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Jul 12, 2018 11:53 AM

Office of the County Recorder
Hennepin County, Minnesota
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Deputy 136	Pkg ID 1710969E
Document Recording Fee	\$46.00
<i>Document Total</i>	\$46.00



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Office of the Registrar of Titles
Hennepin County, Minnesota
Martin McCormick, Registrar of Titles
Mark Chapin, County Auditor and Treasurer

Deputy 1	Pkg ID 1709372E
Document Recording Fee	\$46.00
Multiple Certificates Affected Fee	\$20.00
<i>Document Total</i>	\$66.00

Existing Certs

1437841, 1437840

SITE DEVELOPMENT AGREEMENT

THIS SITE DEVELOPMENT AGREEMENT is made effective as of this 7th day of June, 2018, by and between the City of Bloomington, a Minnesota municipal corporation, 1800 West Old Shakopee Road, Bloomington, Minnesota 55431 (“City”) and Al-Jazari Institute, a Minnesota nonprofit corporation, 8201 Park Avenue South, Bloomington, Minnesota 55420 (“Applicant”).

RECITALS

The Applicant filed a development application (Case PL201700251) for the City’s approval of an amended Conditional Use Permit (“Amended CUP”) to expand the maximum number of students from 60 to 84 for an existing Pre K—8 school at the property located at 8201 Park Avenue South, in the City of Bloomington, Hennepin County, Minnesota, and legally described as set forth in **Exhibit A** which is attached hereto and incorporated herein by reference (“Property”).

The City Council of the City of Bloomington, Minnesota, at its regular meeting on February 12, 2018, approved the above-referenced Amended CUP subject to, and contingent upon, the Applicant’s satisfaction of certain conditions relating to the Property, and made subject to those conditions, as well as all applicable code provisions, including but not limited to City Code, building code and fire code (whether or not enumerated in the Council Approval).

This Agreement sets forth the obligations of the parties and the conditions that govern the development and use of the Property. It is intended to address the parties’ compliance with the conditions the City Council placed on its February 12, 2018, approval. This Agreement does not address other issues relating to public improvements, assessments, storm water charges, or other matters regarding or affecting the Property unless specifically set forth herein or incorporated herein by reference. This Agreement terminates and supersedes the Amended and Restated Site Development Agreement between the City and the Applicant related to the Property, dated September 27, 2011, and recorded with the Hennepin County Recorder as Document No. A9710205.

NOW THEREFORE, in consideration of the recitals stated above and the mutual covenants stated below, the parties agree as follows:

1. **Recitals.** The foregoing recitals are correct and are incorporated herein.
2. **Obligations of the Applicant.**
 - (a) **Compliance with Conditions of Approval.** The Applicant agrees that development of the Property shall be in strict conformance with all conditions set forth in the decision notice dated February 13, 2018, which is attached hereto and incorporated herein by reference as **Exhibit B.**

(b) Conformance with Approved Amended CUP. The Applicant agrees that development and use of the Property shall also be in strict conformance with the Amended CUP as approved on February 12, 2018, by the City Council, all applicable code provisions, including but not limited to City Code, building code and fire code (whether or not enumerated in the Council Approval and decision notice), and all applicable state and federal laws. In the event that there is a conflict between the Amended CUP as approved by the City Council and the regulatory terms of this Agreement, the more restrictive standard shall apply. It shall be the obligation of the Applicant to provide advance written notice to the City of any aspect of the development that varies to any degree from the Amended CUP. The Applicant also agrees that any major or minor change to the previously approved Final Development Plan must be approved by the City as provided in City Code Section 21.501.03, subdivisions (c) and (d).

(c) Compliance with Zoning Regulations. The Applicant agrees that any change to a use of the Property that is prohibited under the City's zoning regulations will require City Council approval of a revision of the zoning code and approval of a revision to the Amended CUP.

3. Obligations of the City.

(a) Issuance of Permits. The City will issue permits necessary for the approved development of the Property subject to the satisfaction of Conditions of Approval set forth in the attached **Exhibit B**, and compliance with all applicable code provisions, including but not limited to City Code, building code and fire code (whether or not enumerated in the Council Approval or decision notice). No permits will be issued until the Applicant has submitted all appropriate permit applications, which are subject to City review and approval.

4. Event of Default.

(a) The term "event of default" shall mean, whenever it is used in this Agreement (unless the context provides otherwise), any of the following events:

(i) The failure of the Applicant to perform the obligations set forth in paragraph 2 ("Obligations of the Applicant") of this Agreement and to commence corrective measures to perform the obligations within sixty (60) days after receipt by the Applicant of written notice of such default by the City.

(ii) The failure of the City to perform the obligations set forth in paragraph 3 ("Obligations of the City") of this Agreement and to commence corrective measures to perform the obligations within sixty (60) days after receipt by the City of written notice of such default by the Applicant.

5. Remedies of the City.

(a) Whenever any event of default of the Applicant occurs, the City may take whatever action at law or in equity as may appear necessary or desirable to the City to enforce performance and observance of this Agreement.

