

SMALL BUSINESS LOAN ACT OF 2016

Ordinance #07-700-05

Article I. Purpose; Policy

1.01. *Purpose.* The purpose of the Small Business Loan Program is to effectively use Tribal resources to maximize the potential of citizens of the Little River Band of Ottawa Indians by providing services and support that complement and expand their business opportunities and skill levels.

1.02. *Goals.* This program is developed with the following goals –

- a. To make a positive impact on the Tribe's economy by maximizing the success of the citizen owned businesses.
- b. To assist citizens in contributing to their community and achieving self-sufficiency.
- c. To mobilize financial and educational resources that assist citizens in achieving a successful business that is financially viable and self-sufficient.
- d. To promote positive business endeavors by citizens which reflect the Tribe's morals, values, and commitment to the Tribe's community.
- e. To ensure that the maximum number of Tribal Members have access to participate in Tribal funding opportunities.

Article II. Adoption; Amendment; Repeal; Severability

2.01. *Adoption.* This Ordinance was originally adopted by Tribal Council Resolution #07-0110-06 which repealed the Small Business Incentive Program Code, Ordinance No. 05-700-05, and replaced it with the Small Business Loan Act of 2007, Ordinance No. 06-700-05. This current version is amended and adopted by Resolution #16-0727-214.

2.02. *Amendment.* This Ordinance may be amended in accordance with the procedures set forth in the Administrative Procedures Act – Ordinances.

a. Resolution #07-0711-363 – adopting amendments to the Ordinance which:

1. Limit participation in this program to applicants/citizens who have not received either Tribal, Grant or Consent Decree business-related funding under any other program, including but not limited to this Ordinance, the Small Business Incentive Program Code; and
2. Provide that all applicants/citizens shall meet all specific eligibility requirements set forth in Article V, or as otherwise required within this Ordinance; and
3. Confirms and clarifies that the Small Business Incentive Program Code that was repealed by Resolution # 07-0110-06 and replaced by this Small Business Loan Act of 2007; and
4. Changes the Ordinance Number of the Small Business Loan Act of 2007 from 06-0700-05 to 07-700-05, to conform to the Administrative Procedures Act and the date the Ordinance was adopted by Tribal Council; and
5. Corrects errors in renumbering provisions.

b. Resolution #07-1017-548, repealing the Emergency Amendments adopted by Resolution #07-0711-363 and replacing that Ordinance with this Amended Ordinance.

2.03. *Repeal*. This Ordinance may be repealed in accordance with the procedures set forth in the Administrative Procedures Act – Ordinances.

2.04. *Severability*. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

Article III. Definitions

3.01. *General*. As used in this Ordinance, except where otherwise specifically provided or the context otherwise requires, the following terms and expressions shall have the following meanings.

3.02. *Business Owner* means a citizen of the Little River Band of Ottawa Indians who is the owner of a business operated for profit.

3.03. *Applicant* means a citizen of the Little River Band of Ottawa Indians who is applying for a loan under this program who is, or will be, a business owner, and who meets all eligibility requirements under Article V of this Ordinance.

3.04. *Citizen* means an individual who is an enrolled member of the Little River Band of Ottawa Indians in accordance with Article II of the Constitution who meets all eligibility requirements under Article V of this Ordinance.

3.05. *Commerce Commission* means the entity created in the Commerce Commission Ordinance. Should this Commission cease to exist at any point in the future, its duties, if any, assigned by operation of this Ordinance shall be executed by the Commerce Department, Ogema, and/or Tribal Council as then appropriate.

3.06. *Eligibility period* means the 12 (repayment incentive) or 24 month (employment incentive) period during which an applicant, having received a program loan, is eligible for incentive reductions to the program loan as set forth in this ordinance.

3.07. *Eligibility trigger* date means the date 30 days after signing the program loan documents.

3.08. *Incentive application* means the signed form, if required, or other signed document which identifies the facts and contains supporting documents to request an incentive reduction to a program loan.

3.09. *Employee* means an individual hired by a business owner, after the date of receipt of a program loan, who will work for at least 1560 hours for the business owner.

