TO: **HONORABLE MAYOR AND CITY COUNCIL OF CANNON FALLS**

FROM: **Laura Qualey, Economic Development**

SUBJECT: **Resolution 2582, Approving the Development Agreement with Keller-Baartman Properties XIV, LLC**

DATE: **October 19, 2021**

BACKGROUND

The City Council has approved the creation of District TIF 2-10 on August 3, 2021 because: (a) redevelopment of the vacated property was determined to be in the best interest of the City and its residents; (b) the private sector would not pursue the project 'but-for' the availability of tax increment financing thereby creating economic feasibility to undertake the project; and (c) successful completion of the project would create new market rate rental housing opportunities in Cannon Falls. The cooperative effort between the Economic Development Authority, the City Council, Economic Initiatives of Cannon Falls, Inc., and the Developers have allowed us to achieve these goals!

Attorney Mary Ippel (Taft Law) has prepared the accompanying Development Agreement which incorporates the details of the TIF Plan and the terms of the redevelopment project for the former Cannonball site.

REQUESTED ACTION

The Economic Development Authority respectfully requests a motion to approve the accompanying Resolution 2582 approving the Development Agreement with Keller-Baartman Properties XIV, LLC.

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF CANNON FALLS, MINNESOTA

AND

KELLER-BAARTMAN PROPERTIES XIV, LLC

This document drafted by: TAFT STETTINIUS & HOLLISTER LLP
                                             2200 IDS Center, 80 South 8th Street
                                             Minneapolis, Minnesota 55402

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DEVELOPMENT AGREEMENT

THIS AGREEMENT, made as of the _____day of _____, 2021, by and between the City of Cannon Falls, Minnesota (the "City"), a municipal corporation organized and existing under the laws of the State of Minnesota and Keller-Baartman Properties XIV, LLC, a Minnesota limited liability company (the "Developer").

WITNESSETH:

WHEREAS, pursuant to Minnesota Statutes, Section 469.124 through 469.133, the City has heretofore established Municipal Development District No. 2 (the "Development District") and has adopted a development program therefor (the "Development Program"); and

WHEREAS, pursuant to the provisions of Minnesota Statutes, Section 469.174 through 469.1794, as amended (hereinafter, the "Tax Increment Act"), the City has created within the Development District, Tax Increment Financing District No. 2-10 (the "Tax Increment District"), and has adopted a tax increment financing plan therefor (the "Tax Increment Plan") which provides for the use of tax increment financing in connection with certain development within the Development District; and

WHEREAS, in order to achieve the objectives of the Development Program and particularly to make the land in the Development District available for development by private enterprise in conformance with the Development Program, the City has determined to assist the Developer with the financing of certain costs of a Project (as hereinafter defined) to be constructed within the Tax Increment District as more particularly set forth in this Agreement; and

WHEREAS, the City believes that the development and construction of the Project, and fulfillment of this Agreement are vital and are in the best interests of the City, the health, safety, morals and welfare of residents of the City, and in accordance with the public purpose and provisions of the applicable state and local laws and requirements under which the Project has been undertaken and is being assisted; and

WHEREAS, the requirements of the Business Subsidy Law, Minnesota Statutes, Section 116J.993 through 116J.995, do not apply to this Agreement pursuant to an exemption for housing.

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

ARTICLE I.

DEFINITIONS

Section 1.1   Definitions. All capitalized terms used and not otherwise defined herein shall have the following meanings unless a different meaning clearly appears from the context:

Agreement means this Development Agreement, as the same may be from time to time modified, amended or supplemented;

Business Day means any day except a Saturday, Sunday or a legal holiday or a day on which banking institutions in the City are authorized by law or executive order to close;

City means the City of Cannon Falls, Minnesota;

Compliance Certificate means the Compliance Certificate in substantially the form attached hereto as Exhibit D;

County means Goodhue County, Minnesota;

Developer means the Keller-Baartman Properties XIV, LLC and its successors and assigns;

Development District means Municipal Development District No. 2 heretofore established, including the real property described in the Development Program;

Development Program means the development program approved in connection with the Development District;

Development Property means the real property described in Exhibit A attached to this Agreement;

Event of Default means any of the events described in Section 4.1 hereof;

Legal and Administrative Expenses means the fees and expenses incurred by the City in connection review and analysis of the development proposed under this Agreement with the adoption and administration of the Tax Increment Financing Plan and establishment of the Tax Increment District, the preparation of this Agreement and the issuance of the TIF Note including, but not limited to, attorney and municipal advisor fees and expenses;

Note Payment Date means August 1, 2024, and each February 1 and August 1 of each year thereafter to and including February 1, 2050; provided, that if any such Note Payment Date should not be a Business Day, the Note Payment Date shall be the next succeeding Business Day;

