

Substitute Term Sheet
City of Milwaukee Loan Guarantee for Bookends Project
Development Agreement between City of Milwaukee and Bookends North, LLC
November 16, 2009

<p><u>Project:</u></p>	<p>The City of Milwaukee (“City”), via its Redevelopment Authority (“RACM”), intends to provide a City-backed guarantee (“City Guarantee”) to support a third party Unsecured Subordinate Loan (“Subordinate Loan”) to assist with the development of the Bookends rental residential project located at the northeast corner of Kilbourn Avenue and Van Buren Avenue.</p> <p>For the purposes of this Term Sheet, the term “City” collectively refers to the City, RACM, and/or other affiliates of these entities except where otherwise specified.</p> <p>The Bookends Project (“Project”) is a 19-story high-rise structure containing:</p> <ul style="list-style-type: none"> • 224 for rent luxury apartment units; • 292 above ground, structured parking spaces; and • 3,000 square feet of street level retail <p>Total Project costs are estimated at \$60.2 million</p>
<p><u>Developer/ Borrower:</u></p>	<p>Bookends North, LLC is a Wisconsin Limited Liability Company owned 50% by New Land Development, LP and 50% by Wiechman Enterprises. Both partners will be co-managing members of the Developer entity. The ownership structure has not been finalized at this time, but organizational documents and a final structure will be provided within the next 1-2 months.</p>
<p><u>Zoning/Design Review:</u></p>	<p>As of November 3, 2009, the Project is zoned DPD (Detailed Planned Development) with permitted uses of multifamily residential dwelling units, parking, and retail and is subject to, and will be developed in accordance with, the standards required by these regulations. City review of permit drawings for consistency with these requirements is necessary prior to approval to commence construction.</p>
<p><u>Development Schedule:</u></p>	<p>Construction shall commence by June 1, 2010. The Developer shall secure a Certificate of Occupancy and reach Project completion within 19 months of construction commencement.</p>

Project Budget:

Total Project budget is approximately \$60.2 million. Estimated total sources include:

- Approximately \$51.75 million in 221(d)4 loan proceeds funded by Love Funding and guaranteed by HUD
- Approximately \$5.0 million in equity from the Developer (anticipated to consist of \$2.6 million in cash equity and \$2.4 million in deferred Developer fees)
- \$3.45 million in Subordinate Loan proceeds guaranteed by the City of Milwaukee as described below

The primary financing for the Project will be a HUD 221(d)4-enhanced senior loan (“Senior Loan”) in an amount to be determined through final sizing, but not to exceed \$51.75 million and not less than \$51.0 million, funded by an investor anticipated to be the AFL-CIO and serviced by Love Funding. The term of this loan will be the construction period plus 480 months of amortization.

Payments will be interest-only during the construction period, funded from a capitalized interest reserve. After completion, level monthly debt service payments commence such that the loan would be fully amortized over 480 months. These payments also include a mortgage insurance charge equal to 45 basis points on the principal amount of the loan.

The parties understand and agree that Love Funding is seeking a waiver on certain HUD cost limitations to reach a loan size of \$51.75 million, and that Love Funding has indicated that this is likely to be granted. They further agree that this Term Sheet and the ensuing Development Agreement are predicated on the grant of this waiver. If this waiver is not obtained, the City may deem this issue a material change that requires restructuring and supplementary approval.

Prior to closing on Project financing, the Developer will obtain a Guaranteed Maximum Price contract with KBS Construction to construct the Project for a cost of no more than \$43.5 million (“GMP Contract”).

City Guarantee:

The City and/or RACM intend to enter into agreements reflecting the business terms articulated in this Term Sheet and customary lending/guarantee provisions (collectively, “Agreements”) to provide loan guarantee assistance for the Project. This will include a Development Agreement. Subject to completion of due diligence and satisfaction of all closing conditions, the City intends to provide this

guarantee in an amount not to exceed \$3.45 million to support the original principal amount of a Subordinate Loan that the Developer will obtain.