Article IV. Types of Loans

4.01. *Loans*. The primary focus of this program is to assist applicants with obtaining financing for new business start-ups. The program also assists existing businesses in relocating to the Reservation and expansion of existing businesses. The Department of Commerce has four types of loans that it administers – mini, micro, macro and growth loans. All loans may be issued for less than the maximum amount, and all applicants may expand an existing loan to the capacity of the loan category, or, if meeting eligibility criteria for a higher loan category, may expand an existing loan into a higher loan category. An overview of the loan types is as follows:

a. *Mini Loan*

1. Loan for \$1,000 to \$5,000.
2. Term 2 years or less.
3. 4% simple interest.

b. *Micro Loans*.

1. Loans over \$5,001 up to \$10,000
2. Repayment number of years based on dollar amount and repayment capability of the business.
3. 4% simple interest.

c. *Macro Loan.*

1. Loans over \$10,001 up to \$50,000.
2. Repayment number of years based on dollar amount and repayment capability of the business.
3. Must provide 3 years of business tax returns.
4. 4% simple interest

d. *Growth Loan.*

1. Loan for a combined maximum of \$150,000 (including the existing mini, micro, or macro loan balance).
2. Repayment number of years based on dollar amount and repayment capability of the business.
3. Must provide 5 years of business tax returns.
4. 4% simple interest.

4.02. *Additional Loan Incentives.*

a. *Business location.* Businesses located in the 1836 or 1855 Treaty area will be given the opportunity to request a one-time principal forgiveness incentive totaling 2.5% of the principal amount after one year of successful operation and timely payments made under the loan agreement.

b. *Employment Incentive.* A one-time employment incentive is granted when the business owner employs, other than themselves, tribal citizens in the business activity during the 24 month eligibility period following the eligibility trigger date. The job created must pay no less than the federal minimum wage, employ the citizen for no less than 1,560 hours per 12 month period, and the applicant must be current on loan repayment.

Employment incentives are allocated as follows.

1. Upon submission of eligibility certification regarding the first employee worked and received compensation for 1,560 hours within a 12 month period at a minimum rate of no less than the federal minimum wage per hour for the entire period an applicant receives an employment incentive forgiveness of 2.5% off the then current loan balance. This employment incentive may only be awarded once to any business entity.
2. Upon submission of an eligibility certification regarding the employment of five citizens, each of whom has worked and received compensation for 1560 hours of work within a 12 month period individually at a minimum of no less than the federal minimum wage per hour for the entire period, an applicant receives an addition employment incentive forgiveness of 2.5% off the then current loan balance. Citizens employed in this category may be the same or different employees as under the first employment incentive certification, but, each employee presented must have individually worked 1560 hours in a 12 month period. This employment incentive may only be awarded once to any business entity.
3. Upon submission of an eligibility certification regarding the employment of 10 citizens, each of whom has worked and received compensation for 1,560 hours of

work within a 12 month period individually at a minimum of no less than the federal minimum wage per hour for the entire period, an applicant receives an addition employment incentive forgiveness of 2.5% off the then current loan balance. Citizens employed in this category may be the same or different employees as under the first employment incentive certification, but, each employee presented must have individually worked 1,560 hours in a 12 month period. This employment incentive may only be awarded once to any business entity.

Article V. Loan Guidelines and Eligibility

5.01. *Loan Guidelines.* To be eligible for program loan funds, the applicant/citizen must, minimally, meet all of the following requirements.

- a. 18 years of age or older; and
- b. The applicant/citizen(s) must own 100% of the business and is willing to sign a bankruptcy carve out exception and access to per cap monies in the event of default; and
- c. The applicant/citizen(s) must actively manage or control the business; and
- d. The applicant/citizen(s) has not received either Tribal, Grant or Consent Decree business-related funding under any other program, including but not limited to this Ordinance, the Small Business Incentive Program Code and the funds released for use in commercial fishing operations under Resolution #07-0221-101 and never been in default under any type of loan relationship with the tribal government unless the applicant can demonstrate a significant improvement in their credit score and has cured any previous delinquency to the Tribe and other credit facilities; and
- e. The business is located and headquartered within the State of Michigan; and
- f. The applicant/citizen(s) resides in the State of Michigan; and
- g. Employment preference must be first given to citizens, descendants of citizens, and members of other federally and state historic recognized tribes; and
- h. The business must be a for profit entity; and
- i. The applicant must provide a detailed business plan, marketing plan and a 3-year proforma for micro loans and above; and
- j. The Little River Band of Ottawa Indians shall be the lien holder on all equipment/land purchases until the loan is paid in full. Once the loan is paid in full all equipment/land liens shall be removed; and
- k. Maximum loan dollar amounts are based per business; and
- l. The Commerce Department may require the applicant to attend Tribal approved entrepreneurship training; and
- m. The applicant must meet certain baseline thresholds relating to Debt Service Coverage (1:1.2), Loan to Value (90%), and appropriate risk thresholds as determined by the Commerce Department.

