

**DATE:** January 10, 2011

**ITEM:** 8.A.

**RE:** REVIEW AND DISCUSSION OF A LOAN REQUEST FROM  
BROADWAY PARK LOFTS L.L.C.

**PROJECT AREA:** Central Business District

**PREPARED BY:** Matt Dahl

**EXECUTIVE SUMMARY:** Broadway Park Lofts LLC (BPL) is requesting a \$2,300,000 construction loan from the RDA for the purpose of funding the completion of Phase 2 of the Broadway Park Lofts (the "Lofts") located at 300 South 360 West. The RDA currently has \$2.3 million available to lend in the Central Business District. RDA Board review of the loan is required because the applicant is seeking non-standard loan terms and the loan request exceeds \$500,000.

**LOAN COMMITTEE RECOMMENDATION:** The Loan Committee will meet to review the loan application on January 9<sup>th</sup>. Staff will present the Loan Committee findings at the RDA Board meeting.

**ALTERNATIVES:** Memo for information purposes only.

**Broadway Park Lofts Project Description:** The Lofts project is the latest installment in a series of similar development projects the developer has built around Pioneer Park. These projects are intended to create an urban, pedestrian friendly neighborhood with a focus on the park. The Lofts is planned to be a 93 unit mixed-use condominium (86 residential units and 6 commercial units) development located at 300 South 360 West, just north of Pioneer Park. The project was constructed in two phases, with 35 residential units being constructed in Phase 1 and 51 units intended to be constructed in Phase 2. Phase 1 has been completed and the units were sold at auction on November 4<sup>th</sup>. Phase 2 currently has a completed structure with a partially completed facade, but no interior work is in place. Due to issues that arose when the project's original construction lender went out of business and its assets were taken over by US Bank, no significant progress was made on Phase 2 for 15 months. In anticipation of receiving construction financing, BPL recently installed the windows on the ground floor of Phase 2 and began preparing to restart construction.

The units in Phase 2 range in size from 392 to 1,312 square feet, and average 724 square feet. The units will all include 9-foot minimum ceiling heights, have two levels, birch veneer, glazed interior doors, acid stained concrete floors, exposed steel joist structures, entry phone, keyed elevator security system, one enclosed parking stall, mini-deck, and a glass roll-up

indoor/outdoor wall. The 23 units on the second floor contribute to “The Village” area of the development and are intended to be business incubator spaces, artist studios, or small residential spaces. The remaining Phase 2 units are residential only and include the project’s premium units, which will face the park.

BPL intends to have a two step approach to completing Phase 2. The first step would result in the completion of the building’s shell and finishing three model units. The majority of units would be roughed in, but not finished. To accomplish this level of completion will cost \$2,715,426. If BPL secures construction financing from the RDA they anticipate being able to complete the work on the shell and model units by Summer 2012. Following the completion of the shell, BPL will proceed with marketing the Phase 2 units, finishing the units only after they are under contract. The estimate for finishing each unit type is as follows:

<b>Unit Type</b>	<b>Average Cost To Finish</b>	<b>Number of Units</b>	<b>Total Cost</b>
Live/Work	\$15,103	19	\$286,957
Lanai	\$31,661	20	\$633,220
Parkview Unit	\$45,060	12	\$540,726
	<b>Total</b>	<b>51</b>	<b>\$1,460,903</b>

The contractor for the completion of Phase 2 will be Scott Harmer. Mr. Harmer is a licensed contractor and employee of Urban Associates, a real estate and development consulting business owned by Mr. Millo.

**Proposed Project Financing:** Until recently, US Bank held a \$17,660,321 note (the “Note”) from the construction loan for the Lofts. In December, Silverleaf Financial (Silverleaf) acquired the Note at a discount from US Bank after BPL was unable to put together the necessary funding to purchase the note by the deadline imposed by US Bank. Silverleaf is now offering to sell the note to BPL for \$9,000,000, including fees. If BPL is unable to purchase the Note, Silverleaf would likely call the personal guarantees of BPL’s partners. This would impact several properties around Pioneer Park, including the Firestone and Uffens Buildings. The total effect on the community of such an action would be unpredictable, but an impact would be felt by the businesses around Pioneer Park. The impacts to BPL’s partners would be financially devastating.

