ORDINANCE 13-20       Passed: April 8, 2013

APPROVING A LEASE AND OPERATING AGREEMENT WITH BARB CITY MANOR.

WHEREAS, the City of DeKalb is a home rule Illinois municipal corporation, with the power and authority granted to it under the Illinois Constitution of 1970, the Illinois Municipal Code, and the City Code of Ordinances; and,

WHEREAS, the City currently permits the lease of certain real property commonly referred to as Barb City Manor, as more fully described in the attached Exhibit “A,” and wishes to renew and extend said lease on mutually acceptable terms and conditions; and,

WHEREAS, the City has determined that said lease complies with all applicable laws and regulations and is in the best interests of the public, and preserves the public health, welfare, safety and morals;

THEREFORE BE IT ORDAINED AS FOLLOWS by the City Council of the City of DeKalb:

SECTION 1: LEASE AND OPERATING AGREEMENT APPROVED

The Mayor of the City of DeKalb is authorized and directed to execute the lease and operating agreement attached hereto as Exhibit A, subject to such amendments as the Mayor shall deem to be appropriate with the advice and recommendation of the City Manager.

SECTION 2: GENERAL PROVISIONS

REPEALER: All ordinances or portions thereof in conflict with this ordinance are hereby repealed.

SEVERABILITY: Should any provision of this Ordinance be declared invalid by a court of competent jurisdiction, the remaining provisions will remain in full force and affect the same as if the invalid provision had not been a part of this Ordinance.

EFFECTIVE DATE: This Ordinance shall be in full force and effect on and after its approval, passage and publication in pamphlet form as provided by law. Publication date: April 9, 2013. Effective date: April 19, 2013.

ADOPTED BY THE CITY COUNCIL of the City of DeKalb, Illinois at a regular meeting thereof held on the 8th day of April, 2013 and approved by me as Mayor on the same day. Second reading waived and passed on roll call vote 7-0-1. Aye: Jacobson, Teresinski, Lash, Naylor, Baker, Povlsen. Absent: Gallagher.

ATTEST:

DIANE K. WRIGHT, City Clerk
KARLEN T. WRIGHT, Mayor
AMENDED AGREEMENT

This Agreement Made and Entered into in duplicate original this __th day of
[ ] 2013, by and between the City of DeKalb, a municipal corporation of the State of
Illinois, hereinafter referred to as "City", and Barb City Manor, Inc., an Illinois not-for-profit
corporation, hereinafter referred to as "BCM", WITNESSETH:

WHEREAS, City has determined that there is an on-going need to provide services to
encourage, promote, and engage in the development and operation of low and moderate income
housing for senior citizens; and

WHEREAS, City desires that BCM provide such services to the citizens of the City of
DeKalb; and

WHEREAS, BCM is capable of and desires to provide such services; now

THEREFORE, in consideration of the mutual covenants contained herein, and for
other good and valuable consideration, City and BCM agree as follows:

1. TERM

The term of this Agreement shall be from July 1, 2013 until the first to occur of: a) June 30,
2019; or, b) the date which is thirty days after the City receives the last payment of incremental
revenue from Tax Increment Allocation Financing District #2 from the DeKalb County Treasurer
upon expiration or termination of the TIF, unless otherwise terminated sooner under the
provisions of this Agreement.

2. SCOPE OF SERVICE

BCM shall provide for the development and operation of housing for low and
moderate income senior citizens as set forth in Exhibit "A" attached hereto and made a part
hereof by reference.

3. LOCATION

BCM shall operate said housing and perform the services provided for in paragraph 2 at the
improvements located at 680 Haish Boulevard, DeKalb, Illinois, hereinafter referred to as
"Premises", unless otherwise agreed by the parties hereto. City shall retain title and ownership of
Premises and BCM shall have no ownership or other interest in said Premises beyond the scope
of the terms set forth herein. The legal description for Premises is set forth in Exhibit "B"
attached hereto and made a part hereof by reference.

4. TENANT RATIO

BCM in providing housing for low and moderate income senior citizens, shall maintain
a tenant ratio of at least 51% DeKalb residents and not more than 49% non-DeKalb residents.
For purposes of this provision, "DeKalb residents" shall mean: 1) tenants who were residents
within the City of DeKalb immediately prior to becoming tenants of Premises; or, 2) tenants who have an immediate family member who is a resident of DeKalb. "Non-DeKalb residents" shall mean tenants who were not living within the City of DeKalb immediately prior to becoming tenants of Premises and who did not have an immediate family member who is a resident of DeKalb. If a waiting list is established, BCM shall give priority to "DeKalb residents" in filling any vacancies.

