

Kenosha



County

BOARD OF SUPERVISORS.

RESOLUTION NO _____

Subject: RESOLUTION AUTHORIZING A LOAN IN AN AMOUNT NOT TO EXCEED \$1,500,000 TO BEAR DEVELOPMENT, LLC FOR THE PURPOSE OF ACQUIRING AND CONSTRUCTING HOMES FOR THE AGED AND INDIGENT	
Original XX Corrected <input type="checkbox"/> 2nd Correction <input type="checkbox"/> Resubmitted <input type="checkbox"/>	
Date Submitted: February 22, 2017	Date Resubmitted:
Submitted By: Finance/Administration Committee	
Fiscal Note Attached <input type="checkbox"/>	Legal Note Attached <input type="checkbox"/>
Prepared By: Quarles & Brady LLP	Signature:

RESOLUTION AUTHORIZING A LOAN IN AN AMOUNT NOT TO EXCEED \$1,500,000
TO BEAR DEVELOPMENT, LLC FOR THE PURPOSE OF ACQUIRING AND
CONSTRUCTING HOMES FOR THE AGED AND INDIGENT

WHEREAS, Bear Development, LLC (together with its affiliates and assigns, hereby referred to herein as "Bear") has requested two loans each in an amount not to exceed \$750,000 (each the "Loan" and collectively the "Loans") to assist with the financing of the construction of two separate apartment developments each of which would provide homes for the aged and indigent (each the "Project" and collectively the "Projects") in Kenosha County (the "County") and are further described in Exhibit A attached hereto and incorporated herein by this reference; and

WHEREAS, counties are authorized by the provisions of Section 59.52(6)(d), Wisconsin Statutes, to acquire and construct homes for the aged and indigent; and

WHEREAS, the County Board of Supervisors has determined that the Projects constitute homes for the aged and indigent and assisting in the financing of the Projects is desirable to support the needs of the County and the residents thereof; and

WHEREAS, in order to finance and undertake either or both Projects it is necessary and desirable for the County to enter into a purchase and sale agreement (the "Agreement") with Bear for the following purposes: (1) Bear conveying all real property necessary to undertake the Project to the County in exchange for the proceeds of the Loan(s) and (2) the County immediately transferring back to Bear the same real property in exchange for Bear's agreement to make payments under the Loan(s); and

WHEREAS, it is also necessary and desirable for the County to authorize officers of the County to further negotiate the terms of the Loan(s) within the parameters established in this resolution and obtain an irrevocable letter of credit (the "LOC") to further secure Bear's obligation to repay the Loan in the form attached hereto as Exhibit B and incorporated herein by this reference;

NOW THEREFORE, BE IT RESOLVED by the County Board of Supervisors of Kenosha County that:

Section 1. Authorization of the Loan and Loan Commitment. Subject to the conditions specified in Section 3 below, the County hereby authorizes an appropriation of funds in an amount not to exceed \$1,500,000 to make one or two Loans to Bear for the purpose of carrying out the Projects. Officers of the County are hereby authorized to enter into all agreements necessary to providing the Loan(s) and securing the County's interests in repayment of the Loan(s), including the LOC. The Director of Administration and Finance is hereby authorized to draw on the LOC at any time without further approval in order to secure the repayment of the Loan(s). The County shall charge Bear an origination fee in an amount not to exceed 1.50% of the principal amount of the Loan.

The County Executive or Director of Administration and Finance is authorized to execute and provide Bear with the loan commitments for the Loan(s) in the forms attached as Exhibit C.

Section 2. Authorization of the Agreement. The County hereby authorizes the acquisition of any and all real property associated with the Project and the immediate transfer of such real property back to Bear pursuant to the terms of the Agreement.

Section 3. Conditions and Terms of the Loans. The Director of Administration and Finance of the County is hereby authorized to make the Loan(s) on the general terms set forth in subsection (a) below, subject to satisfaction by Bear of the conditions in (b)-(d) below:

(a) the exact terms of any Loan may be approved by the Director of Administration within the following parameters:

- (1) the term shall not exceed 15 years;
- (2) repayment of the Loan shall be subject to available cash flow of the Project;
- (3) a balloon payment may be allowed at the end of the loan;
- (4) the interest rate charged on the Loan shall not exceed the annual long term Applicable Federal Rate (as determined by the IRS) at the time the Loan is issued and such interest payments shall be amortized over the term of the loan and payable at least annually; and
- (5) Bear shall reimburse the County for all reasonable costs the County may incur in making the Loan.

