



City of Boonville
City Council Work Session Agenda

July 17, 2023

6:15 PM

**City Council Chambers
525 E. Spring Street
Boonville MO 65233**

I. Work Session Topics

- A.** Discussion of Development Agreement between Kemper Apartments LLC and the City of Boonville

NOTICE: The City of Boonville will comply with the Americans with Disabilities Act (ADA). Individuals who require an accommodation due to disability to attend this meeting should contact our office at (660) 882-2332 or Relay Missouri, 1-800-735-2966 TTY at least 48 hours in advance.

Date: July 17, 2023

To: Mayor and Council

From: Kate Fjell, City Administrator

Re: Discussion of Development Agreement between Kemper Apartments LLC and the City of Boonville

Tonight, we will be sharing with the Council a draft version of a development agreement between the City of Boonville and Kemper Apartments, LLC. Chris Ales, from Kemper Apartments, LLC will be at the meeting to participate in the discussion. There are several key points for the Council to understand relative to this agreement. The Development Agreement clarifies and specifies the agreement that was initially passed by Resolution in 2022.

Since some of the current members of Council were not around when this project was initially brought forward, I want to provide some background to the project. In 2003, the City purchased the entire Kemper Campus at auction. The intention at that time was to purchase the campus to secure the home of the YMCA (they were already in Johnson Field House with Kemper, prior to its closing) and to acquire flat green space for recreational activities. Following the purchase of the campus, the City subdivided the residence on the campus and sold that to a private individual. The remaining buildings (A Barracks, K Barracks, Administration Building, Science Hall, Academic Hall, D Barracks), Council hoped to find an end user that would be interested in the entire campus to purchase or lease from the City. The Council has always intended to retain ownership of Johnson Field House for the YMCA's operations. Despite several close calls and interested parties, this plan was ultimately unsuccessful. In 2012, the City Council at that time shifted toward identifying end users for each building, rather than one entity taking the entire campus. This change brought State Fair Community College to Boonville, which has operated at Kemper since that time. State Fair Community College ultimately relocated to Science Hall in 2014. Around this same time, the City made the difficult decision to demolish the administration building. In 2018, the City worked with the YMCA and the Library to move forward on several projects that would facilitate the Library's relocation to the campus, necessary improvements to Johnson Field House and the renovation of Academic Hall to allow for expanded child care options in Boonville. These projects are supported by the 7/8th cent 5-year temporary sales tax. This left D Barracks and A barracks as the remaining buildings that did not have an end user identified. At that time, it was in our plan to demo D Barracks- given its size and high renovation costs, it seemed infeasible if the City was spearheading the project. A small group of citizens formed a committee to try and market D Barracks to potential end users in an effort to save it. Thanks to their hard work, networking and effort, Chris Ales approached the City in 2022 with an interest in renovating D Barracks and A Barracks into senior housing. The City Council passed a resolution generally supporting the project in 2022. Since this resolution was passed, the City and the developer have been working on their respective tasks and due diligence to determine if the project is feasible and appropriate.

I believe that this project has the potential to complete our Kemper campus redevelopment, a project 20 years in the making, and the City should move forward with a development agreement. For the City, the proposition has several benefits. First, it takes vacant buildings and will make them useful again, while creating more housing options for seniors in our area. Additionally, these buildings will be owned and maintained by Kemper Apartments, LLC, so maintenance will no longer be the City's responsibility. The new residents of the apartments will help to build the Kemper Campus community. There will be all ages living, recreating, reading and enjoying the campus, breathing new life into this part of town. Finally, the City will invest in building another parking lot, but the cost of the parking lot is comparable to the cost of demolishing D barracks.

The draft development agreement commits the city to removing the asbestos in the building and constructing the parking lot. The City further agrees to give Kemper Apartments up to 5 years to complete this project. This long time frame is given in consideration of the many "upfront" tasks that need to be completed prior to any redevelopment being considered. This includes the City completing the clean up of the building which we are working on; but we are working through a state grant program which will take additional time. Second, the State Historic Preservation Office has stated that in order to consider the historic tax credit application, the developer needs to update or put an addendum to the existing Kemper Historic District A; this will require several months to complete.