Prime Rate means the rate of interest from time to time publicly announced by U.S. Bank National Association in St. Paul, Minnesota, as its "reference rate" or any successor rate, which rate shall change as and when that prime rate or successor rate changes;

Project means the acquisition, construction and equipping of 79 multifamily housing rental units on the Development Property in the City;

Site Improvements means the site improvements to be undertaken on the Development Property as identified on Exhibit C attached hereto;

State means the State of Minnesota;

Tax Increment Act means Minnesota Statutes, Sections 469.174 through 469.1794, as amended;

Tax Increment District means Tax Increment Financing District No. 2-10, located within the Development District, a description of which is set forth in the Tax Increment Financing Plan, which was qualified as a housing district under the Tax Increment Act;

Tax Increment Financing Plan means the tax increment financing plan approved for the Tax Increment District by the City Council on August 3, 2021, and any amendments thereto;

Tax Increments means 90% of the tax increments derived from the Development Property which have been received and retained by the City in accordance with the provisions of Minnesota Statutes, Section 469.177;

Termination Date means the earlier of (i) February 1, 2050, (ii) the date the TIF Note, including applicable interest, is paid in full, (iii) the date on which the Tax Increment District expires or is otherwise terminated, or (iv) the date this Agreement is terminated or rescinded in accordance with its terms;

TIF Note means the Tax Increment Revenue Note (Keller-Baartman Properties XIV, LLC Project) to be executed by the City and delivered to the Developer pursuant to Article III hereof, the form of which is attached hereto as Exhibit B; and

Unavoidable Delays means delays, outside the control of the party claiming its occurrence, which are the direct result of strikes, other labor troubles, unusually severe or prolonged bad weather, acts of God, fire or other casualty to the Project, material shortages, pandemic affecting the State as determined by the Governor, acts of war or terrorism, discovery of unknown hazardous materials or other concealed site conditions or delays of contractors due to such discovery, litigation commenced by third parties which, by injunction or other similar judicial action or by the exercise of reasonable discretion, directly results in delays, or acts of any federal, state or local governmental unit (other than the City) which directly result in delays.

ARTICLE II.

REPRESENTATIONS AND WARRANTIES

Section 2.1   Representations and Warranties of the City. The City makes the following representations and warranties:

(1)   The City is a municipal corporation and has the power to enter into this Agreement and carry out its obligations hereunder and the execution of this Agreement has been duly and properly authorized by the City. This Agreement contains the valid and binding obligations of the City and is enforceable in accordance with its terms.

(2)   Based on the representation of the Developer set forth in Section 3.4 below, the Tax Increment District is a "housing district" within the meaning of Minnesota Statutes, Section 469.174, Subdivision 11, and was created, adopted and approved in accordance with the terms of the Tax Increment Act.

(3)   The development contemplated by this Agreement is in conformance with the development objectives set forth in the Development Program.

(4)   To finance certain costs within the Tax Increment District, the City proposes, subject to the further provisions of this Agreement, to apply Tax Increments to reimburse the Developer for a portion of the costs of the acquisition of the Development Property, construction costs of the Project, and the construction of Site Improvements, incurred in connection with the Project as further provided in this Agreement.

(5)   The City makes no representation or warranty, either expressed or implied, as to the Development Property or its condition or the soil conditions thereon, or that the Development Property shall be suitable for the Developer's purposes or needs.

(6)   The City will, in a timely manner, subject to all notification requirements, review and act upon all submittals and applications of the Developer.

Section 2.2   Representations and Warranties of the Developer. The Developer makes the following representations and warranties:

(1)   The Developer is a Minnesota limited liability company and has the power and authority to enter into this Agreement and to perform its obligations hereunder, and doing so will not violate its articles of organization, member control agreement or operating agreement, or the laws of the State and by proper action has authorized the execution and delivery of this Agreement.

(2)   The Developer shall cause the Project to be constructed in accordance with the terms of this Agreement, the Development Program, and all applicable local, state and federal laws and regulations (including, but not limited to, environmental, zoning, energy conservation, building code and public health laws and regulations).

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(3)   The construction of the Project would not be undertaken by the Developer, and in the opinion of the Developer would not be economically feasible within the reasonably foreseeable future, without the assistance and benefit to the Developer provided for in this Agreement.

(4)   Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by or conflicts with or results in a breach of, the terms, conditions or provision of any contractual restriction, evidence of indebtedness, agreement or instrument of whatever nature to which the Developer is now a party or by which it is bound, or constitutes a default under any of the foregoing.

(5)   The Developer will cooperate fully with the City with respect to any litigation commenced by third parties with respect to the Project.

(6)   The Developer will cooperate with the City in resolution of any traffic, parking, trash removal or public safety or nuisance problems which may arise in connection with the construction and operation of the Project.

(7)   Construction shall begin by July 1, 2022 and the construction of the Project will be substantially completed on or before December 31, 2023, subject to Unavoidable Delays.