(b) the County shall receive the LOC in the form substantially the same as attached hereto.

(c) the County shall receive an executed promissory note from Bear in the amount of the Loan and satisfactory to Corporation Counsel or outside counsel of the County.

(d) the County shall receive an executed Agreement to convey the real property as described herein.

No Loan shall be made and no funds delivered to Bear until the conditions in (b)-(d) are satisfied by Bear. Upon satisfaction of these conditions, the Director of Administration is authorized to execute the necessary documents, including those provided for herein to make the Loan(s).

Section 4. Professionals for the Transaction. The County is hereby authorized to hire Quarles & Brady LLP and Ehlers & Associates, Inc. and any other professionals deemed necessary to provide professional services to aid the County in undertaking the transactions described in this Resolution. Bear has agreed to pay any and all such fees charged by such professionals.

Section 5. Execution of Documents. The County hereby authorizes the officers and agents of the County to enter into, on its behalf, agreements and contracts in conjunction with the Loans, including but not limited to the documents specifically referenced in this Resolution.

Section 6. Conflicting Resolutions; Severability; Effective Date. All prior resolutions, rules or other actions of the County Board of Supervisors or any parts thereof in conflict with the provisions hereof shall be, and the same are, hereby rescinded insofar as the same may so conflict. In the event that any one or more provisions hereof shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provisions hereof. The foregoing shall take effect immediately upon adoption and approval in the manner provided by law.

Adopted and recorded this 22nd day of February, 2017.

County Board Chairperson

Attest:

County Clerk

County Executive

(SEAL)

Resolution – Authorizing a Loan in an amount not to exceed \$1,500,000 to Bear Development, LLC for the purpose of Acquiring and Constructing Homes for the Aged and Indigent

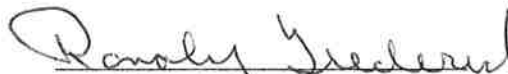
Approved by:

FINANCE & ADMINISTRATION
COMMITTEE

Aye No Abstain Excused


Terry Rose, Chairman

☒ ☐ ☐ ☐


Ronald Frederick, Vice Chair

☒ ☐ ☐ ☐


Jeffrey Gentz

☒ ☐ ☐ ☐

Rick Dodge


☐ ☐ ☐ ☒

Edward Kubicki

☐ ☐ ☐ ☒


Daniel Esposito

☒ ☐ ☐ ☐


Greg Retzlaff

☒ ☐ ☐ ☐

EXHIBIT A

Description of the Projects Provided by Bear

Project Summary Eva Manor

Eva Manor is a proposed new construction affordable apartment development located in the Village of Pleasant Prairie at the southeast corner of the intersection of 91st Street and 22nd Avenue. The project will consist of 8 3-bedroom townhome style units targeted toward workforce housing located in one building and 42 units in one 4-story building consisting of independent senior housing. The 42-unit building will be comprised of a mix of one and two bedroom units, a management office and a community room. The project will be financed through the WHEDA tax credit program and 47 of the units will be income restricted to households earning less than 60 percent of area median income; the remaining 3 units will be market-rate (no income restrictions). The building will be constructed of high quality materials and will comply with the Wisconsin Green Built Homes standards for energy efficiency.

There is an extremely high demand for affordable units in the area in general and the senior population is particularly underserved. The project will be developed and owned by Bear Development, a Kenosha-based firm with extensive experience in this type of development activity. Bear will be partnering with local service providers to connect seniors with services such as accessing benefits and entitlements, homebuyer education, educational services, and financial literacy. The site is currently vacant and is environmentally contaminated. The development will result in the environmental closure of the site and bring an underutilized, vacant parcel onto the tax roll.

Project Summary Whitetail Ridge Multifamily

Whitetail Ridge Multifamily is a proposed new construction affordable apartment development located in the Village of Paddock Lake near the southwest corner of the intersection of Highway 50 and Highway 83. The project is part of the larger Whitetail Ridge subdivision that will include 28 single-family lots and a 5 acre commercial parcel located along the Highway 50 frontage. The project will consist of 10 3-bedroom townhome style units targeted toward workforce housing located in one building and 50 units of independent senior housing in one 3-story building. The 50-unit building will be comprised of a mix of one and two bedroom units, a management office and a community room. The project will be financed through the WHEDA tax credit program and all of the units will be income restricted to households earning less than 60 percent of area median income. The buildings will be constructed of high quality materials and will comply with the Wisconsin Green Built Homes standards for energy efficiency.

