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 CITY OF SEATTLE
 18 FEB 13 PM 3:35
 CITY CLERK

Ex B – Property Use and Development Agreement

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Property Use and Development Agreement

<i>When Recorded, Return to:</i>	
THE CITY CLERK 600 Fourth Avenue, Floor 3 PO Box 94728 Seattle, Washington 98124-4728	

PROPERTY USE AND DEVELOPMENT AGREEMENT

Grantor(s):	(1) Brook V LLC	(2) n/a
<input type="checkbox"/> Additional grantors on page <u>n/a</u>		
Grantee:	(1) The City of Seattle	
<input type="checkbox"/> Additional on page <u>n/a</u>		
Legal Description (abbreviated if necessary):	See below.	
<input checked="" type="checkbox"/> Additional legal description on page <u>2</u>		
Assessor's Tax Parcel ID #:	880790-0200 880790-0210	
Reference Nos. of Documents Released or Assigned:	n/a	

THIS PROPERTY USE AND DEVELOPMENT AGREEMENT (the "Agreement") is executed this 9 th day of Feb, 2018, in favor of the Grantee CITY OF SEATTLE (the "City"), a Washington municipal corporation, by Grantor BROOK V LLC a Washington limited company (the "Owner")(together hereafter the "Parties").

RECITALS

A. BROOK V LLC is the owner of that certain real property (the "Rezone Area") in the City of Seattle zoned Neighborhood Commercial 3 with a pedestrian designation and a 40-foot height limit ("NC3P-40") shown in Attachment A and legally described as:

PARCEL A:

LOTS 6 AND 7, BLOCK 6, UNION LAKE ADDITION SUPPLEMENTAL TO THE CITY OF SEATTLE. W.T., ACCORDING TO THE PLAT THEREOF RECORDED IN [VOLUME 2 OF PLATS, PAGE 177](#), IN KING COUNTY, WASHINGTON; EXCEPT THE WEST 18.21 FEET THEREOF CONDEMNED IN KING COUNTY SUPERIOR COURT CAUSE NO. 61981 FOR DEXTER AVENUE, AS PROVIDED BY ORDINANCE NO. [17628](#) OF THE CITY OF SEATTLE.

PARCEL B:

LOT 8, BLOCK 6, UNION LAKE ADDITION SUPPLEMENTAL TO THE CITY OF SEATTLE W.T., ACCORDING TO THE PLAT THEREOF RECORDED IN [VOLUME 2 OF PLATS, PAGE 177](#), IN KING COUNTY, WASHINGTON; EXCEPT THAT PORTION CONDEMNED IN KING COUNTY SUPERIOR COURT CAUSE NUMBER 61981 FOR DEXTER AVENUE NORTH.

- B. In September 2016, the Owner submitted to the City an application under Project No. 3021980 for a rezone of the Rezone Area from NC3P-40 to Neighborhood Commercial 3 with a pedestrian designation and a 65-foot height limit. Because the City was in the process of preparing a proposal for a legislative rezone to apply Mandatory Housing Affordability (MHA) requirements in existing multifamily and commercial zones in Seattle, including the subject property, the Applicant and the Department determined that Neighborhood Commercial 3 with a pedestrian designation, a 75-foot height limit, and the MHA suffix (“NC3P-75 (M1)”) was the appropriate zone designation.
- C. Per Seattle Municipal Code (“SMC”) 23.58B.015 and SMC 23.58C.015, the requirements of Chapter 23.58B and 23.58C SMC apply where the provisions of the zone refer to that Chapter or through the terms of a contract rezone according to SMC 23.34.004.
- D. Seattle Municipal Code Section 23.34.004 allows the City to approve a rezone subject to “self-imposed restrictions” upon the development of the property.

NOW, THEREFORE, in consideration of the mutual agreements contained herein, the parties agree as follows:

AGREEMENT

Section 1. Agreement. Pursuant to Seattle Municipal Code Section (“SMC”) 23.34.004, the Owner hereby covenants, bargains and agrees, on behalf of itself and its successors and assigns, that it will comply with the following conditions in consideration of the rezone of the Rezone Area from Neighborhood Commercial 3 with a 40-foot height limit and a pedestrian zone designation (“NCP3-40”) to Neighborhood Commercial 3 with a 75-foot height limit, a pedestrian zone designation, and a mandatory housing affordability suffix (“NCP3-75 (M1)”) (the “Rezone”):

- a) Development of the Rezone Area is restricted to a project developed in substantial conformance with the final approved plans for Master Use Permit (“MUP”) number 3021980. Prior to issuing the MUP, Seattle Department of Construction and Inspections

(“SDCI”) must confirm that the drawings substantially comply with the conditions established during the design review process, including the structure design and location on the site, structure height, building materials, landscaping, street improvements, parking design, signage and site lighting.

- b) The provisions of Seattle Municipal Code Chapter 23.58B and 23.58C shall apply to the Rezone Area.

Section 2. Agreement Runs With the Land. This Agreement shall be recorded in the records of King County by the City Clerk. The covenants hereof shall be deemed to attach to and run with the land and shall be binding upon the Owner, its heirs, successors and assigns, and shall apply to after-acquired title of the Owner of the Rezone Area.

Section 3. Termination of Conditions. The conditions listed in Section 1 of this Agreement shall expire if the Rezone expires according to SMC 23.76.060.C, or if the Rezone is revoked pursuant to SMC 23.34.004.

Section 4. Amendment. This Agreement may be amended or modified by agreement between Owner and the City, if such amendments are approved by the City Council by ordinance.

Section 5. Exercise of Police Power. Nothing in this Agreement shall prevent the City Council from making such further amendments to the Seattle Municipal Code or Land Use Code as it may deem necessary in the public interest.

Section 6. No Precedent. The conditions contained in this Agreement are based on the unique circumstances applicable to the Rezone Area and this Agreement is not intended to establish precedent for other rezones in the surrounding area.

Section 7. Repeal as Additional Remedy. Owner acknowledges that compliance with the conditions of this Agreement is a condition of the Rezone and that if Owner avails itself of the benefits of the Rezone but then fails to comply with the conditions of this Agreement, in addition to pursuing any other remedy, the City may:


- a. revoke the Rezone by ordinance and require the use of the Rezone Area to conform to the requirements of the previous NC3P-40 zoning designation or some other zoning designation imposed by the City Council; and/or
- b. pursue specific performance of this Agreement.

[signature and acknowledgment on following page]

SIGNED this 9th day of February 2018.

BROOK V LLC

A Washington limited liability company


By:  _____

Marc Angelillo, Manager of Stream Real Estate, LLC

As Manager of Brook V LLC

On this day personally appeared before me Marc Angelillo, to me known to be the Manager of Brook V LLC that executed the foregoing instrument, and acknowledged such instrument to be a free and voluntary act and deed of such Church, for the uses and purposes therein mentioned, and on oath stated that he was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this 9th day of February, 2018.

	Printed Name <u>Nina Forbes</u>
	NOTARY PUBLIC in and for the State of Washington, residing at <u>Seattle</u>
	My Commission Expires <u>10/6/19</u>

STATE OF WASHINGTON	}	
COUNTY OF KING		