5. **SCOPE OF SERVICE**

City may terminate this Agreement upon 180 days prior to written notice to BCM should BCM fail to provide low and moderate income senior citizen housing and/or provide the services referenced in paragraph 2 above.

6. **INSURANCE AND PERMITS**

City shall acquire and maintain in full force and effect during the term of this Agreement, policies of insurance through private companies or under its self-insurance program covering the structures on the Premises against property damage and fire.

BCM shall acquire and maintain in full force and effect during the term of this Agreement policies of insurance in connection with providing retirement housing services at Premises including, but not limited to public liability insurance, personal injury insurance, theft, building contents, and worker's compensation insurance. The City of DeKalb shall be named as an additional insured under each such policy with a provision that City shall receive written notice thirty (30) days in advance of any action by the insurance company to non-renew or cancel such policy.

In addition, BCM acknowledges that it shall obtain all licenses, inspections and permits necessary to conduct its operations, including but not limited to licensure as a boarding house within the City of DeKalb, and licensure for food service within the County of DeKalb. The City shall have the right to inspect any and all portions of the BCM premises at 680 Haish at any time, with or without notice. BCM shall also provide such other and additional documentation as may be required by the City from time to time, to evidence the status of its operations, the condition of the premises at 680 Haish, or BCM's compliance with this agreement or any other agreement between BCM and the City.

7. **MAINTENANCE AND REPAIRS**

BCM shall, subject to the provisions below, keep and maintain in thorough repair and good and safe condition, the Premises and improvements constructed thereon and its full equipment and appurtenances, and each and every part of them, and shall use reasonable precaution to prevent waste, damage or injury.

In addition to the foregoing, BCM shall indemnify and save harmless City from and against any and all costs, expenses, claims, losses, damages, fines, penalties and reasonable attorney's fees because of or due to BCM's failure to comply with the foregoing.
BCM shall, at its own expense, perform all maintenance and repairs on Premises, when such maintenance or repair costs less than Ten Thousand Dollars ($10,000) per maintenance or repair activity to perform and shall also be responsible for the first Ten Thousand Dollars ($10,000) of any maintenance or repair activity that exceeds Ten Thousand Dollars ($10,000).

City shall be responsible for that portion of any maintenance or repair activity that exceeds Ten Thousand Dollars ($10,000). The maximum contribution from the City shall be limited to an amount not in excess of $100,000 per year. Any portion of the $100,000 maximum contribution that goes unspent within a given year may be rolled over to the following or subsequent years, with the City reserving the right to limit such future rollover in its sole discretion.

Any maintenance or repair activity that is reasonably expected to exceed Ten Thousand Dollars ($10,000) shall only be performed after consultation with City and only with the prior approval of City except in emergency conditions. Any maintenance or repair activity reasonably anticipated to exceed Ten Thousand Dollars ($10,000) shall be competitively bid by BCM in consultation with City. Any expenditure proposed to be funded by or through TIF proceeds shall be performed in accordance with the current or any future amendments to the Barb City Manor TIF Agreement.

BCM agrees that it will not allow any mechanics liens to be recorded against Premises, for any maintenance or repair activities. If, because of any act or omission of BCM, any mechanic's lien or other lien or order for payment of money shall be filed against Premises, or other improvements thereon or against City, BCM, at BCM's sole expense, shall cause the same to be canceled and discharged or recorded or bonded within sixty (60) days after the date of filing thereof. BCM shall indemnify and save harmless City against all costs, expenses, claims, losses or damages resulting therefrom.

8. STRUCTURAL CHANGES AND PERMANENT IMPROVEMENTS

BCM may make structural changes or construct permanent improvements on Premises, during the term of this Agreement only with the prior written consent of City and the cost of such structural changes and/or permanent improvements shall be borne by BCM unless otherwise agreed to in writing by City. City shall waive all inspection and permit fees for such improvements except those fees such as water taps that reflect an actual cost incurred by City. The waiver of such fees shall not relieve BCM of the obligation to obtain all necessary permits.

9. LAWS AND ORDINANCES

During the term of this Agreement, BCM, at its sole expense, shall promptly comply with all present or future laws, rules, requirements, orders, directions, ordinances and regulations of the United States, the State of Illinois, county or municipal governments, or of any other municipal, governmental, or lawful authority, affecting the use of Premises or appurtenances, or any part of them for intended purpose under this Agreement; to provide housing for low and moderate income senior citizens.
10. LIABILITY

City shall not be liable for any injury, claim or damage to any person happening on or about Premises, or to any tenant, guest, invitee, agent or employee of BCM, or to any property of BCM, or to any property of any other person on or about Premises, where such injury, claim or damage was not caused by an act or omission by City, or its agents or servants. BCM shall indemnify and hold harmless City for all claims, suits or actions taken to establish liability against City where City, its agents and employees have not been the cause of such injury or damage and shall reimburse City for the cost of any reasonable attorney's fees City may incur to defend any such liability for any injury, claim or damage.