The City Guarantee will have the following key terms:

- Term of the City Guarantee will be equal to the lesser of 79 months or the construction period plus 5 years
- City Guarantee applies solely to the original principal amount of the Subordinate Loan, not to any interest, whether accrued or otherwise
- The full amount of the City Guarantee will be payable to the Subordinate Lender upon a substantive monetary default (i.e. a monetary default that is not cured or curable, and does not arise from clerical/administrative error, payments late by less than 60 days, or other similar issues) by Developer, and expiration of reasonable cure periods
- Any payments under the City Guarantee will be subject to a customary Reimbursement Agreement and the repayment obligation will be secured by personal guarantees from Boris Gokhman, Vladimir Shuk, and James Weichmann (“Guarantors”) (including life insurance requirements as specified by the City). Personal guarantees shall be secured by a first lien on assets with a combined fair market value, as determined by independent appraisal, of not less than \$1.65 million.
- Guarantee shall only be payable on occurrence of an un-cured substantive monetary default occurring after issuance of a full Certificate of Occupancy for the Project.
- To the extent allowable by HUD, City will also be granted a second mortgage on the Project site to secure the City Guarantee
- City will have the right to require assignment of the Subordinate Loan from the Subordinate Lender immediately upon the City’s payment of the Guarantee
- Developer will be restricted from assuming any additional indebtedness secured by the Project other than the Senior and Subordinate Loan; Further, the Guarantee shall be immediately terminated upon sale or refinance of any portion of the Project or the Senior or Subordinate Loans.
- Carry a 2% origination fee to be paid to the City at closing
- Carry an annual maintenance fee of 2% per year during the construction period and first year of operations and 4% per year thereafter to be paid to the City on a subordinate basis to debt service on the Senior and Subordinate Loans, but prior to any equity distributions.
- Annual maintenance fees will be reserved in the Project budget

	<p>for the construction period and first operating year. These reserves will be pledged to the City and/or RACM and specifically excluded from the collateral for the Senior Loan.</p> <ul style="list-style-type: none"> • Annual maintenance fees paid to the City/RACM will be set aside into a restricted debt service reserve account (“Debt Service Reserve”) that may be used at the City’s discretion to protect against monetary defaults on the Subordinate Loan. If the amount remaining in this reserve drops below \$275,000, the Guarantors will be required to replenish the funds up to this amount. • Payments of Developer Fee or other fees or distributions to affiliates of the Developer will be fully subordinated to Senior and Subordinate Loan debt service payments as well as annual maintenance payments due to the City under the City Guarantee. <p>As a provision of the Development Agreement, the City shall also have the right to impose a long-term special assessment on the Project site to recover any funds the City has paid out on the City Guarantee.</p>
<p><u>Subordinate, Unsecured Loan (“Subordinate Loan”)</u></p>	<p>Currently, this loan is anticipated to be funded by Emerald Isle Investment Partners. The City reserves the right to approve any replacement lender. The Subordinate Loan supported by the City Guarantee will:</p> <ul style="list-style-type: none"> • Be issued on an accruing interest basis during the construction period, and an interest-only basis thereafter with no principal repayment required during the initial loan term • Be subordinated to the Senior Loan and have no mortgage on the Project or any other assets • Incorporate sufficient flexibility in payment timing to accommodate a typical schedule of HUD approval/release of net cash flow to the Developer • Have no provisions that could result in a default that would cause payment of the City’s guarantee during the construction period (i.e. prior to issuance of a full Certificate of Occupancy for the Project) • Have an original principal amount of no greater than the amount of the City Guarantee • Not be drawable to reimburse any Developer pre-paid costs or repay any debt obligations of the Developer or its affiliates • Carry an interest rate of no more than 9% calculated on a 360-day year consisting of 12 30-day months • Include an initial loan term extending at least 3 months beyond the expiration of the City Guarantee • Incorporate a reasonable cure period for any monetary or