(8)   The Developer will use its best efforts to obtain, or cause to be obtained, in a timely manner, all required permits, licenses and approvals, and will meet, in a timely manner, all requirements of all applicable local, state, and federal laws and regulations which must be obtained or met before the Project may be lawfully constructed.

(9)   The Developer acknowledges that Tax Increment projections contained in the Tax Increment Financing Plan are estimates only and the Developer acknowledges that it shall place no reliance on the amount of projected Tax Increments and the sufficiency of such Tax Increments to reimburse the Developer for a portion of the costs of the acquisition of the Development Property, the construction costs of the Project, and the construction of the Site Improvements as provided in Article III.

ARTICLE III.

UNDERTAKINGS BY DEVELOPER AND CITY

Section 3.1   Development Property and Site Improvements. The parties agree that the acquisition of the Development Property and the Site Improvements to be constructed by the Developer are essential to the successful completion of the Project. The costs of acquiring the Development Property, construction costs of the Project, and the construction of Site Improvements shall be paid by the Developer. The City shall reimburse the Developer for the lesser of (a) $3,600,000, or (b) the actual costs of acquisition of the Development Property, construction costs of the Project, and construction of Site Improvements actually incurred and paid by the Developer (the "Reimbursement Amount"), as further provided in Section 3.3 hereof.

Section 3.2   Limitations on Undertaking of the City. Notwithstanding the provisions of Section 3.1, the City shall have no obligation to the Developer under this Agreement to reimburse the Developer for the costs identified in Section 3.1, if the City, at the time or times such payment is to be made, is entitled under Section 4.2 to exercise any of the remedies set forth therein as a result of an Event of Default which has not been cured following all applicable cure periods.

Section 3.3   Reimbursement: TIF Note. The City shall reimburse the payments made by the Developer under Section 3.1 for the costs of the acquisition of the Development Property, construction costs of the Project, and the construction of the Site Improvements through the issuance of the City's TIF Note in substantially the form attached to this Agreement as Exhibit B, subject to the following conditions:

(1)   The TIF Note shall be dated, issued and delivered when the Developer shall have (i) demonstrated in writing to the reasonable satisfaction of the City that the construction of the Project has been completed and that the Developer has incurred and paid all costs of the acquisition of the Development Property, as described in and limited by Section 3.1, and (2) and shall have submitted paid invoices for the costs of construction of the Site Improvements and Project (and reimbursed under Section 3.8 below) and a settlement statement or other evidence of payment of the costs of the Development Property in an amount not less than the Reimbursement Amount.

(2)   The unpaid principal of the TIF Note shall bear simple non-compounding interest from the date of issuance of the TIF Note, at 3.75% per annum. Interest shall be computed on the basis of a 360 day year consisting of twelve (12) 30-day months.

(3)   The principal amount of the TIF Note and the interest thereon shall be payable solely from the Tax Increments.

(4)   On each Note Payment Date and subject to the provisions of the TIF Note, the City shall pay, against the principal and interest outstanding on the TIF Note, any Tax Increments received by the City during the preceding six (6) months. All such payments shall be applied first to accrued interest and then to reduce the principal of the TIF Note.

(5)   If, on any TIF Note Payment Date, the Tax Increments for the payment of the accrued and unpaid interest on the TIF Note are insufficient for such purposes, the difference

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shall be carried forward, without interest accruing thereon, and shall be paid if and to the extent that on a future TIF Note Payment Date there are Tax Increments in excess of the amounts needed to pay the accrued interest then due on the TIF Note.

(6)   The TIF Note shall be a special and limited obligation of the City and not a general obligation of the City, and only Tax Increments shall be used to pay the principal and interest on the TIF Note.

(7)   The City's obligation to make payments on the TIF Note on any Note Payment Date or any date thereafter shall be conditioned upon the requirements that: (A) there shall not at that time be an Event of Default that has occurred and is continuing under this Agreement beyond all applicable cure periods and (B) this Agreement shall not have been rescinded pursuant to Section 4.2(b) hereof.

(8)   The TIF Note shall be governed by and payable pursuant to the additional terms thereof, as set forth in Exhibit B. In the event of any conflict between the terms of the TIF Note and the terms of this Section 3.3, the terms of the TIF Note shall govern. The issuance of the TIF Note pursuant and subject to the terms of this Agreement, and the taking by the City of such additional actions as bond counsel for the TIF Note may require in connection therewith, are hereby authorized and approved by the City.

Section 3.4   Compliance with Low and Moderate Income Requirements.

