



SECOND AMENDMENT TO STATE STREET LOFTS DEVELOPMENT AGREEMENT

THIS AGREEMENT, made this 16th day of June, 2003, by and between the City of Ann Arbor, 100 North Fifth Avenue, Ann Arbor, Michigan 48107, a Michigan municipal corporation, hereinafter called the CITY, and H & K State Street L.L.C., a Michigan limited liability company, with principal address at 6135 Pickwood Drive, West Bloomfield, Michigan 48322, hereinafter called the PROPRIETOR, amends the agreement between the CITY and the PROPRIETOR previously entered into on August 6, 2001 and on August 5, 2002, hereinafter called the DEVELOPMENT AGREEMENT, and witnesses that:

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(3)

WHEREAS, the PROPRIETOR has received site plan approval for certain land in the City of Ann Arbor surveyed and mapped as STATE STREET LOFTS, and henceforth known as CORNER HOUSE LOFTS, and

WHEREAS, the CITY and the PROPRIETOR acknowledge that certain revisions to the DEVELOPMENT AGREEMENT are needed (necessitated solely by the reduction in floor area of the building).

THE PROPRIETOR AND THE CITY HEREBY AGREE TO ONLY THE FOLLOWING AMENDMENT TO THE AUGUST 6, 2001 DEVELOPMENT AGREEMENT, AS AMENDED AUGUST 5, 2002:

(A) Paragraph (P-8) of the DEVELOPMENT AGREEMENT is hereby amended to provide as follows:

(P-8) Prior to the issuance of any building permits for the site planned project, the PROPRIETOR shall provide no less than 21 off-street parking spaces, either in a public parking lot or structure, pursuant to the written agreement approved on August 5, 2002 with the CITY and/or other public body. Alternately, the parking spaces may be provided privately off-site, if shown on an approved site plan. The parking spaces shall be provided in perpetuity or until such time as City Council determines that the 21 spaces or any portion thereof are no longer required due to a material change in the use or size of the building.

(B) The parties acknowledge that the DEVELOPMENT AGREEMENT between the PROPRIETOR and the CITY dated August 6, 2001 (Liber 4071, Page 767), was amended and restated by the DEVELOPMENT AGREEMENT between the PROPRIETOR and the CITY dated August 5, 2002 (Liber 4185, Page 336). Accordingly, the DEVELOPMENT AGREEMENT dated August 6, 2001 (Liber 4071, Page 767) is terminated and no longer of force or effect. All other items stated in the DEVELOPMENT AGREEMENT dated August 5, 2002 (Liber 4185, Page 336) shall remain unchanged.



Peggy M Haines, Washtenaw AM 5465819

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day first above written. This agreement is not intended to create contractual rights for third parties. It may be enforced, amended or rescinded only by the parties or their successors in interest. The obligation of the PROPRIETOR contained herein shall be binding on successors and assigns in ownership.

CITY OF ANN ARBOR, MICHIGAN
100 North Fifth Avenue
Ann Arbor, Michigan 48107

Witnesses:

Frances Todor Hargreaves
Frances Todor Hargreaves

Laurie Foondle
LAURIE FOONDLE

By: John Hieftje
John Hieftje, Mayor

By: Kathleen M. Root
Kathleen M. Root, City Clerk

Approved as to Substance:

Sue McCormick
~~Roger W. Fraser~~, City Administrator (Acting)
Sue McCormick

Approved as to Form:

Stephen Postema
Stephen Postema, City Attorney

H & K STATE STREET L.L.C.
A Michigan limited liability company
6135 Pickwood Drive
West Bloomfield, Michigan 48322

Witnesses:

Jennifer Wong
Jennifer Wong

Steven R. Cole
Steven R. Cole

By: Howard M. Frehsée Declaration of Trust
dated January 13, 1989, as amended,
Principal Member

By: Howard M. Frehsée
Howard M. Frehsée, Trustee



STATE OF MICHIGAN)
) SS:
COUNTY OF WASHTENAW)

On this 30 day of July, 2003, before me personally appeared John Hieftje, Mayor, and Kathleen M. Root, Clerk of the City of Ann Arbor, a Michigan Municipal Corporation, to me known to be the persons who executed this foregoing instrument, and to me known to be such Mayor and Clerk of said Corporation, and acknowledged that they executed the foregoing instrument as such officers as the free act and deed of said Corporation by its authority.

Jill S. St. John
NOTARY PUBLIC
Washtenaw County, Michigan
My Commission Expires: 9-16-03

JILL S. ST. JOHN
Notary Public, Washtenaw County, MI
My Commission Expires Sept. 16, 2003

STATE OF MICHIGAN)
) ss:
COUNTY OF OAKLAND)

On this 7th day of July, 2003, before me personally appeared Howard M. Frehsée, as Trustee of the Howard M. Frehsée Declaration of Trust dated January 13, 1989, as amended, acting as a principal Member of H & K State Street L.L.C., to me known to be the person who executed the foregoing instrument, and acknowledged that he executed the foregoing instrument as his free act and deed and as the free act and deed of H & K State Street L.L.C.

Steven R. Cole
NOTARY PUBLIC - Steven R. Cole
Oakland County, Michigan
My Commission Expires: 10/12/2004

✓ DRAFTED BY AND WHEN RECORDED RETURN TO:
Karen Popek Hart, Planning Director
Ann Arbor City Planning Department
Post Office Box 8647
Ann Arbor, Michigan 48107
(734) 994-2800



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 Page: 1 of 7
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 L-4185 P-336

Peggy M. Haines - Washtenaw Co. AM

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**FIRST AMENDMENT TO AND RESTATEMENT OF
 STATE STREET LOFTS DEVELOPMENT AGREEMENT**

THIS AGREEMENT, made this 5th day of August, 2002, by and between the City of Ann Arbor, 100 North Fifth Avenue, Ann Arbor, Michigan 48107, a Michigan municipal corporation, hereinafter called the CITY, and H & K State Street L.L.C., a Michigan limited liability company, with principal address at 28400 Northwestern Highway, Fourth Floor, Southfield, Michigan 48086, hereinafter called the PROPRIETOR, supersedes any previously-recorded site development agreements and witnesses that:

