

TO: HONORABLE MAYOR AND CITY COUNCIL OF CANNON FALLS

FROM: Laura Qualey, Economic Development

SUBJECT: Resolution 2629, Approving Zoning & Engineering Development Agreement with Keller-Baartman Properties XIV, LLC

DATE: May 3, 2022

BACKGROUND:

The Keller-Baartman Apartment project has been a lengthy process, but here is a brief recap of what has been presented to the City Council to this point: a public hearing was held to create TIF District 2-10 which was approved on August 3, 2021; Preliminary Concept Plans were approved August 17, 2021; Business Subsidies for the project were approved on September 21, 2021; Introduction of Ordinance 379 to rezone the property from B-2 to a PUD R-4 occurred on September 21, 2021; the Development Agreement which included the TIF plan and business subsidies was approved on October 19, 2021; Final plans for the Keller-Baartman project were approved on January 18, 2022; Re-introduction of Ordinance 379 to rezone the property occurred on March 15, 2022; which leads us to the current day.

Due to the existing utilities and public easements through the property, there were some terms and agreements that needed to be addressed and negotiated between the City and the Developer. With the assistance of our City Engineer Bill Angerman, our Attorney Sarah Schwarzhoff has prepared the accompanying Development Agreement which incorporates the outlines the terms of the redevelopment project for the former Cannonball site in relation to the zoning and engineering pertaining to the project. Upon executing this document, the EDA will be able to proceed with the final gas soil borings and close on the property.

REQUESTED COUNCIL ACTION:

The City of Cannon Falls and the Economic Development Authority respectfully requests a motion to approve Resolution 2629 to execute the Zoning & Engineering Development Agreement with Keller-Baartman Properties XIV, LLC.

**CITY OF CANNON FALLS
GOODHUE COUNTY, MINNESOTA**

RESOLUTION NUMBER 2629

**RESOLUTION AUTHORIZING EXECUTION OF A DEVELOPMENT AGREEMENT
WITH KELLER-BAARTMAN PROPERTIES XIV, LLC**

WHEREAS, the City of Cannon Falls, Minnesota (the "City") has requested that Keller-Baartman Properties XIV, LLC (the "Developer") enter into a Development Agreement relating to the construction, development, zoning, engineering and maintenance of the property located within Cannon Falls of a 79-unit multifamily housing rental complex (the "Project"); and

WHEREAS, the Developer and the City have determined to enter into a Development Agreement providing for the City's assistance in connection with the Project (the "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.

ADOPTED by the Council this 3rd day of May, 2022.

John O. Althoff, Mayor

ATTEST: _____
Neil L. Jensen, City Administrator

DEVELOPMENT AGREEMENT
Zoning and Engineering

Keller-Baartman Apartment Complex

This Development Agreement ("Agreement") is entered into this ____ day of _____, 2022, by and between the City of Cannon Falls, a Minnesota municipal corporation ("City"), and Keller-Baartman Properties XIV, LLC, a Minnesota limited liability company ("Developer").

WHEREAS, Developer is the owner of property located within the City of Cannon Falls, County of Goodhue, legally described on Exhibit A ("Property");

WHEREAS, Developer and City have entered into a Development Agreement by and between the City of Cannon Falls, Minnesota, and Keller-Baartman Properties XIV, LLC relating to Tax Increment Financing ("TIF Agreement") for the Property.

WHEREAS, Developer has applied to the City Final PUD Plan approval for the construction of a 79-unit apartment complex on the Property;

NOW, THEREFORE, in consideration of the City Council adopting Resolution No. 2613 (“Resolution”) for Final PUD Plan approval for the construction of 79-unit apartment complex, Developer agrees to construct, develop and maintain the Property as follows:

1. **RIGHT TO PROCEED.** The City shall not issue a grading or building permit and Developer shall not grade or otherwise disturb the earth, remove trees, develop, construct upon the Property in any manner, or begin the Development Work until all of the following conditions have been satisfied: 1) this Agreement has been fully executed by all parties and recorded in the office of the Goodhue County Recorder or Registrar or Titles as applicable and 2) an Amended McDonalds Access Agreement is completed, executed and recorded in the office of the Goodhue County Recorder or Registrar or Titles as applicable.