(b) A major change in the development or use of the Property that differs from the Amended CUP by the Applicant shall require City Council approval in accordance with Bloomington City Code Section 21.501.03(c), and the City reserves the right to initiate such

proceedings. In addition, the City reserves its right to initiate rezoning of the Property if the Applicant changes the Property to a use prohibited in the approved zoning district.

6. **Remedies of the Applicant.** Whenever any event of default by the City occurs, the Applicant may take whatever action at law or in equity may appear necessary or desirable to the Applicant to enforce performance or observance of this Agreement.

7. **Notices and Demands.**

(a) A notice, demand, or other communication under this Agreement by either party to the other shall be sufficiently given if it is dispatched by registered or certified mail, postage pre-paid, return receipt requested, and addressed to the party at the addresses listed below with receipt thereof presumed on the third business day thereafter. Either party may designate another address, or attorney for receipt of notices pursuant to this Agreement by designating in writing and forwarding such writing to the other party as provided in this section.

(b) Notices, demands, or other communications to a party under this Agreement shall be sufficiently given if sent by registered or certified mail, postage pre-paid, return receipt requested, and addressed to the party as follows:

If to the City:

City of Bloomington
ATTN: Director of Community Development
1800 West Old Shakopee Road
Bloomington, Minnesota 55431

If to the Applicant:

Al Jazari Institute
ATTN: Mohamed Omar, Executive Director
8201 Park Avenue South
Bloomington, Minnesota 55420

With a copy to:

Jay Smigielski
Ferdinand F. Peters Esq. Law Firm
842 Raymond Avenue, Suite #200
St. Paul, Minnesota 55114

8. **Amendment/Additional Documents.** This Agreement may be amended, in writing, as the parties may mutually agree. The plans, standards, stipulations, and other information constituting the development plan and the conditions placed on the approval of the plans as detailed in **Exhibit B** may also be amended upon application by the Applicant and approval of the City pursuant to Bloomington City Code Section 21.501.03. Once approved by the City Council, subsequent development plans and conditions shall become part of this Agreement and shall be fully binding upon the parties as if set forth herein. All such additional documents affecting the development and use of this property shall be kept on file as a public record by the City of Bloomington, Director of Community Development.

9. **Application of City Code Provisions, Rules, Regulations and Policies.** This Agreement shall not prevent the City, in subsequent actions applicable to the Property, from applying new City Code provisions, rules, regulations or policies, nor shall this Agreement prevent the City from denying or conditionally approving any subsequent development application on the basis of such existing or new City Code provisions, rules, regulations or

policies. No rights shall be deemed to vest in the Applicant or any other person, under any site development agreement, except as expressly set forth therein.

10. **Relationship of the Parties.** No partnership or joint venture is established between the parties hereto by or under this Agreement or any agreement referenced herein.

11. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns, including without limitation any and all future and present Applicants, tenants, occupants, licensees, mortgagees and any other parties with any interest in the Property. Upon sale or conveyance of any portion of the Property, the transferee shall be liable for all obligations of the Applicant which relate to such portions of the Property and the transferor shall be automatically released from any further obligation, liability, right or responsibility under this Agreement relating to the transferred portion of the Property.

12. **Recording of Document.** This Agreement shall run with the Property and shall be recorded in the Office of the Hennepin County Recorder or Registrar of Titles, as appropriate, by the Applicant with proof thereof shown to the City prior to its issuance of any permits hereunder.

13. **Governing Law.** The City and Applicant agree that the laws of the State of Minnesota shall govern all questions and interpretations concerning the validity and construction of this Agreement and the legal relations between the undersigned parties and performance under it without regard to the principles of conflicts of law. The language of this Agreement is and shall be deemed the result of negotiation among the parties and their respective legal counsel and shall not be strictly construed for or against any party. Each party agrees that any action arising out of or in connection with this Agreement shall be brought solely in the courts of the State of Minnesota, Fourth Judicial District, or the United States District Court for the District of Minnesota.

14. **Entire Agreement; Superseding All Prior Agreements.** This Agreement and the Plans represent the entire Agreement between the Applicant and the City. This Agreement terminates and supersedes the Amended and Restated Site Development Agreement between the City and the Applicant related to the Property, dated September 27, 2011, and recorded with the Hennepin County Recorder as Document No. A9710205.

15. **Severability.** If any provision or term of this Agreement for any reason is declared invalid, illegal or unenforceable, such decision shall not affect the validity of any remaining provisions, provided that: (i) each party receives the substantial benefit of its bargain with respect to the transaction completed hereby; and (ii) the ineffectiveness of such provision would not result in such a material change as to cause completion of the transactions contemplated hereby to be unreasonable for either party. The remaining provisions shall remain in full force and effect as if this Agreement had been executed with the invalid portion thereof eliminated and it is hereby declared the intention of the parties that they would have executed the remaining portions of this Agreement without including any such part or portion which may be hereafter declared invalid.