WHEREAS, the PROPRIETOR is the owner of certain land described below in the City of Ann Arbor, known as State Street Lofts, which received site plan approval on May 21, 2001;

WHEREAS, the PROPRIETOR desires to amend the development agreement as approved, dated August 6, 2001 and recorded at Washtenaw County, Liber 4071, Page 767, having submitted a revised development agreement to the CITY for consideration;

WHEREAS, the CITY desires to insure that all improvements required by CITY ordinances and regulations and the existing site plan, as approved, are made as well as, where appropriate, incorporating the PROPRIETORS' requested revisions; and

WHEREAS, the CITY has reviewed the revised development agreement proposed by the PROPRIETOR and recommends that, as specifically stated below, provisions P-2c, P-7b, and C-3 of the development agreement approved August 6, 2001 and recorded at Washtenaw County, Liber 4071, Page 767, be revised; and the remaining provisions of the development agreement approved August 6, 2001 and recorded at Washtenaw County, Liber 4071, Page 767, be restated and continue in full force and effect;

RESOLVED, the PROPRIETOR and the CITY hereby agree to amend and restate the "State Street Lofts Development Agreement" as follows:

THE PROPRIETOR HEREBY AGREES:

(P-1) To prepare and submit to the CITY for approval six copies of detailed plans and specifications ("the Plans") prepared by a registered professional engineer for construction of private storm sewers, private storm water management systems, and public sidewalks and lights (collectively, the "Public Improvements") with the understanding that no work on said Public Improvements shall be commenced until the Plans have been approved by the City Administrator or designee, and to provide such other relevant information to CITY departments as shall be reasonably required.



(P-2) To construct all Public Improvements set forth in Paragraph P-1 of this Agreement only in accordance with the approved Plans, and to repair all defects in the Public Improvements which develop within one year from the date of acceptance thereof by the CITY. If the PROPRIETOR fails to construct the Public Improvements, the CITY may send notice via first class mail to the PROPRIETOR at the address listed above requiring it to commence and complete the Public Improvements in the notice within the time set forth in the notice. The CITY may cause the work to be completed at the expense of the PROPRIETOR if the work is not completed by the PROPRIETOR within the time set forth in the notice.

a) Every owner of a portion of the property, including co-owners of condominium units, shall pay a pro-rata share of the cost of the work. That portion of the cost of the work attributable to each shall be a lien on that Property and may be collected as a single lot assessment as provided in Chapter 13 of the Ann Arbor City Code. This subparagraph a) shall apply to condominium units only if the project becomes a condominium development; and if the project does not become a condominium development, then this subparagraph a) shall apply to the project as a whole.

b) Notwithstanding any term or provision of this Development Agreement to the contrary, PROPRIETOR shall not be obligated to construct the Public Improvements described in Paragraph P-1 (including the storm water management system areas referred to in Paragraph P-6), irrespective of any notice from the CITY, unless PROPRIETOR, in its sole discretion, commences construction of the site planned State Street Lofts project. The parties acknowledge that the Public Improvements described in Paragraph P-1 consist of solely private storm sewers, private storm water management systems and public sidewalks and lights; and in no event shall PROPRIETOR be obligated to proceed with construction of the State Street Lofts unless PROPRIETOR, in its sole discretion, decides to proceed with such construction project.

c) As long as PROPRIETOR constructs all Public Improvements described in Paragraph P-1 in accordance with the approved Plans, the CITY, upon the request of the PROPRIETOR, shall accept such Public Improvements within ninety (90) days after completion of all such Public Improvements. The period of ninety (90) days referred to in the preceding sentence shall not begin to run until all such Public Improvements are completed in accordance with the approved Plans.

d) For purposes of this Agreement, PROPRIETOR shall be deemed to have commenced construction of the State Street Lofts project at such time as PROPRIETOR pulls or otherwise obtains a grading permit pertaining to the approved site planned project.

(P-3) To furnish, within 30 days of completion, an engineer's certificate that the construction of Public Improvements set forth in Paragraph P-1 above has been completed in accordance with the specifications of the CITY in accordance with the approved plans. The engineer's certificate will cover only those items the PROPRIETOR'S engineer inspects.

(P-4) For the benefit of the residents of the PROPRIETOR's development, to make a park contribution of Seventeen Thousand One Hundred Eighty Eight Dollars (\$17,188) to the CITY Parks and Recreation Department for improvements to Liberty Plaza and/or other nearby public parks prior to the issuance of any building permits.

(P-5) To deposit, prior to any building permits being issued, a street tree planting escrow account with the Department of Parks and Recreation in the form of a check payable to the City of Ann Arbor. The escrow amount shall be based on the CITY policy in effect at that time and is to include all on-site public streets. The City Administrator may authorize the PROPRIETOR to install the street trees if planted in accordance with CITY standards and specifications. If the street trees are found to be acceptable by the CITY, the escrow amount will



Peggy M. Haines - Washtenaw Co. AM

be returned to the PROPRIETOR one year after the date of acceptance by the CITY. However, the parties agree that the amount of said street tree planting escrow account will not exceed the sum of Five Hundred Fifty Dollars (\$550).

(P-6) To maintain storm water management system areas to the extent servicing the State Street Lofts project, as delineated on the final approved plans and any related agreements covering this project. Any proposed changes to the system must be approved by the Building Department. If the PROPRIETOR fails to maintain the inlet and detention areas servicing this project, the CITY may send notice via first class mail to the PROPRIETOR at the address listed above, requiring it to commence and complete the maintenance stated in the notice within the time set forth in the notice. The CITY may cause the work to be completed at the expense of the PROPRIETOR if the work is not completed by the PROPRIETOR within the time set forth in the notice. Every owner of a portion of the property, including co-owners of condominium units, shall pay a pro-rata share of the cost of the maintenance work. That portion of the cost of the maintenance work attributable to each lot or condominium unit shall be a lien on that Property and may be collected as a single lot assessment as provided in Chapter 13 of the Ann Arbor City Ordinances. The preceding two sentences shall apply to condominium units only if the project becomes a condominium development; and if the project does not become a condominium development, then the preceding two sentences shall apply to the project as a whole.

