

Ordinance No. 123774

Council Bill No. 117371

AN ORDINANCE relating to land use and zoning; amending Chapter 23.32 of the Seattle Municipal Code at page 102 of the Official Land Use Map to rezone property located at 500 Fairview Avenue North from Industrial Commercial with a 65 foot height limit to Seattle Mixed with an 85 foot height limit, and accepting a Property Use and Development Agreement in connection therewith. (Petition by BMR-500 Fairview Avenue LLC, C.F. 311061, DPD Project 3011479)

Related Legislation File: \_\_\_\_\_

Date Introduced and Referred: <u>Dec. 12, 2011</u>	To: (committee): <u>Full Council</u>
Date Re-referred:	To: (committee):
Date Re-referred:	To: (committee):
Date of Final Action: <u>12-19-11</u>	Date Presented to Mayor: <u>12.20.11</u>
Date Signed by Mayor:	Date Returned to City Clerk:
Published by Title Only _____	Date Vetoed by Mayor:
Published in Full Text _____	
Date Veto Published:	Date Passed Over Veto:
Date Veto Sustained:	Date Returned Without Signature:

# The City of Seattle – Legislative Department

Council Bill/Ordinance sponsored by: \_\_\_\_\_

## Committee Action:

Date	Recommendation	Vote

This file is complete and ready for presentation to Full Council. \_\_\_\_\_

## Full Council Action:

Date	Decision	Vote
<u>12-19-11</u>	<u>Passed</u>	<u>9-0</u>

*Law Department*

**ORDINANCE** 123774

1  
2 AN ORDINANCE relating to land use and zoning; amending Chapter 23.32 of the Seattle  
3 Municipal Code at page 102 of the Official Land Use Map to rezone property located at  
4 500 Fairview Avenue North from Industrial Commercial with a 65 foot height limit to  
5 Seattle Mixed with an 85 foot height limit; and accepting a Property Use and  
6 Development Agreement in connection therewith. (Petition by BMR-500 Fairview  
7 Avenue LLC, C.F. 311061, DPD Project 3011479)

8  
9 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

10 Section 1. This Ordinance affects the following legally described property (the  
11 "Property"):

12 LOTS 4, 5, AND 6 BLOCK 5, SORENSON'S ADDITION TO THE CITY OF  
13 SEATTLE ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF  
14 PLATS, PAGE(S) 218, IN KING COUNTY, WASHINGTON.

15 Section 2. The Official Land Use Map zone classification for the Property, established  
16 on page 102 of the Official Land Use Map, as adopted by Ordinance 110381, is amended to  
17 rezone the Property currently zoned Industrial Commercial with a 65 foot height limit to Seattle  
18 Mixed with an 85 foot height limit, all as shown in Exhibit A to this Ordinance. The Official  
19 Land Use Map zone classification is conditioned upon performing and complying with the  
20 conditions of the Property Use and Development Agreement (Agreement) referenced in Section  
21 3 of this ordinance.

22 Section 3. The Property Use and Development Agreement, attached to this Ordinance  
23 as Exhibit B, is approved and accepted.

24 Section 4. The rezone shall expire three years from the date Master Use Permit number  
25 3011479 is issued by the Department of Planning and Development. If the Master Use Permit is  
26 issued and the owner subsequently receives a certificate of occupancy for the permitted structure  
27



1 prior to the Master Use Permit expiring, including any renewals; the rezone remains in effect  
2 unless revoked according to Section 23.34.004.

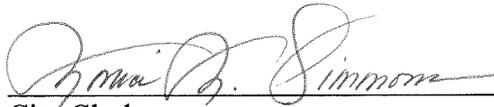
3 Section 5. The City Clerk is authorized and directed to file the Agreement, attached to  
4 this ordinance as Exhibit B, at the King County Records and Elections Division; to file upon  
5 return of the recorded Agreement from the King County Records and Elections Division, the  
6 original Agreement with this Ordinance at the City Clerk's Office; and to deliver copies of the  
7 recorded Agreement to the Director of the Department of Planning and Development and to the  
8 King County Assessor's Office.  
9

10 Section 6. This Ordinance, effectuating a quasi-judicial decision of the City Council; is  
11 not subject to mayoral approval or disapproval; and shall take effect and be in force 30 days from  
12 and after its passage and approval by the City Council.  
13

14  
15 Passed by the City Council the 19<sup>th</sup> day of December, 2011, and  
16 signed by me in open session in authentication of its passage this  
17 19<sup>th</sup> day of December, 2011.

18   
19 President \_\_\_\_\_ of the City Council

20  
21 Filed by me this 19<sup>th</sup> day of December, 2011.