Following comments from this discussion, we will finalize the development agreement and place it on the August 7th City Council meeting for a first reading.

RESOLUTION NO. R2022-19

A RESOLUTION OF THE CITY OF BOONVILLE, MISSOURI PLEDGING SUPPORT FOR A PROJECT AT F.T. KEMPER PARK FOR THE RENOVATION AND REHABILITATION OF “A” BARRACKS AND “D” BARRACKS TO BE USED FOR SENIOR HOUSING WITH THE KEMPER APARTMENTS, LLC; AND PROVIDING AN EFFECTIVE DATE THEREFORE.

WHEREAS, the City of Boonville purchased Kemper Military School in 2001 at public auction; and

WHEREAS, since purchasing the campus, the City of Boonville has secured tenants for the Johnston Field House and Library Learning Center; Boonslick Heartland YMCA and State Fair Community College respectively; and

WHEREAS, in 2018 the citizens of Boonville approved a temporary half-cent sales tax for improvements at F.T. Kemper Park, including improvements to Johnston Field House for the YMCA; parking lot improvements to facilitate the Boonslick Regional Library’s move to Library Learning Center; and the renovation of Academic Hall to be used for childcare programming by the YMCA; and

WHEREAS, after the planned improvements, “A” Barracks and “D” Barracks would be the only unoccupied buildings on the Kemper Campus; and

WHEREAS, the city sees demolition of “A” Barracks and “D” Barracks as a last resort option and would prefer them to be restored and be an asset to the community; and

WHEREAS, The Kemper Apartments, LLC has expressed a desire to partner with the City to restore “A” Barracks and “D” barracks for senior housing; and

WHEREAS, the City Council has discussed the development with The Kemper Apartments, LLC and the Council feels that this would be an investment within the community and significantly contribute to the local quality of life and help to provide economic growth.

NOW THEREFORE, be it resolved by the City Council of the City of Boonville, Missouri as follows:

SECTION 1: The City will proceed with the following to assist in moving this project forward: abatement of asbestos and other environmental contaminants in “A” and “D” Barracks; coordination with The Kemper Apartments, LLC to address parking and ensure gas, electric, water and sewer utilities are available at the buildings with the City hiring MECO Engineering so as to avoid any conflicts of interest.

SECTION 2: The Kemper Apartments, LLC will proceed with the following to assist in moving this project forward: conducting a market study to determine the need for senior housing; preliminary discussions with SHPO, NPS and MHDC regarding tax credit financing; and development of preliminary floor plans.

SECTION 3: In the event that the partners believe this project is still worthwhile once the preliminary planning work has been completed, then the City of Boonville and The Kemper Apartments, LLC will enter into a formal development agreement which includes the transfer of “A” and “D” Barracks to The Kemper Apartments, LLC for a nominal sum pursuant to a conditional agreement, conditioned on final approval by SHPO, NPS and

MHDC of tax credit financing with the stipulation that the property will be used only for the development of approximately 50-60 unit senior housing.

SECTION 5: This resolution shall take effect and be in full force from and after its passage and approval.

Passed this 7TH Day of November 2022, by the City Council of Boonville, Missouri

Ned Beach, Mayor

ATTEST:

Amber Davis, City Clerk

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this “**Agreement**”) is made and entered into this _____ day of _____, 2023 (the “**Effective Date**”), between **Kemper Apartments, LLC**, a Missouri limited liability company (the “**Developer**”) and the **City of Boonville, Missouri**, a Missouri municipal corporation (the “**City**”).

WHEREAS, since 2001, the City has owned the land on which the former Kemper Military School is located, including (until recently) the buildings commonly known as “A Barracks” and “D Barracks” located on the property legally described on **Exhibit A** hereto (the “**Project Site**”); and

WHEREAS, on November 7, 2022, the City Council passed Resolution No. R2022-19 (the “**Intent Resolution**”), which expressed the City’s support toward the renovation and rehabilitation of the “A Barracks” and “D Barracks” (the “**Buildings**”) to be used for senior housing (as more fully described herein, the “**Housing Project**”), which the City Council believes will significantly contribute to the local quality of life and help to provide economic growth within the City; and

