

FORGIVABLE LOAN AGREEMENT

BETWEEN THE

COMMUNITY DEVELOPMENT AUTHORITY OF THE CITY OF WEST ALLIS

AND

6325 Mithli LLC

FOR A

**NATIONAL AVENUE COMMERCIAL CORRIDOR
CODE COMPLIANCE RENOVATION AT**

**6325 W. NATIONAL AVENUE,
WEST ALLIS, MILWAUKEE COUNTY, WISCONSIN**

THIS AGREEMENT is made between the **Community Development Authority of the City of West Allis**, a separate body politic created by ordinance of the City of West Allis, pursuant to Section 66.1335 of the Wisconsin Statutes, (hereinafter the “CDA”), and **6325 Mithli LLC**, a Limited Liability Company (hereinafter the “BORROWER”).

WHEREAS, the West Allis Common Council and the CDA adopted a variety of small business grants and loan programs for the National Avenue Commercial Corridor, described further by the boundary map hereby provided attached under **Exhibit A –National Avenue Commercial Corridor**, to promote investment in a designated area, reduce storefront vacancies, and to attract new businesses. The purpose of this loan is to assist a property owner of a commercial property with bringing a commercial space into code compliance while filling a storefront vacancy and/or encouraging business expansion; and

WHEREAS, the BORROWER, a property owner within the National Avenue Commercial Corridor, desires a Code Compliance Forgivable Loan from the CDA for up to Thirty-Three Thousand Five Hundred Dollars (\$33,500) or 100% the total project cost, whichever is the lesser amount, for the following business development purpose: installation of a new roof system at 6325 W. National Avenue, West Allis, Wisconsin, (hereinafter the “PROJECT”), and the CDA is agreeable to loan said dollar amount to the BORROWER under terms as set forth in this Forgivable Loan Agreement.

WHEREAS, the Code Compliance Forgivable Loan was increased by the CDA as part of an economic incentive to improve a vacant, idle property and to attract a creative use to the Six Points Farmers Market redevelopment area.

WHEREAS, the Loan is that it is about securing new ownership in the property with the acquisition **of the building, fostering new investment with a roof replacement, and creating an environment that will be conducive to reuse of the Facility**. By supporting 6325 Mithli LLC with this grant, the CDA is gaining three things:

1. Ensuring that this building comes off the market and is no longer neglected
2. Securing the purchase of the building by a reputable company

3. Completing a full roof replacement, which sets the building up to be redeveloped (as it stands now, the roof leaks tremendously, so the building is not even ready to be rehabilitated because of the leaks)

NOW, THEREFORE, it is hereby agreed by and between the parties, for and in consideration of the following mutual covenants and promises, as follows:

1. DEFINITIONS. For the purposes of this Agreement, the following terms shall have the meanings set forth below:
 - A. “*Administrative Costs*” means administrative costs incurred by CDA in connection with the Project, but not included in nor deducted from the forgivable loan from CDA to the BORROWER.
 - B. “*Agreement*” means this Forgivable Loan Agreement for the National Avenue Commercial Corridor Code Compliance Forgivable Loan Program between the CDA and the BORROWER, together with any future amendments thereto.
 - C. “*Application*” means the National Avenue Commercial Corridor Code Compliance Forgivable Loan Program Application submittal by the BORROWER.
 - D. “*BORROWER*” means 6325 Mithli LLC, principal office at N28W27542 Peninsula Dr. Pewaukee, WI 53072
 - E. “*Code Compliance Forgivable Loan Program*” means the program approved by Common Council Resolution R-2017-0053 and CDA Resolution #1226.
 - F. “*CITY*” means the City of West Allis, together with its lawful successors and assigns.
 - G. “*Effective Date*” means date of acceptance by signature by the Borrower of this Agreement.
 - H. “*Eligible Project Cost*” means the costs and expenditures incurred by the BORROWER in connection to the Project, as more fully described in **Exhibit B** and that are in compliance with the Program Guidelines for a Code Compliance Forgivable Loan, which is attached as **Exhibit C**.
 - I. “*Facility*” means the BORROWER’S real property, including improvements that are located only within the property at 6325 W. National Avenue, West Allis, Wisconsin.
 - J. “*CDA*” means Community Development Authority of the City of West Allis, together with its lawful successors and assigns.
 - K. “*Project*” means activities described in **Exhibit B**.