22   
23 City Clerk

24 (Seal)



**Exhibit A: Rezone Map**

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**Exhibit B: Property Use and Development Agreement**

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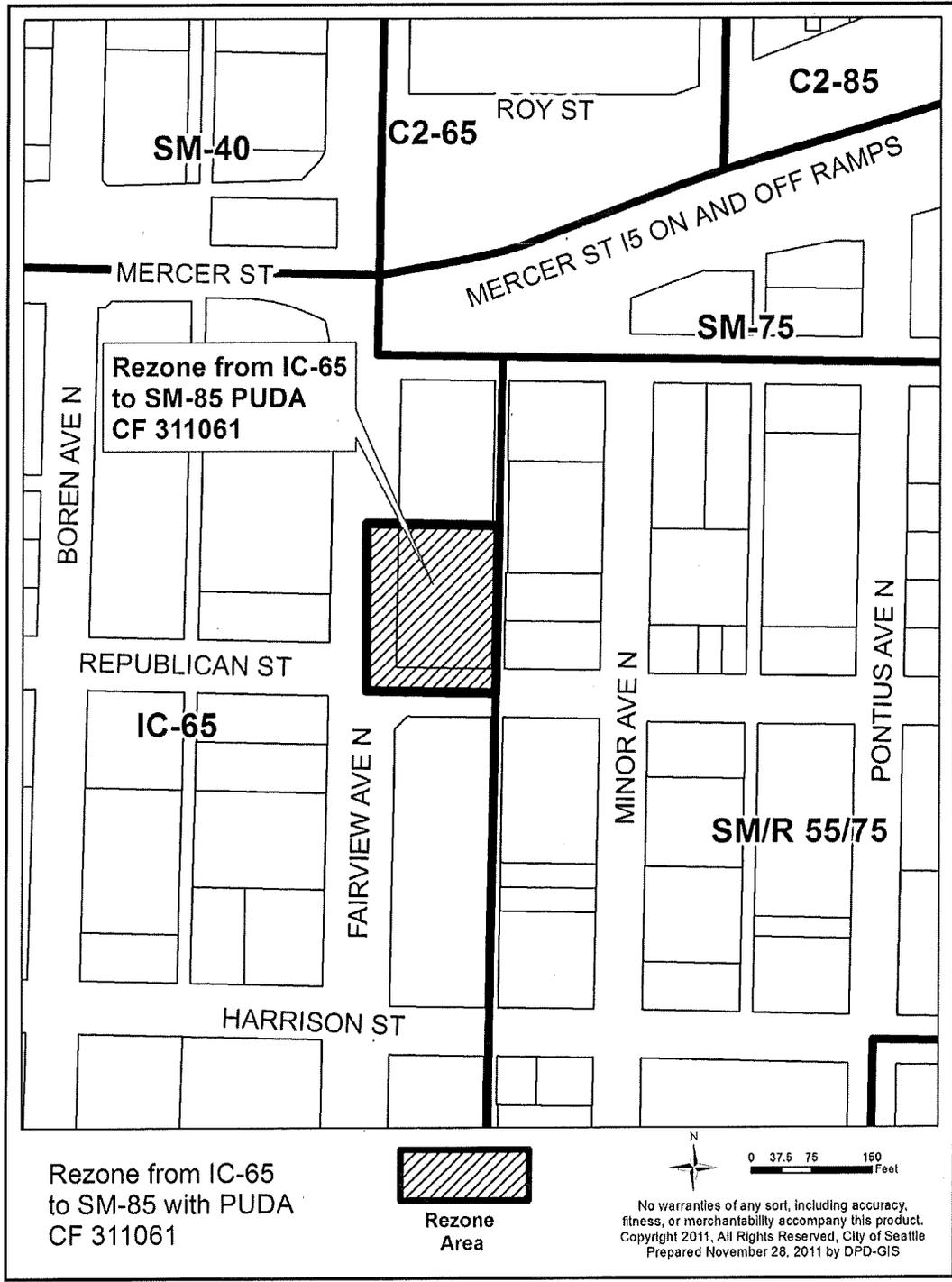
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### Exhibit A: Rezone Map

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**Exhibit B: Property Use and Development Agreement**

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When Recorded, Return to:

THE SEATTLE CITY CLERK  
600 Fourth Avenue, Floor 3  
PO Box 94728  
Seattle, Washington 98124-4728

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## PROPERTY USE AND DEVELOPMENT AGREEMENT

<b>Grantors:</b> 1) <u>BMR-500 Fairview Avenue LLC</u> 2) _____ <input type="checkbox"/> Additional on page _____
<b>Grantee:</b> 1) <u>The City of Seattle</u> 2) _____ <input type="checkbox"/> Additional on page _____
<b>Legal Description (abbreviated):</b> <u>Lot 4, 5, and 6 Block 5, Sorenson's Addition to the City of Seattle</u> <input type="checkbox"/> Additional on : <u>EXHIBIT A</u>
<b>Assessor's Tax Parcel ID #:</b> <u>786350-0040-02</u>
<b>Reference Nos. of Documents Released or Assigned:</b> _____

THIS PROPERTY USE AND DEVELOPMENT AGREEMENT (the "Agreement") is executed this 12<sup>th</sup> day of December, 2011, in favor of the CITY OF SEATTLE, a Washington municipal corporation (the "City"), and BMR-500 Fairview Avenue LLC, a Delaware limited liability company (the "Owner").