WHEREAS, the Intent Resolution identified certain preliminary actions to be taken by the City and by the Developer with respect to the Housing Project, including engaging MECO Engineering, assist in environmental remediation, conducting a market study and exploring tax credit financing; and

WHEREAS, in connection therewith, the City has transferred title to the Project Site to the Boonville Community Development Corporation (the “**BCDC**”), which intends to apply for grant funds to pay part of the costs of environmental remediation of the Buildings; and

WHEREAS, based on initial investigations and consultations, the parties have determined that the Housing Project is financially feasible; and

WHEREAS, the City Council finds that it is in the best interest of the public to enter into this Agreement to identify the respective agreements and obligations of each party with respect to the Housing Project;

NOW, THEREFORE, in consideration of the recitals set forth above, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

Section 1. Definitions. As used in this Agreement and unless otherwise defined herein, the following words and terms shall have the following meanings:

“*City Code*” means the Code of General Ordinances, City of Boonville, Missouri, as the same may be amended from time to time.

“*Governmental Approvals*” means all site plan approvals, conditional use permits, variances, building permits, architectural review or other subdivision, zoning or similar approvals, or approvals required by the City Code or this Agreement for the implementation of the Housing Project.

“*Housing Project*” means (a) the design and construction of all infrastructure improvements required for the Housing Project; (b) the construction of approximately 55 multi-family residential units and approximately 14 parking spaces within the “A Barracks” and the “D Barracks”; and (c) all other work reasonably necessary to complete the Housing Project and effectuate the intent of this Agreement.

“State” means the State of Missouri.

Section 2. Environmental Remediation. The City will use commercially reasonable efforts to, in coordination with the BCDC, finance and complete any necessary environmental remediation, including asbestos abatement, within the Buildings and on the Project Site, in accordance with the requirements of the Missouri Department of Natural Resources.

Section 3. Additional Parking. To provide additional parking for the Housing Project, the City agrees to construct at least 70 spaces within Kemper Park at the location shown on the map attached as **Exhibit B** hereto; these spaces will be in addition to the shared parking lots currently available on the campus and, if reasonably required by lenders or state agencies, the City will restrict use of those 70 spaces for the Housing Project. The City commits to complete the parking lot (including striping thereof) before the Developer completes construction of the Housing Project. The parking lot will be constructed of asphalt or concrete to the same standard as if the Developer were required to construct the parking lot under the City Code.

Section 4. Availability of Public Utility Services. The City and the Developer acknowledge that the availability of public utility services is critical to the Housing Project. The Developer acknowledges that gas and electric service are available at the Project Site. The City will pay any reasonable costs to provide water and sewer lines to the Project Site, if necessary.

Section 5. Maintenance of Certain Improvements. The City agrees to be responsible for 100% of the costs to maintain, repair or replace the sidewalks, parking lots and roads at the Kemper Park, including, without limitation, snow removal, resurfacing road surfaces, replacing and repairing curbs and gutters, and keeping all of the same in good condition, regardless of who owns title to the underlying real estate on which such improvements are located. If the Developer completes the Housing Project, the obligations of the City under this Section shall survive termination of this Agreement.

Section 6. Construction of the Housing Project.

(a) The Developer shall, promptly after the execution of this Agreement, submit plans and specifications to the City for construction of the Housing Project. The City agrees to cooperate with the Developer and to process and timely consider all complete applications for the Governmental Approvals as received, all in accordance with the applicable City ordinances and laws of the State. The City agrees to waive the first \$20,000.00 in building application and permit fees that would otherwise have been chargeable to the improvements that are part of the Housing Project under the City Code.

(b) The Developer will be solely responsible for obtaining financing for the Housing Project. The City will reasonably cooperate with the Developer to prepare and submit financing applications to appropriate organizations, including but not limited to the State Historic Preservation Office (SHPO), the National Park Service and the Missouri Housing Development Commission (MHDC).

(c) The City agrees to execute an option agreement, to be prepared by the Developer but subject to the City’s reasonable approval, providing the Developer an exclusive right to purchase the Project Site and the improvements thereon (the “**Option**”). The Option shall have an initial term of December 31, 2026, with two one-year extensions so long as the Developer provides evidence to the City’s reasonable satisfaction that the Developer is actively pursuing and has a reasonable likelihood of obtaining funding from MHDC and/or SHPO.