(P-7) To enter into a written agreement ("Affordable Housing Agreement"), prior to the issuance of any occupancy permits, with the CITY which includes:

a) The provision of at least three residential units as affordable housing units in the residential component of this multiple-story, mixed-use building. The rental price shall be restricted at the time of initial rent-up and in subsequent lease periods to be affordable to a one-, two-, or three-person family with an income of not more than 80 percent of median income for the Ann Arbor area for the appropriate family size, as defined by the United States Department of Housing and Urban Development and qualifications for eligibility of the lessee shall be determined by the City of Ann Arbor or its designee.

b) The submission of a certified semi-annual report on forms supplied by the CITY Community Development Department with the following information: number of units available for lower income households, number of units occupied by lower income households, annual income of each household occupying a designated lower income unit, monthly rent of each designated lower income unit, and statement from lower income unit tenant of average monthly cost of utilities. This report shall be submitted during the first week of January and July of each year, unless otherwise approved by the Community Development Department.

c) The verification of a household's annual income as a lower income household as defined by the CITY. To that end, the annual income of a household seeking to lease a designated lower income unit in State Street Lofts shall be provided in writing to the Community Development Department. Households determined to meet the stated criteria by the Community Development Department shall be applied toward fulfilling the State Street Lofts requirements in accordance with subparagraph a) above. Those which do not meet the stated criteria shall not be applied toward fulfilling the requirements of subparagraph a) above.

d) If at any time the affordable housing units are to be converted to condominiums, the PROPRIETOR agrees herewith to continue to furnish three affordable housing units to buyers who meet the CITY's criteria for affordable housing through an appropriate sale mechanism. This mechanism shall be in writing and shall be a covenant which shall run with the land affecting those affordable housing units. If at any time the remainder of the development (excluding the affordable housing units) is to be converted



Peggy M. Haines - Washtenaw Co. AM

to condominiums (before any conversion of the affordable housing units to condominiums), the PROPRIETOR shall first provide written notice to the CITY informing the CITY of PROPRIETOR's desire and intention to accomplish such condominium conversion, and shall continue to provide three affordable housing units to buyers who meet the CITY's criteria for affordable housing units through leases which comply with the terms of the Affordable Housing Agreement referred to in this Paragraph P-7.

(P-8) Prior to the issuance of any building permits for the site planned project, the PROPRIETOR shall provide no less than 29 off-street parking spaces, either in a public parking lot or structure, pursuant to a written agreement with the CITY and/or other public body. Alternately, the parking spaces may be provided privately off-site, if shown on an approved site plan. The parking spaces shall be provided in perpetuity, or until such time as City Code requirement is amended to delete or lessen this quantity and the PROPRIETOR petitions City Council to remove the requirement, or until such time as, upon petition by the PROPRIETOR, City Council determines that the 29 spaces or any portion thereof are no longer required.

(P-9) The PROPRIETOR represents to the CITY and warrants that PROPRIETOR is the sole title-holder in fee simple of the land described below except for any mortgage, easements and deed restrictions of record and that the person(s) signing below on behalf of PROPRIETOR has legal authority and capacity to enter into this agreement for PROPRIETOR.

(P-10) Failure to construct, repair and/or maintain the site pursuant to the approved site plan and/or failure to comply with any of this Development Agreement's terms and conditions shall constitute a material breach of the Agreement and the CITY shall have all remedies in law and/or in equity necessary to ensure that the PROPRIETOR complies with the approved site plan and/or the terms and conditions of this Development Agreement. The PROPRIETOR shall be responsible for all costs and expenses including reasonable attorney fees incurred by the CITY in enforcing the terms and conditions of the approved site plan and/or Development Agreement, if the CITY is a prevailing party as determined by the court; provided, however, that if PROPRIETOR is the prevailing party as determined by the court in litigation with the CITY concerning enforcement of the approved site plan and/or Development Agreement, then the CITY shall be responsible for all costs and expenses including reasonable attorney fees incurred by the PROPRIETOR in such litigation. This Paragraph P-10 does not alter the terms of Paragraph P-2 which provide that PROPRIETOR is not obligated to proceed with construction of the State Street Lofts and the related Public Improvements unless PROPRIETOR, in its sole discretion, decides to proceed with construction of the State Street Lofts.

(P-11) The PROPRIETOR shall indemnify and hold the CITY harmless from any claims, losses, liabilities, damages or expenses (including reasonable attorney fees) suffered or incurred by the CITY based upon or resulting from any acts or omissions of the PROPRIETOR, its employees, agents, subcontractors, invitees or licensees in the design, construction, maintenance or repair of any of the Public Improvements required under this Agreement and the approved site plan. The PROPRIETOR shall cause to be maintained Public Liability Insurance and Property Damage Insurance in the minimum amount of \$1,000,000 per occurrence and naming the CITY as named insured to protect and indemnify the CITY against any claims or losses for damage due to public use of Public Improvements in said development prior to final written acceptance of said Public Improvements by the CITY. Evidence of such insurance shall be produced prior to the commencement of any Public Improvements and a copy filed with the City Clerk's Office and shall remain in full force and effect during construction of the Public Improvements and until notice of acceptance by the CITY.

(P-12) To pay for the cost of recording this Agreement with the Washtenaw County Register of Deeds.



THE CITY HEREBY AGREES:

Peggy M. Haines - Washtenaw Co. AM

(C-1) In consideration of the above undertakings, the State Street Lofts Revised Site Plan is approved as of May 21, 2001.

(C-2) To use the park contribution described above for improvements to Liberty Plaza and/or other nearby public parks.