### RECITALS

**A.** The Owner owns real property (the "Property") in the City of Seattle that is zoned Industrial Commercial with a 65 foot height limit (IC 65), and legally described in Exhibit A attached to and incorporated into this Agreement.

**B.** On January 21, 2011, the Owner submitted to the City a Master Use Permit (MUP) application, project number 3011479, to rezone the Property from IC 65 to Seattle Mixed with an 85 foot height limit (SM 85), as shown in Exhibit B. The purpose of the application is to allow the Property to be developed for research and development laboratory use.

**C.** Seattle Municipal Code (SMC) Section 23.34.004 allows the City to approve a contract rezone subject to "self-imposed restrictions upon the use and development of the property in order to ameliorate adverse impacts that could occur from unrestricted use and development permitted by development regulations otherwise applicable after the rezone."

NOW, THEREFORE, in consideration of this Agreement's terms the parties agree as follows:

## AGREEMENT

**Section 1. Agreement.** Under Section 23.34.004, the Owner covenants, bargains, and agrees on behalf of itself and its successors and assigns that it will comply with the following limitations and conditions in consideration of the rezone of the Property from Industrial Commercial with a 65 foot height limit (IC 65) to Seattle Mixed with an 85 foot height limit (SM 85):

**Future development of the Property is restricted to a project developed in substantial accordance with the final approved Master Use Permit drawings for MUP Application 3011479 dated July 15, 2011, and included as Exhibit 9 in Clerk's File 311061.**

**Section 2. Agreement Runs With the Land.** This Agreement shall be recorded in the records of King County by the City Clerk. The Agreement shall be considered covenants that attach to and run with the Property and are binding on the Owner, its heirs, successors and assigns; and shall apply to any after-acquired title to the Property by the Owner.

**Section 3. Termination.** The covenants and the rezone shall expire three years from the date a Master Use Permit is issued for the project. If the Master Use Permit is issued and the Owner subsequently receives a certificate of occupancy for the permitted structure prior to the Master Use Permit expiring, including any renewals; the rezone remains in effect unless revoked according to Section 23.34.004.

**Section 4. Amendment.** This Agreement may be amended or modified by written agreement between the parties, provided any amendment shall be approved by ordinance.

**Section 5. Exercise of Police Power.** Nothing in this Agreement prevents the City Council from making further amendments to the Seattle Municipal Code or Land Use Code that apply to the Property 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 this Property, and this Agreement is not intended to establish precedent for other rezones in the surrounding area.

**Section 7. Enforcing the Agreement.** This Agreement benefits the City and owners of property within 300 feet of the Property, and either the City or any benefitted property owner may institute and prosecute a proceeding at law or in equity to enforce this Agreement.

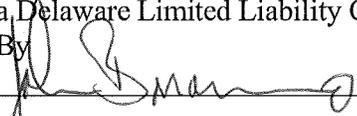
**Section 8. Repeal as Additional Remedy.** The Owner acknowledges that compliance with the conditions of this Agreement is a condition of the rezone and that if Owner or its successor avails itself of the benefits of this rezone but then fails to comply with the conditions of this Agreement; in addition to pursuing any other remedy, the City may revoke

the rezone by ordinance and require the use of the Property to conform to the requirements of the IC 65 zone.

SIGNED this 12<sup>th</sup> day of December, 2011.

BMR-500 Fairview Avenue LLC  
a Delaware Limited Liability Company

By

  
\_\_\_\_\_

[Name]

Its **John Bonanno**  
**Sr. Vice President, Leasing & Development**  
\_\_\_\_\_

[Title]

ALL PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF San Diego

} ss.

On December 12, 2011, before me, Nicole L. Smith, a Notary Public in and for said County and State, personally appeared John Bonanno,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Nicole L. Smith