- L. “*Term of This Agreement*” means until the BORROWER’s obligations hereunder are fully satisfied.
 - M. “Completed Project” means commercial space that has fulfilled necessary requirements for the issuance of an Occupancy Permit from the City of West Allis Building Inspection and Neighborhood Services Department.
2. The CDA agrees, in consideration of the BORROWER executing this Agreement, completing the Project as described in **Exhibit B**, and agreeing to be bound by its terms, to loan the lesser amount of the maximum sum of Thirty-Three Thousand Five Hundred Dollars (\$33,500), or 100% of the total eligible project cost, to the BORROWER.
 3. The CDA shall have received the representation and warranty of the BORROWER that the BORROWER has the necessary power to execute, deliver and carry out the terms and provisions of this Agreement; further, that compliance with the provisions of the Agreement will not conflict with or result in the breach of any other agreement to which it is a party or by which it is bound. The BORROWER acknowledges that nothing contained in this Agreement nor any act of the CDA shall be deemed or construed to create any relationship of third-party beneficiary, or of principal and agent, or of limited or general partnership, or of joint venture, or of any association between the parties to this Agreement.
 4. The BORROWER will not discriminate against any employee, applicant for employment or customer because of race, religion, color, sex, age, national origin, handicap, marital status of the person maintaining the household, lawful source of income, ancestry or any other reason prohibited by federal, state or local law. Any act finally determined by a court of law to be an act of illegal discrimination shall be a breach of this Agreement, and the CDA may proceed to enforce its remedies in this Agreement by all lawful means available to the CDA.
 5. The BORROWER represents and warrants to the CDA that it has obtained, or has reasonable assurance that it will obtain, all federal, state and local governmental approvals required by law to be obtained by it for this PROJECT.
 6. The BORROWER acknowledges that the CDA, in making the Code Compliance Forgivable Loan, relied upon the assured completion of the PROJECT activities to be undertaken by the BORROWER, and the BORROWER reassures the CDA that it will complete such PROJECT activities.
 7. The National Avenue Commercial Code Compliance Forgivable Loan from the CDA to the BORROWER hereunder for the Eligible Project Costs shall be made upon receipt and staff approval of requests for disbursements and supporting documents. The supporting documents shall include, but not limited to:
 - A. Contracts made with all contractors, subcontractors, vendors, and suppliers employed on this project.
 - B. Itemized invoices of all contractors, subcontractors, vendors, and suppliers employed on this project.

- C. Lien waivers signed by all contractors, subcontractors, vendors, and suppliers employed on this project.
 - D. Copies of all paid invoices, cancelled checks and/or bank statements for all code compliance work covered by the grant. The invoices must be marked paid, signed, and dated by the contractors. *Cash payments are not allowed.*
 - E. Color photos of Completed Project.
8. The CDA may request reimbursement for the CDA Code Compliance Forgivable Loan funds paid if it determines that the BORROWER has not provided adequate documentation of Eligible Project Costs, has failed to file required reports hereunder, or is otherwise in default under the terms of this Agreement.
 9. All reimbursement requests for Eligible Project Costs must be submitted by the Borrower to the CDA with all required supporting documents by December 31, 2022.
 10. The BORROWER shall complete and maintain books, records and other documents relating directly to the receipt and disbursement of any of the Code Compliance Forgivable Loan proceeds received by it, either directly or indirectly, and any duly authorized representative of the CDA, shall at all reasonable times, after proper notice is given, have access to and the right to inspect, copy, audit and examine all such books, records and other documents of the BORROWER until the final settlement and conclusions of all issues arising out of the Forgivable Loan or under the Agreement.
 11. The BORROWER agrees that any duly authorized representative of the CDA shall, at all reasonable times after notice, have access to any portion of the Project.
 12. The BORROWER acknowledges that the duties, obligations or responsibilities under this Agreement are continuing, and no right or privilege inures to the BORROWER to the complete Code Compliance Forgivable Loan proceeds without complete compliance with the aforementioned continuing duties and responsibilities.
 13. Forgiveness of the Forgivable Loan is such that funds are tied to the acquisition and the roof replacement. Forgiveness shall take place once Closing is complete, and the Roof Replacement is complete.

This Forgivable Loan Agreement may not be amended without approval of the CDA.