(C-3) To assist, through City of Ann Arbor agents or its designee, in identifying and qualifying eligible lessees for the affordable rental unit(s) and to receive and review the PROPRIETOR's semi-annual reports of the rental rate(s) of said unit(s), utilities, taxes, and other expenses associated with said unit(s) in order to assure compliance with the affordable guidelines.

(C-4) To provide timely and reasonable CITY inspections as may be required during construction.

(C-5) To record this agreement with the Washtenaw County Register of Deeds.

GENERAL TERMS:

Both the PROPRIETOR and the CITY agree as follows:

(T-1) This Agreement is not intended to create a contractual right for third parties.

(T-2) This Agreement and any of its terms or conditions cannot be modified, amended or waived unless in writing and unless executed by both parties to this Agreement. Any representations or statements, whether oral or in writing, made prior to the date of creation of and not contained in this Agreement shall not be binding on either party.

(T-3) The obligations and conditions on the PROPRIETOR, as set forth in this Agreement and in the approved site plan, shall be binding on any successors and assigns in ownership of the following described parcel:

Lot 1 and part of Lot 2 of Eastern Addition to the Village of Ann Arbor (now City), Block No. 2, more particularly described as beginning at the Northwest corner of Lot 1, also being the intersection of the Easterly line of State Street with the Southerly line of Washington Street and proceeding thence North 89 degrees 37 minutes 20 seconds East along the Southerly line of Washington Street, also being the Northerly line of Lot 1, 132.00 feet; thence due South 82.5 feet; thence South 89 degrees 37 minutes 20 seconds West 132.00 feet to a point on the Easterly line of State Street; thence due North 82.5 feet to a point of beginning. Commonly known as 205 South State Street, Ann Arbor (Tax Parcel No. 09-28-223-007)

(T-4) In addition to any other remedy in law or in equity, failure to comply with any of the above paragraphs, in whole or in part, on the part of the PROPRIETOR, or any part of the approved site plan, in part or in whole, shall give the CITY adequate basis and cause to issue a stop work order for any previously-issued building permits, certificates of occupancy or any other permits unless and until the CITY has notified the PROPRIETOR in writing that the PROPRIETOR has satisfactorily corrected the item(s) the PROPRIETOR has failed to perform. Notwithstanding the foregoing, if one party (the Defaulting Party) defaults under or otherwise breaches this Development Agreement, then the other party (the Non-Defaulting Party) shall furnish written notice of such default or breach to the Defaulting Party, and the Defaulting Party shall have a period of thirty (30) days from the furnishing of such written notice in which the Defaulting Party may cure the default or breach, prior to the Non-Defaulting Party asserting

breach or claiming any right or remedy arising as a result thereof (including but not limited to before the CITY may issue any stop work order).

(T-5) This agreement shall be interpreted, enforced and governed under the laws of the State of Michigan and Ann Arbor City Code.

(T-6) Any notice to PROPRIETOR contemplated or required under this Agreement shall be furnished to PROPRIETOR at 28400 Northwestern Highway, Fourth Floor, Southfield, Michigan 48086. Any notice to the CITY contemplated or required under this Agreement shall be furnished to the City Administrator at 100 North Fifth Avenue, Third Floor, Ann Arbor, Michigan 48107. A copy of all notices shall be sent to: H & K State Street L.L.C., Attention: Howard M. Frehsée, 6135 Pickwood Drive, West Bloomfield, Michigan 48322. Any party may change the address to which such notices are to be furnished, by giving written notice of such change to the other parties, in the manner specified herein.

(T-7) This Development Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, administrators, executors, personal representatives, successor trustees, successors and assigns.

(T-8) This Agreement shall be dated and shall be deemed effective on the date as of which both the CITY and PROPRIETOR have fully executed this Agreement below.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day first above written.

Witnesses:

Frances Todaro Hargreaves
Frances Todaro Hargreaves

Laurie Foondle
LAURIE FOONDLE

CITY OF ANN ARBOR, MICHIGAN
100 North Fifth Avenue
Ann Arbor, Michigan 48107

By: John Hieftje
John Hieftje, Mayor

By: Yvonne Carl
Yvonne Carl, Interim City Clerk 9/26/02

Approved as to Substance:

Roger Fraser
Roger Fraser, City Administrator

Approved as to Form:

Abigail Elias 9-15-02
Abigail Elias, City Attorney



Peggy M. Haines - Washtenaw Co. AM

L-4185 P-336

H & K STATE STREET L.L.C.
A Michigan limited liability company
28400 Northwestern Highway, Fourth Floor
Southfield, Michigan 48086

Witnesses:

John T. Panourgias

Jennifer Wong

By: Howard M. Frehsée Declaration of Trust
dated January 13, 1989, as amended,
Principal Member

By:

Howard M. Frehsée, Trustee

STATE OF MICHIGAN)
) SS:
COUNTY OF WASHTENAW)

On this 26 day of September, 2002, before me personally appeared John Hieftje, Mayor, and Yvonne Carl, Interim Clerk of the City of Ann Arbor, a Michigan Municipal Corporation, to me known to be the persons who executed this foregoing instrument, and to me known to be such Mayor and Clerk of said Corporation, and acknowledged that they executed the foregoing instrument as such officers as the free act and deed of said Corporation by its authority.

NOTARY PUBLIC
Washtenaw County, Michigan
My Commission Expires: 9-16-03

JILL S. ST. JOHN
Notary Public, Washtenaw County, MI
My Commission Expires Sept. 16, 2003

STATE OF MICHIGAN)
) ss:
COUNTY OF OAKLAND)

On this 10th day of September, 2002, before me personally appeared Howard M. Frehsée, as Trustee of the Howard M. Frehsée Declaration of Trust dated January 13, 1989, as amended, acting as a principal Member of H & K State Street L.L.C., to me known to be the person who executed the foregoing instrument, and acknowledged that he executed the foregoing instrument as his free act and deed and as the free act and deed of H & K State Street L.L.C.