	<p>technical defaults</p> <ul style="list-style-type: none"> • Allow the City/RACM to at its discretion cure monetary defaults on behalf of the Developer within the defined cure periods • Not include cross-default provisions that would automatically cause a default if the Developer defaults on its obligations to the City/RACM with respect to the Project • Grant the right for the City to require assignment of the Subordinate Loan upon payment of the City Guarantee • Require that any releases of the HUD-required Working Capital Reserve not needed to pay Project costs be set aside as a restricted debt service reserve for the Subordinate Loan
<p><u>Developer Equity:</u></p>	<p>The Developer will provide at least \$5.0 million of total equity, including not less than \$2.6 million of cash equity in the form of:</p> <ul style="list-style-type: none"> • Cash funded into the construction escrow at closing; and/or • City-approved pre-paid costs to third party entities <p>Cash equity (\$2.6 million) shall not be reimbursed or reimbursable via the proceeds of the Senior or Subordinate Loans.</p> <p>In addition, the Developer may defer up to 100% of Developer Fee (described below), estimated at \$2.4 million, and have this deferral counted toward the minimum overall \$5.0 million equity requirement. If a lesser amount is deferred and additional capital contributions are made instead, these contributions shall not be counted toward the \$2.6 million base cash equity requirement described above.</p>
<p><u>Developer Fee:</u></p>	<p>Developer Fees and Overhead allocations in the Project budget shall be limited to \$2.4 million. Any deferred portions to be counted towards the \$5 million total equity requirement (see “Developer Equity” above) shall be subordinated to the Senior and Subordinate loans and City Guarantee fees, and payable solely from net cash flow of the Project.</p>
<p><u>Conditions to Closing/Issuance of City Guarantee:</u></p>	<p>Preconditions to closing of Development Agreement and issuance of City Guarantee shall include, but not be limited to, such items as:</p> <p>A. <u>Design and Construction Cost Review.</u> The City of Milwaukee shall have reviewed and approved the final plans and specifications for the Project and the fully executed GMP Contract and issued full permits for commencement of building construction.</p>

- B. Evidence of Financing. Developer must provide evidence that, together with the Subordinate Loan, sufficient Senior Debt and Developer equity are committed (and all preconditions to funding satisfied) to pay for the costs of the Project.
- C. Project Property Appraisal. City is to be provided an “as completed” appraisal of the Project site evidencing a fair market value of at least \$60.2 million or additional equity and collateral will be required.
- D. Personal Guarantees and Verification of Assets. The City is to be provided with satisfactory personal guarantees from the principals of the Developer as described in the City Guarantee section of this Term Sheet, including acceptable evidence of the assets of these guarantors and acceptable life insurance. Personal guarantees shall be secured by a first lien on assets with a combined fair market value, as determined by independent appraisal, of not less than \$1.65 million.
- E. Loan Documents. City shall have received and approved all documentation related to the Senior and Subordinate loans.
- F. Evidence of Equity Contributions. City shall have received and approved evidence of the Developer’s cash equity contribution greater than or equal to the minimum amount specified in this Term Sheet.
- G. Insurance. Borrower shall provide City with evidence of Insurance for all coverage customary for the City and its affiliates on loan transactions. This will include hazard insurance.
- H. Title. Borrower is to provide evidence of title insurance naming City as mortgagee on Project site (if allowable by HUD) and any real property securing the City’s Guarantee

The City shall be granted the rights to monitor the construction process and to receive copies of all draw requests and supplemental information simultaneously with the Senior and Subordinate Lenders. Subordinate Lender and Developer shall also provide City with interest statements, debt service invoices, and evidence of payment.

<p><u>Profit Sharing:</u></p>	<p>The City will receive payments out of the sale or refinance of any portion of the Project as follows: Upon sale or refinance of the Project or portion thereof, the Developer shall provide to the City sufficient information to calculate the Project annual internal rate of return (IRR) on equity. If, upon the sale or refinance event, this return will exceed 20%, the City will share in 50% of net sale/refinance proceeds over and above the level necessary to achieve this 20% threshold. For the purposes of this IRR calculation, deferred Developer Fees shall be recognized as contributed equity during the construction period on a pro rata basis with expenditure of hard construction costs, and Internal Developer Costs (defined as payments of fees or expenses to the Developer or its affiliates) shall be considered equity distributions. Internal Developer Costs shall include but not be limited to salaries/payroll allocation, Developer fees, general/administrative and overhead, reserves, and payments of leasing or management fees to affiliates.</p> <p>This provision shall remain in effect while the City Guarantee is outstanding and/or while any Developer reimbursements obligations remain outstanding via the Reimbursement Agreement. This provision shall also encompass all calculations and/or distributions of profit made within 18 months of, or with respect to the year in which the later of the following occurs:</p> <ul style="list-style-type: none"> a) The expiration of the City Guarantee, or b) Fulfillment of all Developer obligations under the Reimbursement Agreement
<p><u>Development Agreement/Loan Agreements:</u></p>	<p>The City, RACM, Developer, and Subordinate Lender shall enter into the Agreements evidencing the City Guarantee, the Developer's obligation to reimburse the City in the event the City Guarantee is called upon, security provided to the City, the Developer's obligations, and other provisions consistent with this Term Sheet and customary for such development and transaction agreements. The Development Agreement, or a memorandum summarizing the terms thereof, will be recorded against the Project property with the Milwaukee County Register of Deeds.</p>
<p><u>Debt Service Reserve:</u></p>	<p>The Debt Service Reserve shall be escrowed or otherwise restricted during the term of the City Guarantee. During the term of the City Guarantee, the City shall have the exclusive right to direct the application of any funds in the Debt Service Reserve toward curing or forestalling of monetary defaults on the Subordinate Loan and/or</p>

