

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</b> (abbreviated): <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 \_\_\_\_\_ day of \_\_\_\_\_, 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 \_\_\_\_ day of \_\_\_\_\_, 2011.

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

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

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

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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: \_\_\_\_\_.

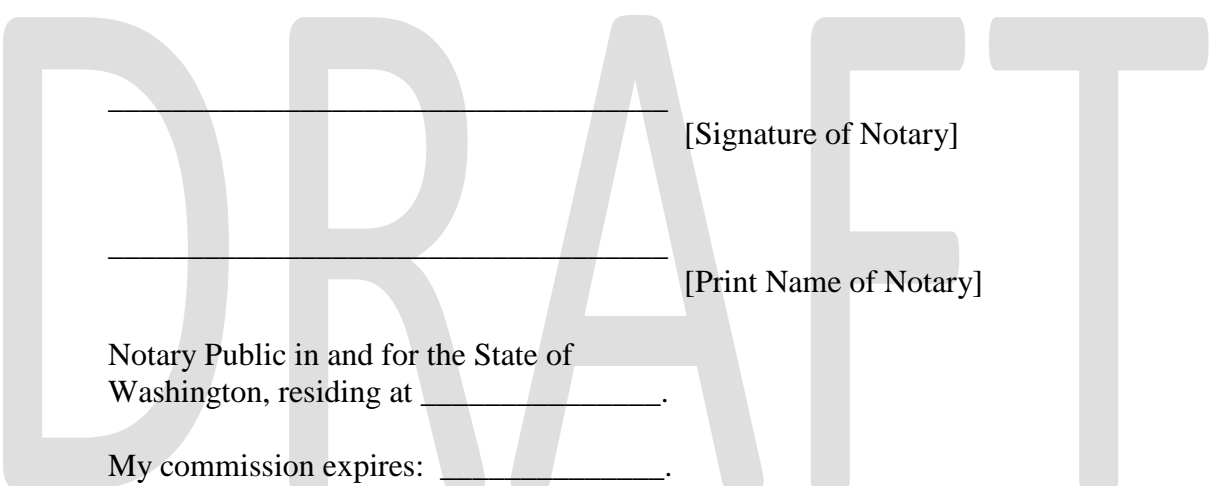


EXHIBIT A  
Legal Description

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.

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EXHIBIT B  
Rezone Map