11. NON-DISCRIMINATION IN RENTING

BCM agrees, that except for the age, income and residency requirements established for tenants contained in Exhibit "A" and in paragraph 4, it shall not otherwise discriminate in providing housing under the provisions of this Agreement based on an applicant's race, religion, color, sex, national origin or ancestry.

12. MAINTENANCE OF GROUNDS, PARKING LOTS AND SIDEWALKS

BCM shall be solely responsible for mowing all grassed areas on Premises and shall cause the sidewalks adjacent to Premises to be maintained in a good and safe condition, free of snow and ice and shall also keep the parking lots covered under this Agreement in a good and safe condition at all times. BCM shall also be solely responsible for maintaining all other exterior areas of the Premises.

BCM shall indemnify and hold harmless City, its employees, agents and servants from any and all claims or causes of action arising out of BCM's failure to comply with the foregoing.

13. CHAPTER 35 DETERMINATION

This Agreement may be terminated by either party upon 180 days prior written notice to the other party if a determination should be made by the appropriate state or county official that Premises are assessable under the provisions of Chapter 35, Paragraphs 205/19.6, 205/19.7 or any other statutory provision of the Illinois Compiled Statutes. Unless otherwise mutually agreed, BCM and City shall equally share payments for any lawful real estate assessments.

14. DEFAULT

If BCM should default in the performance of any of the terms, covenants or conditions of this Agreement, and such default shall continue for a period of sixty (60) days after written notice by City (except if BCM shall, within said period of time, commence to remedy such default); upon expiration of the time fixed in such notice, if BCM has neither cured such default nor is diligently proceeding to cure such default, this Agreement as well as the right, title and interest of BCM under it shall wholly cease and expire in the same manner and with the same force and effect as the date fixed by such latter notice.
15. CITY'S CONSENT

Whenever City's consent in writing to any act to be performed by BCM is required under this Agreement, City agrees that its consent will not unreasonably be withheld.

16. SUBLEASE OR ASSIGNMENT

This Agreement shall inure only to the benefit of BCM and City. This Agreement may not be assigned nor may any part of Premises be subleased without the prior written consent of City. To the extent of any conflict between this Agreement and any other Agreement between BCM and the City, the Parties agree that the conflict shall be resolved by the City's determination of which conflicting provision shall prevail, in the City's sole discretion.

17. SEVERABILITY

If any provision of this Agreement, or any paragraph, sentence, clause, phrase or word, or the application thereof, is held invalid, the remainder of the Agreement shall be construed as if such invalid part were never included herein and the Agreement shall remain valid and enforceable to the greatest extent permitted by law.

City of DeKalb
BY: 
ITS: 
ATTEST:
BY: Diane Wright
ITS: City Clerk

Barb City Manor
BY: Peggy K. Wening
ITS: 
ATTEST:
EXHIBIT "A"

Provision of Services at Premises

The needs and interests of all of the citizens of the DeKalb area will be served by the creation of a living environment primarily for Senior Citizens who are able to provide in part for themselves, but are not able to provide total care for themselves, and to that end Barb City Manor, Inc. shall establish an environment for the benefit of said people in the Premises a safe, clean, decent and sanitary dwelling unit without overcrowding. The Premises will also provide the necessary social environment as well as a balanced nutritional diet each day. This service shall be licensed as a boarding house by the City of DeKalb, but will allow assistance through the social and health care services available in the community.
EXHIBIT "B."

That part of Lot 2 of a dimension of 50 feet by 50 feet located in the Southwest corner of Lot 2; and including Lots 3 through 11, all in Vaughn's Addition and Lots 1 through 7 in Block 10 of Taylor's Addition, all within the City of DeKalb.
April 15, 2013

Barb City Manor
Ms. Ellen Tyne
680 Haish Boulevard
DeKalb, Illinois 60115

SUBJECT: AMENDED AGREEMENT – July 1, 2013

Dear Ellen:

Enclosed please find a fully-executed Amended Agreement between the City of DeKalb and Barb City Manor, Inc.

Please feel free to contact me with any questions or concerns you may have.

Thank you.

Very truly yours,

Rudy Espiritu
Assistant City Manager

815.748.2393
rudy.espiritu@cityofdekalb.com

Enclosure

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