

ORDINANCE NO. 91-75 AC CMS

AN ORDINANCE APPROVING AN AGREEMENT WITH
KENDAL AT OBERLIN, INC., CONCERNING THE KENDAL
AT OBERLIN PRD PROJECT

BE IT ORDAINED by the Council of the City of Oberlin, County of Lorain, State of Ohio, a majority of all members elected thereto concurring:

SECTION 1. That the proposed agreement between the City of Oberlin and Kendal at Oberlin, Inc., which sets forth certain standards and obligations between the parties concerning street construction, water mains and sanitary sewers, and attempts to ensure payment of a "fair share" of real and personal property taxes by the Kendal at Oberlin PRD, a copy being attached hereto and incorporated herein by reference, is hereby approved, and the City Manager is hereby authorized and directed to execute same.

SECTION 2. It is hereby found and determined that all formal actions of this Council concerning or relating to the adoption of this ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 3. That this ordinance shall take effect at the earliest date allowed by law.

PASSED: 1st Reading - September 16, 1991
2nd Reading - October 7, 1991
3rd Reading - October 21, 1991 - Tabled; November 4, 1991
(Emergency)

ATTEST:


CLERK OF COUNCIL


CHAIRMAN OF COUNCIL

POSTED: November 6, 1991

EFFECTIVE DATE: November 4, 1991

AGREEMENT

This Agreement is made and entered into at Oberlin, Ohio, on this 13th day of February, 1992, by and between Kendal at Oberlin, Inc., a not-for-profit corporation organized and existing under the laws of the State of Ohio, which together with its successors and assigns is hereinafter referred to as "KENDAL", and the City of Oberlin, Ohio, which together with its successors and assigns is hereinafter referred to as "OBERLIN";

W I T N E S S E T H:

WHEREAS, KENDAL is undertaking to build a Continuing Care Retirement Community (the "Project") on real property recently annexed by OBERLIN and hereinafter described (the "Property"); and

WHEREAS, KENDAL will be seeking to exempt such portion of the Property from real property and other taxes as may be consistent with the laws of the State of Ohio; and

WHEREAS, KENDAL and OBERLIN desire to facilitate the proper and orderly development of the Project in a manner that will enable the Project to be completed while not placing an undue financial burden on OBERLIN; and

WHEREAS, KENDAL and OBERLIN further desire that KENDAL pay taxes to OBERLIN in an amount that will fairly compensate OBERLIN for the municipal services that it will likely provide to the Project during its life while assuring that the Project's tax burden will not be such as to jeopardize its financial viability or stability; and

WHEREAS, KENDAL and OBERLIN further desire that KENDAL will aid the future development of OBERLIN by allowing OBERLIN access to certain water and sanitary sewer mains to be constructed by KENDAL in connection with the Project;

NOW, THEREFORE, KENDAL and OBERLIN hereby agree as follows:

1. Zoning. OBERLIN agrees to authorize and approve, at the earliest possible date, the zoning of the Property, which is hereinafter described and which is presently owned by Oberlin College but which will be conveyed to KENDAL and utilized as the site of the Project, in accordance with the provisions of Chapter 1338 of the Codified Ordinances of OBERLIN:

Situated in the City of Oberlin, County of Lorain, State of Ohio, being further known as a part of Original Russia Township Lots Nos. 66 and 76, more definitely described as follows:

Beginning in the easterly right of way line of Ohio State Route 58 at its intersection with the southerly line of land conveyed to William F. Cobb as recorded in Volume 96, Page 337, "Parcel 3B", of Lorain County Official Records;

Thence South 89° 27' 30" East in the southerly line of said Cobb parcel, a distance of 2696.21 feet to the southeasterly corner thereof and a point in the easterly line of Original Lot 66;

Thence South 0° 13' 35" East along said easterly line of Original Lot 66 and along the easterly line of Original Lot 76, a distance of 2271.67 feet to the northeasterly corner of lands conveyed to Leslie D. Mann, as recorded in Volume 3, Page 730, "Parcel 2", of Lorain County Official Records;

