

PL201800226  
PL2018-226



Doc No **A10595791**

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Sep 27, 2018 3:16 PM

Office of the County Recorder  
Hennepin County, Minnesota  
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Deputy 138	Pkg ID 1741286C
Document Recording Fee	\$46.00
<b><i>Document Total</i></b>	<b>\$46.00</b>

PL201800226

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Doc No **T05563241**

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Sep 27, 2018 3:16 PM

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

Deputy 138

Pkg ID 1741256C

Attested Copy or Duplicate Original	\$2.00
Document Recording Fee	\$46.00
Multiple Certificates Affected Fee	\$20.00
<b><i>Document Total</i></b>	<b>\$68.00</b>

**Existing Certs**

1437840, 1437841

**SITE DEVELOPMENT AGREEMENT**

THIS SITE DEVELOPMENT AGREEMENT is made effective as of this 27<sup>th</sup> day of September, 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 Property LLC, a Minnesota nonprofit corporation, 8201 Park Avenue South, Bloomington, Minnesota 55420 ("Applicant").

**RECITALS**

The Applicant, along with Success Academy, filed a development application (Case PL201800226) for the City's approval of a Conditional Use Permit ("CUP") for an existing place of assembly, community center, and prekindergarten-8<sup>th</sup> grade school, and to expand the existing prekindergarten-8th grade school student enrollment from 84 students to 130 students 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 that began on September 10, 2018, approved the above-referenced 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 (regardless of whether specifically enumerated in the City Council CUP Approval, as hereinafter defined).

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 September 10, 2018, approval (Resolution No. 2018-117) ("City Council CUP 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 Site Development Agreement between the City and the Applicant related to the Property, dated June 7, 2018, and recorded with Hennepin County as Document Nos. A10572204 and T05543875; and the Site Development Agreement recorded with Hennepin County as Document Nos. A10594455 and T05562272 on September 24, 2018. Exhibit B was inadvertently not included with the document recorded on September 24, 2018. To correct the omission of Exhibit B, this Agreement was recorded again with Exhibit B and thereby replaces Documents No. A10594455 and T05562272.

**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.

City of Bloomington  
Box 291

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 September 13, 2018, which is attached hereto and incorporated herein by reference as **Exhibit B.**

(b) **Conformance with Approved CUP.** The Applicant agrees that development and use of the Property shall also be in strict conformance with the City Council CUP Approval, all applicable code provisions, including but not limited to City Code, building code and fire code (regardless of whether specifically 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 City Council CUP Approval 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 City Council CUP Approval. 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 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 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. All previous agreements, whether written or oral, are superseded by and merged into this Agreement. Subsequent changes shall not be binding unless reduced to writing and signed by the parties hereto. This Agreement terminates and supersedes the Site Development Agreement between the City and the Applicant related to the Property, dated September 24, 2018, and recorded with Hennepin County as Document Nos. A10594455 and T05562272.

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 and the County require execution of multiple originals of this Agreement: three (3) originals for City records; one (1) original for recording with the Office of the County Recorder, and one (1) for recording with the Office of the Registrar of Titles.

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

*[left blank intentionally; signature pages follow]*



Signature Page for AL JAZARI INSTITUTE

AL JAZARI INSTITUTE

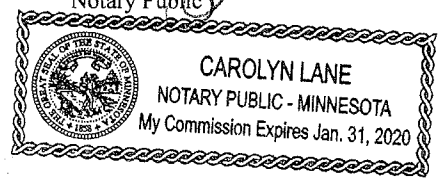
DATED: 9/27/18

By: *Mohamed Omar*  
Mohamed Omar  
Its Executive Director

STATE OF MN )  
COUNTY OF Dakota ) SS.

This instrument was acknowledged before me this 27<sup>th</sup> day of September, 2018, by Mohamed Omar, the Executive Director of Al Jazari Institute, a Minnesota nonprofit corporation, on behalf of the corporation.

*Carolyn Lane*  
Notary Public



This instrument was drafted by:  
Legal Dept. - City of Bloomington  
1800 W. Old Shakopee Rd.  
Bloomington, MN 55431  
(952) 563-8753

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

**LEGAL DESCRIPTION OF THE PROPERTY**

LOT 1, BLOCK 1, SMITH PARK 3<sup>RD</sup> ADDITION

HENNEPIN COUNTY, MINNESOTA

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

*See attached*



September 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 # PL201800226 – Conditional Use Permit for a place of assembly, community center, and prekindergarten-8<sup>th</sup> grade school with a maximum enrollment of 130 students  
8201 Park Avenue South

Mr. Omar and Mr. Rabeaa:

At its regular meeting of September 10, 2018, the City Council approved a Conditional Use Permit for an existing place of assembly, community center and prekindergarten-8<sup>th</sup> grade school, and to expand the existing prekindergarten-8<sup>th</sup> grade school student enrollment from 84 students to 130 students (Case # PL201800226).