BPL’s objectives are to purchase the Note and complete Phase 2 construction early in the first part of 2012. Purchase the Note, covering transaction fees, repaying construction expenses from previous work, and covering the auction expenses will cost \$12,184,149. To cover these expenses, BPL is seeking a \$7,000,000 loan from Acer Capital Group (Acer), and will utilize \$4,657,423 from the Phase 1 auction proceeds, and \$600,000 from the sale of two Uffens Condominiums units. Once the purchase of the Note and corresponding transactions are finalized the only holdover expense will be the \$7,000,000 Acer loan. The cost to complete

Phase 2, including the Acer loan principal, is estimated to be \$12,313,747. Generally the expenses fit into the following categories:

<b>Expense</b>	<b>Amount</b>
Acer Loan – Purchase of Note	\$7,000,000
Construction of Phase 2	\$4,176,329
Accrued Retention	\$168,043
RDA Interest (1 Year)	\$115,000
Marketing	\$591,875
Other: Legal, Architect, Taxes, Management	\$262,500
<b>Total</b>	<b>\$12,313,747</b>

To fund these costs, BPL is seeking a \$2.3 million loan from the RDA, including \$207,000 in revolving funds for finishing units, with the remaining funds coming from BPL and sales proceeds from Phase 2 units.

The \$7.0 million Acer loan (the “Acer Loan”) would be the senior loan secured by the Lofts. The Acer Loan will include the following terms:

**Loan Amount:** \$7,000,000

**Loan Term:** One Year

**Extension Options:** Two Six Month Extensions

**Interest Rate:** The greater of 12% or WSJ Prime Rate Plus 6 ¾%

**Interest Payment:** 12 Months Prepaid

**Guarantors:** Ken Millo

**Requirements:**

- 1) 100% of the proceeds from the sale of the units sold in auction will be used to pay down the US Bank Loan.
- 2) Full and complete approval by the RDA of a minimum of \$2.3 million in subordinated debt.

Given the project objectives and costs, as well as the terms of the primary financing, BPL is requesting the RDA provide a \$2.3 million subordinated construction loan. The RDA’s loan would be used to fund the hard costs to complete the Phase 2 shell and finish units as they are sold. BPL is requesting modifications to the standard Construction Loan terms. The requested terms are as follows:

**Loan Amount:** \$2.3 million

**Loan Term:** Five-years

**Interest Rate:** 5%

**Collateralization:** Junior lien on the residential units of Phase 2 only.

**Guarantor:** Ken Millo

### **Modifications to Standard Terms:**

- 1) Repayment: Following the repayment of Acer, 95% of the net sales proceeds from each unit sold shall be paid to the RDA until the RDA's loan is repaid. Payments shall first be applied to accrued interest and then loan principal.
- 2) Revolving Funds: BPL is seeking to retain \$207,000 in revolving funds to finish roughed in units. The funds would be used when a unit goes under contract and would then be repaid into the revolving line of credit after the unit is sold.
- 3) The line of credit would be closed after the sale of the last unit, but no later than the RDA's loan maturity date.

### **Loan Analysis:**

***Loan To Value:*** The most recent appraisal was completed on December 22, 2011 (the "Appraisal"). The Appraisal indicated that the Phase 2 Prospective Gross Retail Value at completion would be \$14,670,000. The RDA and Acer loans total \$9.3 million. Given the appraised value of Phase 2 and the total amount of the RDA and Acer loans, the Loan to Value Ratio is 63%. The Loan To Value Ratio maximum is 90%. The Appraisal indicates that the residential units will sell for an average of \$345 per square foot and the retail space will sell for an average of \$206 per square foot. The minimum sales price to repay the Acer and RDA, if only the residential units are considered, is \$286 per square foot. If the commercial property is sold for the appraised value of \$1,920,000, the residential units would need to sell for \$229 per square foot. The average sales price of the 35 Phase 1 residential units auctioned in November 2011 was \$242 per square foot. It is likely that Phase 2 residential units will sell at higher prices than those generated at auction, because:

- 1) Auctions tend to result in below market prices.
- 2) The incomplete Phase 2 shell was a negative factor.
- 3) The project will be 41% occupied.
- 4) The market would likely determine the Phase 2 units are superior due to their proximity to Pioneer Park.