FOR NOTARY SEAL OR STAMP

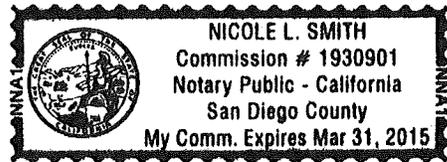
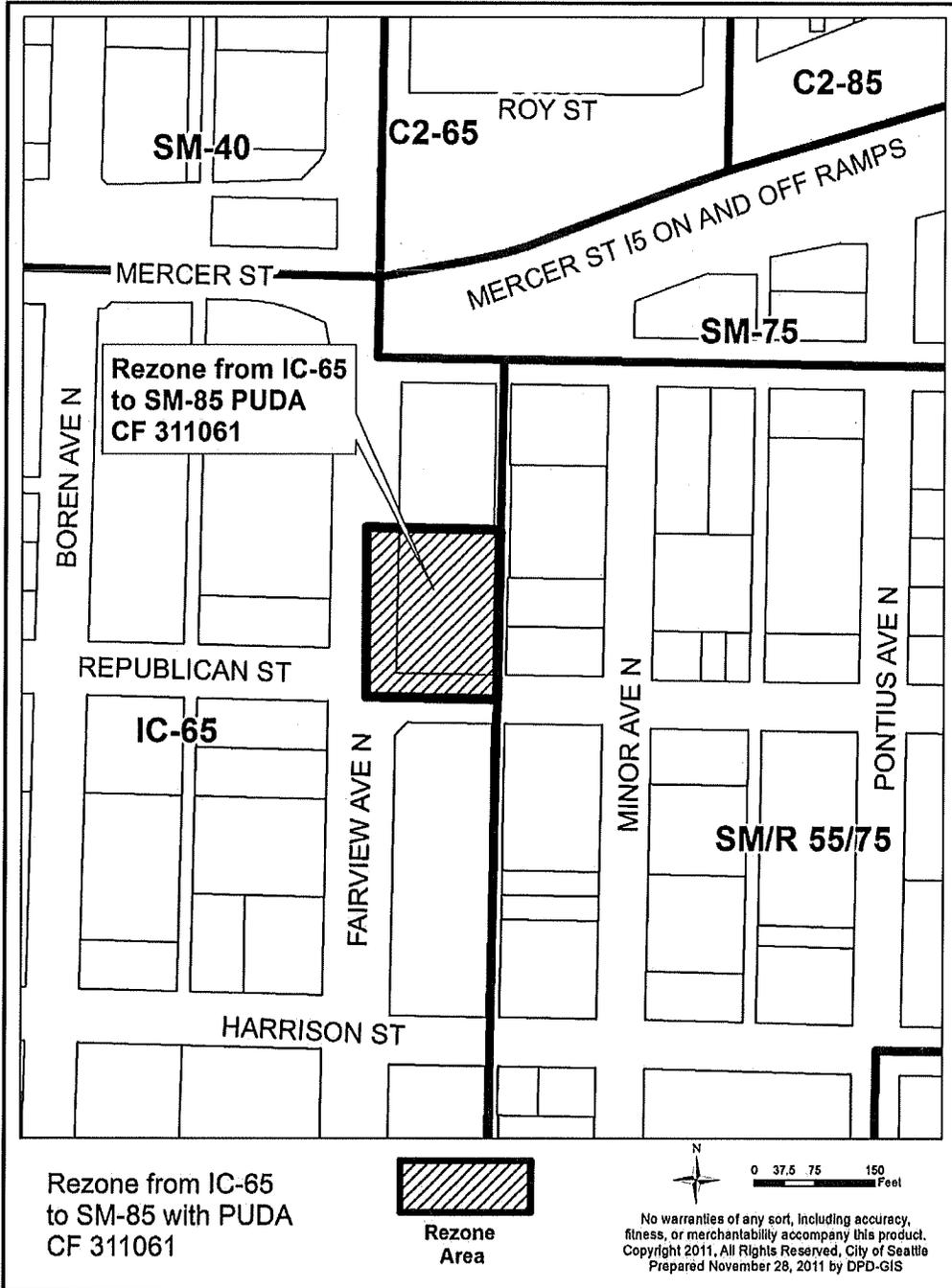


EXHIBIT A  
Legal Description

Real property in the City of Seattle, County of King, State of Washington, described as follows:

LOTS 4, 5, AND 6 BLOCK 5, SORENSON'S ADDITION TO THE CITY OF SEATTLE ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE(S) 218, IN KING COUNTY, WASHINGTON.

EXHIBIT B  
Rezone Map



When Recorded, Return to:

**THE SEATTLE CITY CLERK**  
600 Fourth Avenue, Floor 3  
PO Box 94728  
Seattle, Washington 98124-4728

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## PROPERTY USE AND DEVELOPMENT AGREEMENT

<b>Grantors:</b> 1) <u>BMR-500 Fairview Avenue LLC</u> 2) _____ <input type="checkbox"/> Additional on page _____
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**B.** On January 21, 2011, the Owner submitted to the City a Master Use Permit (MUP) application, project number 3011479, to rezone the Property from IC 65 to Seattle Mixed with an 85 foot height limit (SM 85), as shown in Exhibit B. The purpose of the application is to allow the Property to be developed for research and development laboratory use.

**C.** Seattle Municipal Code (SMC) Section 23.34.004 allows the City to approve a contract rezone subject to "self-imposed restrictions upon the use and development of the property in order to ameliorate adverse impacts that could occur from unrestricted use and development permitted by development regulations otherwise applicable after the rezone."



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the rezone by ordinance and require the use of the Property to conform to the requirements of the IC 65 zone.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

BMR-500 Fairview Avenue LLC  
a Delaware Limited Liability Company  
By

\_\_\_\_\_ [Name]

Its  
\_\_\_\_\_ [Title]



STATE OF WASHINGTON )

: ss.

COUNTY OF \_\_\_\_\_ )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of BMR-500 Fairview Avenue LLC, a Delaware limited liability company, the limited liability company that executed the within and foregoing instrument, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_

[Signature of Notary]

\_\_\_\_\_

[Print Name of Notary]

Notary Public in and for the State of  
Washington, residing at \_\_\_\_\_.