The approval is subject to conditions that must be satisfied prior to the increase in student enrollment from 84 to 130 students. 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 Enrollment Increase A Site Development Agreement, including all conditions of approval, must be executed by the property owner and the City and must be properly recorded by the property owner with proof of recording provided to the Director of Community Development.
2. Prior to Enrollment Increase The following mitigation measures must be provided as specified prior to any increase of prekindergarten-8<sup>th</sup> grade school enrollment above 84 students:
  - a) Add traffic control signs and striping as required by the City Engineer to make the eastern parking lot drive aisle one way, northbound;
  - b) Construct screening to buffer the institutional use from abutting residential uses as required by the City Code;
  - c) A vehicular circulation plan must be prepared and at least annually communicated with site users;
  - d) Prior to any increase of prekindergarten-8<sup>th</sup> grade school enrollment above 84 students, provide a

**PLANNING DIVISION**

1800 W. OLD SHAKOPEE ROAD, BLOOMINGTON MN 55431-3027  
PH 952-563-8920 FAX 952-563-8949 TTY 952-563-8740

AN AFFIRMATIVE ACTION/EQUAL  
OPPORTUNITIES EMPLOYER



- b. Instructional activities associated with the community center or place of assembly are limited to a combined total of 80 participants at any one time. Athletic program participants are not subject to the 80 participant total;
  - c. The use of the large gymnasium is limited to 500 occupants at any one time;
  - d. Assembly uses may not occur in the assembly rooms, large gymnasium, small gymnasium or cafeteria during prekindergarten-8<sup>th</sup> grade school hours, athletic programming, or instructional activities; and
  - e. While the 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.
10. Ongoing The floor area of the assembly rooms is limited to the size and location shown in the floor plan for Case #PL2018-226.
11. Ongoing The property owner must maintain rights to utilize the off-site parking spaces identified in the staff report and must provide copies of agreements and leases to the Planning Manager. Changes in occupancy, building use, or access to the off-site parking spaces identified in the staff report must be reviewed and approved by the Planning Manager and may require an amendment to the Conditional Use Permit.
12. Ongoing All prekindergarten curriculum must meet Minnesota's early learning instructional program standards for children.
13. Ongoing The property owner must provide and fund traffic control services as required by Chapter 14 of the City Code.
14. Ongoing Due to parking availability and the increase in trip generation, the school use is limited to grades prekindergarten-8<sup>th</sup> grade.
15. Ongoing Due to parking availability, the Joint Use Agreement dated March 2, 2015, 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.
16. Ongoing The property owner, subject to the review and approval of the Parks and Recreation Director, 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.
17. Ongoing Any use of the kitchen must be reviewed and approved by the Environmental Health, Planning and Fire Prevention Divisions.
18. Ongoing Parking lot and site security lighting plans for new parking areas must comply with Section 21.301.07 of the City Code.
19. Ongoing All pickup, drop-off, loading and unloading must occur on-site and off public streets.
20. Ongoing Interior or exterior site alterations must comply with the Minnesota

- State Accessibility Code.
21. Ongoing Signs must be in compliance with the requirements of Chapter 19, Article X of the City Code and Uniform Design Plan.
  22. Ongoing All trash and recyclable materials must be stored inside the principal building (Sec. 19.51).
  23. Ongoing Recyclable materials must be separated and collected (Sec. 10.45).
  24. Ongoing 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).
  25. Ongoing Alterations to utilities must be at the property owner's expense.
  26. Ongoing Execute an agreement approved by the City Attorney by 12/31/18 for the property owner/applicants to be assessed 50% of the cost (but not more than \$10,000) for the construction of a driveway from Park Avenue to the Smith Park parking lot. Upon the construction of such driveway, the property owner shall revise site circulation making the southern driveway from Park Avenue an entrance only and making the northern driveway from Park Avenue an exit only.

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

Sincerely,



Glen Markegard, AICP  
Planning Manager

cc: Melissa Manderschied, City Attorney