(a)   The City and the Developer understand and agree that the Tax Increment District will constitute a "housing district" under Section 469.174, Subd. 11 of the Tax Increment Act. Accordingly, in compliance with Section 469.1761, Subd. 3 of the Tax Increment Act, the Developer agrees that the Project must satisfy, or be treated as satisfying, the income requirements for a qualified residential rental project as defined in Section 142(d) of the Internal Revenue Code. The parties further agree that no more than 20% of the square footage of the Project may consist of commercial, retail, or other nonresidential uses. The Developer must meet the above requirements as follows:

(A)   At least 40% of the residential units in the Project must be occupied or available for occupancy by persons whose incomes do not exceed 60% of the County median income; and

(B)   The limits described in clause (A) must be satisfied through the Termination Date. Income for occupants of units described in clause (A) shall be adjusted for family size in accordance with Section 142(d) of the Internal Revenue Code and related regulations.

(b)   On or before each January 1 and July 1, commencing on July 1, 2024, the Developer or an agent of the Developer must deliver or cause to be delivered to the City a Compliance Certificate executed by the Developer covering the preceding six (6) months together with written evidence satisfactory to the City of compliance with the covenants in this Section. This evidence must include a statement of the household income of each qualifying renter, a written determination that each qualifying renter's household income falls within the qualifying limits of this Section (and Section 142(d) of the Internal Revenue

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Code), and certification that the income documentation is correct and accurate (and that the determination of qualification was made in compliance with Section 142(d) of the Internal Revenue Code). The City may review, upon request, all documentation supporting the Developer submissions and statements. In determining compliance with this Section, the Developer must use the County median incomes for the year in which the payment is due on the TIF Note, as promulgated by the Minnesota Housing Finance Agency based on the area median incomes established by the United States Department of Housing and Urban Development.

Section 3.5   Real Property Taxes.

(1)   Prior to the Termination Date, the Developer shall pay all real property taxes due and payable with respect to all and any parts of the Development Property acquired and owned by it until the Developer's obligations have been assumed by any other person pursuant to the provisions of this Agreement.

(2)   The Developer agrees that prior to the Termination Date:

(a)   It will not seek administrative review or judicial review of the applicability of any tax statute relating to the ad valorem property taxation of real property contained on the Development Property determined by any tax official to be applicable to the Project or the Developer or raise the inapplicability of any such tax statute as a defense in any proceedings with respect to the Development Property, including delinquent tax proceedings; provided, however, "tax statute" does not include any local ordinance or resolution levying a tax;

(b)   It will not seek administrative review or judicial review of the constitutionality of any tax statute relating to the taxation of real property contained on the Development Property determined by any tax official to be applicable to the Project or the Developer or raise the unconstitutionality of any such tax statute as a defense in any proceedings, including delinquent tax proceedings with respect to the Development Property; provided, however, "tax statute" does not include any local ordinance or resolution levying a tax;

(c)   It will not seek any tax deferral or abatement, either presently or prospectively authorized under Minnesota Statutes, Section 469.1813, or any other State or federal law, of the ad valorem property taxation of the Development Property between the date of execution of this Agreement and the Termination Date.

(d)   The Developer may seek through petition or other means to have the market value for the Development Property reduced. Until the TIF Note is fully paid, such activity must be preceded by written notice from the Developer. Upon receiving such notice, or otherwise learning of the Developer's intentions, the City may suspend payments due under the TIF Note until the actual amount of the reduction is determined, whereupon the City will make the suspended payments less any amount that the City is required to repay the County as a result any reduction in market value of the Development Property. During the period that the payments are subject to suspension, the City may make partial payments

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on the TIF Note if it determines, in its sole and absolute discretion, that the amount retained will be sufficient to cover any repayment which the County may require. The City's suspension of payments on the TIF Note pursuant to this Section shall not be considered a default under this Agreement.

Section 3.6   Legal and Administrative Expenses. The Developer shall reimburse the City for its actual out of pocket Legal and Administrative Expenses. The City shall invoice the Developer and the Developer shall remit payment to the City within 30 days of receipt of the invoice.

Section 3.7   SAC/WAC Fees. The City agrees to waive all sanitary sewer and water connection fees for the Project The City shall refund to Developer all the building permit fees for the Project that are not reimbursed by the Goodhue County New Housing Permit Reimbursement Program.

Section 3.8   Site Improvement Reimbursement.   The City agrees to provide the Developer $70,000 for reimbursement of Site Improvement costs upon submission of paid invoices for the Site Improvements in the amount of $70,000 and completion of the Project.

ARTICLE IV.

EVENTS OF DEFAULT

Section 4.1   Events of Default Defined. The following shall be "Events of Default" under this Agreement and the term "Event of Default" shall mean whenever it is used in this Agreement any one or more of the following events:

(a)   Failure by the Developer to timely pay any ad valorem real property taxes and special assessments levied against the Development Property and all public utility or other City payments due and owing with respect to the Development Property when due and payable.

(b)   Failure by the Developer to cause the construction of the Project to be completed pursuant to the terms, conditions and limitations of this Agreement.