(d) The Developer shall have the right to have access to the Project Site at any time while the Option is effective to perform such inspections, surveys, testing and other activities preliminary to construction as the Developer deems reasonably necessary.

(e) Simultaneously with closing of financing for the Housing Project and admission of the tax credit investors into the development entity (i.e., the Developer or such other entity that undertakes the Housing Project) (the “**Closing Date**”), the City will convey, or cause the conveyance of, the Project Site and the improvements thereon to the Developer or such other entity as the Developer may designate. Such conveyance shall be by special warranty deed for nominal consideration. The City will also provide, at the City’s expense, appropriate easements for rights-of-way, utilities and drainage.

(f) The City will, at its sole cost and expense, furnish the Developer an ALTA 2006 Owner’s Title Insurance Policy, from a mutually acceptable title company authorized to issue title insurance in Missouri (the “**Title Company**”), insuring the Developer’s title to the Project Site as of the Closing Date. The City will, promptly following the execution of the Option, deliver to the Developer a commitment for the policy (the “**Commitment**”), together with legible copies of all documents referenced in the schedules to the Commitment. If the Commitment is not satisfactory to the Developer in its sole and absolute discretion, the Developer will advise the City of the Developer’s objections within 10 days after receipt of the Commitment and copies of the documents referenced in the schedules to the Commitment. The City will remedy any matters to which the Developer objects and will, at least two days before Closing, have delivered to the Developer a revised Commitment reflecting that such remedy has been effected. If the City is unable to deliver the policy of title insurance as required by this Section, the Developer will have the option either (i) to elect to accept such policy of title insurance as the City is able to deliver, or (ii) to elect to terminate this Agreement, and neither party will have any further obligation under this Agreement.

(g) The Developer shall construct, or cause the construction of, the Housing Project in accordance with this Agreement and all applicable federal, state and local laws, rules, regulations, ordinances and approvals. The Developer shall endeavor in good faith and with reasonable diligence to proceed with and construct the Housing Project by December 31, 2026. Construction of the Housing Project shall be deemed to have occurred when the City issues an occupancy permit pursuant to the City Code for all units within the Buildings.

Section 7. Release and Indemnification.

(a) Notwithstanding anything herein to the contrary, the City and its governing body, officials, agents, employees and independent contractors shall not be liable to the Developer for damages of any kind or nature whatsoever if any ordinance adopted by the City or transaction completed by the City in connection with this Agreement is declared invalid or unconstitutional in whole or in part by the final (as to which all rights of appeal have expired or have been exhausted) judgment of any court of competent jurisdiction, and by reason thereof either the City is prevented from performing any of the covenants and agreements herein or the Developer is prevented from enjoying the rights and privileges hereof.

(b) The Developer releases from and covenants and agrees that the City and its governing body, officials, agents, employees and independent contractors shall not be liable for, and agrees to indemnify, defend and hold harmless the City and its governing body, officials, agents, employees and independent contractors against, any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the construction of the Housing Project, except as such may be caused by the willful misconduct or negligence of the City or its governing body, officials, agents, employees or independent contractors.

(c) The Developer agrees to indemnify, defend and hold harmless the City and its governing body, officials, agents, employees and independent contractors from and against any and all suits, claims and attorneys' fees resulting from, arising out of, or in any way connected with (i) the construction of the Housing Project or (ii) the negligence or willful misconduct of the Developer or its officers, managers, agents, employees or independent contractors in connection with the management, development, redevelopment and construction of the Housing Project, except as such may be caused by the willful misconduct or negligence of the City or its governing body, officials, agents, employees or independent contractors.

(d) The Developer agrees to indemnify, defend and hold harmless the City and its governing body, officials, agents, employees and independent contractors from and against any and all claims, demands, costs, liabilities, damages or expenses, including reasonable attorneys' and consultants' fees, investigation and laboratory fees, court costs and litigation expenses, relating to: (i) from and after the Developer's acquisition of the Project Site, any violation, actual or alleged, or any other liability, under or in connection with any environmental laws relating to any products or materials located upon, delivered to or in transit to or from the Project Site in connection with the construction of the Housing Project, regardless of whether such violation or alleged violation or other liability occurs or arises as the result of any act, omission, negligence or misconduct of the Developer or any third party or otherwise; or (ii) any breach, falsity or failure of any of the representations, warranties, covenants and agreements of the like.