5.02. *Loan Term Repayment Schedule.*

- a. Mini: Loan term not to exceed more than two (2) years.
- b. Micro: Loan term not to exceed more than four (4) years.
- c. Macro: Loan term not to exceed more than five (5) years.
- d. Growth: Loan term not to exceed more than seven (7) years.

5.03. *Category Priorities of Loans.*

a. In the event that funding levels are insufficient to serve all qualified applicants, the Commerce Department may develop a distribution criterion which takes into consideration such things as the amount of available funds, the level of need for each prospective participant, the amount of alternative resources available, and other factors that may impact a prospective participant's level of need.

b. In the event that the availability of lots or building space on Tribal lands is insufficient to serve all qualified applicants, the Commerce Department may develop distribution criteria which takes into consideration such things as the amount of available lands or building space, the amount of land or building space requested by each applicant, the amount of alternative land or building space available, and other factors that may impact applicant's level of need.

5.04. *Distribution Criteria for Land & Funding.* Case numbers assigned to an application do not determine the priority of funding. The style, sector, and job creation determines funding priorities. The Little River Band of Ottawa Indians has no obligation to fund business incentive loans once the funding ceiling for the current fiscal year is reached within the program.

Examples of preferred businesses examples are listed below:

a. Manufacturing and Assembly businesses that create jobs for citizens in the 1836 and 1855 Reservation area, and all of Michigan.

b. Service and Retail, businesses that create jobs for citizens in the 1836 and 1855 Reservation area, and all of Michigan. Some types of service industry businesses create more jobs than assembly and manufacturing. Service businesses will be reviewed on a case by case basis to evaluate the number of jobs that it would create.

c. Consulting, home-based or Internet-based, and/or other businesses that create jobs for Tribal citizens in the 1836 and 1855 Reservation area, and all of Michigan.

d. Preference will be given to job creation and applicants that have their own cash equity involved in the startup/expansion will be viewed as a more qualified applicant in the event of limited availability of funds due to budget constraints.

5.05. *Audits Required.* Recipients under this program shall be required to allow the Little River Band of Ottawa Indians, through the office of the Comptroller General, or other mechanism judged appropriate by the Office of the Ogema, to conduct audits regarding the receipt and use of funds. The audits are solely the property of the Little River Band of Ottawa Indians and shall not be used by the business owner for any purpose.

5.06. The Commerce Department shall have the authority to deny applicants' business proposals if they are deemed to not be feasible or not in the Tribe's best financial interest.

Article VI. Application

6.01. *Application Requirements.* To apply for a macro or growth loan, at a minimum, the following items are required:

a. Updated business plan; and

b. Written cost estimates; and

c. A personal financial statement for each owner(s); and

d. A signed loan application form; and

e. A signed credit application; and

f. 3 or 5, depending on loan product, years of historical business tax returns and financial statements; and

