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

6.05 Security. The NCDC attorney will be responsible for perfecting all of the RLF's 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 RLF's security interests. Intercreditor agreements may be executed where appropriate to further protect the RLF's interests and to facilitate the processing of defaults and foreclosures.

6.06 Loan Disbursements. The following guidelines shall generally apply to the disbursement of RLF 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 6.06, the NCDC may disburse loan proceeds upon the borrower's presentation of vouchers and other such evidence satisfactory to the NCDC that represent paid or accrued expenses of the borrower and which are eligible costs as determined by the NCDC.

(b) Where RLF loan funds will be used by the borrower as working capital, the NCDC Board will establish an appropriate disbursement schedule and the NCDC or its agent will be responsible for ensuring that appropriate documentation of the use of the loan funds is procured.

(c) Where other debt, equity, or grant funding is to be used in conjunction with the RLF financing, such funding must, in the opinion of the NCDC, 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 RLF financing, the NCDC will, at its discretion, determine an appropriate draw schedule for RLF funding based on such factors as the nature and magnitude of risk assumed by the NCDC, the nature of the activities being financed, the draw schedule for the other financing, and applicable Federal regulations for the use of EDA funds. The manner and terms of the disbursement of the RLF financing should normally be included as part of the written report to the Loan Committee and should be included in the approval of the financing by the NCDC Board. However, in instances where the NCDC Board has not prescribed a draw schedule, the NCDC attorney may establish a draw schedule.

Section 7. LOAN MANAGEMENT

7.01 General. The NCDC will establish and use appropriate systems for the accounting and collection of RLF loan repayments and shall procure and maintain appropriate documents and records associated with RLF assistance in a manner consistent with the rules and requirements of the EDA and with standard commercial lending practices.

7.02 Delinquencies. For loan repayments that are 15 days past due, the NCDC will notify the borrower of the delinquency and encourage prompt payment. Delinquencies that continue for 60 days will be referred to the Loan Committee for appropriate action. Notwithstanding the above, the NCDC's agent, or such other person charged with the responsibility of monitoring the activity of borrowers, shall immediately notify the NCDC Board of any bankruptcy or other serious event that would negatively affect the financial status of an RLF borrower.

7.03 Annual Financial Review. The NCDC will conduct an annual financial review for all borrowers with outstanding RLF loans based primarily on the annual financial statements submitted by the borrower. Additional information may be procured as appropriate. The reviews will be presented to the Loan Committee for further action or recommendations as appropriate.

7.04 Adjustment of Terms and Conditions. Requests by the borrower for adjustment of any of the terms and conditions of a closed RLF loan will be reviewed to determine whether the adjustment is in the best interests of the NCDC. 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 Loan Committee for review and recommendations and presented to the NCDC Board for action. Any such adjustments will require approval of the NCDC Board.

(b) Requests to accrue interest, defer principal payments, or otherwise temporarily modify the repayment schedule may be approved by the Loan Committee for a period not to exceed 90 days. Extensions for any longer period will require the approval of the NCDC Board.

(c) Requests for changes respecting any covenants or conditions of a financial nature must be approved by the NCDC Board as to content and the NCDC attorney as to form.

(d) Requests for any other changes to the covenants or conditions of the loan including, but not limited to such areas as reporting requirements, cost documentation, and maintenance of records may be approved by the NCDC attorney or referred to the Loan Committee at the discretion of the NCDC attorney.

Section 8. Loan Servicing and Cash Management

Except as otherwise noted below, servicing and cash management for RLF loans will be the responsibility of NCCED staff and will involve the following activities:

8.01 Collections. The billing of borrowers for amounts as due; the receipt and posting of payments; the notification of borrowers for past due accounts; and the preparation and dissemination of monthly loan portfolio status reports to the NCDC attorney and the RLF consultant.

8.02 Disbursements.

(a) For loan disbursements, the NCDC attorney and the RLF consultant will be jointly responsible for ensuring that all conditions precedent to the disbursement of loan funds have been met. The RLF consultant will be responsible reviewing all project cost documentation and the status of all other project funding sources and determining the appropriate amount, if any, of RLF funds to disburse to a borrower. No disbursement of RLF loan funds may be made without the written authorization of the NCDC attorney and the RLF consultant specifying the amount to be disbursed, the payee(s), and the use of funds. Upon receipt of such authorization, NCCED staff will, as soon as practicable, disburse the RLF funds as directed and record such disbursement in an appropriate manner.

(b) For the payment of administrative expenses, the following will apply:

    (i) For costs incurred for third-party goods or services, NCCED staff will be responsible for reviewing invoices, bills, receipts, or other appropriate evidence of the expense and for processing and paying such costs to the extent they are eligible pursuant to the

RLF program and appropriately documented. Any such requests for payment will be processed and paid consistent with the standard operating procedures of the NCDC.

(ii) Direct NCCED staff costs must be documented by timesheets, invoices, or other appropriate information to evidence the nature of the cost. Such costs may include, but are not limited to employee salaries, benefits, and other compensation at rates not to exceed those paid by NCCED for work not provided pursuant to his Agreement. Any requests for the payment of RLF funds for NCCED staff costs will be processed and paid consistent with the standard operating procedures of the NCDC.

8.03 Cash Management. The NCDC will maintain an interest-bearing checking account or accounts in which all RLF Capital and Income cash-on-hand is maintained. All loan repayments and other cash receipts and all disbursements will be deposited to, withdrawn from, or drawn on such account(s) as applicable. The NCDC will implement appropriate procedures for cash management consistent with applicable Federal regulations.

8.04 On-going Monitoring of Borrower Compliance. Collecting and maintaining evidence of ongoing compliance with loan requirements including insurance, financial reporting, special conditions (affirmative action, CETA, minority business enterprises).

Section 9. Exceptions

9.01 Exceptions.

(a) The NCDC may deviate from the Eligibility Requirements (Section 2), RLF Standards (Section 3), and Lending Policies (Section 4) only where it is determined by the NCDC Board that such deviation will result in an extraordinary public benefit to Niagara County. The nature of the deviation and the nature and extent of public benefit to result must be stated in an approved NCDC Board Resolution. In no instance shall any such deviation be inconsistent with the laws, regulations, rules, or policies of the EDA.

(b) Any other deviations from the Operational Procedures will require the authorization of the NCDC Board and shall not be inconsistent with the laws, regulations, rules, or policies of the EDA.