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C.B. 117827

When Recorded, Return to:

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

**AMENDED AND RESTATED
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 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 29th 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.

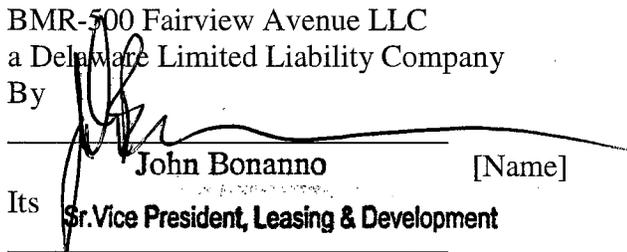
Section 8. Repeal as Additional Remedy. The Owner acknowledges that compliance with the conditions of this Agreement is a condition of the rezone and that if Owner or its successor avails itself of the benefits of this rezone but then fails to comply with the conditions of this Agreement, then, in addition 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 29th 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]

ACKNOWLEDGMENT

State of California
County of San Diego

On July 29th, 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/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 (Seal)

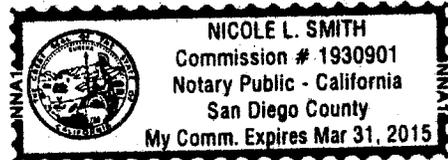
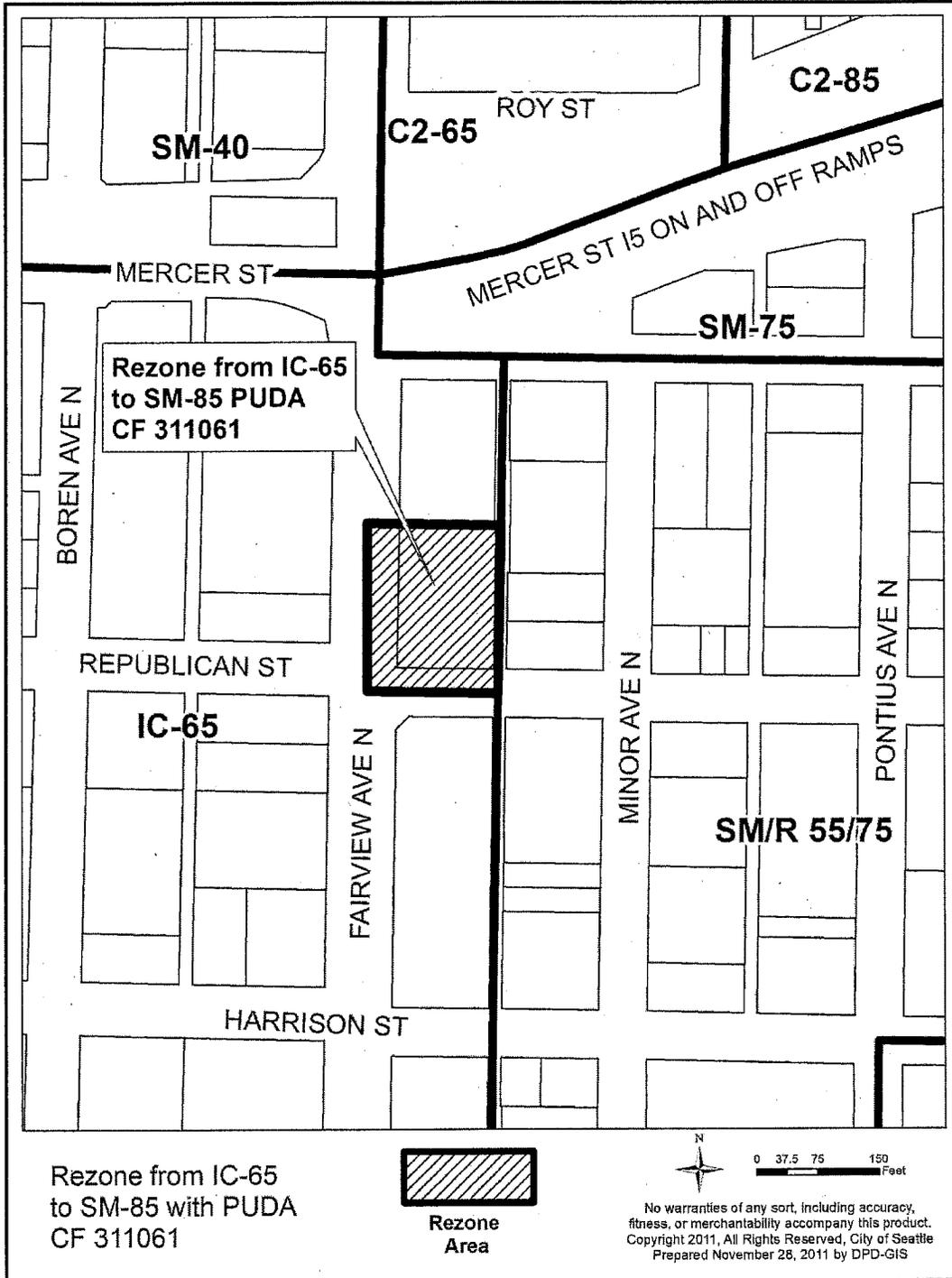


EXHIBIT A
Legal Description

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



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Section 3. This Ordinance, effectuating a quasi-judicial decision of the City Council; is not subject to mayoral approval or disapproval; and shall take effect and be in force 30 days from and after its passage and approval by the City Council.

Passed by the City Council the ____ day of _____, 2013, and signed by me in open session in authentication of its passage this ____ day of _____, 2013.