NOTARY PUBLIC - STEVEN R. COLE
Oakland County, Michigan
My Commission Expires: 10/12/2004

DRAFTED BY AND WHEN RECORDED RETURN TO:
Karen Popek Hart, Planning Director
Ann Arbor City Planning Department
Post Office Box 8647
Ann Arbor, Michigan 48107
(734) 994-2800



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Page: 1 of 9
11/19/2002 02:28P
L-4185 P-335

STATE STREET LOFTS PARKING AGREEMENT

This PARKING AGREEMENT ("Agreement") is made and entered into this 5th date of August, 2002, by and between H & K State Street L.L.C. ("Owner"), whose address is c/o Howard M. Frehsee, 6135 Pickwood Drive, West Bloomfield, Michigan 48322, and the City of Ann Arbor, Michigan, a Michigan municipal corporation, whose address is 100 North Fifth Avenue, Ann Arbor, Michigan 48104 (the "City").

WHEREAS, the Owner has caused certain land in the City, located within the Downtown Area, to be surveyed, mapped and site planned as State Street Lofts, which land is commonly known as 205 South State Street and legally described herein (referred to herein as "State Street Lofts"); and

WHEREAS, the State Street Lofts development has utilized premiums allowed under the City Code to develop 28,301 square feet of residential dwelling space in excess of the normally permitted 400 percent (43,544 square feet) of floor area in percentage of lot area; and

WHEREAS, the City has reviewed and approved the site plan and development agreement for this property with the condition, pursuant to City Code Chapter 62, Off-Street Parking, Section 5:169(1), that no less than 29 parking spaces are provided for occupants of the site, either in a public parking lot or structure, pursuant to a written agreement with the City and/or other public body;

WHEREAS, the Owner requested that a number of parking spaces, in addition to the 29 spaces required by the site plan, be made available for the benefit of the occupants of State Street Lofts;

WHEREAS, the DDA, pursuant with a 2002 agreement with the City, acts as manager of the City's parking structures;

WHEREAS, the DDA has resolved that the development of this property will redevelop a blighted site in the Downtown Area, will provide 28,301 square feet of residential dwelling space in excess of the normally permitted floor area in percentage of lot area, including 3 units affordable to lower income families, and will generate TIF revenues for the benefit of the Downtown Area; and

WHEREAS, the DDA has committed to the Owner parking spaces in a public structure owned by the City and managed by the DDA (the "Structure") for the Owner to make available for use by the occupants of the State Street Lofts,

NOW, THEREFORE, in consideration of the mutual promises contained herein, and other good and valuable consideration, receipt whereof is hereby severally acknowledged, the Owner and the City hereby agree as follows:

1. Subject to the conditions specified in Section 2, the CITY or its successor body will make parking permits available upon the following terms and conditions:



- (a) Parking permits ("permits") for 29 vehicles shall be made available at the Structure for a period of twenty (20) years (the "Term"), with renewals offered in perpetuity, except that if the building is demolished or if it is determined by the City, either through Code amendments or petition of the Owner, that the 29 spaces are no longer required as a condition of the State Street Lofts site plan. The owner agrees to negotiate in good faith with the City and/or its designated representative to develop alternate arrangements for permanent parking so that renewal of the 29 spaces may not be required.
- (b) Parking permits for 47 additional vehicles (a total of 76 permits) shall be made available at the Structure for a period of twenty (20) years. Renewals for the 47 additional permits will be offered following the Term, subject to negotiation of the price and terms with the City or its designated manager.
- (c) The Term shall begin on the date specified by the Owner by written notice to the CITY, which notice shall be delivered by the Owner to the DDA not less than one hundred twenty (120) days prior to the first day of the Term, except that permits shall not become operational until issuance of the first certificate of occupancy for a residential dwelling unit at State Street Lofts. The Owner will use good faith efforts to advise the DDA of the projected commencement date of the initial Term at least six (6) months prior to that effective date.
- (d) During the initial Term, and thereafter, the DDA will issue to the Owner parking permits for up to seventy-six (76) spaces at the Structure, subject to the right of the Owner, at any time and from time to time, to reduce the number of permits by delivery of notice to the DDA at least thirty (30) days prior to the effective date of such reduction. The Owner acknowledges however, that unless otherwise agreed in writing by the CITY, any such reduction will be permanent and that the Owner will not have the right to require restoration of the permits eliminated because of any such reduction.
- (e) Notwithstanding the rights of the Owner in (d) above to reduce the number of permits, the Owner shall at no time reduce the number of permits to less than 29, unless and until such time as, upon petition of the Owner, the City Council has determined that the provision of 29 parking spaces for the benefit of State Street Lofts is no longer required or the Owner has provided 29 parking spaces elsewhere in the downtown area, as shown on an approved site plan and restricted for use solely by the occupants of State Street Lofts.
- (f) The permits issued to the Owner by the DDA for the Structure shall be made available for use only by individuals who are occupants of State Street Lofts ("permit holders"), with none of the first (required) 29 permits being issued to non-residential occupants of State Street Lofts, with no more than six permits for any remaining spaces being provided to retail occupants, and the remainder provided to residential occupants for whom State Street Lofts is a primary residence while in Ann Arbor. The rate charged to the residents for these permit spaces shall not exceed the permit fee as defined in sub section (g). The Owner, on or before the first day of the Term, shall provide a schedule to the DDA of each permit holder and the vehicle for which the permit will be utilized (the "permit schedule"). A vehicle permit sticker will be supplied for each permit holder. On a semi-annual basis thereafter, not later than the thirtieth (30th) day of each six month period, the Owner shall deliver to the DDA an update of the permit schedule of the permit holders as of the first day of that six month period. (If, as of the date of any permit schedule, any permit is not assigned for use by a specific permit holder, then the Owner shall confirm that fact in such permit schedule and, promptly after the permit is assigned to a specific permit holder, shall supplement the permit schedule with the name of the permit holder to whom that permit is assigned and the vehicle for which that permit will be utilized.) Each permit holder, in the use of the Structure, shall affix a permit sticker in the designated location to the vehicle for which the permit will be utilized and will comply with all



applicable ordinances of the City and will comply with all rules and regulations adopted by the DDA for use of the Structure to the extent that such rules and regulations are applicable to all holders of permits for the Structures and such rules and regulations have been furnished by the DDA to the Owner.