14. If an event occurs which causes or may cause delays in either the commencement or the completion of the undertaken Project, the BORROWER shall notify the CDA, in writing, of the delay or anticipated delay, and the cause or causes of the delays or anticipated delays; and, if the cause has been or will be by circumstances beyond the control of the BORROWER, the time for performance shall be extended for the period equal to the delay. The BORROWER agrees that any of the following events shall constitute an event of default:
 - A. failure to obtain a commercial occupancy permit for the Facility by December 31, 2023;

- B. failure to maintain ownership of the Facility during the time period of this Agreement;
 - C. failure to perform any obligation contained in this Agreement;
 - D. the execution of any remedies resulting from an assignment for the benefit of the BORROWER's creditors or commission of any other act amounting to a business failure;
 - E. the filing, by or against the BORROWER, of a petition under any chapter of the U.S. Bankruptcy Code or for the appointment of a receiver;
 - F. any uncured default or breach of the BORROWER's obligations under the terms and conditions of this Agreement, its leases, or financing arrangements with other creditors;
 - G. any material misrepresentation with respect to the BORROWER's warranties and representations under this Agreement or the Application;
 - H. any other action or omission by the BORROWER, which in the CDA's reasonable discretion, jeopardizes the BORROWER's ability to fulfill its obligations under this Agreement or otherwise causes the CDA to deem Borrower insecure.
15. The BORROWER shall procure and maintain comprehensive property damage and comprehensive liability insurance reasonably acceptable to the CDA and the City Attorney. Evidence of insurance shall be provided by a Certificate of Insurance listing the Community Development Authority of the City of West Allis and its officers (elected and appointed), employees, agents, and volunteers as an additional insured on the insurance policies. The Borrower's evidence of insurance must insure the CDA up to CDA's limits, and the Borrower agrees to submit all documents that are requested by the City Attorney. All insurance documents provided by the Borrower must be in a form approved by the City Attorney.
16. REMEDIES IN EVENT OF DEFAULT
- A. Upon the occurrence of any Event of Default, the CDA shall send a written notice of default to the BORROWER, setting forth with reasonable specificity the nature of the default. If the BORROWER fails to cure the default to the reasonable satisfaction of the CDA within ten (10) business days, the CDA may, without prior written consent and without further written notice to the BORROWER, declare the BORROWER in default, terminate this Agreement effective immediately, and seek return of all Forgivable Loan funds disbursed to the BORROWER hereunder.
 - B. Upon the termination of this Agreement:

1. The BORROWER shall be liable for the full Forgivable Loan amount disbursed as a result of this Agreement.
 2. Subject to the rights of other creditors, the CDA shall be entitled to exercise any and all remedies available to the CDA under this Agreement, related Forgivable Loan documents, and applicable laws.
 3. In addition to the rights and remedies available to the CDA at law, in equity, or in bankruptcy, the CDA shall be entitled to recover from the BORROWER an amount equal to the sum of:
 - i. The full CDA Code Compliance Forgivable Loan amount and other amounts owed by the BORROWER hereunder;
 - ii. All court costs and reasonable attorney's fees incurred by the CDA in the enforcement of its rights and remedies under this Agreement; and
 - iii. Any other damages arising from the BORROWER's default.
- C. The CDA's foreclosure upon, repossession of, and subsequent actions shall not affect the CDA's right to recover from the BORROWER any and all damages caused by the BORROWER's breach of this Agreement. The CDA's rights and remedies hereunder shall be cumulative, not exclusive, and shall be in addition to all other rights and remedies available at law, in equity, or in bankruptcy.
- D. Upon the occurrence of any Event of Default, the CDA, in its sole discretion, may pursue or intervene in any negotiations or litigation to enforce and protect the CDA's rights and interests. Upon the Borrower's request, the CDA shall execute and deliver an assignment and any other legal documents that may be required by the CDA to facilitate its pursuit or intervention in such negotiations or litigation.
17. To induce the CDA to enter into this Agreement, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the BORROWER hereby warrants and represents that:
- A. The BORROWER is qualified to engage in business in the State of Wisconsin and in every jurisdiction where the nature of his business makes such qualification necessary.
 - B. The BORROWER is in compliance with all laws, regulations, ordinances, and orders of public authorities applicable to it, the violation of which would have a material and adverse effect on the BORROWER's financial ability to comply with this Agreement.
 - C. The BORROWER is unaware of any conditions which could subject it to any damages, penalties, or clean-up costs under any federal or state environmental laws which would have a material and adverse effect on the BORROWER's financial ability to comply with this Agreement.