My commission expires: \_\_\_\_\_.



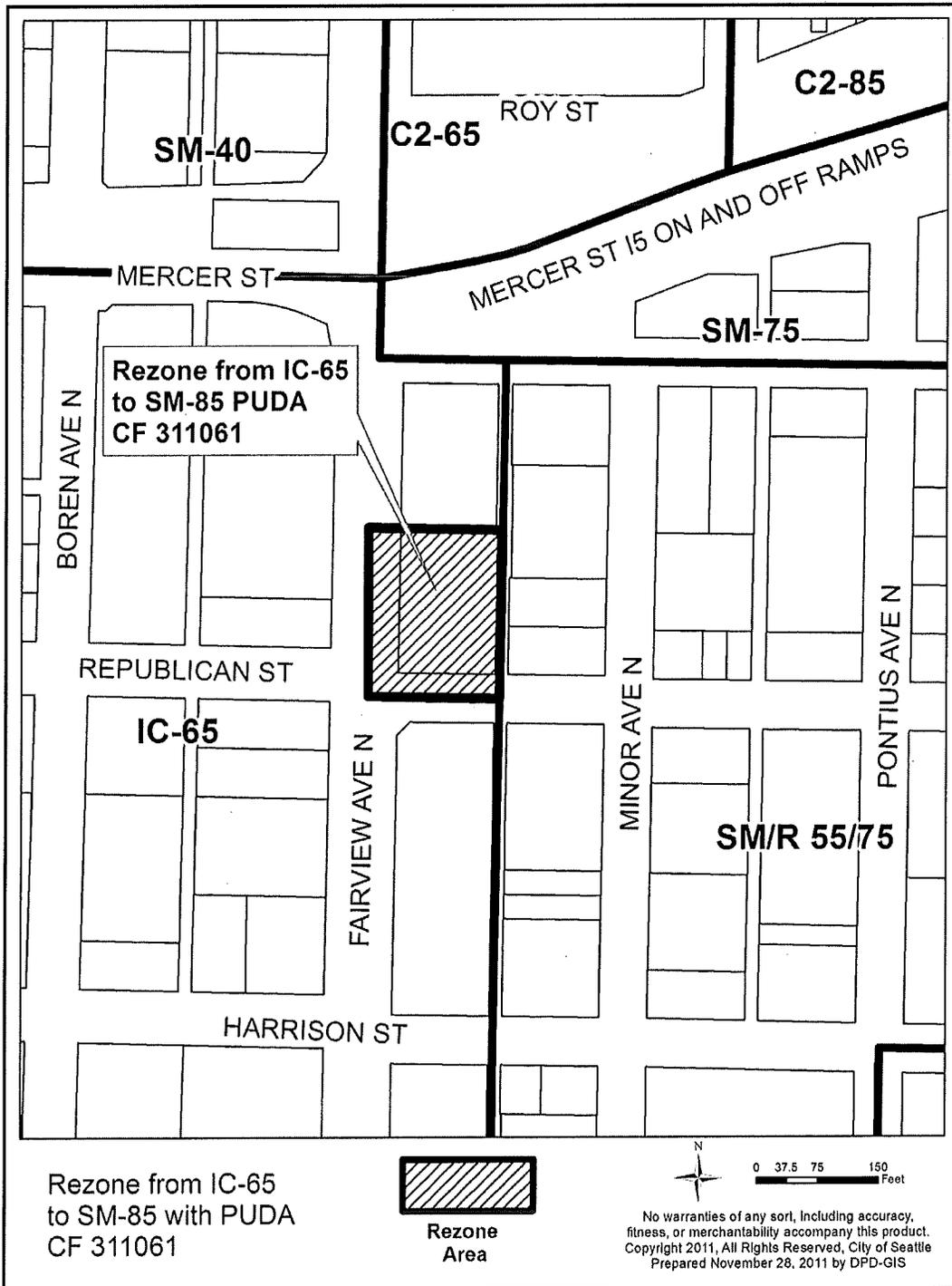
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EXHIBIT B  
Rezone Map



**FISCAL NOTE FOR NON-CAPITAL PROJECTS**

<b>Department:</b>	<b>Contact Person/Phone:</b>	<b>DOF Analyst/Phone:</b>
Legislative	Ketil Freeman, 684.8178	NA

**Legislation Title:**

AN ORDINANCE relating to land use and zoning; amending Chapter 23.32 of the Seattle Municipal Code at page 102 of the Official Land Use Map to rezone property located at 500 Fairview Avenue North from Industrial Commercial with a 65 foot height limit to Seattle Mixed with an 85 foot height limit, and accepting a Property Use and Development Agreement in connection therewith. (Petition by BMR-500 Fairview Avenue LLC, C.F. 311061, DPD Project 3011479)

• **Summary of the Legislation:**

This legislation rezones a site located at the northeast corner of Fairview Avenue North and Republican Street from Industrial Commercial with a 65-foot height limit to Seattle Mixed with an 85-foot height limit and accepts a property use and development agreement in connection with the rezone.

