

**Substitute Term Sheet**

**Moderne Project**  
**Loan Agreement Between Milwaukee Moderne, LLC and the City of Milwaukee**  
November 2, 2009

<p><b><u>Project:</u></b></p>	<p>The City of Milwaukee will fund two project loans to assist with the development of the Moderne mixed-use project located at the southwest corner of Juneau Avenue and Old World Third Street in the Park East Corridor. The loans will be funded from borrowing supported by the Park East Tax Increment District (“TID”).</p> <p>The Moderne Project (“Project”) is a 30-story high-rise structure containing:</p> <ul style="list-style-type: none"><li>• 14 for-sale condominium units;</li><li>• 203 for-rent apartment units;</li><li>• 204 above ground, structured parking spaces; and</li><li>• 7,230 Square feet of street level retail</li></ul> <p>Total Project costs are estimated at \$55.2 million.</p>
<p><b><u>Developer/ Borrower:</u></b></p>	<p>Milwaukee Moderne, LLC, a Wisconsin limited liability company, managed by Rick Barrett.</p>
<p><b><u>Zoning/Design Review:</u></b></p>	<p>The Project is within the Park East Redevelopment Boundary/RED Zoning and is subject to, and being developed in accordance with, the standards required by these regulatory documents.</p>
<p><b><u>Development Schedule:</u></b></p>	<p>Construction shall commence by June 1, 2010. The Developer shall secure a Certificate of Occupancy and reach Project completion within 24 months of construction commencement.</p>
<p><b><u>Project Budget:</u></b></p>	<p>Total project budget is approximately \$55.24 million. Estimated total sources include:</p> <ul style="list-style-type: none"><li>• Approximately \$41.4 million in 221(d)4 loan proceeds funded by AFL-CIO and serviced by CAPMARK</li><li>• Approximately \$4.53 million in Developer Equity (anticipated to consist of \$3.83 million in cash and \$700,000 in deferred Developer Fee)</li><li>• \$9.3 million in City Loans as described below</li></ul>

<p><b><u>Senior Loan:</u></b></p>	<p>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 \$41.4 million, funded by the AFL-CIO and serviced by CAPMARK. The term of this loan will be the construction period plus 480 months of amortization.</p> <p>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.</p>
<p><b><u>City Loans:</u></b></p>	<p>The City intends to enter into a Development Agreement with the Redevelopment Authority of the City of Milwaukee (“RACM”) and the Developer to provide TID assistance for the Project. Subject to completion of due diligence and satisfaction of all closing and funding conditions, the City, through the RACM, intends to provide two TID-funded loans in amounts not to exceed:</p> <ul style="list-style-type: none"> <li>• \$3,300,000 in Mezzanine Loan funds</li> <li>• \$6,000,000 in Completion Loan funds</li> </ul> <p>These loans will be disbursed during the construction period through a process to be coordinated with the disbursement of the Senior Loan. The City will subordinate its collateral position and assignment of lease income for the apartment/retail/parking component of the project to the lender providing the Senior Loan.</p> <p>Subject to final underwriting and coordination with the Senior Loan parameters, the Executive Director of RACM may reallocate up to \$500,000 from the Mezzanine Loan to the Completion Loan and modify the term of the Completion Loan by up to 10 months.</p> <p>Unless otherwise specified in this Term Sheet, the terms of the City loans may in RACM’s discretion match those of the Senior Loan with respect to defaults and other provisions. The City/RACM intend to reasonably tailor the City Loan documents to match the required parameters of the Senior Loan with respect to payment timing, subordination, funds in balance, and other issues.</p>
<p><b><u>Definition of Available Cash to</u></b></p>	<p>Available Cash shall be defined as the sum of:</p>

**Pay City Loans**  
**("Available Cash"):**

- All revenues to project from leases of apartments, retail, and parking
- All condominium sales revenues (net of third party commissions, sales expenses, and closing costs)
- All releases of funds from reserves set aside for operating shortfalls, working capital, or construction period expenses

Less

- Operating expenses paid to third parties not affiliated with the Developer or its affiliates
- Operating/Replacement reserves totaling no more than the lesser of HUD minimums for the 221(d)4 program per year or the developer's pro forma amounts used by the City to underwrite this loan (provided such reserves are used to the maximum allowable extent to cover operating expenses)
- Scheduled debt service or other required payments on the Senior Loan
- Priority payment of condominium sale revenues on the mezzanine and completion loans

For the purposes of this calculation, internal Developer costs (defined as payments of fees or expenses to the Developer or its affiliates other than the Developer Fee described below during the construction period) shall be disallowed.

**Mezzanine Loan**  
**Parameters:**

**Repayment:** Interest shall accrue until such time as funds are available for repayment, at which time monthly payments shall commence. Payments shall be applied first to accrued interest and then to unpaid principal. Repayable with first priority from 100% of net Condominium sales proceeds (net of third party commissions, sales expenses, and closing costs) and second priority from 100% of Available Cash from apartments, parking, and retail components of project. Repayment shall commence upon the earlier of construction completion or the availability of Available Cash. Developer shall neither make distributions of profit nor utilize Available Cash for any purpose other than servicing City debt while the Mezzanine Loan is outstanding.