The risk is that the Phase 2 premium will be insufficient to cover the debt of the Acer and RDA loans and closing costs. The Appraisal indicates that this risk is low, though the window for selling the units and paying off the Acer and RDA loans is relatively short.

***Collateralization:*** The residential and retail units of Phase 2 will be used to collateralize the RDA's loan. The RDA's \$2.3 million would be in a junior position on the collateral behind Acer's \$7.0 million loan. There is increased risk to the RDA in taking the junior lien position. This risk is somewhat mitigated by the low Loan to Value Ratio, but the realities of foreclosure proceedings would likely result in minimal repayment to the RDA through the sale of the property in the case of a BPL default on the Acer or RDA loan. RDA policy allows for the RDA

to take a junior lien position, because subordinated debt is often required to facilitate the financing of construction projects.

**Acer Loan:** The Acer loan has a term of one-year with the option of receiving two six-month extensions. Staff is proposing that the term of the RDA loan, if approved, be made coterminous with the Acer loan. The short term of the Acer loan would be seen as problematic if there were concern about selling a sufficient number of units to pay-off the Acer loan. Given the robust sales of the Phase 1 units, concern about repaying Acer is low, although if the units sold at the same prices as those achieved at the November 4<sup>th</sup> auction, it would be insufficient to repay the RDA's loan.

**Loan Repayment:** RDA policy requires that the RDA receive 95% of the net sales income from the sale of each unit to repay the construction loan. Given that Acer will be the primary lender they are requiring that they receive 95% of the sales proceeds, relegating the RDA repayment to starting once the Acer loan has been paid off. This repayment structure has been used for other RDA loans, but because it is not a standard RDA lending policy it need to be given specific consideration.

**Revolving Funds:** BPL is seeking to use \$207,000 as a revolving line of credit for finishing residential units on a per unit basis after they are under contract. Upon the sale of a unit, the amount used to finish the unit would be repaid to the RDA, but held by the RDA for finishing future units. This approach would effectively protect the \$207,000 by ensuring that it would be repaid upon the sale of a contracted unit. For purposes of determining the sufficiency of the revolving funds, \$207,000 would cover the cost of completing 13 Live/Work Units or 4 Park View Units at one time. This approach to funding the project is non-standard and would likely result in more staff time to administer than a normal loan.

**Lender of Last Resort:** Acer is requiring that the RDA provide subordinate financing for the completion of Phase 2. If the RDA does not approve BPL's construction loan request, Acer will not close on its loan and BPL will be unable to purchase the Note from Silverleaf, which would likely result Silverleaf foreclosing on the project and calling the guarantees. Acer's requirement that the RDA financing be approved was based on its perception that the RDA was likely the only lender that would provide a subordinate loan in a timely manner.

**Proposed Loan Terms:** The following are the terms that staff is proposing to require if the loan is approved as requested:

Loan Amount:	\$2.3 million
Loan Term:	Coterminous with Acer loan, not to exceed two years.
Interest:	5% on dispersed funds.
Collateral:	Second Lien Position on Residential and Retail Units