• **Background:**

This bill approves a petitioner-generated rezone subject to the Council's rules for quasi-judicial decisions. The original petition, Department of Planning and Development recommendation, Hearing Examiner's Findings and Recommendation, record established by the Hearing Examiner and Council's Findings, Conclusions and Decision are contained in Clerk's File 311061.

Rezone conditions are contained in the Findings, Conclusions and Decision. The conditions are recorded in a property use and development agreement for the rezone. The rezone petitioner anticipates development of a research and development laboratory on the site.

• *Please check one of the following:*

X **This legislation does not have any financial implications.** *(Stop here and delete the remainder of this document prior to saving and printing.)*



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STATE OF WASHINGTON – KING COUNTY

--SS.

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279736  
CITY OF SEATTLE, CLERKS OFFICE

No. TITLE ONLY

**Affidavit of Publication**

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12<sup>th</sup> day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:123774,790-123805

was published on

01/06/12

The amount of the fee charged for the foregoing publication is the sum of \$ 237.15, which amount has been paid in full.

*Malcolm*

Subscribed and sworn to before me on

01/06/12

*Jennifer A. Borrero*  
Notary public for the State of Washington,  
residing in Seattle

Affidavit of Publication



# State of Washington, King County

## City of Seattle

The full text of the following legislation passed by the City Council on December 19 2011, and published below by title only, will be mailed upon request, or can be accessed at <http://clerk.seattle.gov>. For information on upcoming meetings of the Seattle City Council, please visit <http://www.seattle.gov/council/calendar>. Contact: Office of the City Clerk at (206) 684-8344.

### ORDINANCE NO. 123774

AN ORDINANCE relating to land use and zoning; amending Chapter 23.32 of the Seattle Municipal Code at page 102 of the Official Land Use Map to rezone property located at 500 Fairview Avenue North from Industrial Commercial with a 65 foot height limit to Seattle Mixed with an 85 foot height limit; and accepting a Property Use and Development Agreement in connection therewith. (Petition by BMR-500 Fairview Avenue LLC, C.F. 311061, DPD Project 3011479)

### ORDINANCE NO. 123790

AN ORDINANCE relating to land use and zoning, amending Seattle Municipal Code Section 23.47A.013, enacting new Section 23.47A.009, modifying development standards, and amending the Official Land Use Map Chapter 23.32, at pages 137 and 150 to rezone areas within the West Seattle Junction Hub Urban Village.

### ORDINANCE NO. 123791

AN ORDINANCE relating to the Seattle Center; authorizing the Director of Seattle Center to execute a new ten-year lease agreement with The Children's Museum, Seattle for the use and occupancy of certain space in the Center House.

### ORDINANCE NO. 123792

AN ORDINANCE authorizing the Interlocal Agreement between the City of Seattle and the Port of Seattle promoting music and musicians primarily associated with Seattle and the Puget Sound region.

### ORDINANCE NO. 123793

AN ORDINANCE granting the Board of Regents of the University of Washington permission to maintain and operate an underground pedestrian concourse tunnel under and across 6th Avenue north of University Street, for a ten-year term, renewable for two successive ten-year terms; specifying the conditions under which this permit is granted; providing for acceptance of the permit and conditions; and ratifying and confirming certain prior acts.

### ORDINANCE NO. 123794

AN ORDINANCE granting 2020 Fifth Avenue, LLC permission to construct, maintain, and operate a pedestrian skybridge in the mid-block portion of the alley between 5th Avenue and 6th Avenue, south of Lenora Street, for a ten-year term, renewable for two successive ten-year terms; specifying the conditions under which this permit is granted; and providing for the acceptance of the permit and conditions.

### ORDINANCE NO. 123795

AN ORDINANCE granting Cornish College of the Arts permission to maintain and operate a vehicular tunnel under and across the alley between 8th Avenue and 9th Avenue, north of Lenora Street, for a ten-year term, renewable for two successive ten-year terms; specifying the conditions under which this permit is granted; providing for the acceptance of the permit and conditions; and ratifying and confirming certain prior acts.

### ORDINANCE NO. 123796

AN ORDINANCE relating to affordable housing; authorizing the Director of the Office of Housing to enter into and administer an Interlocal Cooperation Agreement with King County for a Regional Affordable Housing Program using revenues from a surcharge on document recording fees authorized by State law; and ratifying and confirming prior acts.

### ORDINANCE NO. 123797

AN ORDINANCE authorizing the Superintendent of the Department of Parks and Recreation to amend the Ground Lease between the City of Seattle and the Center for Wooden Boats for development, operation and maintenance of an Education Center in Lake Union Park.

### ORDINANCE NO. 123798

AN ORDINANCE relating to Seattle Public Utilities; authorizing the Director of Seattle Public Utilities to accept an extension and modification to certain lease and interlocal agreements with the City of Renton, Washington, and ratifying and confirming certain prior acts.