(e) The City and its governing body, officials, agents, employees and independent contractors shall not be liable for any damage or injury to the persons or property of the Developer or its officers, managers, agents, employees or independent contractors or any other person who may be about the Project Site or the Housing Project due to any act of negligence of any person, except as such may be caused by the willful misconduct or negligence of the City or its governing body, officials, agents, employees or independent contractors.

(f) No member of the governing body, officials, agents, employees or independent contractors of the City shall be personally liable to the Developer in the event of a default or breach by any party under this Agreement.

(g) All covenants, stipulations, promises, agreements and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City and not of its governing body, officials, agents, employees or independent contractors in their individual capacities.

(h) The provisions of this Section 7 shall survive the termination of this Agreement.

Section 8. Representations, Warranties and Covenants.

(a) *By the City.* The City represents, warrants, covenants and agrees as the basis for the undertakings on its part herein contained that:

(i) The City is a third-class city organized and existing under the laws of the State and by proper action has been duly authorized to execute, deliver and perform this Agreement.

(ii) To the best of the City's knowledge, there are no lawsuits either pending or threatened that would affect the ability of the City to perform this Agreement.

(iii) Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement, conflicts with or results in a breach of any of the terms, conditions or provisions of any restriction, agreement or instrument to which the City is now a party or by which the City is bound.

(iv) Prior to conveyance thereof to the Developer, the City will have good, merchantable and insurable title to the Project Site, free and clear of all mortgages, liens, security interests, charges, claims, restrictions and other encumbrances of every kind except as otherwise specifically provided for in this Agreement or as will be discharged at or before conveyance of the Project Site to the Developer (or its designee), and there will be no restrictions on the transfer of the Project Site at the time of conveyance. In addition, there will be no outstanding actions or rights of first refusal to purchase the Project Site, or any portion thereof, or interest therein. There will be no leases or other contracts which affect the Project Site. At the time of conveyance of the Project Site, no person or entity, other than the Developer (or its designee), will have any right of possession to any portion of the Project Site.

(b) *By the Developer.* The Developer represents, warrants, covenants and agrees as the basis for the undertakings on its part herein contained that:

(i) The Developer is a limited liability company duly organized and existing under the laws of the State and has power to enter into, and by proper action has been duly authorized to execute, deliver and perform, this Agreement.

(ii) Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement, conflicts with or results in a breach of any of the terms, conditions or provisions of any restriction, agreement or instrument to which the Developer is now a party or by which the Developer is bound.

(iii) There are no lawsuits either pending or threatened that would affect the ability of the Developer to proceed with the completion or operation of the Housing Project.

(iv) After acquisition of the Project Site and continuing until the City issues an occupancy permit for the Housing Project, the Developer agrees to maintain commercial general liability insurance for the Housing Project in a policy amount of not less than the then-current absolute statutory waivers of sovereign immunity in Sections 537.600 and 537.610 of the Revised Statutes of Missouri, as may be revised annually by the Missouri Department of Insurance. The Developer further agrees to name the City as an additional insured with respect to such insurance policy and to annually provide evidence of such insurance policy to the City.

(v) After acquisition of the Project Site and continuing until the City issues an occupancy permit for the Housing Project, the Developer agrees to annually provide evidence of contractual liability insurance (in form and substance reasonably acceptable to the City's legal counsel) that insures the Developer's obligations to indemnify the City, as provided in this Agreement.

Section 9. Termination. This Agreement shall terminate upon the earliest of the following:

- (a) before closing of financing for the Housing Project, the Developer determines that funding is unlikely and therefore that the Housing Project is not feasible;
- (b) written notice is provided by the aggrieved party to the defaulting party to terminate this Agreement pursuant to **Section 10(b)**; or
- (c) the completion of the Housing Project in accordance with this Agreement.

Section 10. Default and Remedies.