2. **DEVELOPMENT PLANS.**

A. The Property shall be developed in accordance with the final plans identified below, subject to such changes and modifications as provided herein (“Plans”). The Plans shall not be attached to this Agreement, but are incorporated by reference and made a part of this Agreement as if fully set forth herein. If the Plans vary from the written terms of this Agreement, the more specific or stringent controls shall apply. The Plans are:

Plan A -- Cannonball Apartments Site/Grading Plan (2 Sheets) prepared by
G-Cubed dated January 3, 2022, updated January 5, 2022

Plan B Cannonball Apartments Landscape Plan (1 Sheet) prepared by
G-Cubed dated January 5, 2022

B. In addition, Developer shall grade, construct upon, and improve the Property pursuant to all requirements of this Agreement; the Resolution; the TIF Agreement, the MN Pollution Control Agency SWPPP and the Cannon Falls City Code. All improvements and other work required by the Plans, the Developer Installed Public Improvements, and such other work

as is required by this Agreement, the Resolution or the documents or parties identified above are hereafter referred to as the "Development Work." Developer shall be responsible for all costs related to the Development Work.

3. **DEVELOPER INSTALLED PUBLIC IMPROVEMENTS.**

A. The Developer shall install and pay for the public improvements consisting of approximately 477 feet of concrete curbing on Hickory Drive and boulevard restoration as shown on the Plans, hereinafter referred to as the "Developer Installed Public Improvements". All Developer Installed Public Improvements shall be dedicated or conveyed to the public, and shall be located within public property, right-of-way, or easement dedicated to the public.

B. Developer shall complete all Developer Installed Public Improvements no later than December 31, 2023, and upon completion shall request the City Council's written acceptance of the Developer Installed Public Improvements. Upon Developer's completion of all Developer Installed Public Improvements, the City shall promptly inspect such improvements and notify Developer in writing if any of such improvements do not conform to this Agreement's requirements.

C. As a condition of the City Council's acceptance of the Developer Installed Public Improvements, the Developer's engineer shall, by written letter, certify to the City that the Developer's engineer made reasonable inspections of the Developer Installed Public Improvements and that the Developer Installed Public Improvements were built in accordance with this Agreement. Upon Developer's compliance with this Agreement with respect to the Developer Installed Public Improvements, the City shall give formal notice of acceptance to Developer.

D. Upon the City Council's written acceptance, by City Council Resolution, of the Developer Installed Public Improvements, the Developer Installed Public Improvements shall

automatically become property of the City without further notice or action. The Developer shall be responsible for all maintenance of the Developer Installed Public Improvements until written acceptance by the City Council and following the City Council's acceptance, the Developer shall have no responsibility with respect to the maintenance or repair thereof, except for any repairs required by Developer's warranty set forth herein.

E. **Utility Easement.** There is a 30' utility easement located on the Property which was dedicated when the Property was platted. The utility easement remains in full force and effect giving the City the right to use the utility easement for purposes such as installation, maintenance, repair, and/or reconstruction of utilities within the easement. If the City performs any work within the utility easement, the City will repair any damage and restore the impacted area to the condition that existing prior to such work. If the City performs any work within the utility easement, the City will restore the impacted area with pavement, seed and/or sod, but will not repair and/or replace any private improvements within the utility easement. Developer acknowledges that the City has the right to remove any private improvements located within the utility easement and that the Developer and/or future owners of the Property will be responsible for any repair and/or replacement of any private improvements within the utility easement.

F. **Private Improvements.** In addition to the Developer Installed Public Improvements, the Developer shall install and pay for the private improvements identified in the Plans, all of which shall be located on private property. The private improvements shall be installed, maintained, operated, repaired and replaced by the Developer. The City shall have no obligations in relation to the private improvements.

4. **AS-BUILTS.**

A. Within 30 days after the completion of the Developer Installed Public Improvements, Developer shall supply the City a complete set of reproducible “as constructed” plans. In addition, Developer shall provide the City with an as-built grading plan.

B. In addition, upon completion of the project the Developer shall provide the City with as-built utility plans in electronic format compatible with the City’s current software and with layers, colors, and line-types formatted in accordance with City standards. Additionally, three (3) full size (22 X 34 inch) paper copies and one (1) reduced (11 X 17 inch) copy shall be certified and submitted to the City.

5. **WARRANTY.** Developer warrants all Developer Installed Public Improvements against any defects, poor material and faulty workmanship for a period of one year after its completion by Developer and acceptance by the City Council. Any replacement work shall be so warranted for one year after its completion by Developer and acceptance by the City Council (collectively these periods are the “Warranty Period”).