### ORDINANCE NO. 123799

AN ORDINANCE relating to Seattle Public Utilities, authorizing the Director of Seattle Public Utilities to enter into an agreement with the City of Renton for the sale of water in an emergency from the City of Renton to the City of Seattle; and ratifying and confirming certain prior acts.

### ORDINANCE NO. 123800

AN ORDINANCE relating to Seattle Public Utilities; authorizing the Director of Seattle Public Utilities to execute, for and on behalf of The City of Seattle, an easement agreement granting a non-exclusive easement for ingress, egress, and public utilities under, over, and across The City of Seattle's fee-owned [municipal water pipeline property] for the benefit of abutting property owned by 112 Skyway Associates LLC located in the Skyway area of unincorporated King County just south of Seattle in the NW 1/4 of the NE 1/4 of Section 11, Township 23 North, Range 4 East, W. M.

### ORDINANCE NO. 123801

AN ORDINANCE, relating to a vehicular and pedestrian ramp over North Northlake Way beneath the George Washington Memorial (Aurora Avenue) Bridge, amending Ordinance 118908, as amended by Ordinance 121855, updating the insurance and bond requirements, and amending the annual fee; renewing the term of the permit to the Quadrant Corporation; providing for acceptance of the permit and conditions; and ratifying and confirming certain prior acts.

Page 2 of aiiidavii

### ORDINANCE NO. 123802

AN ORDINANCE relating to the use of Seattle Center Department property; amending Section 17.16.030 of the Seattle Municipal Code to authorize the Seattle Center Director to enter into leases with terms of up to ten years for food and beverage services in the Seattle Center House; establishing an oversight committee to review such leases; and ratifying and confirming certain prior acts.

### ORDINANCE NO. 123803

AN ORDINANCE related to the Board of Park Commissioners; authorizing a Get Engaged young adult position to the Board of Park Commissioners; changing the membership composition and terms of Park Commissioners; and amending Section 3.26.010 of the Seattle Municipal Code.

### ORDINANCE NO. 123804

AN ORDINANCE relating to Conservation Futures Levy proceeds; authorizing the Mayor to amend the Interlocal Cooperation Agreement between the City of Seattle and King County as authorized by City of Seattle Ordinance 114978; and authorizing the deposit of 2011 allocations from King County Conservation Futures Levy proceeds into the City of Seattle's 2008 Parks Levy Fund.

### ORDINANCE NO. 123805

AN ORDINANCE appropriating money to pay certain audited claims and ordering the payment thereof.

Publication ordered by the City Clerk  
Date of publication in the Seattle Daily Journal of Commerce, January 6, 2012.

1/6(279736)

[000 123777]

When Recorded, Return to:

THE SEATTLE CITY CLERK  
600 Fourth Avenue, Floor 3  
PO Box 94728  
Seattle, Washington 98124-4728



20130830000538

SEATTLE CITY C AMND-RER 77.00  
PAGE-001 OF 006  
08/30/2013 09:52  
KING COUNTY, WA

AMENDED AND RESTATED  
PROPERTY USE AND DEVELOPMENT AGREEMENT

FILED  
CITY OF SEATTLE  
14 FEB -3 PM 2:04  
CITY CLERK

Grantors:	1) <u>BMR-500 Fairview Avenue LLC</u>	2) _____
	<input type="checkbox"/> Additional on page _____	
Grantee:	1) <u>The City of Seattle</u>	2) _____
	<input type="checkbox"/> Additional on page _____	
Legal Description (abbreviated):	<u>Lot 4, 5, and 6 Block 5, Sorenson's Addition to the City of Seattle</u>	
	<input checked="" type="checkbox"/> Additional on : <u>EXHIBIT A</u>	
Assessor's Tax Parcel ID #:	<u>786350-0040-02</u>	
Reference Nos. of Documents Released or Assigned:	<u>20111229000634</u>	

THIS PROPERTY USE AND DEVELOPMENT AGREEMENT (the "Agreement") is executed this 29<sup>th</sup> day of July, 2013, in favor of the CITY OF SEATTLE, a Washington municipal corporation (the "City"), and BMR-500 Fairview Avenue LLC, a Delaware limited liability company (the "Owner").

RECITALS

A. The Owner ground leases real property (the "Property") in the City of Seattle that is zoned Seattle Mixed with an 85 foot height limit ("SM 85"), and legally described in Exhibit A attached to and incorporated into this Agreement.

B. On January 21, 2011, the Owner submitted to the City a Master Use Permit ("MUP") application, project number 3011479, to rezone the Property from IC 65 to SM 85 as shown in Exhibit B. The purpose of the application was to allow the Property to be developed for research and development laboratory use.

C. Seattle Municipal Code ("SMC") Section 23.34.004 allows the City to approve a contract rezone subject to "self-imposed restrictions upon the use and development of the property in order to ameliorate adverse impacts that could occur from unrestricted use and development permitted by development regulations otherwise applicable after the rezone."