(c)   Failure of the Developer to observe or perform any other covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement.

(d)   The holder of any mortgage on the Development Property or any improvements thereon, or any portion thereof, commences foreclosure proceedings as a result of any default under the applicable mortgage documents.

(e)   If the Developer shall

(A)   file any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the United States Bankruptcy Act of 1978, as amended or under any similar federal or state law; or

(B)   make an assignment for the benefit of its creditors; or

(C)   admit in writing its inability to pay its debts generally as they become due; or

(D)   be adjudicated as bankrupt or insolvent; or if a petition or answer proposing the adjudication of the Developer as bankrupt or its reorganization under any present or future federal bankruptcy act or any similar federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within sixty (60) days after the filing thereof; or a receiver, trustee or liquidator of the Developer, or of the Project, or part thereof, shall be appointed in any proceeding brought against the Developer, and shall not be discharged within sixty (60) days after such appointment, or if the Developer, shall consent to or acquiesce in such appointment.

Section 4.2   Remedies on Default. Whenever any Event of Default referred to in Section 4.1 occurs and is continuing, the City, as specified below, may take any one or more of the

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following actions after the giving of thirty (30) days' written notice to the Developer citing with specificity the item or items of default and notifying the Developer that it has thirty (30) days or, if said Event of Default cannot reasonably be cured within the time, the Developer fails to give assurances reasonably satisfactory to the City that the Event of Default will be cured within a period of time reasonably acceptable to the City, but in any event not to exceed ninety (90) days, but only if the Event of Default has not been cured within said ninety (90) days:

(a)   The City may suspend its performance under this Agreement and the TIF Note until it receives assurances from the Developer, deemed adequate by the City, that the Developer will cure its default and continue its performance under this Agreement.

(b)   The City may cancel and terminate the Agreement and the TIF Note.

(c)   The City may take any action, including legal or administrative action, in law or equity, which may appear necessary or desirable to enforce performance and observance of any obligation, agreement, or covenant of the Developer under this Agreement.

Section 4.3   No Remedy Exclusive. No remedy herein conferred upon or reserved to the City is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

Section 4.4   No Implied Waiver.   In the event any agreement contained in this Agreement should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

Section 4.5   Agreement to Pay Attorney's Fees and Expenses. Whenever any Event of Default occurs and the City shall employ attorneys or incur other expenses for the collection of payments due or to become due or for the enforcement or performance or observance of any obligation or agreement on the part of the Developer herein contained, the Developer agrees that it shall, within 10 days after written demand therefor, pay to the City the reasonable fees of such attorneys and such other expenses so incurred by the City.

Section 4.6   Indemnification of City.

(1)   The Developer (a) releases the City and its governing body members, officers, agents, including the independent contractors, consultants and legal counsel, servants and employees (collectively, the "Indemnified Parties") from, (b) covenants and agrees that the Indemnified Parties shall not be liable for, and (c) agrees to indemnify and hold harmless the Indemnified Parties against, any claim, cause of action, suit or liability for 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 Project or on the Development Property.

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(2)   Except for any willful misrepresentation or any willful or wanton misconduct of the Indemnified Parties, the Developer agrees to protect and defend the Indemnified Parties, now and forever, and further agrees to hold the aforesaid harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from the actions or inactions of the Developer (or other persons acting on its behalf or under its direction or control) under this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, and operation of the Project; provided, that this indemnification shall not apply to the warranties made or obligations undertaken by the City in this Agreement or to any actions undertaken by the City which are not contemplated by this Agreement but shall, in any event and without regard to any fault on the part of the City, apply to any pecuniary loss or penalty (including interest thereon from the date the loss is incurred or penalty is paid by the City at a rate equal to the Prime Rate) as a result of the Developer operating the Project so that the Tax Increment District does not qualify or ceases to qualify as a "housing district" under Section 469.174, Subdivision 11, of the Act or to violate limitations as to the use of Tax Increments as set forth in Section 469.176, Subdivision 4d.

(3)   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 any governing body member, officer, agent, servant or employee of the City.

ARTICLE V.

DEVELOPER'S OPTION TO TERMINATE AGREEMENT

Section 5.1   The Developer's Option to Terminate. This Agreement may be terminated by the Developer, if (i) the Developer is in compliance with all material terms of this Agreement and no Event of Default has occurred; and (ii) the City fails to comply with any material term of this Agreement, and, after written notice by the Developer of such failure, the City has failed to cure such noncompliance within ninety (90) days of receipt of such notice, or, if such noncompliance cannot reasonably be cured by the City within ninety (90) days, of receipt of such notice, the City has not provided assurances, reasonably satisfactory to the Developer, that such noncompliance will be cured as soon as reasonably possible.

