

**212 SOUTH STATE STREET DEVELOPMENT AGREEMENT**

THIS AGREEMENT, made this \_\_\_ day of \_\_\_\_\_, 2019, by and between the City of Ann Arbor, a Michigan municipal corporation, with principal address at 301 East Huron Street, Ann Arbor, Michigan 48107, hereinafter called the CITY, and Cerca Trova, a Michigan limited liability company, with principal address at 3910 Telegraph, Suite 201, Bloomfield Hills, Michigan 48302, hereinafter called the DEVELOPER, witnesses that:

WHEREAS, the DEVELOPER owns or has the right to develop certain land in the City of Ann Arbor, described in Paragraph T-4 below (the "Property") and site planned as 212 South State Street, which will be incorporated into a condominium project as further described herein, and

WHEREAS, the DEVELOPER has caused certain land in the City of Ann Arbor, described below to be surveyed, mapped and site planned as 212 South State Street, and desires site plan and development agreement approval thereof, and

WHEREAS, the DEVELOPER desires to build or use certain improvements with and without the necessity of special assessments by the CITY, and

WHEREAS, on \_\_\_\_\_, City Council approved the 212 South State Street Site Plan ("Site Plan") and the 212 South State Street Development Agreement ("Agreement") pursuant to a resolution adopted on that date, and

WHEREAS, the CITY desires to insure that all of the improvements required by pertinent CITY ordinances and regulations be properly made, and that the DEVELOPER will install these improvements prior to any permits being issued except as provided herein.

**THE DEVELOPER HEREBY AGREES:**

(P-1) To prepare and submit to the CITY for approval plans and specifications ("the Plans") prepared by a registered professional engineer for construction of public water main, private storm water management systems, and sidewalks ("the Improvements") provided that no work on said Improvements shall be commenced until the Plans have been approved by the City Administrator or designee in accordance with City standards, and until such other relevant information to CITY service areas as shall be reasonably required has been provided.

(P-2) To construct the Improvements set forth in Paragraph P-1 of this Agreement in accordance with the approved Plans and to repair all defects in the Improvements that occur within one year from the date of acceptance of the Improvements by the CITY, commencing on the latest date of the acceptance of any Improvements by the CITY. If the DEVELOPER fails to construct the Improvements, the CITY may send notice via first class mail to the DEVELOPER

at the address listed above requiring it to commence and complete the Improvements in the notice within a reasonable time as set forth in the notice. The CITY may cause the work to be completed at the expense of the DEVELOPER, if the DEVELOPER does not complete the work within the time set forth in the notice. Every owner of a portion of the property, including co-owners of any condominium units, shall pay a pro-rata share of the cost of the work as specified by the master deed. That portion of the cost of the work attributable to each such condominium unit shall be a lien on that property and may be collected as a single tax parcel assessment as provided in Chapter 13 of the Ann Arbor City Code. DEVELOPER shall specify in the master deed that notwithstanding the foregoing, the owner of the "H&K Parcel" (as described below) shall not be responsible for any costs of the initial construction of the Improvements; and any assessment for the costs of initial construction of the Improvements (and for repairing defects within the aforementioned one year period) shall be assessed exclusively against condominium units other than the condominium unit comprising the H&K Parcel.

(P-3) To furnish, within 30 days of completion, an engineer's certificate that the construction of the 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 DEVELOPER'S engineer inspects.

(P-4) Prior to the issuance of any grading and building permits and recording the master deed, DEVELOPER shall record a reciprocal easement for the shared storm sewer water management system for the Project and 616 E. Washington in a form acceptable to the City Attorney.

(P-5) To provide and install such temporary warning signs during the construction period as are appropriate to protect the health, safety and welfare of the public.

(P-6) To install all water mains and storm sewers pursuant to CITY approved plans and specifications, necessary to connect the site with existing CITY systems adjacent to the site prior to the issuance of any above grade, vertical building permits, or at a later time as determined by the CITY public Services Area..

(P-7) To be included in a future special assessment district, along with other benefiting property, for the construction of additional improvements to South State Street such as street widening, storm sewers, curb and gutter, sidewalks, bike paths, street lights, and the planting of trees along the South State Street frontage when such improvements are determined by the CITY to be necessary, and to include this requirement in the master deed.

(P-8) To indemnify, defend 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 DEVELOPER, its employees, agents, subcontractors, invitees, or licensees in the design, construction, maintenance or repair of any of the Improvements required under this Agreement and the Site Plan.