6. **LICENSE.** The Developer hereby grants the City, its agents, employees, officers and contractors a non-revocable license to enter the Property to perform all work and inspections deemed reasonably appropriate by the City in conjunction with the development of the Property.

7. **EROSION CONTROL.**

A. Developer shall be responsible for constructing and maintaining all grading, storm water/drainage infrastructure, and erosion control in compliance with the Plans and the City Engineer or his/her designee’s reasonable requirements.

B. Developer shall install silt fence prior to construction to avoid erosion to adjoining properties, public sidewalk or the public street; locate all garbage roll offs and

dumpsters, or cause the same to be located, on the Property and not on public property; and install protection at catch basins to prevent silt and debris from entering the storm sewer.

C. Developer shall seed or lay cultured sod in all boulevards and restore all other areas disturbed by the Development Work within thirty (30) days of the completion of street related improvements. No building permits will be issued until the Developer has installed silt-fence behind the curb of the Property. Developer shall be responsible for the maintenance of any silt fence installed. Upon request of the City Engineer or his/her designee, the Developer shall remove the silt fences after turf establishment.

D. Prior to initiating site grading, the erosion control plan and SWPPP shall be implemented by the Developer and inspected and approved by the City Engineer or his/her designee, which approval shall not be unreasonably withheld, conditioned or delayed. The City Engineer or his/her designee may require the Developer, at no cost to the City, to install additional erosion control measures if they are reasonably necessary to meet erosion control objectives. All areas disturbed shall be reseeded or sodded immediately after the completion of the work in that area. All seeded areas shall be mulched and disc anchored as necessary for seed retention.

E. No development, utility or street construction will be allowed unless the Property is in full compliance with the erosion control requirements.

8. **CONSTRUCTION OBSERVATION.** The City's authorized personnel or contractors shall provide construction observation during the installation of the Developer Installed Public Improvements. These services by the City shall include:

A. Construction observation during installation of required Developer Installed Public Improvements, which include grading, street, curb and gutter.

B. Documentation of construction work and all testing of Developer Installed Public Improvements.

9. **MAINTENANCE OF PROPERTY.** Developer shall provide ongoing maintenance of the Property, including, but not limited to, mowing and weed control, sidewalk clearing (ice, snow, building materials, eroded materials, and other debris), storm water and erosion control, and other maintenance issues as required by applicable City ordinances.

10. **CLEAN UP AND DAMAGE.**

A. Developer assumes full financial responsibility for any damage which may occur to public property including, but not limited to, streets, street sub- base, base, bituminous surface, curb, utility system including but not limited to water main, sanitary sewer or storm sewer when said damage occurs as a result of the activity of Developer and its contractors, agents and representatives which takes place during the development of the Property. Developer further agrees to pay all costs required to repair the streets, utility systems and other public property damaged or cluttered with debris when occurring as a direct result of the construction that takes place on the Property by Developer and its contractors, agents and representatives.

B. Developer shall clean the streets as reasonably required by the City Engineer or his/her designee.

C. Developer agrees that any damage to public property occurring as a result of construction activity on the Property by Developer and its contractors, agents and representatives shall be repaired immediately if reasonably deemed to be an emergency by the City Engineer or his/her designee. Developer further agrees that any damage to public property as a result of construction activity on the Property by Developer and its contractors, agents and representatives

shall be repaired within 14 days if not reasonably deemed to be an emergency by the City Engineer or his/her designee.

11. **NON-INTERFERENCE WITH ADJOINING PROPERTIES.** All Development Work performed by Developer and Developer's contractors and subcontractors shall be performed exclusively upon the Property. Any Development Work related to roads, trails, drainage, and utility improvements, which are specified herein to occur on land outside the Property, shall occur exclusively within the appropriate easement boundaries for such work. In no event shall any work performed by Developer or Developer's contractors and subcontractors interfere with other properties, rights-of-way, or easements.

12. **DEVELOPER'S RESPONSIBILITY FOR CODE VIOLATIONS.** In the event of a violation of City Code relating to use of the Property during construction thereon, City shall give at least 72 hours' notice of such violation in order to allow a cure of such violation, provided however, City need not issue a building or occupancy permit for construction or occupancy on the Property while such a violation is continuing, unless waived by the City Engineer or his/her designee. The existence of a violation of City Code shall be reasonably determined by the City Administrator or his/her designee.