- D. The BORROWER has read, fully understands, and agrees to all of the terms and conditions in this Agreement and the related Forgivable Loan documents.
 - E. This agreement is valid and enforceable in accordance with its terms against the BORROWER, subject only to applicable bankruptcy, insolvency, reorganization, or other similar laws affecting generally the enforceability of the rights of creditors.
 - F. The BORROWER is financially solvent and able to comply with all of the terms and conditions set for in the Agreement.
 - G. The financial statements and other information provided by the BORROWER to the CDA are complete and accurate in accordance with generally accepted accounting principles, and may be relied upon by the CDA in deciding whether to enter into this Agreement with the BORROWER.
 - H. The BORROWER is not in default under the terms and conditions of any grant agreements, loans, notes, leases, or financing arrangements with the BORROWER's other creditors.
 - I. Excluding the funds to be disbursed under this Agreement, the BORROWER has sufficient funding to fund all costs related to this Agreement and as identified in Exhibit B
 - J. The BORROWER's warranties and representations herein are true and accurate as of the date of this Agreement, and shall survive execution thereof.
 - K. In making these warranties and representations, the BORROWER has not relied upon any information furnished by the CDA.
18. The BORROWER shall prepare, keep, maintain, and present such records as may be reasonably required by the CDA to show:
- A. The amount and disposition of Code Compliance Forgivable Loan funds provided and disbursed under this Agreement; and
 - B. The total cost of the Project.
19. All of the BORROWER'S financial records pertaining to this project only shall be prepared, kept, and maintained in accordance with generally accepted accounting principles. The BORROWER shall provide such records to the CDA during the term of this Agreement as may be reasonably requested. Such materials shall be retained by the BORROWER for a period of at least seven (7) years after the Code Compliance Forgivable Loan term is completed.
20. NEGATIVE COMPANY COVENANTS.
- A. During the term of this Agreement, the BORROWER shall not consolidate or merge with or into any other corporation or business entity without prior written notification to the CDA.

- B. During the term of this Agreement, the BORROWER shall not sell, transfer, hypothecate, liquidate, pledge or otherwise encumber the Facility without prior written notification to the CDA; provided however, that nothing herein shall prohibit the BORROWER from selling inventory in the ordinary course of business.

21. WISCONSIN OPEN RECORDS LAW.

West Allis acknowledges that certain portions of the materials to be exchanged pursuant to this Agreement (e.g., financial statements, project models) contain sensitive and proprietary information relating to the Borrower and the Project and that disclosure could cause irreparable harm if such materials were to be made available to the general public. Additionally, certain of the materials to be exchanged may be trade secrets or copyrighted. The Parties further acknowledge that West Allis is subject to the requirements of the Wisconsin Public Records Law. Wis. Stats. §§19.21 et seq. Under these statutes, all documents and records are subject to public disclosure, unless there is a statutory, common law, or public policy reason for nondisclosure. The Parties acknowledge that this Agreement is subject to the provisions of the Public Records Law of the State of Wisconsin (Wis. Stat. Section 19.21 et seq.) This Agreement, and other attachments to this agreement are deemed to be public records. Should West Allis receive a records request for Borrower's financial information, West Allis shall notify Borrower of the request and afford Borrower a reasonable period of time (not to exceed 10 days) to respond to West Allis. If the Borrower objects to the release of the requested record(s) or part thereof, West Allis shall perform the common law balancing test. If West Allis determines that the balance falls in favor of non-disclosure, it shall so inform Borrower and the requestor. If West Allis determines that the balance falls in favor of disclosure, it shall so notify Borrower and the requestor and afford the Borrower a reasonable time (not to exceed 10 business days) to commence an action seeking to prevent disclosure of the record(s).

22. To induce the CDA to enter into this Agreement, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the CDA hereby warrants and represents that:

- A. The CDA has read, fully understands, and agrees to all of the terms and conditions in this Agreement;
 - 1. This Agreement is valid and enforceable in accordance with its terms against the CDA, subject only to applicable bankruptcy, insolvency, reorganization, or other similar laws generally affecting the enforceability of the rights of creditors and equitable principles relating to enforceability;
 - 2. The information provided by the CDA is complete and materially correct, and;
 - 3. The CDA's warranties and representations herein are true and accurate as of the date of this Agreement, and shall survive the execution thereof.