**Security:**

- A first mortgage on the condominium portion of the Project;
- A second mortgage on the apartment/retail/parking portion of the Project and second priority assignment of leases and rents from the Borrower
- 50% of the Developer's ownership interest in the Project

**Interest Rate and Accrual:** Interest shall be calculated monthly based on a

360 day year consisting of twelve 30-day months on the disbursed unpaid principal and accrued interest balances. The annual interest rate shall be the greater of 14% or 21.15% less the Completion Loan interest rate. Interest shall accrue on unpaid principal and interest.

Term: 48 months from the initial disbursement of funds. The full principal balance and accrued interest shall become immediately due and payable in the event of a refinancing of the Primary Debt or Sale of the Project unless RACM chooses to waive this condition.

Disbursement Timing: Mezzanine Loan may be drawn prior to Senior Loan and Completion Loan after 100% of Developer equity has been expended for the Project. All Developer equity will have been provided in the form of City pre-approved pre-paid developer costs and additional cash funded into the construction escrow.

Prepayment: Borrower may prepay the Mezzanine Loan in whole or in part at any time, without penalty or premium.

**Completion Loan Parameters:**

Repayment: Interest shall accrue until such time as funds are available for repayment, at which time monthly payments shall commence. Payments shall be applied first to accrued interest and then to unpaid principal. Repayable with second priority from 100% of Condominium sales proceeds and third priority from 100% of Available Cash as defined below from apartments, parking, and retail components of project. Repayment shall commence upon construction completion. Developer shall neither make distributions of profit nor utilize Available Cash for any purpose other than servicing City debt while the Mezzanine Loan is outstanding.

Security:

- A first mortgage on the condominium portion of the Project;
- A second mortgage on the apartment/retail/parking portion of the Project and second priority assignment of leases and rents from the Borrower
- Personal guarantees from Rick Barrett and Tan Lo (minimum life insurance requirements may be set forth by City/RACM and maintained during the term of the Loans). 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 \$3,350,000.

Interest Rate and Accrual: Interest shall be calculated monthly based on a 360-day year consisting of twelve 30-day months on the disbursed unpaid principal and accrued interest balances. The annual rate of interest shall

be set equal to that of the Senior Loan.

Term: 48 months from the initial disbursement of funds. The full principal balance and accrued interest shall become immediately due and payable in the event of a refinancing of the Primary Debt or Sale of the Project unless RACM chooses to waive this condition.

Disbursement Timing: Completion Loan may be drawn starting upon the later of Month 12 of construction or November 2010, provided over 50% of the Senior loan has been drawn.

Prepayment: Borrower may prepay the Completion Loan in whole or in part at any time, without penalty or premium, provided the Mezzanine Loan has first been fully repaid.

**Developer Equity:**

The Developer will provide at least \$4.53 million of total equity, including not less than \$3.83 million of cash equity in the form of:

- Cash funded into the construction escrow at closing; and/or
- City-approved pre-paid costs to third party entities
- City-approved pre-paid Developer overhead expenses totaling \$489,905

Such equity shall not be reimbursed or reimbursable via the proceeds of the Senior or Subordinate Loans.

Anticipated pre-paid costs, subject to final City approval and verification include the following:

- Land acquisition costs
- Consolidation of ownership of the Developer entity
- Developer out-of-pocket expenses to construct and maintain the sales center
- Payments to third party professional service providers for predevelopment activities such as architecture, engineering, etc.
- City permitting/approval costs
- Property tax and carry cost for the Project site

In addition, the Developer may defer up to 50% of Developer Fee (described below), or \$700,000 to be counted toward the minimum overall equity requirement. If a lesser amount is deferred and additional capital contributions are made to reduce this fee deferral, these contributions shall not be counted toward the \$3.83 million base cash equity requirement described above.

**Developer Fee:**

Developer Fees shall be limited to \$1.4 million plus \$175,000 to cover internal overhead (other than salaries of principals) during the construction period. With the exception of \$200,000 that may be paid with the first construction draw, the un-deferred portion of the Developer Fee may be paid no faster than pro rata with construction progress as measured by disbursements against the project budget for hard costs. The deferred portion of the Developer Fee shall be payable as follows:

- Provided the project has reached full construction completion, achieved a full certificate of occupancy, and Developer is in full compliance with all applicable provisions of the City and Senior loans, the deferred portion of the Developer Fee maybe paid from proceeds released by the Senior Lender from the HUD-required Working Capital Reserve.
- To the extent such Working Capital Reserve proceeds are insufficient to pay the full deferred portion of Developer Fee, the balance may, at the discretion of the Executive Director of RACM, be paid by the City/RACM as an abatement or refund of interest paid on City loans provided:
  - Project has reached full construction completion, achieved a full certificate of occupancy, and Developer is in full compliance with all applicable provisions of the City and Senior loans
  - Mezzanine Loan has been fully repaid, including all accrued interest
  - Project has completed a full year of rental operations and demonstrated at least 1.05 debt coverage on the Senior Loan
  - At least \$6.1 million of net condominium sales proceeds have been realized, and such proceeds have been applied toward City loan repayment

**Conditions to Closing/ Disbursement of City Loans:**

Preconditions to closing of City Loans to the Developer shall include, but not be limited to:

- A. Design Review. The City of Milwaukee shall have approved the final plans and specifications for the Project, and issued permits for building construction.