APPROVED  
BIOMED REALTY LEGAL

AS



D. On December 19, 2011 the Seattle City Council (the "Council") passed Ordinance 123774, which rezoned the Property and accepted a Property Use and Development Agreement (the "PUDA") in connection with the rezone. The PUDA was recorded at Auditor's File No. 20111229000634, records of King County, Washington.

E. Conditions in the PUDA accepted by Ordinance 123774 limit "[f]uture development of the Property...to a project developed in substantial accordance with the final approved Master Use Permit drawings for MUP Application 3011479 dated July 15, 2011."

F. On March 19, 2013, the Owner submitted revised plans that make changes to the plans approved in MUP 3011479. The revised plans were submitted under the new project number 3015121.

G. SMC Section 23.76.058.C provides that "[p]roperty use and development agreements recorded as a condition of a contract rezone may be amended by agreement between the owner and the City, if the amendment is approved by the Council."

H. The parties desire to amend and restate the PUDA to acknowledge the approval of the revised plans by the Council.

NOW, THEREFORE, in consideration of this Agreement's terms, the parties agree to amend and restate the PUDA in its entirety as follows:

## AGREEMENT

**Section 1. Agreement.** Under SMC Section 23.34.004, the Owner covenants, bargains, and agrees on behalf of itself and its successors and assigns that it will comply with the following limitations and conditions in consideration of the rezone of the Property from Industrial Commercial with a 65 foot height limit ("IC 65") to SM 85:

**Future development of the Property is restricted to a project developed in substantial accordance with the approved Master Use Permit drawings for MUP Application 3015121.**

**Section 2. Agreement Runs With the Land.** This Agreement shall be recorded in the records of King County, Washington by the City Clerk. The Agreement shall be considered covenants that attach to and run with the Property and are binding on the Owner, its heirs, successors and assigns; and shall apply to any after-acquired title to the Property by the Owner.

**Section 3. Termination.** The covenants and the rezone shall expire three years from the date a Master Use Permit is issued for the project, as revised. If the Master Use Permit is issued and the Owner subsequently receives a certificate of occupancy for the permitted structure prior to the Master Use Permit expiring, including any renewals, the rezone remains in effect unless revoked according to SMC Section 23.34.004.



**Section 4. Amendment.** This Agreement may be amended or modified by written agreement between the parties, provided any amendment shall be approved by ordinance.

**Section 5. Exercise of Police Power.** Nothing in this Agreement prevents the Council from making further amendments to the Seattle Municipal Code or Land Use Code (which currently is a part of the Seattle Municipal Code) that apply to the Property 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 this Property, and this Agreement is not intended to establish precedent for other rezones in the surrounding area.

**Section 7. Enforcing the Agreement.** This Agreement benefits the City and owners of property within 300 feet of the Property, and either the City or any benefitted property owner may institute and prosecute a proceeding at law or in equity to enforce this Agreement.

**Section 8. Repeal as Additional Remedy.** The Owner acknowledges that compliance with the conditions of this Agreement is a condition of the rezone and that if Owner or its successor avails itself of the benefits of this rezone but then fails to comply with the conditions of this Agreement, then, in addition to pursuing any other remedy, the City may revoke the rezone by ordinance and require the use of the Property to conform to the requirements of the IC 65 zone.

**Section 9. Superseding Agreement.** This Agreement supersedes and replaces in its entirety the PUDA recorded at Auditor's File No. 20111229000634, records of King County, Washington.

SIGNED this 29<sup>th</sup> day of July, 2013.

BMR-500 Fairview Avenue LLC  
a Delaware Limited Liability Company

By

John Bonanno [Name]

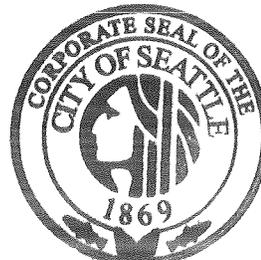
Its Sr. Vice President, Leasing & Development

[Title]

State of Washington,  
County of King

I, Janet Polata certify that this is a true and correct  
Amended copy of PUDA to ordinance 124258 authorized by \_\_\_\_\_, on file in the records

of the City of Seattle, Office of the City Clerk



Signed by: \_\_\_\_\_  
Signature: [Signature]  
Title: Information Specialist  
Date: August 29, 2013



## ACKNOWLEDGMENT

State of California  
County of San Diego)

On July 29<sup>th</sup>, 2013 before me, Nicole L. Smith, notary public  
(insert name and title of the officer)

personally appeared John Bonanno  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in  
his/her/their authorized capacity(ies), and that by his/hér/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.

Signature Nicole L. Smith (Seal)



EXHIBIT A  
Legal Description

Real property in the City of Seattle, County of King, State of Washington, described as follows:

LOTS 4, 5, AND 6 BLOCK 5, SORENSON'S ADDITION TO THE CITY OF SEATTLE ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE(S) 218, IN KING COUNTY, WASHINGTON.



EXHIBIT B  
Rezone Map