23. During the Terms of This Agreement, the CDA shall be responsible for:

- A. Enforcing the CDA Code Compliance Forgivable Loan documents and ensuring that the BORROWER complies with all of its obligations;
 - B. Promptly notifying the City of any known Events of Default by the BORROWER;
 - C. Protecting its rights and interests with respect to the BORROWER's obligations; and
 - D. Complying with all of the contractual, statutory, and administrative requirements set forth in this Agreement and the Implementation Handbook.
24. Intentionally Left Blank
25. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns.
26. This Agreement shall, in all respects whether as to validity, construction, capacity, performance, or otherwise, be governed by the laws of the State of Wisconsin. Any suit or proceeding arising out of or related to this Agreement shall be commenced and maintained only in a court of competent jurisdiction in the state or federal courts located in Milwaukee County, Wisconsin. Each party irrevocably consents to submit to the exclusive jurisdiction of such courts.
27. The forgivable loan program is structured over a 5-year period. If the BORROWER'S property experiences the conditions outlined above is sold or the facility no longer is occupied, the funds shall be proportionally repaid according to the following schedule:

Year 0 - 1	100% of grant funds
Year 1 - 2	80% of grant funds
Year 2 - 3	60% of grant funds
Year 3 - 4	40% of grant funds
Year 4 - 5	20% of e grant funds

Note: Forgiveness can be accelerated if the conditions of Forgiveness are satisfied.

28. If any term contained in this Agreement shall be invalid and unenforceable, the remainder of this Agreement shall not be affected thereby.
29. MISCELLANEOUS.
- A. Notices to the BORROWER hereunder shall be affective upon mailing by first class mail, postage prepaid, and addressed to the following persons and address or such other person and address as the BORROWER may designate in writing:

6325 Mithli LLC.

N28W27542 Peninsula Dr.
Pewaukee, WI 53072

Notices to the CDA hereunder shall be effective upon mailing by first class mail, postage prepaid, and addressed to the following person and address or such other person and address as the CDA may designate in writing;

Community Development Authority of the City of West Allis
Attn: Mr. Patrick Schloss, Executive Director
Development Department, City Hall
7525 W. Greenfield Avenue,
West Allis, WI 53214

- B. All documents required to be delivered contemporaneously with the execution of this Agreement are expressly made a part of this Agreement as though completely herein, and all references to this Agreement herein shall be deemed to refer to and include all such documents.
 - C. In the event of any conflict or inconsistency between the Agreement and the exhibits hereto, the terms of this Agreement shall control.
 - D. In the event of any conflict or inconsistency between the Agreement and previous correspondence or discussions between the BORROWER and the CDA, the terms of this Agreement shall control.
 - E. Any publications or news releases issued by the CDA or the Borrower relating to this Project shall state that this Project was supported and financed by the National Avenue Commercial Corridor Code Compliance Forgivable Loan Program from the Community Development Authority of the City of West Allis.
 - F. The captions in this Agreement are for convenience of reference only and shall not define or limit any of the terms and conditions set forth herein.
32. LIST OF EXHIBITS. The following exhibits shall be considered part of this Agreement:
- Exhibit A: National Avenue Corridor Map
 - Exhibit B: Project Description
33. IN WITNESS WHEREOF, the CDA, and the BORROWER, having full and complete authority to sign this Agreement, have executed and delivered this Agreement.

Signatures on the Next Page

Community Development Authority of the City of West Allis

By: _____
Patrick Schloss, Executive Director

Date

Borrower

6325 Mithli LLC

By: _____

Marla Poytinger, Manager Member

Date

Approved as to form this ____ day
Of _____, 2022

City Attorney

Exhibit A – National Avenue Corridor Map



**EXHIBIT B:
PROJECT DESCRIPTION**



6325 W. National Ave has been vacant for a number of years and is an older industrial/automotive building that has fallen into disrepair. The proposed project meets the objectives of the West Allis National Avenue Study. The City of West Allis (“the City”) desires to work with 6325 Milthi LLC, the project’s proposed developer, to reposition the property so that it is acquired by stable ownership and undergoes the investment of a complete roof repair.

Work associated with the grant will include acquisition and roof replacement.

Need quotes on the roof replacement