(a) *Events of Default.* The following shall be events of default (each, an “**Event of Default**”) with respect to this Agreement:

- (i) any material representation made by a party in this Agreement, or in any certificate, notice, demand or request made by a party, in writing and delivered to the other party pursuant to or in connection with this Agreement, proves to be untrue or incorrect in any material respect as of the date made; or
- (ii) breach by a party of any material covenant, warranty or obligation set forth in this Agreement.

(b) *Remedies on Default.* In the case of an Event of Default by a party hereto or any successor to such party, such party or successor shall, upon written notice from the other party, take immediate action to cure or remedy such Event of Default within 60 days after receipt of such notice. If the Event of Default is not cured or remedied within such 60 day period (or, in the case of an Event of Default that cannot be cured within a 60 day period, the defaulting party does not make reasonable progress toward curing the default and/or does not notify the aggrieved party of when such default will be cured), then the aggrieved party may terminate this Agreement or institute such proceedings as may be necessary or desirable in its opinion to cure or remedy such default, including but not limited to, proceeding to compel specific performance by the party in default of its obligations.

(c) *Other Rights and Remedies of Parties; Delay in Performance Waiver.*

(i) Any delay by a party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights under this Agreement shall not operate to act as a waiver of such rights or to deprive it of or limit such rights in any way (it being the intent of this provision that the parties should not be constrained so as to avoid the risk of being deprived of or limited in the exercise of the remedies provided in this Agreement because of concepts of waiver, laches or otherwise); nor shall any waiver in fact made by a party with respect to any specific Event of Default by a party under this Agreement be considered or treated as a waiver of the rights of a party under this Section or with respect to the particular Event of Default, except to the extent specifically waived in writing by the other party.

(ii) The rights and remedies of the parties to this Agreement (or their successors in interest) whether provided by law or by this Agreement, shall be cumulative, and the exercise by any party of any one or more of such remedies shall not preclude the exercise by it, at the time or different times, of any other such remedies for the same Event of Default by the other party. No waiver made by any party with respect to the performance, nor the manner or time thereof, or any obligation of the other party or any condition to its own obligation under this Agreement shall be

considered a waiver of any rights of the party making the waiver with respect to the particular obligation of the other party or condition to its own obligation beyond those expressly waived in writing and to the extent thereof, or a waiver in any respect with regard to any other rights of the party making the waiver or any other obligations of the other party.

(iii) Neither the City nor the Developer, nor any successor in interest, as the case may be, shall be considered in breach of, or in default of, any of its obligations under this Agreement or otherwise with respect to the Housing Project, or progress in respect thereto, in the event of delay in the performance of any such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including but not restricted to, acts of God, acts of a public enemy, acts of federal, state or local government (other than the City), litigation instituted by third parties, acts of the other party, fires, floods, epidemics, pandemics, quarantine restrictions, strikes, embargoes, acts of nature, unusually severe weather or delays of subcontractors due to such causes; it being the purpose and intent of this provision that in the event of the occurrence of any such delay, the time or times for performance of such obligations by the City or the Developer shall be extended for the period of the enforced delay; provided, that the party seeking the benefit of the provisions of this Section shall, within 30 days after the beginning of any such enforced delay, have first notified the other party thereof in writing, of the cause or causes thereof, and requested an extension of the period of delay.

Section 11. Amendment or Modification. The parties to this Agreement may amend or modify this Agreement only by written instrument duly executed by the parties hereto.

Section 12. Third Party Rights. No person or entity who or which is not a party to this Agreement will have any right of action under this Agreement.

Section 13. Scope. This Agreement constitutes the entire Agreement between the parties, and no statements, promises or inducements that are not contained in this Agreement will be binding on the parties.

Section 14. Severability. If any part, term or provision of this Agreement is held by a court of law to be illegal or otherwise unenforceable, such illegality or unenforceability will not affect the validity of any other part, term or provision hereof, and the rights of the parties will be construed as if the illegal or unenforceable part, term or provision was never part of this Agreement.

Section 15. Transferability. This Agreement may not be assigned by the Developer without the express written approval of the City unless such assignment is to an entity succeeding to all or substantially all of the business of the Developer or to an entity controlled by the Developer or under common control with the Developer (in which case the Developer shall provide notice to the City of such assignment within 10 days from the date of such assignment).