There is an extremely high demand for affordable units in the area in general and the senior population is particularly underserved. The project will be developed and owned by Bear Development, a Kenosha-based firm with extensive experience in this type of development activity. Bear will be partnering with local service providers to connect seniors with services such as accessing benefits and entitlements, homebuyer education, educational services, and financial literacy. Development of Whitetail Ridge is part of the Village's larger West-Side development strategy and is a key component of the Village's ongoing effort to upgrade the entire municipal water system using an USDA loan program that is currently in process.

EXHIBIT B

Form of LOC

(See Attached)

IRREVOCABLE LETTER OF CREDIT

TO: Kenosha County

RE: Irrevocable Letter of Credit No. _____
Applicant: Bear Development, LLC

County Board of Supervisors:

The undersigned, SOUTHPORT BANK, a Wisconsin Banking Corporation ("*Issuer*"), by its duly authorized officer, hereby irrevocably issues to Kenosha County, a Wisconsin quasi-municipal corporation ("*Lender*") this Irrevocable Letter of Credit in the amount of Seven Hundred Fifty Thousand Dollar (\$750,000.00) (the "*Maximum Amount*"), which credit may be drawn by the Lender as herein provided. The conditions precedent to a draw being permitted under this Letter of Credit are found below.

This Letter is provided to Lender as security for Applicant's obligation under and pursuant to a Promissory Note in the original principal amount of \$750,000 executed on the even date hereof by the Applicant, in favor of Lender in connection with the [Eva Manor][Whitetail Ridge] project (the "*Promissory Note*").

Funds drawn from time to time under this Letter of Credit are available to the Lender upon presentation of a certificate (with all blanks appropriately completed) in the form of Exhibit A attached hereto executed by the Lender.

Drawing(s) may be made by Lender in person or by facsimile at the address set forth below for the Issuer, in part or in full and without regard to whether the Promissory Note is in default or otherwise. If a drawing(s) exhausts the Maximum Amount, the Letter of Credit will be retained by Issuer. If a partial drawing is presented and paid, the amount available for draws by the Lender under this Letter of Credit (the "*Available Amount*") will be reduced automatically by the amount of any drawing hereunder.

This Irrevocable Letter of Credit shall terminate on the earlier of the following to occur:

- A. _____, 20__; or
- B. Upon the payment in full of the amount due to Lender by Applicant under and pursuant to the Promissory Note.

Any and all notices associated with this Irrevocable Letter of Credit shall be delivered as follows:

If to Lender: Kenosha County
Attn: County Executive
1010 56th Street
Kenosha, WI 53140

If to Issuer: Southport Bank
Attn: [Timothy C. Schadeberg, President and CEO or Russ Weyers?]
7027 Green Bay Road
Kenosha, WI 53142
Fax: _____

If to Applicant: Bear Development, LLC
Attn: S. R. Mills
4011 – 80th Street
Kenosha, WI 53142

Issuer certifies that all acts, requirements and other preconditions for the issuance of this Letter of Credit have been completed and that this Letter of Credit is in full force and effect upon execution by Issuer.

Issuer agrees that all demands made in conformity with the Letter of Credit will be duly honored upon presentation in conformity with its forms. If, within seven (7) business days after the date any demand made in conformity with Letter of Credit is presented, the Issuer fails to honor same, Issuer agrees to pay all reasonable attorney fees, court costs and other expenses incurred by Lender in enforcing the terms of this Letter of Credit.

This Letter of Credit is governed by, and construed in accordance with the laws of the State of Wisconsin, including without limitation the Uniform Commercial Code as in effect in the State of Wisconsin, without regard to principles of conflict of laws.

Dated this _____ day of _____, 2017.

[signatures on following page]

SOUTHPORT BANK

By: _____
Name: [Russ Weyers]
Title: President and CEO

STATE OF WISCONSIN)
) ss.
COUNTY OF _____)

Personally came before me on _____, 2017, the above named [Russ Weyers], to me known to be the person who executed the foregoing instrument and acknowledged the same.

*

Notary Public, State of Wisconsin
My commission expires _____

COUNTERSIGNED:

Bear Development, LLC

By: _____
Name: Stephen R. Mills
Title: Authorized Member

STATE OF WISCONSIN)
) ss.
COUNTY OF _____)

Personally came before me on _____, 2017, the above named Stephen R. Mills, to me known to be the person who executed the foregoing instrument and acknowledged the same.