- (g) The Owner shall pay to the DDA the following fees for each permit issued under this agreement (the "permit fee"): (i) an initial fee for the issuance of a card required to obtain access under the permit, which fee shall be at the then prevailing charge for such access cards, and (ii) a monthly fee for each calendar month during which the permit is issued. For the first 12 months, commencing on the date specified by the Owner, the monthly permit fees for the first fifty (50) permits shall be Thirty Dollars (\$30) plus a sum equal to the then prevailing monthly rates for a parking permit in the Structure, as established by the DDA or its successor body. For the remaining twenty six (26) permits the monthly permit fee shall be Sixty Dollars (\$60) plus a sum equal to the then prevailing monthly rates for a parking permit in the Structure, as established by the DDA or its successor body. The DDA, not later than sixty (60) days prior to the commencement of the Term, shall advise the Owner in writing of the then prevailing rates which will provide the basis for the permit fee. Commencing 12 months after the starting date of the Term, and continuing on an annual basis thereafter, the \$30 fee and the \$60 fee will be increased by an amount equivalent to the rise of the Consumer Price Index published by the Bureau of Labor Statistics of the United States Department of Labor, U.S. City Average, All items and Major Group Figures for Urban Wage Earners and Clerical Workers (1982-84+100).CPI) for the previous 12-month period. The CITY will have the right, from time to time during the Term, to revise the permit fees payable by the Owner under this agreement to correspond to authorized changes in the then prevailing rates by a written notice delivered at least sixty (60) days prior to the effective date of such revision. For purposes of this Agreement, the prevailing rate for a parking space in the Structure will be the rate generally charged to individuals an arm's length basis for monthly parking permits in the Structure. If no other monthly parking permits are issued for the Structure, then the prevailing rate will be the rate which is charged for monthly parking permits in the parking Structure operated by the DDA or the City which is nearest the Structure.
- (h) The Owner (or a subsequent legally established Condominium Association, as defined by laws of the State of Michigan) shall pay to the DDA the total of permit fees for each permit issued under this agreement on a monthly basis, in a single lump sum, not later than the first day of the calendar month for which such permits are issued. (For example, for permits applicable for the month of August, the Owner will receive an invoice from the DDA during the preceding July, and the Owner shall pay the required charges to the DDA on or before that August 1st.) The permit fee for each calendar month will be payable for all permits issued by the DDA under this agreement for that month, irrespective of whether the Owner has assigned that permit to a permit holder for use during that month and irrespective of whether the permit holder has reimbursed the Owner for that permit fee. Any permit fee not paid by the Owner on or before its due date will bear interest at the prime rate (as published by Comerica Bank or its successor) plus three percent (3%) from its due date to its date of payment.
- (i) The DDA shall use its best efforts (i) to make up to 59 parking permits available in the Liberty Street Structure, and (ii) to make the remaining parking permits available in the Maynard Street Structure (or in any future structure which is closer to the State Street Lofts). However, unforeseen circumstances may make it necessary to substitute some of the initial 59 permits with permits in the Maynard Street Structure. If during the Term, renovations or repairs are required to either Structure, the DDA shall use its best efforts to minimize the effect of such repairs or renovations upon the utilization of the permits used under this agreement. If despite such best efforts, the utilization of some or all of those permits must be temporarily suspended, then the DDA shall use its best efforts to arrange for alternative parking arrangements for the affected permit holders at the



nearest available locations. If during the Term the DDA permanently discontinues parking at the Structure, then the DDA shall give written notice to the Owner as far in advance as possible of such discontinuance and shall use its best efforts to provide alternative parking for the affected permit holders at other locations.

2. Conditions to Effectiveness. The commitment of the DDA to issue permits to the Owner for the Structure on the Terms specified in Section 1 is subject to the satisfaction (or waiver in writing by the DDA) of each of the following conditions on or before the following dates:

- (a) The Owner shall have satisfied each of its commitments under the State Street Lofts development agreement on or before the date specified for satisfaction of such commitment in the State Street Lofts development agreement; and
- (b) The Owner, by written notice to the DDA pursuant to Section 7, shall have activated the Term of this agreement as of a date on or before May 21, 2004 (said date being three years from the date of approval of the revised site plan by the City) or such later date as the City may hereafter designate.
- (c) Unless each of the above conditions is satisfied on or before the date specified above for such condition, then all rights and obligations of the DDA and the Owner in this agreement shall be null, void and have no further force or effect, provided however that the City shall first provide the Owner written notice of the Owner's breach and an opportunity to cure that breach as provided in Section 3 below.

3. Default/Termination.

(a) The following will constitute events of default by the Owner under this Agreement:

- 1. The failure by the Owner to pay any permit fees after the date for payment specified in Section 1(h), which shall be considered a "Monetary Breach" hereunder, and the failure to remedy that breach within fourteen (14) days after the date that the DDA delivers written notice to the Owner identifying such breach and demanding payment of the full amount owing; or
- 2. The breach by the Owner of any other commitment under this Agreement, which shall be considered a "Non-Monetary Breach" hereunder, and the failure to remedy that breach within thirty (30) days after the date that the DDA delivers written notice identifying such breach and demanding such remedial action. However, if the Non-Monetary Breach cannot reasonably be cured within such thirty (30) days, and if the Owner furnishes a written response to the DDA within such thirty (30) days explaining the need for more time to cure the breach, and if such explanation is reasonably satisfactory to the DDA, then the DDA will grant the Owner such additional time to cure that Non-Monetary Breach as may be reasonably necessary under the circumstances, provided that the Owner must attempt to accomplish the cure of such breach in a reasonably diligent manner.