	towards payment of the City Guarantee obligation. After the expiration of the City Guarantee, the City shall have the exclusive right to direct the release of any remaining funds in the Debt Service Reserve at its discretion.
<u>Limits on Developer Action:</u>	<p>Until all Developer obligations under the Development Agreement have been fully discharged, the Developer may not without City consent:</p> <ul style="list-style-type: none"> • Liquidate or consolidate the Project site; • Merge with another entity; • Enter into any transaction that would materially adversely affect the ability of the Developer to complete the Project or fulfill its obligations under the Development Agreement; • Assume additional indebtedness for which the collateral includes any portion of the Project or the Developer’s interest therein, or any collateral pledged to the City • Assume or guarantee the obligations of any other person or entity that would materially adversely affect the ability of the Developer to complete the Project or repay the Senior and Subordinate Loans; or • Enter into a transaction that would cause a material and detrimental change to the Developer’s financial condition
<u>Human Resources:</u>	See Exhibit A
<u>Prevailing Wages:</u>	See Exhibit A
<u>PILOT Payments:</u>	The Development Agreement will require payments in lieu of taxes with respect to any parcel, unit or building within the Project site that subsequently becomes exempt from real property taxes. This provision shall be incorporated into a covenant running with the land.
<u>Financial Statements:</u>	Throughout the term of the City Guarantee, Developer shall provide annual financial statements prepared and audited by outside accountants acceptable to the City no later than 120 days following the close of each Borrower fiscal year for the Project, certified as to accuracy by the

	<p>Developer, and annual tax returns within 120 days of the end of fiscal year. The City shall pledge to hold such records confidential to the greatest extent permitted by law. Developer shall also provide such other information on Project financial performance or other related matters as may be requested by the City in its discretion to oversee Developer performance and maintenance of collateral.</p> <p>Guarantors are required to provide the City with signed, updated personal financial statements within 120 days of the end of each year and if requested, a signed copy of their personal tax returns.</p>
<p><u>Defaults:</u></p>	<p>Monetary or technical defaults on the Senior or Subordinate Loans shall be considered Events of Default under the Development Agreement and, at the City’s discretion, other ancillary documents executed by Developer and City. The Development Agreement will define these and other Events of Default, as well as corresponding cure periods and remedies if applicable. These Events of Default will be based on provisions in this Term Sheet, standard City Development Agreement provisions, and other commercially reasonable terms as may be required by the City. Default provisions shall include (but not be limited to) non-payment of Guarantee fees to the City. City remedies in the event of default shall include (but not be limited to) foreclosure on assets on which the City has a first lien and/or calls on personal guarantees.</p> <p>The City will not close on the Guarantee or Development Agreement if any Senior Loan documents contain cross-default provisions whereby the Senior Loan will be automatically in default if a default occurs on Developer obligations to Subordinate Lender or City. Likewise, Subordinate Loan may not include cross-default provisions triggered by Developer defaults on obligations to City.</p>
<p><u>General:</u></p>	<p>This Term Sheet does not constitute a binding agreement. The terms set forth herein and other provisions customary for a transaction of this sort shall be incorporated in one or more agreements, including the Agreements mentioned above, between the City and Developer. Resolutions approving the Term Sheet will also provide for the execution of all additional documents and instruments necessary to implement the Project.</p> <p>All other customary provisions (Comptroller audit rights, DCD Commissioner review and approval of Project budget and design, etc.) will also be included in the Development Agreement.</p>