16. **Signatures/Execution.** Each person executing this Agreement on behalf of a party hereto represents and warrants that such person is duly and validly authorized to do so on behalf of such party, with full right and authority to execute this Agreement and to bind such party with respect to all of its obligations hereunder. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute but one and the same instrument. Facsimile or electronic signatures are not accepted by the City, or by Hennepin County for recording purposes. The City requires three originals of this Agreement for City records; Hennepin County will require one original for the Recorder and one original for the Registrar for recording.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

[left blank intentionally; signature pages follow]

EXHIBIT A
TO SITE DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF BLOOMINGTON & APPLICANT

LEGAL DESCRIPTION OF THE PROPERTY

LOT 1, BLOCK 1, SMITH PARK 3RD ADDITION

EXHIBIT B
TO SITE DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF BLOOMINGTON & APPLICANT

See attached



February 13, 2018

Al Jazari Institute Property, LLC
ATTN: Mohamed Omar
8201 Park Avenue South
Bloomington, MN 55420

Success Academy
ATTN: Magdy Rabeaa
8201 Park Avenue South
Bloomington, MN 55420

RE: Case # PL201700251 – Conditional Use Permit amendment to increase student enrollment from 60 to 84 students at an existing Pre K–8 school
8201 Park Avenue South

Mr. Omar and Mr. Rabeaa:

At its regular meeting of February 12, 2018, the City Council adopted a resolution approving an amendment to a Conditional Use Permit to expand the maximum number of students from 60 to 84 for an existing school (Case # PL201700251).

The approval is subject to conditions that must be satisfied prior to the release of the Conditional Use Permit. While the conditions list includes selected City Code requirements of particular interest, the development must comply with all applicable local, state and federal codes.

1. Prior to Release A Site Development Agreement, including all conditions of approval, must be executed by the applicant and the City and must be properly recorded by the applicant with proof of recording provided to the Director of Community Development.
2. Prior to Permit All Sewer Availability Charges (SAC) must be satisfied no later than March 31, 2018, if applicable.
3. Ongoing Proof of parking agreement, Hennepin County Recorder Document #A9710204 as filed via case 8915A-11 remains in effect.
4. Ongoing While the weekday or weekend school is in session, the use of the large gymnasium, small gymnasium and cafeteria is limited to school activities.
5. Ongoing While other on-site assembly areas are in use, the use of the large gymnasium, small gymnasium and cafeteria is limited to activities that do not generate additional parking demand.
6. Ongoing The weekend school is limited to 80 students at one time.
7. Ongoing The weekday school is limited to 84 students.
8. Ongoing The capacity of the large gymnasium is limited to 500 occupants.
9. Ongoing The floor area of the assembly rooms is limited to the size and location shown in the floor plan for case PL2017-251.
10. Ongoing All pickup, drop-off, loading and unloading must occur on site and off

- of public streets.
11. Ongoing Due to parking demand, the joint use agreements providing shared access to 110 off-site parking spaces on adjacent land must be maintained unless the Conditional Use Permit is amended to reflect a new use mix parking demand that can be met through on-site parking.
 12. Ongoing The property owner must provide traffic control services if overflow parking occurs.
 13. Ongoing Due to parking and trip generation, the weekday school is limited to grades Pre K-8.
 14. Ongoing The previously approved fitness center and day care uses are no longer valid.
 15. Ongoing The property owner, subject to the review and approval of the Parks and Recreation Manager, must prepare in January of each year, an annual plan that coordinates the use of joint parking areas and outdoor recreation/athletic facilities in a manner that minimizes overlapping demand.
 16. Ongoing Bicycle parking spaces must be provided and located throughout the site as approved by the City Engineer.
 17. Ongoing All preschool or prekindergarten curriculum must meet Minnesota's early learning instructional program standards for children.
 18. Code Requirement Interior modifications must be reviewed and approved by the Fire Marshal to verify automatic fire sprinkler system coverage is in compliance (MN Bldg. Code Sec. 903, MN Rules Chapter 1306; MN State Fire Code Sec. 903).
 19. Code Requirement Any future application to modify this CUP must include a traffic study if required in Section 21.302.06(b)(7).
 20. Code Requirement Recyclable materials must be separated and collected (Sec. 10.45).
 21. Code Requirement Fire lanes must be posted as approved by the Fire Marshal (MN State Fire Code Sec. 503.3).
 22. Code Requirement Parking lot and site security lighting plans must satisfy the requirements of Section 21.301.07 of the City Code.
 23. Code Requirement Signs must be in compliance with the requirements of Chapter 19, Article X of the City Code.
 24. Code Requirement All trash and recyclable materials must be stored inside the principal building (Sec. 19.51). Exterior access to the room is allowed pursuant to Case PL201700282.
 25. Code Requirement Development must comply with the Minnesota State Accessibility Code.

Should you have any questions regarding this action, please contact Nick Johnson, Planner, at (952) 563-8925 or nmjohnson@BloomingtonMN.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Glen Markegard". The signature is written in a cursive, flowing style.

Glen Markegard, AICP
Planning Manager

cc: Jay Smigielski, Ferdinand Peters Law Firm