(P-9) To cause to be maintained General Liability Insurance and Property Damage Insurance in the minimum amount of \$1,000,000 per occurrence, and naming the CITY as additional insured to protect and indemnify the CITY against any claims for damage due to public use of the public Improvement(s) in the development prior to final written acceptance of the public Improvement(s) by the CITY. Evidence of such insurance shall be provided by the

DEVELOPER prior to any construction of the Improvements and a copy shall be 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 of the Improvements.

(P-10) For the benefit of the residents of the DEVELOPER'S development, to make a park contribution of \$11,875 to the CITY Parks and Recreation Services Unit prior to the issuance of certificates of occupancy, for improvements to Liberty Plaza, Sculpture Plaza, the Farmer's Market, North Main Park, Wheeler Park, South University Park, Douglas Park, or Crary Park.

(P-11) Existing street trees shown on the site plan as trees to be saved shall be maintained by the DEVELOPER in good condition for a minimum of three years after acceptance of the public improvements by the CITY or granting of a Certificate of Occupancy for the final unit. Existing street trees that are determined by the CITY to be dead, dying or severely damaged due to construction activity within three years after acceptance of the public improvements or granting of a Certificate of Occupancy for the final unit, shall be replaced by the DEVELOPER as provided by Ann Arbor City Code.

(P-12) To create an association of co-owners, as defined in the Michigan Condominium Act, composed of all owners of the condominium contemplated for the property (hereinafter called the "Association"), in which membership shall be required by covenants and restrictions recorded as part of the master deed for the Project. (The City acknowledges that an administrator may act on behalf of or in lieu of the Association.) The Association shall be responsible for and shall execute the appropriate documents insuring perpetual maintenance and ownership of the following elements to the extent such elements constitute common elements in the master deed: landscape materials, exterior lighting, driveways, sidewalks, on-site storm water management system, and all other common elements. For any of the foregoing elements that are not common elements, the master deed shall specify which condominium unit or units own and are responsible for their perpetual maintenance.

(P-13) To prepare and submit to the Planning and Development Services Unit one copy of the master deed, along with the required review fee, prior to issuance of building permits.

(P-14) To construct a private on-site storm water management system. After construction of the private on-site storm water management system, to maintain it until the Association assumes responsibility under the master deed. Thereafter, by provision in the master deed, the Association shall own and maintain the storm water management system. Any proposed changes to the system must be approved by the City of Ann Arbor Systems Planning and Planning and Development Services Units. If the DEVELOPER or Association, as appropriate, fails to maintain any portion of the system, the CITY may send notice via first class mail to the DEVELOPER, or Association, at the address listed above, requiring it to commence and complete the maintenance stated in the notice within a reasonable time set forth in the notice. After reasonable notice and an opportunity to cure, the CITY may cause the work to be completed at the expense of the DEVELOPER or Association if the DEVELOPER or Association does not complete the work, as appropriate, within the time set forth in the notice. If the CITY completes the work, and the costs remain unpaid by the Association or the DEVELOPER for 60 days after notice via first class mail, the CITY may bill each condominium unit for the pro rata share of the total cost, or assess the pro rata share of those costs to each condominium unit as a single tax parcel assessment as provided in Chapter 13 of Ann Arbor City Code. Provisions for maintenance and responsibility for the storm water management system, as well as the pro rata share of each condominium unit shall be included by the

DEVELOPER in the master deed. DEVELOPER shall specify in the master deed that notwithstanding the foregoing, the owner of the H&K Parcel shall not be responsible for any costs of the initial construction of the private on-site storm water management system; and any assessment for the costs of initial construction shall be assessed exclusively against condominium units other than the condominium unit comprising the H&K Parcel.

(P-15) After construction of the private on-site storm water management system, to commission an annual inspection of the system by a registered professional engineer evaluating its operation and stating required maintenance or repairs, and to provide a written copy of this evaluation to the CITY Public Services Area upon request.

(P-16) To design, construct, repair and maintain this Project in accordance with the provisions of Chapter 119 (Noise Control) to ensure that any noise emanating from said Project will not negatively impact nearby residents or businesses. In addition, DEVELOPER shall review existing noise sources surrounding the Project and incorporate necessary design and construction techniques to ensure that future tenants will not be exposed to noise sources in violation of Chapter 119 originating from within this Project or this Project's facilities or equipment.

(P-17) To include the elevation drawings, as submitted to City Council, as part of the Site Plan and to construct all buildings consistent with said elevation drawings.. If the DEVELOPER proposes any substantive changes to the approved building elevations, aesthetics, or materials, that those changes be submitted to the City Council for approval. Nonmaterial changes to the approved building elevations, aesthetics, or materials may be approved by the Planning and Development Services Manager or designee.