13. **DEVELOPER'S RESPONSIBILITY FOR ITS CONTRACTORS.** Developer shall release, defend and indemnify City, its elected and appointed officials, employees and agents from and against any and all claims, demands, lawsuits, complaints, loss, costs (including attorneys' fees), damages and injunctions relating to any acts, failures to act, errors, omissions of Developer or Developer's consultants, contractors, subcontractors, suppliers and agents. Developer shall not be released from its responsibilities to release, defend and indemnify because of any inspection, review or approval by City.

14. DEVELOPER'S DEFAULT.

A. **Definition.** In the context of this Agreement, "Event of Default" shall include, but not be limited to, any one or more of the following events: (1) failure by the Developer to observe or perform any covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement; or (2) the failure by Developer to pay its debts as they become due, the voluntary or involuntary filing of a petition in bankruptcy, an assignment by Developer for the benefit of its creditors, or the appointment of a receiver for (a) Developer; (b) all or any substantial portion of Developer's assets; or (c) the Property.

B. **Event of Default - Remedies.** Whenever an Event of Default occurs, the City, through the City Administrator, City Engineer, City Attorney or any of their designees, may take any one or more of the following actions:

1. The City may suspend its performance under this Agreement.
2. The City may take whatever action, including legal or administrative action, which may be necessary or desirable to the City to collect any payments due under this Agreement or to enforce performance and/or observance of any obligation, agreement or covenant of Developer under this Agreement.
3. The City may suspend issuance of building permits and/or certificates of occupancy on the Property.
4. The City is hereby granted the option, but not the obligation, to complete or cause completion in whole or part of all of the Developer's obligations under this Agreement. This Agreement is a license for the City to act, and it shall not be necessary for the City to seek a court order for permission to enter the Property and cure the default, including but not limited to, completion of the Development Work.

C. **Notice.** In a non-emergency, Developer shall first be given written notice of the Event of Default not less than 30 days (or such longer period of time as may be reasonably required to cure such default, provided Developer has commenced curing and is proceeding with diligence to cure such default) prior to City's curing the default or exercising a remedy. Except that, if, in the City's reasonable judgment, an Event of Default results in an immediate threat to the public health, safety or welfare, the City may act to correct the default without notice.

D. **Election of Remedies.** No remedy conferred in this Agreement is intended to be exclusive and each shall be cumulative and shall be in addition to every other remedy. The election of any one or more remedies shall not constitute a waiver of any other remedy. The City may, but is not obligated to, exercise any of the remedies referred to in this paragraph 14.

15. NOTICES.

A. Required notices to the Developer shall be in writing, and shall be either hand delivered to Andy Baartman, Chief Manager, or mailed to the Developer in care of Andy Baartman, Chief Manager, by United States mail at the following address: Keller-Baartman Properties XIV, LLC, P.O. Box 31, Red Wing, MN 55066. Notices to the City shall be in writing and shall be either hand delivered to the City Administrator, or mailed to the City by United States mail in care of the City Administrator at the following address: City of Cannon Falls, 918 River Road, Cannon Falls, MN 55009.

B. Notices shall be deemed effective on the date of receipt. Any party may change its address for the service of notice by giving written notice of such change to the other party, in any manner above specified, 10 days prior to the effective date of such change.

C. Notice related to an Event of Default shall include the following: (1) the nature of the breach of the term or condition that requires compliance by the Developer, or the Event of

Default that has occurred; (2) what the Developer must do to cure the breach or remedy the Event of Default; and (3) the time the developer has to cure the breach or remedy the Event of Default.

16. **INDEMNIFICATION.** Developer shall indemnify, defend, and hold the City, its Council, agents, employees, attorneys and representatives harmless against and in respect of any and all claims, demands, actions, suits, proceedings, liens, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies, including interest, penalties, and reasonable attorneys' fees, that the City incurs or suffers, which arise out of, result from or relate to Developer's negligence or performance or failure to perform its obligations under this Agreement or the Development Work. The responsibility to indemnify and hold harmless the City, its Council, agents, employees, attorneys and representatives does not extend to any willful or intentional misconduct or negligence on the part of any of these individuals.