g. Business organization documents, for example –

1. Sole-proprietor, state or Tribal business registration

2. Partnership; a partnership agreement
 3. Corporation; articles, ownership minutes, and/or share certificates.
 - h. Other documents as determined necessary by the Commerce Director.
- 6.02. *Use of Loan Funds.* Program loan funds can be used to establish a new business, to purchase an existing business, or expand an existing business. Specific uses include,
- a. Land.
 - b. Land/site infrastructure.
 - c. Existing building.
 - d. New construction, construction must begin within 6 months of loan receipt.
 - e. Renovations must begin within 3 months of loan receipt.
 - f. Equipment.
 - g. Inventory, limited to 1.5 months.
 - h. Startup costs, onetime costs incurred during business startup.
 - i. Working capital, based on needs of business but limited to first 2 months or less.
 - j. Equipment & Machinery; seven years or expected life whichever is shorter.
- 6.03. *Non Permitted Uses of Loan Funds.*
- a. Financing of receivables.
 - b. Additional working capital for existing businesses.
 - c. Purchase or payment of personal items or personal residential purposes.
 - d. Tiered or multi-level marketing operations.
 - e. Activities that are not permitted under Tribal and local laws.
 - f. Funds are for business purposes, not for personal items.
 - g. Vehicles that are purchased with SBLA funds must be required to operate the business
 - h. Getting to and from a job site is not a sufficient enough purpose to qualify for this loan.
- 6.04. *Owner Contribution.* The Little River Band of Ottawa Indians realizes most citizen(s) lack start-up capital and has developed this program to assist citizen(s) in the process of getting into business. It is greatly preferred and recommended that citizen(s) provide at least ten percent (10%) equity. Examples of equity are:
- a. Personal cash.
 - b. Labor.
 - c. Materials.
 - d. Personal assets newly titled in the name of the business.

The Commerce Department reviews each complete application and retains discretion, subject to Ogema/Tribal Council input if requested by aforesaid political leaders, to determine the amount of applicant equity required on a case by case basis.

6.05. *Collateral.* Loans will be secured by all business assets up to the value of the loan. If other financing sources are used the secured position can be flexible. If other financing is used, program loan funds are released only after verification of any or all other financing is complete and secure.

6.06. *Proper Insurance Coverage.* Applicants must show and maintain proof of insurance coverage on all business assets, liability coverage, and life insurance to cover the balance of the program loan funds.

6.07. *Financial Statement.* Applicants must submit quarterly financial statements to the Commerce Department for the first three years and annually thereafter, or for the duration of their loan repayment.

Statements must include:

- a. Profit and Loss Statement.
- b. Cash Flow Statement.
- c. Detailed Expense Report of Funds Use.

Once a loan is paid in full and the business owner has completed their obligation, it is no longer required to report monthly. The business owner is requested to report on a yearly basis to the Commerce Department for statistical purposes. This process will allow the Commerce Department to gauge the overall impact on the economy and the effectiveness of the program.

6.08. *Expanding a Loan.* Expanding an existing program loan may be authorized if existing program funds remain, and may be authorized in the fourth fiscal quarter. The Commerce Department has the authority to approve or deny requests to expand an existing program loan based upon the following criteria and other criteria as deemed applicable.

- a. Availability of funds.
- b. Repayment and compliance history.
- c. Purpose for additional funds.
- d. Business need(s).
- e. The first time loan applicant will be given priority over applicants applying for additional funds under a new business name.

6.09. *Loan Restructuring.* Restructuring of loans may be requested by a business owner.

- a. To accelerate payments due to higher than expected cash flows.
- b. To lower payment or create a deferral that would prevent the business from default or going out of business. Restructuring of loans is done on a case by case basis and depends on the Commerce Department recommendation. The applicant may request in writing that the program modify or defer payments. A decision will be made within 30 working days from date the request is received and all documentation necessary to make a decision has been supplied.

6.10. *Loan Management Program.* Once funds have been committed to the applicant, the loan account will enter the Loan Management Program. This program is designed to assist the business owner with any issues, questions, and or technical assistance that they need during the duration of the loan.

Article VII. Payment

7.01. *Payment of Loans.* Loan payments will be in the form of checks or money orders payable and sent to the designated payment receiver identified in the application. The payments will be recorded on the individual loan ledgers with the Little River Band of Ottawa Indians Accounting Department. A yearly statement will be sent to each business owner concerning their annual interest paid, total of all payments received and current balance.

7.02. *Due Dates.* All payments are due on the 1st of every month. If payment does not come in on time the Commerce Department will contact the business owner by phone to see if there is a problem or if payment was inadvertently delayed. The Commerce Director will also attempt to contact the business owner to see if there are any technical issues or training assistance that needs to be addressed. If the payment is not received by the 15th of the month a written notice will be sent, stating the business owner's loan payment is overdue and the business owner must contact the Commerce Director. A late fee of \$50.00 and any and all other appropriate fees will also be added to the account. The Commerce Director will work with the business owner and develop an action plan. The plan will be based upon the following options which shall determine which course of action is most viable and best protects the assets of the Tribe:

- a. Make the payment before the next payment becomes due.
- b. Make payment arrangements that would not harm the business or the SBLA.
- c. Sign a garnishment agreement where outside income is available that is subject to garnishment.
- d. If employed, sign a payroll deduction agreement.
- e. Restructure the loan if the business has changed drastically from the original business plan.
- f. Foreclose on the business and capture the assets secured as collateral.