(P-18) To remove all discarded building materials and rubbish from the Project at least once each month during construction of the Project, and within one month after completion or abandonment of construction.

(P-19) DEVELOPER is entering into a 616 E. Washington Development Agreement simultaneous herewith, for development and construction of a building that will include a bicycle parking area sufficient in size for shared use by residents of such building and residents of the Project. Prior to the issuance of grading or building permits, DEVELOPER shall grant an access easement (or equivalent rights provided in the master deed for the Project), for permanent, non-exclusive rights for shared use of the bicycle parking facilities by the residents of the Project.

(P-20) Prior to the issuance of grading or building permits, DEVELOPER shall acquire pedestrian access easements for ingress and egress from the Project to Washington Street or to State Street in a form acceptable to the City Attorney. The access area must meet all requirements and standards of the City Public Services Area and applicable fire and building codes.

(P-21) Prior to the issuance of grading or building permits, DEVELOPER shall acquire easements for the CITY to access the Project for solid waste removal over the private "alley" on 611 E. Liberty Street, as well as 609 E. Liberty Street if necessary. The easements shall be in a form acceptable to the City Attorney. The access area must meet all solid waste requirements and standards of the City Public Services Area. The City Public Services Area may approve an alternative arrangement for solid waste removal in their sole discretion.

(P-22) To provide partial solar power for the Project by installing solar panels on the

roof of the Project, as shown on the Site Plan, and subsequent construction drawings. The solar panels shall produce a minimum rated capacity of \_\_\_\_\_ kWh per year, with solar panel coverage of a minimum of 470 square feet of the roof. (The solar panels as shown on the Site Plan are projected to produce over \_\_\_\_\_ kWh per year, which is projected to offset over \_\_\_\_% of the Project's total energy consumption.)

(P-23) DEVELOPER has a contract right to become the sole title holder in fee simple of the land described below as the "Developer's Parcel" except for any mortgage, easements and deed restrictions of record and that the person signing below on behalf of DEVELOPER has legal authority and capacity to enter into this Agreement for DEVELOPER. DEVELOPER also has legal authority to develop this Project and enter into this Agreement from the owner of the land described below as the H&K Parcel.

(P-24) Failure to construct, repair and/or maintain the site pursuant to the Site Plan and/or failure to comply with any of this 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 DEVELOPER complies with the Site Plan and/or the terms and conditions of the Agreement. The DEVELOPER shall be responsible for all costs and expenses including reasonable attorney fees incurred by the CITY in enforcing the terms and conditions of the Site Plan and Agreement.

(P-25) In addition to any other remedy set forth in this Agreement or in law or equity, if DEVELOPER fails to make timely or full payments to the CITY as set forth elsewhere in the Agreement in the agreed upon manner, any unpaid amount(s) shall become a lien on the Property, as provided under Ann Arbor City Code, and such lien may be recorded with the Washtenaw County Register of Deeds, against the Property, and may be placed on the CITY tax roll as a single lot assessment, or if the Project is converted to condominium ownership, every owner of a portion of the Property shall pay a pro-rata share of the amount of the payments attributable to each condominium unit, except to the extent the owner of the H&K Parcel is herein expressly excluded from such assessment, as specified in the master deed. If the unpaid amount(s), in whole or in part, has been recorded as a lien on the CITY'S tax roll and with the Washtenaw County Register of Deeds, upon payment of the amount in full along with any penalties and interest, the CITY, upon request, will execute an instrument in recordable form acknowledging full satisfaction of this condition.

(P-26) To pay for the cost of recording this Agreement with the Washtenaw County Register of Deeds, and to pay for the cost of recording all documents granting easements to the CITY.

(P-27) The owner of the H&K Parcel, H & K Campus Properties LLC, shall have no obligation, duties or liability with respect to DEVELOPER'S responsibilities or obligations under this Agreement, except as otherwise expressly provided herein. This Agreement is not intended to create a partnership, joint venture or other mutual endeavor on behalf of DEVELOPER and the owner of the H&K Parcel.

**THE CITY HEREBY AGREES:**

(C-1) In consideration of the above undertakings, to approve the 212 S. State Street Site Plan.

(C-2) To use the park contribution described above for improvements to Liberty Plaza,

Sculpture Plaza, the Farmer's Market, North Main Park, Wheeler Park, South University Park, Douglas Park, or Crary Park.

(C-3) To provide timely and reasonable CITY inspections as may be required during construction.

(C-4) To record this Agreement with the Washtenaw County Register of Deeds.

## **GENERAL TERMS**

Both the DEVELOPER 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, conditions, or provisions 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, not contained in this Agreement shall not be binding on either party.