17. **NO THIRD PARTY RECOURSE.** The City and Developer agree that third parties shall have no recourse against the City under this Agreement. The Developer agrees that any party allegedly injured or aggrieved as a result of the City Council's approval of the final PUD Plan shall seek recourse against the Developer or the Developer's agents. In all such matters, including court actions, the Developer agrees that the indemnification and hold harmless provisions set out in paragraph 16 shall apply to said actions. This Agreement is a contract agreement between the City and the Developer. No provision of this Agreement inures to the benefit of any third person, including the public at large, so as to constitute any such person as a third-party beneficiary of the Agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action for any person not a party hereto.

18. **INSURANCE REQUIREMENTS.** Developer, at its sole cost and expense, shall take out and maintain or cause to be taken out and maintained, until issuance of a certificate of

occupancy for the Property, a policy of insurance with limits for bodily injury, death, and property damage of not less than \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate. The City, its elected and appointed officials, officers, employees, planners, engineers, attorneys, and agents shall be named additional insureds on any such policy. The insurance certificate shall provide that the City shall be given 30 days' advance written notice before any modification, amendment or cancellation of the insurance becomes effective.

19. RECONSIDERATION OR RESCISSION. If Developer fails to commence construction of the Development Work within twenty-four (24) months of the date hereof, Developer, for itself, its successors, and assigns, shall not oppose the City's reconsideration and rescission of all approvals issued in connection with this Agreement, thus restoring the status of the Property before the Agreement and all such approvals.

20. MISCELLANEOUS.

A. Compliance With Other Laws. The Developer represents to the City that the Developer, in performing all work under this Agreement, shall comply with all applicable county, metropolitan, state, and federal laws and regulations, including but not limited to: subdivision ordinances, zoning ordinances, and environmental regulations.

B. Permits. The Developer shall obtain all necessary approvals, permits and licenses from the City, and any other regulatory agencies and the utility companies. All costs incurred to obtain said approvals, permits and licenses, and also all fines or penalties levied by any agency due to the failure of the Developer to obtain or comply with conditions of such approvals, permits and licenses, shall be paid by the Developer.

C. **Severability.** If any portion, section, subsection, sentence, clause, paragraph, or phrase of this Agreement is for any reason held invalid, such decision shall not affect the validity of the remaining portions of this Agreement.

D. **Amendments.** There shall be no amendments to this Agreement unless in writing, signed by the parties and approved by resolution of the City Council.

E. **Waiver.** Failure of the City to require performance of any provision of this Agreement shall not affect its right to require full performance of this Agreement at any time thereafter and the waiver by the City of a breach of any such provision shall not be a waiver of any subsequent breach and shall not nullify the effectiveness of such provision.

F. **Interpretation.** This Agreement shall be interpreted in accordance with and governed by the laws of the State of Minnesota. The words herein and hereof and words of similar import, without reference to any particular section or subdivision, refer to this Agreement as a whole rather than to any particular section or subdivision hereof. Titles in this Agreement are inserted for convenience of reference only and shall be disregarded in constructing or interpreting any of its provisions.

G. **Successors and Assigns.** The Provisions of this Agreement shall be binding upon and enforceable against each of the parties and their respective successors and assigns including, but not limited to, all purchasers and owners of all or any part of the Property and their successors and assigns.

H. **Performance Standards.** The Property shall be developed and operated in a manner meeting all applicable noise, vibration, dust and dirt, smoke, odor and glare laws and regulations.

CITY OF CANNON FALLS

By: _____
John O. Althoff, Mayor


By: _____
Neil L. Jensen, City Administrator

STATE OF MINNESOTA)
 (ss.
COUNTY OF GOODHUE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by John O. Althoff, Mayor, and by Neil L. Jensen, City Administrator, of the City of Cannon Falls, a Minnesota municipal corporation, on behalf of the corporation and pursuant to the authority granted by its City Council.

NOTARY PUBLIC

**KELLER-BAARTMAN
PROPERTIES XIV, LLC**

By: 
Andrew Baartman, Chief Manager

STATE OF MINNESOTA)
 (ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2022, by Andrew Baartman the Chief Manager of Keller-Baartman Properties XIV, LLC, a Minnesota limited liability company, on behalf of the company.

NOTARY PUBLIC

DRAFTED BY:
Hoff Barry, PA
100 Prairie Center Drive, Suite 200
Eden Prairie, MN 55344

**EXHIBIT A
TO DEVELOPMENT AGREEMENT**

Legal Description of Property:

Lot 1, Block 1, McCannonball Subdivision, Goodhue County, Minnesota