Section 5.2   Action to Terminate. Termination of this Agreement pursuant to Section 5.1 must be accomplished by written notification by the Developer in the City within sixty (60) days after the date when such option to terminate my first be exercised. A failure by the Developer to terminate this Agreement within such period constitutes a waiver by the Developer of its right to terminate this Agreement due to such occurrence or event.

Section 5.3   Effect of Termination. If this Agreement is terminated pursuant to this Article V, this Agreement shall be from such date forward null and void and of no further effect; provided, however, the termination of this Agreement shall not affect the rights of either party to institute any action, claim or demand for damages suffered as a result of breach or default of the terms of this Agreement by the other party, or to recover amounts which had accrued and become due and payable as of the date of such termination. Upon termination of this Agreement pursuant to this Article V, the Developer shall be free to proceed with the Project at its own expense and without regard to the provisions of this Agreement; provided, however, that the City shall have no further obligations to the Developer with respect to reimbursement of the expenses set forth in Section 3.3, or to make any further payments on the TIF Note.

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ARTICLE VI.

ADDITIONAL PROVISIONS

Section 6.1   Restrictions on Use. The Developer agrees for itself, its successors and assigns and every successor in interest to the Development Property, or any part thereof, that during the term of this Agreement the Developer and such successors and assigns shall operate, or cause to be operated, the Project as a multi-family rental housing project and shall devote the Development Property to, and in accordance with, the uses specified in this Agreement.

Section 6.2   Conflicts of Interest. No member of the governing body or other official of the City shall have any financial interest, direct or indirect, in this Agreement, the Development Property or the Project, or any contract, agreement or other transaction contemplated to occur or be undertaken thereunder or with respect thereto, nor shall any such member of the governing body or other official participate in any decision relating to the Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested. No member, official or employee of the City shall be personally liable to the City in the event of any default or breach by the Developer or successors or on any obligations under the terms of this Agreement.

Section 6.3   Titles of Articles and Sections. Any titles of the several parts, articles and sections of the Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 6.4   Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand or other communication under this Agreement by any party to any other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and

(a)   in the case of the Developer is addressed to or delivered personally to:

Keller-Baartman Properties XIV, LLC
Attn: Robert Keller
1489 Hay Creek Valley Road
Red Wing, Minnesota 55066-5506

with a copy to:

Rinke Noonan
Attn: Scott Hamak
1015 West St. Germain, Suite 300
P.O. Box 1497
St. Cloud, MN 56302

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(b)   in the case of the City is addressed to or delivered personally to the City at:

City of Cannon Falls, Minnesota
Cannon Falls City Hall
Attn: City Administrator
918 River Road
Cannon Falls, Minnesota 55009

with a copy to:

Taft Stettinius & Hollister LLP
Attention: Mary Ippel
2200 IDS Center
80 South 8th Street
Minneapolis, MN 55402

or at such other address with respect to any such party as that party may, from time to time, designate in writing and forward to the other, as provided in this Section.

Section 6.5   Counterparts.   This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 6.6   Law Governing.   This Agreement will be governed and construed in accordance with the laws of the State.

Section 6.7   Expiration. This Agreement shall expire on the Termination Date.

Section 6.8   Provisions Surviving Rescission or Expiration. Sections 4.5 and 4.6 shall survive any rescission, termination or expiration of this Agreement with respect to or arising out of any event, occurrence or circumstance existing prior to the date thereof.

Section 6.9   Transfer of Project; Assignability of Agreement and TIF Note.   The Developer shall not transfer the Project or assign this Agreement and the TIF Note without obtaining the prior consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed.

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IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed in its name and on its behalf and the Developer has executed this Agreement in its names and on its behalf, on or as of the date first above written.

CITY OF CANNON FALLS, MINNESOTA

By _____
    Its Mayor

By _____
    Its Administrator

This is a signature page to the Development Agreement by and between the City of Cannon Falls and Keller-Baartman Properties XIV, LLC.

KELLER-BAARTMAN PROPERTIES XIV, LLC

By _____

    Andrew Baartman

Its Chief Manager

This is a signature page to the Development Agreement by and between the City of Cannon Falls and Keller-Baartman Properties XIV, LLC.

EXHIBIT A

Description of Development Property

The parcel identification number of the development property, located in the City of Cannon Falls, Goodhue County, Minnesota is as follows:

PID #52.730.0010

EXHIBIT B

Form of TIF Note

No. R-1 $_____

UNITED STATES OF AMERICA
STATE OF MINNESOTA
COUNTY OF GOODHUE
CITY OF CANNON FALLS

TAX INCREMENT REVENUE NOTE
(KELLER-BAARTMAN PROPERTIES XIV, LLC PROJECT)

The City of Cannon Falls, Minnesota (the "City"), hereby acknowledges itself to be indebted and, for value received, hereby promises to pay the amounts hereinafter described (the "Payment Amounts") to Keller-Baartman Properties XIV, LLC, a Minnesota limited liability company, individually (the "Developer" or the "Registered Owner"), but only in the manner, at the times, from the sources of revenue, and to the extent hereinafter provided.