Thence North 89° 47' 13" West in Mann's northerly line a distance of 449.05 feet to a point in the easterly line of lands conveyed to The Oberlin City Board of Education, as recorded in Volume 742, Page 450 of Lorain County Deed Records;

Thence North 1° 10' 10" West in the easterly line of said parcel and in the easterly line of Parcel No. 1 as conveyed to The Oberlin City Board of Education, as recorded in Volume 742, Page 591 of Lorain County Deed Records, a distance of 371.90 feet to the northeasterly corner thereof;

Thence South $89^{\circ} 22' 40''$ West a distance of 560.63 feet to a point in the easterly line of lands conveyed to Ronald J. and Florence M. Beck, as recorded in Volume 1406, Page 500 of Lorain County Deed Records;

Thence North $0^{\circ} 41' 54''$ East in the easterly line of said Beck parcel, a distance of 23.86 feet to the northeasterly corner thereof;

Thence South $89^{\circ} 27' 45''$ West in the northerly line of said Beck parcel, a distance of 596.25 feet to a point in the Beck's northerly line at the southeasterly corner of lands conveyed to College Village Associates, Limited Partnership, as recorded in Volume 1354, Page 237 of Lorain County Deed Records;

Thence North $0^{\circ} 03' 35''$ West in the easterly line of said College Village Associates, Limited Partnership parcel, a distance of 365.66 feet to a point in the northerly line of Maple Street;

The following three (3) courses lie in the northerly line of Maple Street;

Thence Northwesterly in the arc of a curve which deflects to the right, a distance of 260.96 feet to a point of reverse curvature; said curve has a radius of 960.00 feet, a central angle of $15^{\circ} 34' 30''$ and a chord of 260.16 feet which bears North $89^{\circ} 26' 08''$ West;

Thence Northwesterly in the arc of a curve which deflects to the left, a distance of 75.08 feet to the point of tangency of said curve; said curve has a radius of 480.00 feet, a central angle of $8^{\circ} 57' 42''$ and a chord of 75.000 feet which bears North $86^{\circ} 07' 44''$ West;

Thence South $89^{\circ} 23' 25''$ West a distance of 93.00 feet to an angle point in the northerly line of Maple Street;

Thence North $88^{\circ} 54' 20''$ West in the northerly line of Maple Street, a distance of 65.00 feet to the southeasterly corner of lands conveyed to Herman Robinson, as recorded in Volume 315, Page 454 of Lorain County Deed Records;

Thence North $0^{\circ} 07' 50''$ West in the easterly line of said Robinson parcel, a distance of 329.22 feet to the northeasterly corner thereof and a point in the southerly line of lands conveyed to Daisy D. Jackson, as recorded in Volume 159, Page 525 of Lorain County Official Records;

Thence South $88^{\circ} 54' 20''$ East in the southerly line of said Jackson parcel, a distance of 65.00 feet to the southeasterly corner thereof;

Thence North 0° 04' 06" East in the easterly line of said Jackson parcel and in the easterly line of land conveyed to Joseph and Irene Zbdniowski, as recorded in Volume 399, Page 280 of Lorain County Deed Records, a distance of 146.27 feet to the northeasterly corner of said Zbdniowski parcel and the southeasterly corner of lands conveyed to Joseph and Irene Zbdniowski, as recorded in Volume 239, Page 85 of Lorain County Official Records;

Thence North 0° 18' 30" West in the easterly line of said Zbdniowski parcel and in the easterly line of lands conveyed to Joseph and Irene Zbdniowski as recorded in Volume 233, Page 282 of Lorain County Official Records, a distance of 732.47 feet to a point;

Thence North 89° 27' 30" West in the northerly line of the Zbdniowski parcel, a distance of 253.44 feet to the southeasterly corner of lands conveyed to Arthur C. and Joyce E. Supers, as recorded in Volume 148, Page 316 of Lorain County Official Records;

Thence due North in the easterly line of said Super's parcel, a distance of 200.00 feet to the northeasterly corner thereof;

Thence North 89° 27' 30" West in the northerly line of said Super's parcel, a distance of 405.62 feet to a point in the easterly right of way line of Ohio State Route 58;

Thence due North in the easterly right of way line of Ohio State Route 58, a distance of 125.00 feet to the place of beginning;

Enclosing a parcel containing 92.7988 acres, of which approximately 17.25 acres lie within Original Russia Township Lot No. 76 and approximately 75.55 acres lie within Original Russia Township Lot No. 66, to be the same more or less, but subject to all legal highways.