Section 16. Notice. Any notice required or permitted by this Agreement will be deemed effective when personally delivered in writing or three days after notice is deposited with the U.S. Postal Service, postage prepaid, certified, return receipt requested, and addressed as follows:

To the City: City of Boonville
 401 Main Street
 Boonville, Missouri 65233
 Attn: City Administrator

To the Developer: Kemper Apartments, LLC
7152 Eldorado Pointe
West Des Moines, Iowa 50266
Attn: Jim Bergman

Section 17. Immunity. Nothing contained in this Agreement constitutes a waiver of the City's sovereign immunity under any applicable State law.

Section 18. Jurisdiction and Venue. Personal jurisdiction and venue for any civil action commenced by either party to this Agreement shall be deemed to be proper only if such action is commenced in the Circuit Court of Cooper County, Missouri. The Developer expressly waives its rights to bring such action in or to remove such action to any other court whether state or federal.

Section 19. Missouri Law. This Agreement shall be construed in accordance with and governed by the laws of the State.

Section 20. Federal Work Authorization Program. Simultaneously with the execution of this Agreement, the Developer will provide the City with an affidavit and documentation meeting the requirements of Section 285.530 of the Revised Statutes of Missouri.

Contemporaneous with the Developer's execution of this Agreement, the Developer shall by sworn affidavit in substantially the form of **Exhibit C**, attached hereto and incorporated herein by reference, and provision of documentation, affirm the Developer's enrollment and participation in a federal work authorization program with respect to the employees working in connection with the Project, all as required by Section 285.530 of the Revised Statutes of Missouri. The Developer shall also sign and deliver to the City an affidavit affirming that the Developer does not and will not knowingly employ in connection with the Private Development any person who is an unauthorized alien and, if and as required by Section 285.530 of the Revised Statutes of Missouri, the Developer shall obtain from each contractor employed by or on behalf of the Developer in connection with the Private Development affidavits affirming that such contractors do not and will not knowingly employ in connection with the Private Development any person who is an unauthorized alien.

Section 21. Counterparts. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument.

Section 22. Anti-Discrimination Against Israel Act. Pursuant to Section 34.600 of the Revised Statutes of Missouri, the Developer certifies it is not currently engaged in and will not, for the duration of this Agreement, engage in a boycott of goods or services from (a) the State of Israel, (b) companies doing business in or with the State of Israel or authorized by, licensed by, or organized under the laws of the State of Israel, or (c) persons or entities doing business in the State of Israel.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and the City has caused its seal to be affixed hereto and attested as of the date first written above.

CITY OF BOONVILLE, MISSOURI

By: _____
Name: Kate Fjell
Title: City Administrator

(SEAL)

ATTEST:

By: _____
Name: Amber Davis
Title: City Clerk

KEMPER APARTMENTS, LLC

By: _____
Name: _____
Title: _____

EXHIBIT A

PROJECT SITE

DRAFT

EXHIBIT B
PARKING DIAGRAM

DRAFT

EXHIBIT B

PARKING DIAGRAM

AFFIDAVIT

COMPLIANCE WITH THE WORK AUTHORIZATION LAW

STATE OF MISSOURI)
) SS
COUNTY OF ST. LOUIS)

I, the undersigned, am over the age of 18 years and have personal knowledge of the matters stated herein.

I am a duly authorized officer of GS Brentwood Land Development, LLC, a Missouri limited liability company (the “*Company*”), and am authorized by the Company to attest to the matters set forth herein.

The Company has no employees and is not expected to have any employees in the future. All employment matters related to projects undertaken by the Company in the City of Brentwood, Missouri, will be administered by its affiliate, Green Street Real Estate Ventures, LLC (“*Green Street*”). I hereby affirm Green Street’s enrollment and participation in a “federal work authorization program” as defined in Section 285.525 of the Revised Statutes of Missouri, as amended.

Green Street does not knowingly employ any person who is an “unauthorized alien” as defined in Section 285.525 of the Revised Statutes of Missouri, as amended.

Further Affiant Sayeth Not.

GS BRENTWOOD LAND DEVELOPMENT, LLC

By: _____
_____, Manager

Subscribed and sworn to before me this _____ day of _____, 20__.

Notary Public

My commission expires on: _____