- B. Evidence of Financing. Developer must provide evidence that, together with the City Loans, sufficient Senior Debt and Developer equity are committed (and all preconditions to funding satisfied) to pay for the costs of the Project.
- C. Appraisal. RACM is to be provided an appraisal of the Project real property evidencing an appraised value of at least \$48.5 million or additional equity and collateral will be required.
- D. Insurance. Borrower is to provide RACM with evidence of Insurance for all coverage customary for RACM. This will include hazard insurance.
- E. Title. Borrower is to provide evidence of title insurance naming RACM as mortgagee on Project property.

The proceeds of the Loan shall be disbursed pursuant to the terms of a Disbursing Agreement by and among the holder of the Primary Debt, Borrower, RACM and such other parties as the holder of the Primary Debt may reasonably designate. The City and RACM anticipate that disbursements of City Loans will occur using the same title company as the Senior lender.

Retainage for the Completion Loan shall be set equal to that of the Senior Loan. The Mezzanine Loan shall not bear a retainage requirement.

**Profit Sharing:**

The City will receive payments out of the sale, refinance, or condominium conversion and sale proceeds of the project as follows:

Upon sale or refinance of the Project and/or sale of any condominium units over and above the 14 units currently planned, 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, internal Developer costs (defined as payments of fees or expenses to the Developer or its affiliates) shall be limited to the lesser of actual expenditures or \$2.2 million of Developer fees and overhead during the Development phase. Internal Developer costs shall include but not be limited to salaries/payroll allocation, developer fees, general/administrative and overhead, reserves, and payments of leasing fees to affiliates. Internal costs in excess of this percentage shall be disregarded for IRR calculation purposes.

	<p>This provision shall remain in effect until both City Loans are fully repaid, and shall include all calculations and/or distributions of profit made within 18 months of the retirement of the final City Loan, or with respect to the year in which the final City Loan is retired. If a sale of the Project occurs during the year in which the final City Loan is retired, the Profit Sharing calculation shall take all net proceeds of the sale into account.</p>
<p><b><u>Development Agreement/Loan Agreements:</u></b></p>	<p>The City, Developer and RACM shall enter into a Development Agreement, Loan Agreements, and ancillary loan documents containing terms consistent with this Term Sheet and customary for such development and loan agreements (collectively, “Agreements”). The Development Agreement shall also provide for grant of a city easement over portions of the 4<sup>th</sup> and Highland Parking Structure Site to permit the project to comply with applicable building and fire codes. The Agreements may not be assigned to a third party without the written consent of the Executive Director of RACM.</p>
<p><b><u>Limits on Developer Action:</u></b></p>	<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"> <li>• Liquidate or consolidate the Site;</li> <li>• Merge with another entity;</li> <li>• Enter into any transaction that would materially adversely affect the ability of the Developer to complete the Project or its obligations under the Development Agreement;</li> <li>• Assume additional indebtedness for which the collateral includes any portion of the Project or the Developer’s interest therein</li> <li>• 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 City loans; or</li> <li>• Enter into a transaction that would cause a material and detrimental change to the Developer’s financial condition</li> </ul>
<p><b><u>Human Resources:</u></b></p>	<p>See Exhibit A</p>



<b><u>Prevailing Wages:</u></b>	See Exhibit A
<b><u>PILOT Payments:</u></b>	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.
<b><u>Financial Statements:</u></b>	<p>Throughout the term of the Loans, Developer shall provide annual financial statements prepared and audited by outside accountants acceptable to RACM no later than 120 days following the close of each Borrower fiscal year for the Project, certified as to accuracy by the 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 RACM 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>
<b><u>Defaults:</u></b>	Failure of Developer to comply with the requirements of the City Loan documents (including but not limited to non-payment of interest or principal, use of Available Cash for unauthorized purposes, failure to submit required documentation, failure to complete the project, commission of fraud or other violations, defaulting on Senior Loan) shall be deemed Events of Default. The Development Agreement will define these Events of Default, corresponding cure periods, and remedies if applicable. City remedies shall include standard lender remedies such as rights to accelerate. The City will work with the Senior Lender to develop appropriate intercreditor provisions, including limitations on cross-defaults as needed.
<b><u>General:</u></b>	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, among the City, RACM, and Developer. Resolutions approving the Term Sheet will also provide for the execution of all additional documents and instruments necessary to implement the Project.

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.

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