(T-3) This Agreement and any of its terms or conditions shall not be assigned or transferred to any other individual or entity unless prior approval of the CITY is received. Such approval shall be granted administratively, and shall not be withheld unreasonably, and shall be granted within seven 15 business days of the request.

(a) However, DEVELOPER may, without the requirement of any approval or consent by the CITY, assign this Agreement to any entity that directly or indirectly, through one or more intermediaries, is controlled by, controls or is under common control with some or all of (i) Cerca Trova LLC, or (ii) a partnership, limited liability company, corporation or other entity which includes some or all of the owners of Cerca Trova LLC. Whenever such assignment occurs, DEVELOPER shall provide written notice of such transfer to the City within fifteen (15) days.

(T-4) The Property consists of the Developer's Parcel together with the H&K parcel as described below. The obligations and conditions on the DEVELOPER, and (subject to any approval required herein from the CITY) the rights of the DEVELOPER, as set forth above in this Agreement and in the Site Plan, shall inure to the benefit of and be binding on any successors and assigns in ownership of the Developer's Parcel described below:

(a) Developer's Parcel referred to herein is described below:

### **DESCRIPTION AS SURVEYED OF DEVELOPER'S PARCEL:**

The following land (and after establishment of the 212 South State Street condominium project, the condominium units comprising the space principally located thereon) shall be considered the "Developer's Parcel" for purposes of this Agreement:

**DESCRIPTION OF A 0.086 ACRE PARCEL (212 S. STATE STREET) OF LAND BEING A PART OF ASSESSOR'S PLAT NO. 27, ACCORDING TO THE PLAT THEREOF AS RECORDED IN LIBER 9 OF PLATS, PAGE 18, WASHTENAW COUNTY RECORDS, LOCATED IN THE NORTHEAST 1/4 OF SECTION 29, TOWN 2**

**SOUTH, RANGE 6 EAST, CITY OF ANN ARBOR, WASHTENAW COUNTY,  
MICHIGAN**

**Parcel 6B + Area C:**

PART OF LOTS 12 AND 15 OF ASSESSOR'S PLAT No. 27, ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 9 OF PLATS, PAGE 18, WASHTENAW COUNTY RECORDS, DESCRIBED AS BEGINNING AT THE NORTHWEST CORNER OF LOT 12; THENCE SOUTH 86 DEGREES 06 MINUTES 33 SECONDS EAST 61.38 FEET ALONG THE NORTH LINE OF LOT 12; THENCE SOUTH 00 DEGREES 03 MINUTES 20 SECONDS WEST, 58.48 FEET ALONG THE EAST LINE OF LOT 12 AND EAST LINE EXTENDED; THENCE NORTH 86 DEGREES 00 MINUTES 13 SECONDS WEST 61.38 FEET ALONG THE SOUTH LINE OF LOT 12; THENCE NORTH 85 DEGREES 39 MINUTES 34 SECONDS WEST 4.36 FEET; THENCE NORTH 04 DEGREES 20 MINUTES 26 SECONDS EAST 58.20 FEET ALONG THE EAST LINE OF BUILDING TO THE POINT OF BEGINNING. ALSO, A RIGHT-OF-WAY AS DESCRIBED IN A WARRANTY DEED FROM NELLIE M. GROVES TO THEODORE DAMES RECORDED JULY 13, 1927 IN LIBER 271 OF DEEDS, PAGE 11, WASHTENAW COUNTY RECORDS.

Commonly known as **212 S. State Street**, Ann Arbor

Tax Identification Number:

Formerly part of 09-09-29-108-010

Now part of 09-09-29-108-038

Split/Combined on 02/11/2019 from 09-09-29-108-010, 09-09-29-108-024;

**Parcel 6A:**

(b) The H&K Parcel referred to herein is described below:

DESCRIPTION AS SURVEYED OF H&K PARCEL:

The following land (and after establishment of the 212 South State Street condominium project, the condominium unit comprising the space principally located thereon) shall be considered the "H&K Parcel" for purposes of this Agreement:

**DESCRIPTION OF A 0.121 ACRE PARCEL (214 and 216 S. STATE STREET) OF LAND BEING A PART OF ASSESSOR'S PLAT NO. 27, ACCORDING TO THE PLAT THEREOF AS RECORDED IN LIBER 9 OF PLATS, PAGE 18, WASHTENAW COUNTY RECORDS, LOCATED IN THE NORTHEAST 1/4 OF SECTION 29, TOWN 2 SOUTH, RANGE 6 EAST, CITY OF ANN ARBOR, WASHTENAW COUNTY, MICHIGAN**