2. Payments of Taxes by KENDAL to OBERLIN. KENDAL and OBERLIN agree that KENDAL shall pay to OBERLIN or to the Auditor of Lorain County (or to such other public officials or offices as it may be required by law to pay) on behalf of OBERLIN an amount (the "Tax Amount"), which when added to the taxes paid or to be paid in any one year by KENDAL to the Oberlin City School District and any other political subdivision or public entity which shall be owed taxes by reason of KENDAL's ownership of the Property or its

ownership or operation of the Project, shall equal an aggregate amount (the "Stabilization Amount") per annum during the term of this Agreement that shall not exceed \$250,000 per annum for the initial 15-year term of this Agreement, which will commence with the date of the issuance of the final certificate of occupancy for the Project (the "Stabilization Period"). Prior to the Stabilization Period, KENDAL will pay taxes on the Property as the same become due and payable pursuant to the assessment of the Lorain County Auditor.

During said Stabilization Period, KENDAL shall be obligated to pay a minimum Stabilization Amount that shall not be less than \$200,000, except as is hereinafter provided. Such minimum Stabilization Amount shall be payable by KENDAL during the Stabilization Period even if the Project and or the Property shall be declared totally tax exempt; provided, however, anything to the contrary herein notwithstanding said minimum Stabilization Amount shall in no event exceed the amount of real and personal property taxes due on the residential (i.e., independent living units) portion of the Project that would be generated by the taxation system applicable to residential property generally.

Subsequent to the Stabilization Period, if the Property or the Project is declared totally tax exempt, KENDAL will pay an aggregate minimum total amount in taxes that will be distributed to all entities entitled to tax payments in connection with the Project or the Property that is equal to the real and personal property taxes that would be paid on the residential (i.e.,

independent living units) portion of the Project pursuant to the taxation system then applicable to residential taxpayers generally. The amounts payable by KENDAL hereunder shall be in lieu of any other real and personal property taxes payable by KENDAL to all entities entitled to said tax payments in connection with the Property or the Project and shall be payable in arrears semi-annually in two equal installments due on the last days of January and June of each calendar year.

3. Maintenance of Amounts Payable as or in Lieu of Taxes.

KENDAL and OBERLIN acknowledge and agree (a) that this Agreement defines their respective rights and responsibilities hereunder and the specific obligations of KENDAL with respect to the payment of taxes and amounts in lieu of taxes on the Project and the Property and (b) that OBERLIN has taken and will take all actions necessary to result in the granting of tax exemptions for improvements to the Property. In order to maintain the status and amount of payments payable by KENDAL hereunder, OBERLIN agrees to take such actions within its power or authority (as such power or authority may now, or at anytime during the term of this Agreement shall be, constituted) as shall be necessary to insure that KENDAL shall pay no more than the amounts of taxes herein set forth in connection with its ownership of the Property or its ownership or operation of the Project.

4. Streets Construction. KENDAL is hereby authorized to construct the streets to be located on the Property in compliance with reasonable standards as determined by KENDAL and as

recommended for approval by the OBERLIN Planning Commission pursuant to the City's Planned Residential Development process, as set forth in Chapter 1338 of the Codified Ordinances of OBERLIN.

5. Project Water Main. KENDAL agrees to construct an eight-inch looped water main to supply the needs of the Project, which contemplates 200 to 250 units. After construction of the water main, OBERLIN will assume its operation and maintenance as well as the operation and maintenance of all related fire hydrants. It is agreed that the relocation of the water main as required by OBERLIN will result in an added cost to the Project of approximately \$40,000. This additional cost will be shared equally by OBERLIN and KENDAL at the time it is incurred.