Loan Repayment:	Following the repayment of Acer, 95% of the net sales income from each unit sold shall be paid to the RDA until the RDA's loan is repaid. Payments shall first be applied to accrued interest and then loan principal.
Minimum Sales Prices	The minimum sales price per square foot for residential units shall be \$300. The minimum sales price per square foot for retail units shall be \$206.
Use of Funds:	Agency funds shall only be used for permanent improvements. Acceptable uses of Agency funds shall include the purchase and installation of the following: 1) major systems; 2) windows; 3) doors; 4) light fixtures; 5) floor, wall, and window coverings; 6) permanent wall partitions; 7) cabinetry; 8) bathroom fixtures; and 9) RDA approved appliances.
Revolving Loan Funds:	BPL may use up to \$207,000 in revolving credit for the purpose finishing residential units.
Purchase of Note:	The RDA shall not disburse any loan funds if BPL has not purchased the Note from Silverleaf.
Conditions to Closing:	<ol style="list-style-type: none"> <li>1. BPL shall be prepared to close on the Acer Loan.</li> <li>2. BPL shall be prepared to purchase the Note from Silverleaf at closing.</li> <li>3. BPL shall satisfactorily provide verification that the loan meets all lending criteria established by the Agency, Agency Loan Committee, and Agency legal counsel.</li> <li>4. Ken Millo shall secure the loan with a personal guaranty.</li> <li>5. To ensure the compatibility of the Agency's loan with the anticipated funding sources, Applicant shall provide the Agency with all documentation necessary to verify the financing terms (e.g., commitments, loan documents, etc.). Should the Acer Loan not be approved as described, the Agency will not close unless BPL makes up the difference in cash or receives comparable financing approved by Agency staff.</li> <li>6. Proof that no material or adverse changes have occurred in the finances, business, operations, affairs or prospects of Applicant, or the condition of the property.</li> <li>7. Applicant shall provide evidence at the time of closing that all payment obligations pertaining to the property, including broker's or finder's fees, and tax or mechanics liens have been paid in full. Financial obligations to Agency-approved financial institutions related to the purchase of the property shall be the only exceptions.</li> </ol>

	<ol style="list-style-type: none"> <li>8. The execution of loan documents (promissory notes, loan agreements, security documents, and such other instruments) as deemed necessary by the Agency and its legal counsel.</li> <li>9. Applicant shall provide evidence of insurance covering public liability, fire, and such other insurance in such amounts and with such coverages as deemed necessary by the Agency. In addition, if the property is within a designated flood plain or flood risk area pursuant to the Flood Disaster Protection Act of 1973, as amended or supplemented, Applicant shall obtain flood insurance in such total amount as shall comply with the requirements of the National Flood Insurance Program as set forth in the Flood Disaster Protection Act of 1973.</li> <li>10. All taxes and any assessments that are due and payable affecting the property shall have been paid and discharged in full.</li> <li>11. The Agency shall have been furnished at Applicant's expense an ALTA lender's title policy issued by a title insurance company approved by the Agency and including such endorsements as may be required. Such title insurance shall insure the Agency as a holder of a second mortgage lien, free from any exceptions except those approved by the Agency or its legal counsel.</li> <li>12. Review and approval by the Agency and its legal counsel shall be required for all matters pertaining to title, legality of the loan, and the legality, sufficiency, and the form and substance of all documents that are deemed reasonably necessary for the loan transaction.</li> <li>13. Such other terms as recommended by Agency's legal counsel.</li> <li>14. The borrower and guarantors shall have no current judgments filed against them.</li> </ol>
Closing Costs and Legal Fees:	The developer shall pay all closing costs, including the Agency's legal fees.
Other:	Such other terms as recommended by the Agency's legal counsel.

Board review of this request is required, because the request exceeds \$500,000 and has non-standard terms. In addition to this memo, staff has evaluated the BPL's loan request utilizing the criteria that was presented to the RDA Board in December. An RDA Loan Criteria Rating Sheet

is attached to assist in evaluating the loan.