The principal amount of this Note shall equal from time to time the principal amount stated above, as reduced to the extent that such principal installments shall have been paid in whole or in part pursuant to the terms hereof; provided that the sum of the principal amount listed above shall in no event exceed $3,600,000 as provided in that certain Development Agreement, dated as of _____1, 2021, as the same may be amended from time to time (the "Development Agreement"), by and between the City and the Developer. The unpaid principal amount hereof shall bear interest from the date of this Note at the simple non-compounded rate of four and twenty-five hundredths percent (3.75%) per annum. Interest shall be computed on the basis of a 360 day year consisting of twelve (12) 30-day months.

The amounts due under this Note shall be payable on August 1, 2024, and on each February 1 and August 1 thereafter to and including February 1, 2050, or, if the first should not be a Business Day (as defined in the Development Agreement), the next succeeding Business Day (the "Payment Dates"). On each Payment Date the City shall pay by check or draft mailed to the person that was the Registered Owner of this Note at the close of the last business day of the City preceding such Payment Date an amount equal to the Tax Increments (hereinafter defined) received by the City during the six month period preceding such Payment Date. All payments made by the City under this Note shall first be applied to accrued interest and then to principal. This Note is prepayable by the City, in whole or in part, on any date.

The Payment Amounts due hereon shall be payable solely from 90% of tax increments (the "Tax Increments") derived from the Development Property (as defined in the Development Agreement) within the City's Tax Increment Financing District No. 2-10 (the "Tax Increment District") within its Development District No. 1 which are paid to the City and which the City is entitled to retain pursuant to the provisions of Minnesota Statutes, Sections 469.174 through 469.1794, as the same may be amended or supplemented from time to time (the "Tax Increment

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Act"). This Note shall terminate and be of no further force and effect following the last Payment Date defined above, on any date upon which the City shall have terminated the Development Agreement under Section 4.2(2) thereof or the Developer shall have terminated the Development Agreement under Article V thereof, on the date the Tax Increment District is terminated, or on the date that all principal payable hereunder shall have been paid in full, whichever occurs earliest.

The City makes no representation or covenant, expressed or implied, that the Tax Increments will be sufficient to pay, in whole or in part, the amounts which are or may become due and payable hereunder.

The City's payment obligations hereunder shall be further conditioned on the fact that no Event of Default under the Development Agreement shall have occurred and be continuing at the time payment is otherwise due hereunder, but such unpaid amounts shall become payable if said Event of Default shall thereafter have been cured; and, further, if pursuant to the occurrence of an Event of Default under the Development Agreement the City elects to cancel and rescind the Development Agreement, the City shall have no further debt or obligation under this Note whatsoever. Reference is hereby made to all of the provisions of the Development Agreement, including without limitation Section 3.3 thereof, for a fuller statement of the rights and obligations of the City to pay the principal of this Note, and said provisions are hereby incorporated into this Note as though set out in full herein.

This Note is a special, limited revenue obligation and not a general obligation of the City and is payable by the City only from the sources and subject to the qualifications stated or referenced herein. This Note is not a general obligation of the City of Cannon Falls, Minnesota and neither the full faith and credit nor the taxing powers of the City are pledged to the payment of the principal of this Note and no property or other asset of the City, save and except the above-referenced Tax Increments, is or shall be a source of payment of the City's obligations hereunder.

This Note is issued by the City in aid of financing a project pursuant to and in full conformity with the Constitution and laws of the State of Minnesota, including the Tax Increment Act.

This Note is subject to prepayment in immediately available funds on any date at the option of the City, in whole or in part and without penalty.

This Note may be assigned only with the consent of the City which consent shall not be unreasonably withheld. In order to assign the Note, the assignee shall surrender the same to the City either in exchange for a new fully registered note or for transfer of this Note on the registration records for the Note maintained by the City. Each permitted assignee shall take this Note subject to the foregoing conditions and subject to all provisions stated or referenced herein.

IT IS HEREBY CERTIFIED AND RECITED that all acts, conditions, and things required by the Constitution and laws of the State of Minnesota to be done, to have happened, and to be performed precedent to and in the issuance of this Note have been done, have happened, and have been performed in regular and due form, time, and manner as required by law; and that this Note, together with all other indebtedness of the City outstanding on the date hereof and on the date of its actual issuance and delivery, does not cause the indebtedness of the City to exceed any constitutional or statutory limitation thereon.

IN WITNESS WHEREOF, City of Cannon Falls, Minnesota, by its City Council, has caused this Note to be executed by the manual signatures of its Mayor and Administrator and has caused this Note to be dated as of _____, 202___.

