



# OFFICE OF THE CORPORATION COUNSEL

## MEMORANDUM

TO: CDBG Commission

FROM: Assistant Corporation Counsel Richard Greenlee

DATE: February 15, 2017

RE: **Summary of Mustard Museum Loan Forgiveness Transaction**

The following memorandum is to facilitate an understanding of the implications, mechanics, and possible conditions for loan forgiveness on the ED-RLF loan to MustardMuseum.com, LLC.

### Current Loan Status

The original loan was entered into in December of 2009, for \$200,000 with a term of 7 years, an interest rate of 5.25% per annum, and repayment in equal monthly installments. Over the course of the first 4 years of the loan, the Borrower appeared in front of the Commission a number of times to request modification, deferments, forbearances, and rate reductions. *See amortization schedule.* In 2011, in order to facilitate the tax deductibility of donations made to the museum, the Commission allowed the Borrower to spin off a not-for-profit, tax exempt entity named National Mustard Museum, Inc. The Commission also allowed the collateral to be purchased by the National Mustard Museum, Inc.

In 2013, upon another request for loan modification, a more formal loan restricting agreement was entered into between the MustardMuseum.com, LLC, the National Mustard Museum, Inc., and the County. In this agreement, MustardMuseum.com, LLC, and the National Mustard Museum, Inc., were made jointly and severally liable for the indebtedness to the County. Their new status as Co-Borrowers was memorialized by a new amended Promissory Note, signed by both entities.

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This loan was made out of the ED-RLF program, which was funded with State of Wisconsin CDBG funds. Although the original Loan Agreement specified that the MustardMuseum.com, LLC would need to create 10 new jobs, the both State and HUD statutory requirements actually only required 5.7 Full Time Equivalent Jobs. To date the MustardMuseum.com, LLC has created 2.2 Full Time Equivalent Jobs. Despite this, the State has communicated to the County, that given the funds already repaid, and the anticipated future payment of \$40,000, the State is ok with the current jobs figure and would not seek to recapture any of the unpaid funds.

### Transaction Details

The transaction itself will be performed with two documents, a Loan Forgiveness Agreement and a new Deferred Note. These documents would be signed and executed as a part of a “closing” on the sale of the business. The documents would work to, in effect, hold open the remaining balance of the loan for a period of 5 years with no payments and no interest accruing and then forgive the balance still due if all the terms and conditions of the Loan Forgiveness Agreement were completed at the end of 5 years. If the conditions of the Loan Forgiveness Agreement were violated, then the remaining principal would become due and payable immediately, with a default rate of interest at 10% per annum.

### Recommended Terms and Conditions for Loan Forgiveness Agreement:

1. Receipt of \$40,000 lump sum payment to Dane County.
2. Payment to the Middleton CDA of 25% of the outstanding balance due on the loaned sum and Middleton CDA's agreement to release borrower's obligation on remaining unpaid principal and interest.
3. Sale of the MustardMuseum.com, LLC, business entity to Patricia Bridges.
4. Release of the secured collateral described as follows:
  - a. A first position on the Borrowers' mustard collection as described in the Appraisal Report dated January 28, 2011 and attached hereto as Exhibit 'A, and all of Borrowers' equipment, fixtures, inventory (including all goods held for sale, lease or demonstration or to be furnished under contracts of service, goods leased to others, trade-ins and repossessions, raw materials, work in process and materials or supplies used or consumed in Borrowers' business), documents relating to inventory, general intangibles, accounts, contract rights, chattel paper and instruments, whether now owned or hereafter acquired.
5. Business must stay in Dane County for the term of agreement.

6. Continued efforts to create still uncreated but promised jobs as a part of original conditions of loan.
7. No resale of the MustardMuseum.com, LLC, entity to Barry or Patti Levenson during the 5 year term.
8. Prohibition on either Barry or Patti Levenson holding any equity position in MustardMuseum.com, LLC.

Other possible conditions for the Commission may consider:

9. Prohibit Barry Levenson from receiving wages, salary or any other fringe benefits from either MustardMuseum.com or from the National Mustard Museum or both.
10. Prohibit sale of any part of the Mustard Museum Collection without commission approval.
11. If any part of the Mustard Collection is sold, the proceeds shall first be used to pay down the remaining balance on the amended deferred note.
12. Prohibit Barry Levenson from engaging in any business or consulting work that would compete with the business of MustardMuseum.com, LLC
13. Prohibit Barry or Patti Levenson from taking a seat on the Board of Directors for the National Mustard Museum, Inc.

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