(b) Upon the occurrence of an event of default, the DDA, by further written notice to the Owner, may terminate this Agreement effective thirty (30) days following the day of delivery of such notice. In such event, the obligation of the DDA to issue permits for the Structure will terminate as of the effective date of such termination, the Owner will remain liable to the DDA for all permit fees accrued under this Agreement through the effective date of termination and the Owner will remain liable to the DDA for any damages incurred by the DDA or the City as a result of such default; provided, however, that any claims by the DDA for lost revenues (as distinguished from other damages which may be incurred by the DDA) due to Owner's failure to utilize and pay for permits issued and/or available pursuant to this Agreement will be limited to accrued but unpaid permit fees through the



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effective date of termination plus the total of all permit fees for a period of one hundred twenty (120) days after the date of termination for the number of permits in effect on the date of termination plus any interest accruing thereon in accordance with Section 1(h).

- (c) Default of the obligations of this agreement to maintain the twenty-nine (29) parking permits required by the approved site plan and development agreement for the State Street Lofts shall constitute a violation of the zoning ordinance and the site plan, unless the site plan has been amended as described in Section 1(a) above, and the City may, at its sole discretion, revoke any and all certificates of occupancy in State Street Lofts.
- (d) If the Owner or its lender holding any first mortgage on State Street Lofts furnishes written notice to the City requesting a copy of all notices of breach which are to be sent to the Owner, then the City will send a copy of all notices of any breach by the Owner to that lender, in order to afford the lender an opportunity to cure any breach on the terms granted to the Owner under Subsection (a) above. Such notice of breach shall be furnished to the lender at the same time as notice of breach is furnished to the Owner, so the lender's time period for curing a breach shall begin to run simultaneous with the Owner's time period.

4. Assignment.

- (a) Owner shall make no assignment under this Agreement without the prior written consent of City, which consent shall not be unreasonably withheld, delayed or conditioned, subject to and in accordance with the following:
 - 1. The City shall not withhold its consent to an assignment of this Agreement to a proposed assignee if the assignee, its principals, owners, managers and/or affiliated management company have reasonably sufficient financial strength and/or business experience to be reasonably capable of having the assignee fulfill the obligations of the Owner under this Agreement. The parties acknowledge that the intent of the City under this Section 4 is to protect the City's interest in the operation of the parking structures referred to herein, and the intent is not to address matters concerning the ownership or operation of State Street Lofts.
 - 2. The City shall not impose any additional financial or other obligations (directly or indirectly) on the proposed assignee or on State Street Lofts as a condition of granting the City's consent for the proposed assignment, including but not limited to (i) changing the terms of this Agreement in a manner not already authorized herein, or (ii) imposing any requirements concerning the use, residency, occupancy or operation of State Street Lofts. However, the City may require that the proposed assignee agree in writing to be bound by the terms of this Agreement.
 - 3. When the Owner requests written consent for a proposed assignment, the Owner shall provide the City information reasonably appropriate for the City to review the qualifications of the proposed assignee, its principals, owners, managers and/or affiliated management company. The City shall have ten (10) business days after receipt of this information to, in writing, either approve of the assignment, reject the assignment or make a one-time request for specific supplemental information to satisfy any concerns which the City specifically identifies as necessary in order for the City to conclude its review of the assignee in accordance with the terms of this Section 4. If the City fails to respond in writing to Owner within the ten (10) business day time period, then the City will be conclusively deemed to have consented to the proposed assignment. The same time period of ten (10) business days shall govern the City's review of any supplemental information furnished by the Owner in accordance with the foregoing terms.

4. Notwithstanding the foregoing, in no event shall the City's consent be required in connection with a foreclosure or judicial sale of State Street Lofts, or a deed in lieu of foreclosure, which is initiated by any bank, savings and loan association, credit union, insurance company, pension plan or other institutional lender holding a bona fide mortgage on the property.
- (b) The Owner may assign its rights under this Agreement to a legally established Condominium Association as defined by laws of the State of Michigan. In the event of any such permitted assignment to a Condominium Association, (i) Owner shall notify the City of the assignment in advance and in writing, (ii) the established Condominium Association will be fully liable for the performance of the obligations of the Owner under this Agreement; and (iii) the permits shall only be assigned to occupants of State Street Lofts as stated in Section 1(f).
- (c) In the event of an assignment of this Agreement which is permitted under the foregoing terms, the Owner (and in case of any subsequent transfers or conveyances, the then grantor) shall be automatically freed and relieved from and after the date of such transfer or conveyance of all liability thereafter arising on the part of the Owner under this Agreement. However, the Owner (or the then grantor) shall not be excused from paying any amounts which are already at that time due and payable to the City by the Owner hereunder.
5. City Assumption of DDA Rights and Obligations. If the DDA management responsibility for the Structure is for any reason terminated, whether as a result of the termination or amendment of the Master Lease, the DDA is dissolved by action of the City or operation of law, or any other reason, the rights and obligations of the DDA under this Agreement shall transfer to and become the obligation of the City and the Owner's rights and obligations under this Agreement will not be affected in any way by the transfer of the rights and obligations to the City.
6. Binding Effect. This Agreement is binding upon and shall inure to the benefit of the parties hereto and their permitted successors and assigns.
7. Notices. All notices permitted or required under this Agreement shall be in writing and addressed to the parties at their addresses set forth above. Any such notice shall be sent by certified mail, return receipt requested, express overnight delivery requiring a signed delivery receipt, delivered personally or sent by facsimile. Any notice sent by certified mail, return receipt requested, will be deemed delivered on the third (3rd) business day after mailing. Any notice sent by express overnight delivery will be deemed delivered on the following business day after delivering such notice to the carrier. Any notice given by personal delivery or by facsimile prior to 5:00 p.m. will be deemed delivered on the date of such delivery or, if 5:00 p.m. or later, on the next business day. Any notice that a party fails or refuses to accept will be deemed delivered on the date of such failure or refusal. The parties hereto may change their addresses for notice purposes by a notice sent in accordance with the provisions of this Agreement, but no such address shall be a post office box.
8. Authority. The signatories on behalf of the parties hereto hereby represent and warrant to the other parties hereto that they are duly authorized to execute and deliver this Agreement on behalf of such party and that this Agreement is binding upon and enforceable against such party.
9. Applicable Law. This Agreement shall be interpreted and construed in accordance with the laws of the State of Michigan.



