

#2
CB 117371

ORDINANCE _____

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

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

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

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

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

23 Section 4. The rezone shall expire three years from the date Master Use Permit number
24 3011479 is issued by the Department of Planning and Development. If the Master Use Permit is
25 issued and the owner subsequently receives a certificate of occupancy for the permitted structure
26
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 ____ day of _____, 2011, and
16 signed by me in open session in authentication of its passage this
17 ____ day of _____, 2011.
18

19 _____
20 President _____ of the City Council

21 Filed by me this ____ day of _____, 2011.
22

23 _____
24 City Clerk

25
26
27
28 (Seal)



Exhibit A: Rezone Map

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Exhibit B: Property Use and Development Agreement

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Exhibit A: Rezone Map

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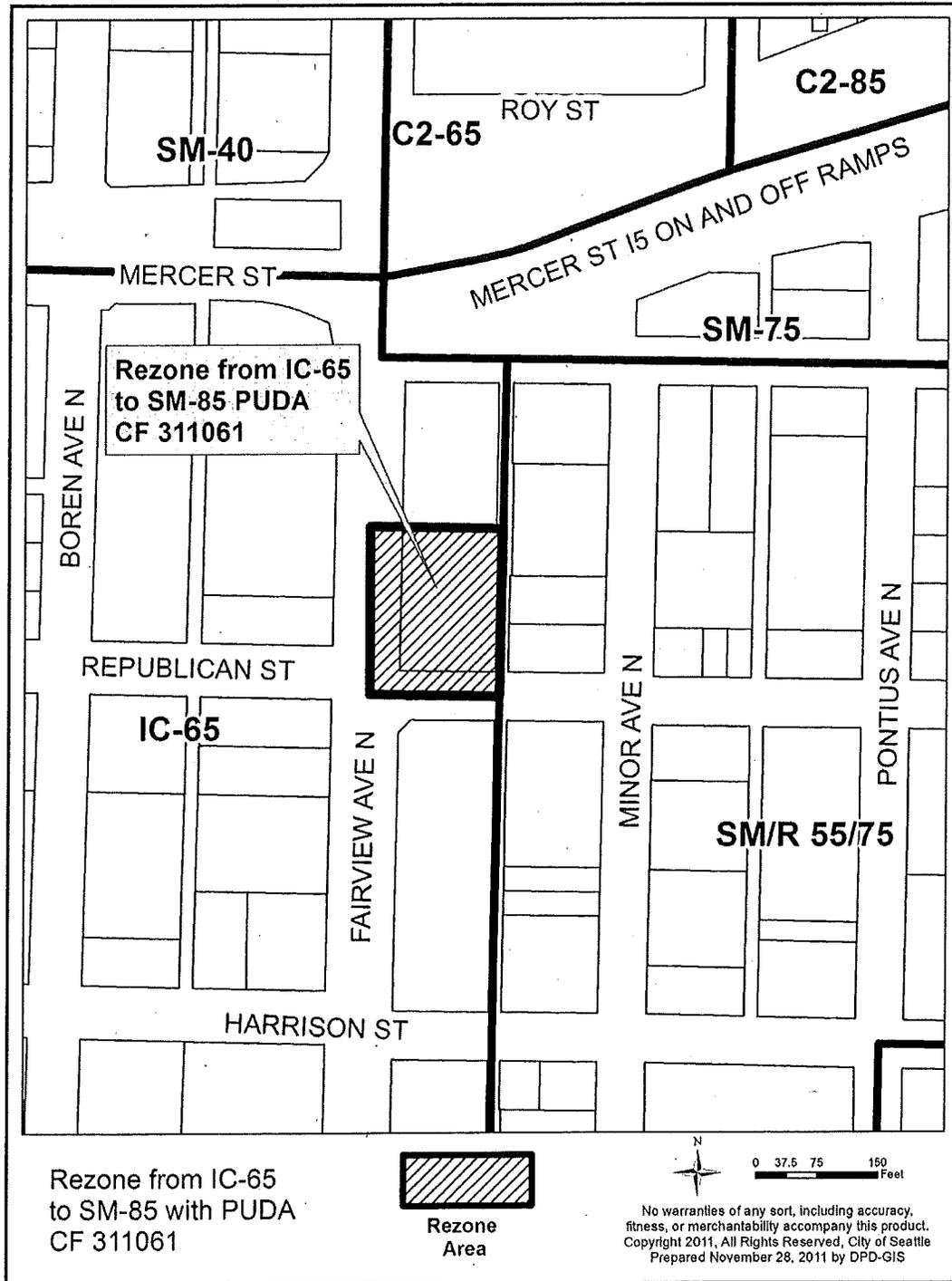


Exhibit B: Property Use and Development Agreement

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When Recorded, Return to:

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

PROPERTY USE AND DEVELOPMENT AGREEMENT

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 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: _____

THIS PROPERTY USE AND DEVELOPMENT AGREEMENT (the "Agreement") is executed this 12th 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.

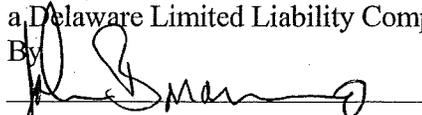
Section 8. Repeal as Additional Remedy. The Owner acknowledges that compliance with the conditions of this Agreement is a condition of the rezone and that if Owner or its successor avails itself of the benefits of this rezone but then fails to comply with the conditions of this Agreement; in addition 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 12th day of December, 2011.