*

Notary Public, State of Wisconsin
My commission expires _____

DRAWING CERTIFICATE

Southport Bank

Attn: [Timothy C. Schadeberg, President and CEO or Russ Weyers]

7027 Green Bay Road

Kenosha, WI 53142

Ladies and Gentlemen:

The undersigned individual, a duly authorized representative of Kenosha County (the "*Lender*"), hereby certifies on behalf of the Lender as follows with respect to (i) that certain Irrevocable Letter of Credit No. _____ dated _____, 2017 (the "*Letter of Credit*"), issued by Southport Bank (the "*Issuer*") in favor of the Lender; and (ii) that certain Promissory Note (as defined in the Letter of Credit):

1. The Lender is entitled to make this drawing in the amount of U.S. \$ _____ with respect to principal, interest and other amounts outstanding pursuant to the Promissory Note.

2. The amount of the drawing made by this Certificate was computed in compliance with the terms and conditions of the Promissory Note and, when added to the amount of any other drawings under the Letter of Credit, does not exceed the Available Amount (as defined in the Letter of Credit).

3. Payment by the Issuer pursuant to this drawing shall be made to _____, ABA Number _____, Account Number _____, Attention: _____, Re: _____.

4. Upon payment of the amount drawn hereunder, the Issuer is hereby directed to permanently reduce the Available Amount by U.S. \$[insert amount of reduction] and the Available Amount shall thereupon equal U.S. \$[insert new Available Amount].

(Signature Page Follows)

IN WITNESS WHEREOF, this Certificate has been executed this _____ day of
_____, _____.

KENOSHA COUNTY

By _____
[Title of Authorized
Representative]

EXHIBIT C

Form of Loan Commitments

(See Attached)

ON COMPANY LETTERHEAD

March 3, 2017

Mr. SR Mills, President
Bear Development, LLC
4011 80th Street
Kenosha, WI 53142

Re: Loan Commitment for Whitetail Ridge in Paddock Lake

Dear Mr. Mills -

We are excited to work with Bear Development (Bear) on its proposed Whitetail Ridge development of 60 units of multifamily housing which will be located in Paddock Lake. We understand that Bear will be applying for 9% low-income housing tax credits through WHEDA and we are very supportive of the development effort. We commit to providing a loan to the development under the terms outlined below.

- Amount: \$750,000
- Term: 15 Years
- Amortization: 15 Years
- Payments: Payments will be subject to available cash flow with a balloon payment due at the end of the loan term
- Interest Rate: 2.81% (rate will be at or below the long term annual AFR at the time of the financial closing)
- Origination Fee: 1.50% of loan amount
- Security: The loan will be evidenced by a promissory note in the amount of the loan and secured by a letter of credit in the full amount of the loan and payable at any time on demand.
- Guarantor: Bear Development, LLC

The housing that would be created by Whitetail Ridge is much needed in the community and we are pleased to be a part of the development effort.

Please contact me at XXX-XXX-XXXX or name@email.com with any questions.

Sincerely,

Name
Title
Company

ON COMPANY LETTERHEAD

March 3, 2017

Mr. SR Mills, President
Bear Development, LLC
4011 80th Street
Kenosha, WI 53142

Re: Loan Commitment for Eva Manor in Pleasant Prairie

Dear Mr. Mills-

We are excited to work with Bear Development (Bear) on its proposed Eva Manor development of 50 units of multifamily housing which will be located in Pleasant Prairie. We understand that Bear will be applying for 9% low-income housing tax credits through WHEDA and we are very supportive of the development effort. We commit to providing a loan to the development under the terms outlined below.

- Amount: \$750,000
- Term: 15 Years
- Amortization: 15 Years
- Payments: Payments will be subject to available cash flow with a balloon payment due at the end of the loan term
- Interest Rate: 2.81% (rate will be at or below the long term annual AFR at the time of the financial closing)
- Origination Fee: 1.50% of loan amount
- Security: The loan will be evidenced by a promissory note in the amount of the loan and secured by a letter of credit in the full amount of the loan and payable at any time on demand
- Guarantor: Bear Development, LLC

The housing that would be created by Eva Manor is much needed in the community and we are pleased to be a part of the development effort.

Please contact me at XXX-XXX-XXXX or name@email.com with any questions.

Sincerely,

Name
Title
Company