7.03. *Loan Delinquency.* If a program loan becomes 15 days delinquent, verifiable contact will be made to the business owner. If payment is 30 days late a written default letter is sent by certified mail. If after all attempts to collect, up to 45 days past due the date of a loan payment have failed, the Commerce Director shall compile the necessary information and proof of attempts to collect payments, and recommendations on how to proceed with the delinquent loan. The Commerce Department will then make a final determination of action and notify the borrower. The Commerce Department will proceed with any and all actions to secure property, assets, judgments and liens via Tribal Court, or State Court, including, but not limited to, garnishment of Federal and State tax returns.

7.04 *Overview of Delinquency Process.*

- a. A 15-day contact has been made with the borrower.
- b. A 30-day written default notice is sent.
- c. A 45-day default notice is filed with the Commerce Department.
- d. The business is assessed to identify problem or issues.
- e. Restructuring of loan request, if filed, is given to Commerce Department for consideration.
- f. If approved, an action plan to improve conditions is implemented with the business owner.
- g. Continued business failure to repay program loan will result in action to recover the program loan.
- h. Evaluate the situation leading to business failure.

Article VIII. Certain Programs/Eligibility

8.01. *Loan Eligibility.* The applicant/citizen shall be required to meet all requirements of this Ordinance, including the eligibility requirements set forth in Article V.

8.02. *Application Approval.* Applications shall receive final review before being moved to a funding status.

8.03. *Reporting Requirements.* Reports to the Commerce Department shall include profit & loss statements, cash flow statements, and a detailed report of funds spent during the previous reporting period. All reports shall be submitted as directed by the Commerce Department. Any audits of financial statements or the business conducted by the Commerce Department shall only be for the purpose of the Little River Band of Ottawa Indians and shall not be used to obtain any outside financing and/or certifications.

8.04. *Acquisition of New Lands.* Applicants requesting program assistance for the purpose of acquiring real property to which the applicant proposes to re-locate its business operations must meet the following threshold requirements:

- a. *Business Requirements.*

1. Demonstrate (through tax returns or other evidence) that the business entity (including any predecessor entities, i.e. sole proprietorship, partnership, etc.) has been engaged in business for not less than 2 years at some other business location(s) and has been owned by a Tribal member for at least the same period of time prior to filing the application for funds; and
2. Proof that the business entity is currently wholly-owned by one or more enrolled member(s) of the Little River Band of Ottawa Indians; and
3. Proof that the business entity's management and operations are, and will continue to be, substantially controlled by one or more enrolled member(s) of the Tribe; and
4. A description of the business' current operations (including location, facilities, number of employees, product(s) service(s)); and
5. Identification of the parcel of real property meeting the criteria described in subsection. Applicants may submit more than 1 (one) parcel for consideration provided that the selection of the parcel to be pursued will be made by the reviewing official in his/her recommendation; and
6. Validation that the cost being paid is within the range of comparable parcels.

b. *Property Requirements.* Applicants for program assistance are responsible for providing documents demonstrating that the real property proposed for acquisition with Program funds meets the following requirements:

1. The property is available for purchase (i.e. copy of the MLS listing information or similar fact sheet); and
2. The proposed business activity is compatible with applicable land use plans and authorized by applicable zoning ordinances; and
3. Certification, with reference to the Business Plan, that the parcel identified reasonably meets all the business' physical requirements in terms of space, utilities and access; and
4. The total cost of acquiring the parcel, including the cost of necessary due diligence (i.e. Phase I Environmental Assessment; Survey; Building Inspections) does not exceed to the maximum amount of Program assistance authorized. The amount of any equity contribution toward the purchase price, which the applicant is committing, shall be considered in making this determination; and
5. Verification that the parcel is located within Reservation areas; and
6. Validation that the cost being paid is within the range of comparable parcels.