**ATTACHMENTS:** Project Photos, RDA Loan Criteria Rating Sheet



Broadway Park Lofts – 300 West Elevation Drawing



Broadway Park Lofts – Northeast Elevation



Lanai Unit Living Room



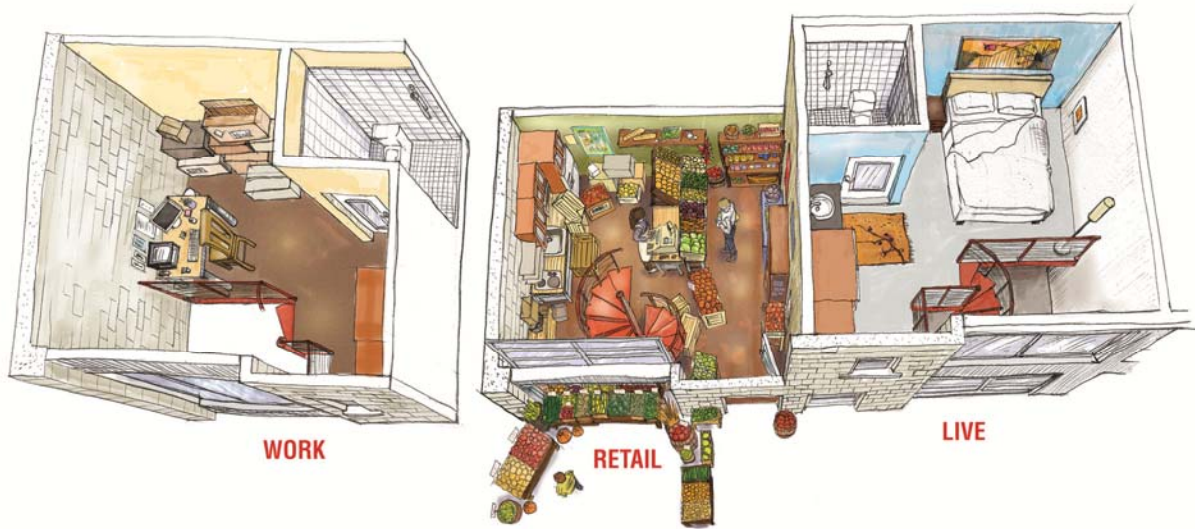
Lanai Unit Bed Room



Lanai Unit – Roof



Lanai Unit



Broadway Park Lofts – Live/Work Unit

## RDA LOAN CRITERIA RATING SHEET

### Loan Applicant:

Loan Qualitative Criteria	Score	Weight	Weighted Score
1. Consistency with RDA Goals & Objectives <i>Scoring Factors: Assign lower score for meeting general goals of City masterplan, mid scoring for RDA general goals, and higher score for RDA specific goals.</i>	5	2	10
2. Public value generated by Project <i>Scoring Factors: Assign zero score for no public amenities, 1-5 score for public amenities that have small to large public impact (may need to quantify)</i>	3	1.5	4.5
3. Incorporation of sustainable building practices <i>Scoring Factors: Assign zero score for no sustainable building project features, 1-5 depending on minor to different levels of LEED certification (i.e., 5 points for Platinum LEED, less for lower levels)</i>	2	1.5	3
4. Loan request for RDA-owned property <i>Scoring Factors: Assign zero score if loan is not for an RDA-owned property, 5 if it is on an RDA-owned property.</i>	0	1	0
<b>TOTAL LQC SCORE:</b>			17.5

Loan Strength Criteria	Score	Weight	Weighted Score
1. Amount of Tax Increment generated by Project <i>Scoring Factors: Assign higher score based on overall TI generation, may want to consider percentage of TI generation to overall PA TI (think Granary...)</i>	2	1.5	3
2. Impact on RDA funds (disbursement & repayment) <i>Scoring Factors: Assign higher score to faster repayment than prescribed by Loan Program Criteria. Some discussion may be prudent with respect to renovation vs. new construction loan requests (i.e., different structure reqs.)</i>	2	1.5	3
3. Extent of requested modification of program terms <i>Scoring Factors: Assign lower score based on requests that depart from existing criteria that negatively impacts the RDA (such as lower interest rates, deferred interest payments, etc.). Default score is 5, then deduct points.</i>	3	1	3
<b>TOTAL LSC SCORE:</b>			9

Loan Fund Leverage Criteria	Score	Weight	Weighted Score
1. Extent to which loan funds are matched by Applicant funds <i>Scoring Factors: Default score is 3 (meets current requirement, less if applicant requests lowering requirement, more if applicant exceeds requirement.</i>	4	1	4
2. Extent to which loan funds are matched by other private funds <i>Scoring Factors: Applicant receives higher rating for providing higher percentage of private funds + applicant funds compared RDA requested funds.</i>	3	1	3
3. Demonstrated financing gap for the project <i>Scoring Factors: Applicant gets higher score by providing proof of funding gap for project.</i>	4	1	4
<b>TOTAL LFLC SCORE:</b>			11

**TOTAL LOAN CRITERIA SCORE:** 37.5