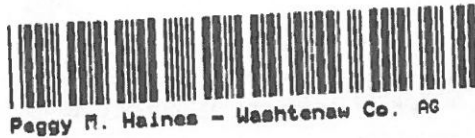
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- 10. Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original but all of which together shall constitute but one and the same Agreement.
- 11. Entire Agreement. This Agreement constitutes the entire Agreement between the parties hereto pertaining to the subject matter hereof and supersedes all negotiations, preliminary agreements and prior to contemporaneous discussions and understandings of the parties hereto in connection with the subject matter hereto.
- 12. Amendments. No amendment, change or modification of any of the terms, provisions or conditions of this Agreement will be effective unless made in writing and signed or initialed on behalf of the parties hereto by their duly authorized representatives.
 - (a) Contingent Termination of Agreement. Notwithstanding any term or provision of this Agreement to the contrary, the Owner shall have the right to terminate this Agreement at any time on or before May 21, 2004, or such later date as the City may hereafter designate as long as the Owner has not yet obtained any grading permit for the site-plan approved State Street Lofts project, by the Owner sending written notice of such termination to the City. Upon such termination by the Owner, this Agreement shall become null and void, and neither party shall have any obligations hereunder. In addition, upon such termination by the Owner, the Owner shall have the right to record an Affidavit of Termination of Parking Agreement, stating that this Agreement has terminated, and thereby confirming for the public record that this Agreement is no longer of any force or effect. For purposes of this agreement, a demolition permit does not constitute a grading permit.
- 13. No Third Party Beneficiaries. The parties acknowledge and agree that this Agreement is made and entered into for the sole benefit of the Owner, the City and the DDA, and in no event shall any other person, entity or agency be considered a party to this Agreement or a beneficiary under this Agreement. Accordingly, there shall be no third party beneficiaries under this Agreement, and in no event shall any nonprofit housing entity, any tenant, any parking permit holder or any other person, entity or agency be entitled to enforce or claim any right or benefit under this Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day first above written. This agreement is not intended to create a contractual right for third parties. It may be enforced, amended, or rescinded only by the parties and their successors in interest. The obligations of the Owner contained in this agreement shall be binding on the successors and assigns in ownership of the following-described parcels:

CITY OF ANN ARBOR, WASHTENAW COUNTY, MICHIGAN

Lot 1 and part of Lot 2 of Eastern Addition to the Village of Ann Arbor (now City), Block No. 2, more particularly described as beginning at the Northwest corner of Lot 1, also being the intersection of the Easterly line of State Street with the Southerly line of Washington Street and proceeding thence North 89°37'20" East along the Southerly line of Washington Street, also being the Northerly line of Lot 1, 132 feet; thence due South 82.5 feet; thence South 89°37'20" West 132 feet to a point on the Easterly line of State Street; thence due North 82.5 feet to a point of beginning. Commonly known as 205 South State Street, Ann Arbor (Tax Parcel No. 09-28-223-007)



5351486
Page: 8 of 9
11/19/2002 02:28P
L-4185 P-335

WITNESSES:

[Signature]
John T. Panourgias
[Signature]
Jennifer Wong

OWNER:

H & K STATE STREET L.L.C.
a Michigan Limited Liability Company

By: [Signature]
Printed Name: Howard M. Frehsee, as Trustee of
the Howard M. Frehsee Declaration of Trust dated
January 13, 1989, as amended
Member

WITNESSES:

[Signature]
Frances Todorro Hargreaves
Frances Todorro Hargreaves
[Signature]
LAURIE FOONDLE
LAURIE FOONDLE

CITY:

CITY OF ANN ARBOR
a Michigan municipal corporation

By: [Signature]
John Hieftje, Mayor
By: [Signature]
Yvonne Carl, Interim City Clerk 9/26/02

Approved as to Substance:

[Signature]
Roger W. Fraser, City Administrator

Approved as to Form:

[Signature] 9-13-02
Abigail Elias, City Attorney *BPV*

STATE OF MICHIGAN)
) ss:
County of Washtenaw)



5351486
Page: 9 of 9
11/19/2002 02:28P
L-4185 P-335

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On this 26 day of September, 2002, before me personally appeared John Hieftje, Mayor, and Yvonne Carl, Clerk of the City of Ann Arbor, a Michigan Municipal Corporation, to me known to be the persons who executed this foregoing instrument, and to me known to be such Mayor and Clerk of said Corporation, and acknowledged that they executed the foregoing instrument as such officers as the free act and deed of said Corporation by its authority.

Jill S. St. John

NOTARY PUBLIC
Washtenaw County, Michigan
My Commission Expires: 9-16-03

STATE OF MICHIGAN)
) ss:
County of Oakland)

JILL S. ST. JOHN
Notary Public, Washtenaw County, MI
My Commission Expires Sept. 16, 2003

On this 10th day of September, 2002, before me personally appeared Howard M. Frehsee, as Trustee of the Howard M. Frehsee Declaration of Trust dated January 13, 1989, as amended, acting as an authorized Member of H & K State Street L.L.C., to me known to be the person who executed the foregoing instrument, and acknowledged that he executed the foregoing instrument as his free act and deed and as the free act and deed of H & K State Street L.L.C.

Steven R. Cole

NOTARY PUBLIC - STEVEN R. COLE
Oakland County, Michigan
My Commission Expires: 10/12/2004

DRAFTED BY AND WHEN RECORDED RETURN TO:
Karen Popek Hart, Planning Director
Ann Arbor City Planning Department
Post Office Box 8647
Ann Arbor, Michigan 48107
(734) 994-2800