8.05. *Lease and Improvement of Tribal Lands.* Applicants requesting Program assistance for the purpose of financing the cost of improvements to a designated parcel of land within the Reservation which is owned by the Tribe to which the applicant proposes to re-locate his/its business must meet the following threshold requirements:

a. *Business Requirements.*

1. Demonstrate (through tax returns or other evidence) that the business entity (including any predecessor entities, i.e. sole proprietorship, partnership, etc.) has been engaged in business for not less than 2 (two) years at some other business location(s) and has been owned by a Tribal member for at least the same period of time prior to filing the application for funds; and
2. Proof that the business entity is currently wholly-owned by one or more enrolled member(s) of the Little River Band of Ottawa Indians; and

3. Proof that the business entity's management and operations are, and will continue to be, substantially controlled by one or more enrolled member(s) of the Tribe; and
4. A description of the business' current operations (including location, facilities, number of employees, product(s)/service(s)); and
5. Identification of the parcel of Tribal land meeting that criteria described in subsection (b). Applicants may identify more than 1 (one) parcel for consideration provided that the selection of the parcel to be pursued will be made by the reviewing official in his/her recommendation.

b. *Property Requirements.* Applicants for Program assistance are responsible for providing documents demonstrating that the Tribal parcel proposed for lease and improvement with Program funds meets the following requirements:

1. The parcel has been designated for use for commercial purposes and is available for lease and that the proposed business activity is compatible with applicable land use plans and zoning ordinances; and
2. Certification with reference to the Business Plan that the parcel identified reasonably meets all the business' physical requirements in terms of space, utilities and access; and
3. The total cost of improving the parcel, including the cost of necessary due diligence (i.e. Phase I Environmental Assessment; Survey; Building Inspections) does not exceed to the maximum amount of Program assistance authorized. The amount of any equity contribution toward the cost of improving the property, which the applicant is committing, shall be considered in making this determination.

8.06. *Lease of Tribal Lands (with Improvements Financed by the Applicant).* Applicants requesting authorization to lease Tribal land, or space within existing Tribal facilities, to which the applicant proposes to relocate its business must meet the following threshold requirements:

a. *Business Requirements.*

1. Demonstrate (through tax returns or other evidence) that the business entity (including any predecessor entities, i.e. sole proprietorship, partnership, etc.) has been engaged in business for not less than 2 (two) years at some other business location(s) and has been owned by a Tribal member for at least the same period of time prior to filing the application for funds; and
2. Proof that the business entity is currently wholly-owned by one or more enrolled member(s) of the Little River Band of Ottawa Indians; and
3. Proof that the business entity's management and operations are, and will continue to be, substantially controlled by one or more enrolled member(s) of the Tribe; and
4. A description of the business' current operations (including location, facilities, number of employees, product(s) service(s)); and
5. Identification of the parcel of Tribal land meeting the criteria described in subsection (b). Applicants may identify more than 1 (one) parcel for consideration; provided that the selection of the parcel to be pursued will be made by the reviewing official in his/her recommendation.

b. *Property Requirements.* Applicants are responsible for providing documents demonstrating that the Tribal parcel (or building space) proposed for lease and improvement by the applicant meets the following requirements:

1. The parcel (or building space) has been designated for use for commercial purposes and is available for lease and that the proposed business activity is compatible with applicable land use plans and zoning ordinances; and
2. Certification, with reference to the Business Plan, that the parcel identified reasonably meets all the business' physical requirements in terms of space, utilities, and access.

8.07. *Start-Up Capital for New Businesses or Operating Capital to Existing Business Relocating to Locations within the Reservation.* Applicants requesting Program assistance for the purpose of obtaining contributions of start-up capital for new businesses proposed by Tribal members for operating capital to existing business currently located within the Reservation or relocating to locations within the Reservation must meet the following threshold requirements:

a. *Business Requirements.*

1. Proof that the business entity is, or will be, wholly-owned by one or more enrolled member(s) of the Little River Band of Ottawa Indians; and
2. Proof that the business entity's management and operations are, and will continue to be, substantially controlled by one or more enrolled member(s) of the Tribe; and
3. A description of the proposed operations (including location, facilities, number of employees, product(s)/service(s)) of the business; and
4. Identification of the location proposed for the business, including any parcel(s) of Tribal land meeting the criteria described in subsection (b).