BMR-500 Fairview Avenue LLC
a Delaware Limited Liability Company

By



[Name]

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

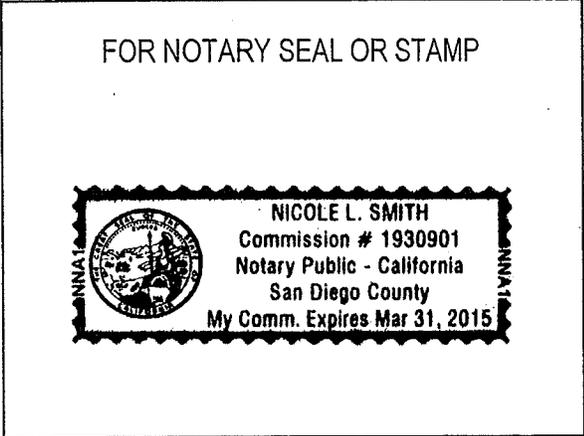
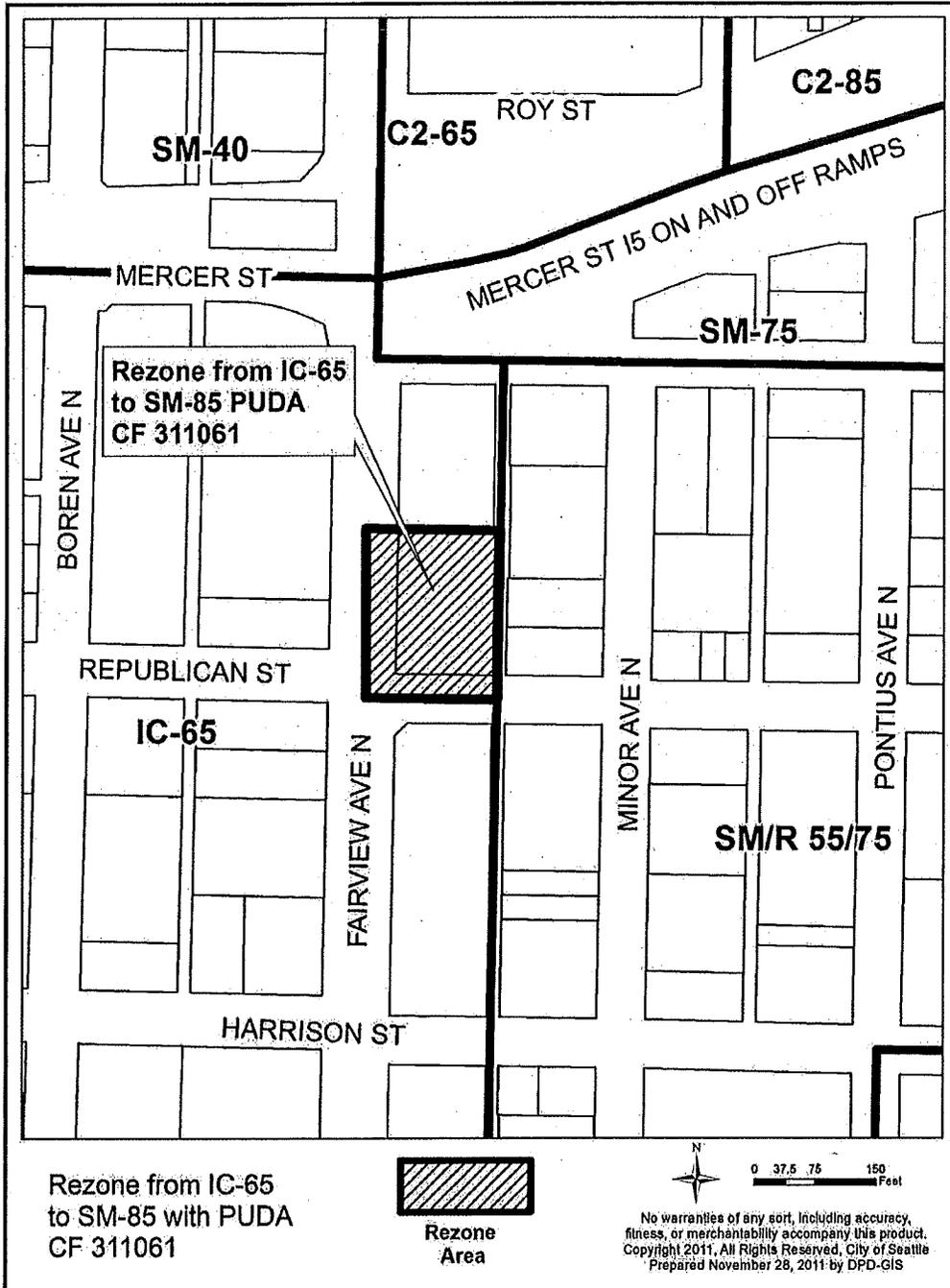


EXHIBIT A
Legal Description

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



FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	DOF Analyst/Phone:
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.)*