President _____ of the City Council

Approved by me this ____ day of _____, 2013.

City Clerk

(Seal)

Exhibit A: Amended PUDA



EXHIBIT A – AMENDED PUDA

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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 ____ day of _____, 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 owns 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."



D. On December 19, 2011 the Seattle City Council passed Ordinance 123774, which rezoned the Property and accepted a Property Use and Development Agreement (PUDA) in connection with the rezone.

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.

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.”

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 revised Master Use Permit drawings for MUP Application 3011479 dated _____.

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.

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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 _____, 2013.

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 _____, 2013.

[Signature of Notary]

[Print Name of Notary]

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

My commission expires: _____.



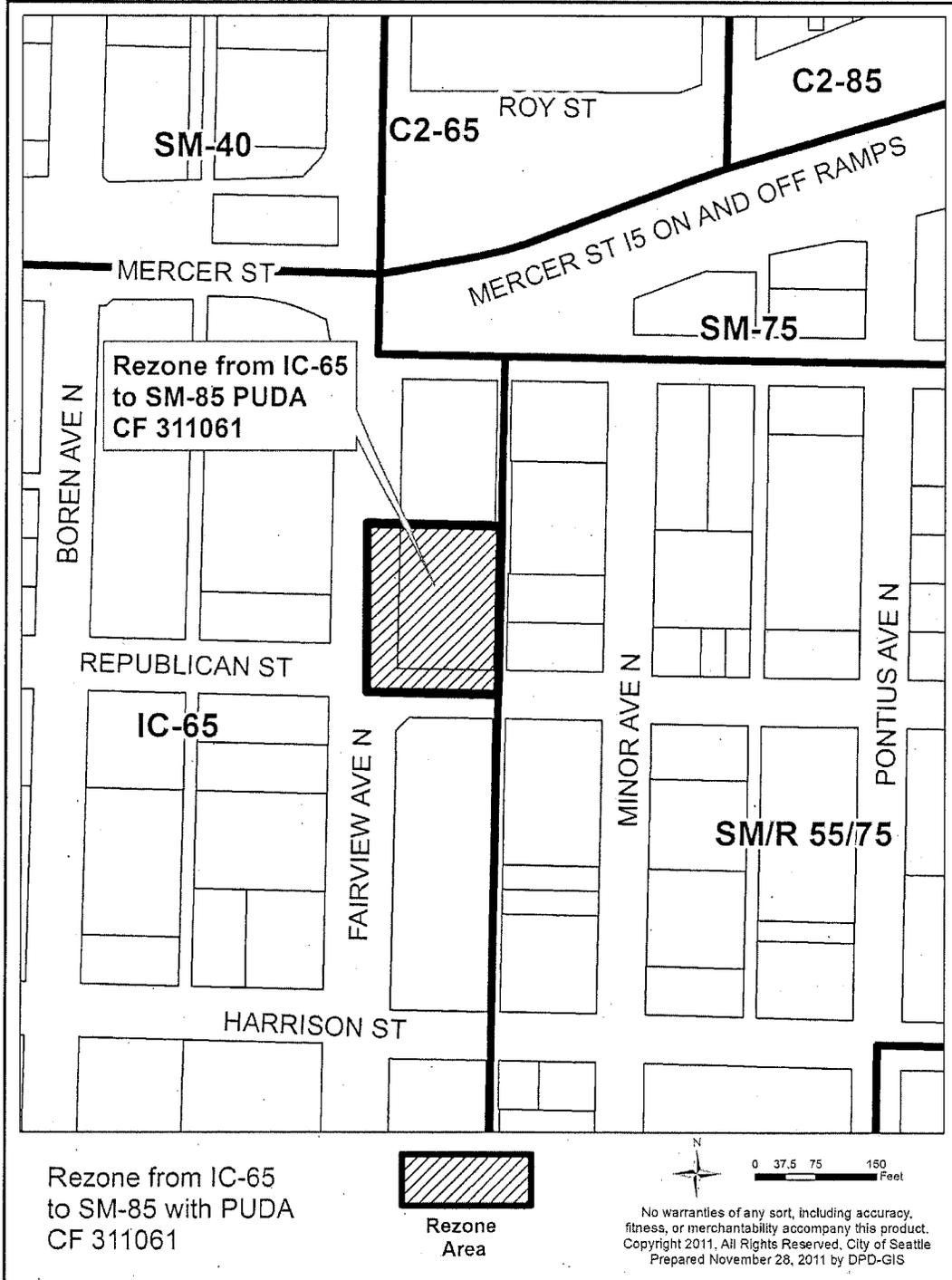
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EXHIBIT B
Rezone Map



FISCAL NOTE FOR NON-CAPITAL PROJECTS

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

Legislation Title:

An ORDINANCE approving an amendment of the Property Use and Development Agreement approved by Ordinance 123774 for property located at 500 Fairview Avenue North.

• **Summary of the Legislation:**

This legislation amends a Property Use and Development Agreement (PUDA). The PUDA establishes a rezone condition for development of a site located at the northeast corner of Fairview Avenue North and Republican Street. The zone designation for that site was previously changed from Industrial Commercial with a 65-foot height limit to Seattle Mixed with an 85-foot height limit and a PUDA was accepted by Ordinance 123774.

• **Background:**

This bill approves a petitioner-generated amendment to a PUDA, which was previously accepted in conjunction with a contract rezone. The PUDA amendment is 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.

• *Please check one of the following:*

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