PART OF LOT 12 OF ASSESSOR'S PLAT No. 27, (CITY OF ANN ARBOR), ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 9 OF PLATS, PAGE 18, WASHTENAW COUNTY RECORDS, DESCRIBED AS BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 12; THENCE NORTH 86 DEGREES 00 MINUTES 13 SECONDS WEST ALONG THE SOUTH LINE OF SAID LOT 12, 132.27 FEET; THENCE NORTH 00 DEGREES 03 MINUTES 20 SECONDS EAST 39.91 FEET TO THE NORTH LINE OF SAID LOT 12; THENCE SOUTH 86 DEGREES 02 MINUTES 35 SECONDS EAST ALONG THE NORTH LINE OF SAID LOT 12, 132.27 FEET TO THE

NORTHEAST CORNER OF SAID LOT 12; THENCE DUE SOUTH ALONG THE EAST LINE OF SAID LOT 12, 40.00 FEET TO THE POINT OF BEGINNING. ALSO, A RIGHT-OF-WAY AS DESCRIBED IN A WARRANTY DEED FROM NELLIE M. GROVES TO THEODORE DAMES RECORDED JULY 13, 1927 IN LIBER 271 OF DEEDS, PAGE 11, WASHTENAW COUNTY RECORDS.

Commonly known as **214 and 216 S. State Street**, Ann Arbor  
Tax Identification Number:  
Formerly part of 09-09-29-108-010  
Now part of 09-09-29-108-038

(T-5) In addition to any other remedy in law or in equity failure to comply with all of the above paragraphs on the part of the DEVELOPER, or any part of the 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 and shall be an adequate basis and cause for the CITY to deny the issuance of any building permits, certificates of occupancy, or any other permits unless and until the CITY has notified the DEVELOPER in writing that the DEVELOPER has satisfactorily corrected the item(s) the DEVELOPER has failed to perform.

(T-6) This Agreement shall be interpreted, enforced and governed under the laws of the State of Michigan and Ann Arbor City Code. DEVELOPER submits to the personal jurisdiction of any competent court in Washtenaw County, Michigan, for any action arising out of this Agreement. DEVELOPER also agrees that no action will be commenced against the City because of any matter arising out of this Agreement in any courts other than those in the County of Washtenaw, State of Michigan, unless original jurisdiction can be established in the United States District Court for the Eastern District of Michigan, Southern Division, the Michigan Supreme Court, or the Michigan Court of Appeals.

[Remainder of page intentionally left blank]

**Execution by City of Ann Arbor**

CITY OF ANN ARBOR, MICHIGAN  
301 East Huron Street  
Ann Arbor, Michigan 48107

By: \_\_\_\_\_  
Christopher Taylor, Mayor

By: \_\_\_\_\_  
Jacqueline Beaudry, City Clerk

Approved as to Substance:

\_\_\_\_\_  
Howard S. Lazarus, City Administrator







**Acknowledgement and Agreement of H & K Campus Properties LLC**

DEVELOPER has entered into an agreement (the "CT-HK Agreement") with H & K Campus Properties LLC, having an address of 3910 Telegraph, Suite 201, Bloomfield Hills, Michigan 48302, the owner of record of a portion of the property described above as the H&K Parcel, to develop the property as a condominium. H & K Campus Properties LLC acknowledges the terms of the 212 South State Street Development Agreement above, and understands that the entire property must be combined into a single parcel and remain combined as a single parcel (or included in a condominium consistent with the Michigan Condominium Act) for the Site Plan to remain in compliance with the City's ordinances, and may only be subsequently divided consistent with City and State laws when the Site Plan no longer controls the use and design of the Project and property. In accordance with the CT-HK Agreement, H & K Campus Properties LLC agrees to permit the property to be submitted to the Project and also acknowledges and agrees that the 212 South State Street Development Agreement shall run with the property and shall be binding on and inure to the benefit of any successors and assigns in ownership of the property.

H & K Campus Properties LLC,  
a Michigan limited liability company

By: \_\_\_\_\_  
Howard M. Frehsee, Manager

STATE OF MICHIGAN )  
  )ss:  
County of Washtenaw )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2019, by Howard M. Frehsee, Manager of H & K Campus Properties LLC, a Michigan limited liability company, on behalf of the company.

\_\_\_\_\_  
NOTARY PUBLIC  
County of \_\_\_\_\_, State of Michigan  
My Commission Expires: \_\_\_\_\_  
Acting in the County of Washtenaw

DRAFTED BY AND AFTER RECORDING RETURN TO:  
Ann Arbor Planning &  
Development Services  
ATTN: Brett Lenart  
Post Office Box 8647  
Ann Arbor, MI 48107  
(734) 794-6265