_____   _____
Administrator   Mayor

DO NOT EXECUTE UNTIL PAID INVOICES, A SETTLEMENT STATEMENT OR OTHER EVIDENCE OF PAYMENT FOR ACQUISITION OF THE DEVELOPMENT PROPERTY AND THE PAYMENT OF THE COST OF THE PROJECT AND SITE IMPROVEMENTS ARE GIVEN TO THE CITY - REFER TO SECTION 3.3(1).

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CERTIFICATION OF REGISTRATION

It is hereby certified that the foregoing Note was registered in the name of Keller-Baartman Properties XIV, LLC, and that, at the request of the Registered Owner of this Note, the undersigned has this day registered the Note in the name of such Registered Owner, as indicated in the registration blank below, on the books kept by the undersigned for such purposes.

NAME AND ADDRESS OF REGISTERED OWNER	DATE OF REGISTRATION	SIGNATURE OF CITY ADMINISTRATOR
Keller-Baartman Properties XIV, LLC 1489 Hay Creek Valley Road Red Wing, MN 55066	_____	_____
_____ _____ _____	_____	_____
_____ _____ _____	_____	_____
_____ _____ _____	_____	_____

EXHIBIT C

Site Improvements

Landscaping, including irrigation
Foundations and Footings
Grading/earthwork
Engineering
Survey
Environmental Testing
Soil Borings
Site Preparation
Onsite Utilities
Storm Water/Ponding
Outdoor Lighting
Onsite Road, Curb, Gutter, Driveway, Sidewalk and Streetscape Improvements
Parking

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EXHIBIT D

COMPLIANCE CERTIFICATE

The undersigned Keller-Baartman Properties XIV, LLC, does hereby certify that as of the date of this Certificate and for the previous six (6) months prior to the execution of this Certificate not less than 40% of the residential units in the Keller-Baartman Properties XIV, LLC Project located at_____, in Cannon Falls, Minnesota (the "Project") were occupied by individuals whose income is 60% or less of the Goodhue County median income.

Dated this _____ day of _____, 202___.

<div style="text-align: right;">

KELLER-BAARTMAN PROPERTIES XIV, LLC

By _____

Its _____
_____
_____
_____
_____
_____

</div>

[Attach income verification required by Section 3.4.]

HELD: October 19, 2021

Pursuant to due call and notice thereof, a regular meeting of the City Council of the City of Cannon Falls, Goodhue County, Minnesota, was duly called and held at the City Hall in said City on October 19, 2021, at 6:30 P.M.

The following members were present:

and the following were absent:

Member _____ introduced the following resolution and moved its adoption:

RESOLUTION NUMBER 2582

**RESOLUTION AUTHORIZING EXECUTION
OF A DEVELOPMENT AGREEMENT**

A.   WHEREAS, Keller-Baartman Properties XIV, LLC (the "Developer") has requested the City of Cannon Falls, Minnesota (the "City") to assist with the financing of certain costs incurred in connection with the acquisition, construction and equipping of 79 multifamily housing rental units by the Developer in the City (the "Project"); and

B.   WHEREAS, the Developer and the City have determined to enter into a Development Agreement providing for the City's tax increment financing assistance for the Project (the "Development Agreement").

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Cannon Falls, Minnesota, as follows:

1.   The City Council hereby approves the Development Agreement in substantially the form submitted, and the Mayor and City Administrator are hereby authorized and directed to execute the Development Agreement on behalf of the City.

2.   The approval hereby given to the Development Agreement includes approval of such additional details therein as may be necessary and appropriate and such modifications thereof, deletions therefrom and additions thereto as may be necessary and appropriate and approved by the City officials authorized by this resolution to execute the Development Agreement. The execution of the Development Agreement by the appropriate officer or officers of the City shall be conclusive evidence of the approval of the Development Agreement in accordance with the terms hereof.

The motion for adoption of the foregoing resolution was duly seconded by member _____ and, after full discussion thereof, and upon a vote being taken thereof, the following voted in favor thereof:

and the following voted against same:

ADOPTED by the Council this 19th day of October, 2021.

_____
John O. Althoff, Mayor

ATTEST:_____
        Neil L. Jensen, City Administrator

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STATE OF MINNESOTA
COUNTY OF GOODHUE
CITY OF CANNON FALLS

I, the undersigned, being the duly qualified and acting City Administrator of the City Council of the City of Cannon Falls, Minnesota, DO HEREBY CERTIFY that I have carefully compared the attached and foregoing extract of minutes with the original minutes of a meeting of the City Council City held on the date therein indicated, which are on file and of record in my office, and the same is a full, true and complete transcript therefrom insofar as the same relates to a Resolution Authorizing Execution of a Development Agreement.

WITNESS my hand as such City Administrator of the City Council of the City of Cannon Falls, Minnesota this 19th day of October, 2021.

_____
City Administrator

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