KENDAL agrees to provide OBERLIN an easement with respect to the Property and the aforesaid water main to allow OBERLIN to make future connections to the water main for benefit of property located north of the Property; provided, however, that no costs associated with such future connections will be payable by KENDAL; and provided further, that such future connections shall be accomplished without disruption to the operation of the Project.

6. Project Sanitary Sewer Main. KENDAL agrees to construct a sanitary sewer main in accordance with City standards from the Southeast portion of the Project Property down "Hovey Lane" to the East Lorain Street sanitary sewer interceptor. The sanitary sewer main shall include a pumping station and a gravity flow line to East Lorain Street.

It is agreed that the inclusion of a gravity flow line will result in an additional cost to the Project of approximately \$50,000, which will be paid by OBERLIN at the time it is incurred. It also is agreed that the current location of the sanitary sewer main is a result of KENDAL'S accommodating the request of OBERLIN and will result in an additional cost to the Project of approximately \$86,000, which amount will be paid by KENDAL; provided, however, that the payment of such amount by KENDAL will result in a reduction of KENDAL's liability for the payment of the amount specified in Section 2 of this Agreement as being due and payable in the first year of the Stabilization Period, which reduction will be equal to the aforesaid additional amount so paid by KENDAL in connection with the current location of the sanitary sewer main. After construction of the sanitary sewer main, OBERLIN will assume its operation and maintenance.

KENDAL agrees to provide OBERLIN an easement along the Westerly border of the Property to allow OBERLIN to install and maintain a sanitary sewer main along said Westerly border of the Property for the benefit of property located North of the Property; provided, however, that no costs associated with such future connections will be payable by KENDAL; and provided further, that such future connections shall be accomplished without disruption to the operation of the Project.

For drainage purposes, KENDAL will carry all storm water to what is known as the "Hill Ditch," and KENDAL agrees to provide

OBERLIN an easement for the continued use of the portion of the "Hill Ditch" that lies on the Property.

7. Traffic Count and Development Process. KENDAL agrees to provide OBERLIN for its information with traffic counts from a facility comparable to the Project, although neither KENDAL nor OBERLIN anticipates any unusual off site street improvement needs.

8. Project Approval. KENDAL and OBERLIN hereby agree, ratify and confirm that all applicable and available ordinances of OBERLIN shall apply to the development of the Project, and that KENDAL shall follow proper, usual and customary procedures in presenting the Project for approval by the appropriate Commissions and Boards of OBERLIN.

9. Successors and Assigns. KENDAL and OBERLIN agree that this Agreement, its benefits and burdens, shall be binding upon the parties, their agents, successors and assigns, and shall represent a restrictive covenant that shall run with the land, i.e., the Property, and shall be recorded with the Lorain County Recorder.

10. Approvals. This Agreement was approved by KENDAL at a duly called meeting of its Board of Directors on the 25th day of July, 1991, and by OBERLIN by Ordinance No. 91-75ACSMS passed at a duly held meeting of the Council of OBERLIN on November 4, 1991.

11. Severability. The holding of any court that any provision of this Agreement is invalid or unenforceable shall not affect the remaining provisions of the Agreement which shall remain in full force and effect. This Agreement contains the entire

agreement of the parties and shall not be modified in any manner except by an instrument in writing signed by the parties or their respective successors in interest.

IN WITNESS WHEREOF, the parties, by their duly authorized agents, have executed duplicate copies of this Agreement, each of which shall constitute an original, as of the date first above-written.

WITNESS:

Nancy R. E. Sutter

John A. Simonson

Approved as to form:

Eric R. Severs

Eric R. Severs
Oberlin City Solicitor

KENDAL AT OBERLIN, INC.

BY: David L. Haines

ITS Chairman

CITY OF OBERLIN, OHIO

BY: Debra L. Limble

ITS City manager

STATE OF *Pennsylvania*
COUNTY OF *Chester* } SS:

This foregoing instrument was executed before me this *13th* day of February, 1992, by David L. Hewitt, the Chairman of the Board of Directors of KENDAL AT OBERLIN, INC., who acknowledged that the same was his free and voluntary deed and act and the duly authorized, free and voluntary deed and act of KENDAL AT OBERLIN.

Janet M. Scott
Notary Public

This Instrument Prepared By:
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