b. *Property Requirements.* Applicants for Program assistance are responsible for providing documents demonstrating that they have identified suitable land/facilities within the Reservation. Applicants seeking to locate their business on Tribally-owned lands must identify a parcel which meets the following requirements:

1. The parcel has been designated for use for commercial purposes, is available for lease and that the proposed business activities(s) is compatible with applicable land use plans; and
2. Certification, with reference to the Business Plan, that the parcel identified reasonably meets all the business' physical requirements in terms of space, utilities, and access; and
3. The total cost of improving the parcel, including the cost of necessary due diligence (i.e. Phase I Environmental Assessment; Survey; Building Inspections) does not exceed the maximum amount of Program assistance authorized. The amount of any equity contribution toward the cost of improving the property, which the applicant is committing, shall be considered in making this determination.

8.08. *Eligibility Determinations; Criteria.* In making recommendations for Program assistance, the Commerce Department must determine that the document submitted by the applicant reasonably demonstrates:

- a. That the applicant currently owns or has the ability to finance the acquisition of any fixtures, equipment and materials not covered by Program assistance, which is necessary to meet the business' requirements; and

- b. That the acquisition of any parcel is consistent with any applicable land use acquisition priorities established by the Tribe; and
- c. The business activities proposed are consistent with any applicable Tribal land use plans, if applicable; and
- d. That the applicant, who is already an established business has, prior to the receipt of Program assistance, contributed, equity or capital in its business in amount not less than 10% of the amount of Program funding requested.
- e. Confirm, in programs oriented toward a move to the Reservation, that substantially the entire applicant's businesses operations (manufacturing/assembly; service delivery and/or warehouse/showroom) will be located on, or relocated from their present location to, the proposed location on the Reservation.
- f. Verify that the applicant and/or business has not received funds from the Program for a period of 5 years prior.
- g. Verify that the applicant/citizen meets all eligibility requirements set forth in Article V of this Ordinance, and as elsewhere provided herein.

Article IX. Development and Lease Agreements.

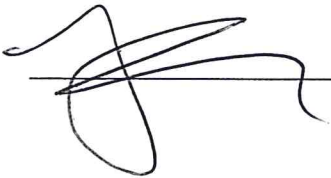
9.01. *Development Agreement.* As a condition of receiving financial assistance from this program, applicants shall be required to execute a Development Agreement which contains the following terms:

- a. Clearly identifies the parties to the agreement, which must include: the applicant, the legal entity which will own and operate the business, and the capacity of each person/entity to enter into the Development Agreement; and
- b. Identifies the property on which the business will be operated; and
- c. Identifies the business activities the applicant will be permitted to engage in on the property, including any activities or uses specifically prohibited; and
- d. A commitment by the applicant to carry out the goals set forth in its business plan; and
- e. Specifies project commencement and completion dates, either for the project as a whole, or for various phases and commits the applicant to maintaining that project schedule. The project schedule should require the applicant to:
 1. Re-locate its business operations to the new location within a specified period of time; and
 2. If applicable, commence construction of improvements within a specified period of time; and
 3. Commence business operations at its new location on the Reservation, where applicable, within a specified period of time.
- e. Provide for periodic review of the applicant's progress in order to determine compliance with the terms of the Development Agreement; and
- f. Require the applicant to make periodic progress reports to the Commerce Director; and
- g. Require the applicant to hold the Tribe, its officials, employees and agents, harmless from liability for damages, injury or death which may arise from the direct or indirect operations of the applicant; and
- h. Require the applicant to re-pay the amount of Program assistance if the applicant fails to re-locate substantially all of its business operations to the location identified; and
- i. Requires the application to re-pay the amount of Program assistance if the applicant sells its business to a non-Tribal member or to a business entity which is not wholly-owned by Tribal members within 5 years after receipt of program funds; and

j. Grants to the Tribe, a right of first refusal with respect to any proposed sale by the applicant of its business to a non-member or a business entity which is not wholly-owned by Tribal members.

CERTIFICATION

I, Joseph Riley II, Tribal Council Recorder, do hereby certify that this is a true and correct copy of the Small Business Loan Act of 2016 permanently adopted by the Tribal Council on 7-27-16.



[Seal]