

SETTLEMENT AGREEMENT AND RELEASE

CITY OF LEXINGTON, NEBRASKA, a Municipal Corporation, LEXINGTON CITY PLANNING COMMISSION, LEXINGTON CITY COUNCIL, and LEXINGTON CITY OFFICIALS, both in their individual and official capacities (collectively referred to herein as the City of Lexington) and the ISLAMIC CENTER OF LEXINGTON, INC., a Nebraska Non-Profit Corporation (referred to herein as Islamic Center), both parties collectively referred to herein as "Parties or Settling Parties," hereby enter into this Settlement Agreement and Release ("Agreement") on this ___ day of _____, 2016, in full and final resolution of all claims which the City of Lexington and Islamic Center have asserted (or may have asserted) against each other.

RECITALS

WHEREAS the Islamic Center is the owner of the real estate legally described in Exhibit "A", informally known as 401 Grant St, Lexington, 401 ½ Grant St., Lexington, NE, and 121 E 4th St., Lexington, NE, all located in Dawson County, Nebraska. That located on the east portion of the real estate described in Exhibit "A" is a business formerly known as "Longhorn Laundry," which was previously owned by Javier Quintero and used and occupied as a laundromat, with an address of 401 Grant St. Said real estate consisting of the former Laundromat being the "Subject Property" identified on the attached Exhibit "B."

WHEREAS the Subject Property is located within the City of Lexington's corporate limits and at all times relevant hereto has been zoned as C-2 Core Commercial ("C-2").

WHEREAS the Islamic Center submitted an Application for Conditional Use Permit ("Application") with the City requesting that they be allowed a conditional use permit for an "Islamic worship place mosque," in regards to the Subject Property;

WHEREAS pursuant to the Lexington Zoning Ordinance, Ordinance No. 2339, adopted February 11, 2014, and incorporated in the Lexington City Code at Section 115-1, a conditional use permit is required for a church to be located in a C-2 zone. Such Ordinance No. 2339 being amended on December 8, 2015. Under both the zoning ordinance adopted February 11, 2014, and as amended December 8, 2015, a conditional use permit is required to use the Subject Property as a mosque;

WHEREAS on or about November 4, 2015, pursuant to the Lexington Zoning Ordinance, the Application was brought before the Lexington Planning Commission. The Planning Commission recommended to the Lexington City Council a denial of the Application;

WHEREAS on or about December 22, 2015, pursuant to the Lexington Zoning Ordinance, the Application was brought before the Lexington City Council. The City Council voted to deny the Application;

WHEREAS the Islamic Center, before and after December 22, 2015, continues to use the Subject Property as a mosque despite the denial of the Islamic Center's application by the Lexington City Council;

WHEREAS on February 5, 2016 the City of Lexington filed a Complaint for Damages and Injunctive Relief in the Dawson County District Court praying for judgment against the Islamic Center in an amount up to \$100.00 per day commencing January 6, 2016 for the Islamic Center's alleged violations of the Lexington Zoning Ordinance, and additionally praying for judgment against the Islamic Center in an amount up to \$500.00 per day commencing January 6, 2016 for the Islamic Center's alleged violations of the Lexington Building Code. Additionally, the City of Lexington prayed for the District Court to issue an injunction against the Islamic Center permanently enjoining and restraining the Islamic Center from violating the Lexington Zoning Ordinance, codified in Section 115-1 of the Lexington City Code, and the Lexington Building Code, codified in Section 113-19 of the Lexington City Code, in regards to the Subject Property;

WHEREAS the Islamic Center alleges the City of Lexington, in changing the city code, denying the Islamic Center's application for a conditional use permit, and issuing threats that the Islamic Center must close, is violating the United States Constitution and Federal Law, specifically the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), codified in 42 U.S.C.2000cc, *et. seq.*

WHEREAS the City of Lexington denies any allegations its code and denial of application for a conditional use permit violate the United States Constitution and federal law;

WHEREAS the Settling Parties by this Agreement now wish to resolve and settle conditionally all claims and disputes encompassed within and that could have been raised in these matters and all attendant and potential litigation arising therefrom.

NOW, THEREFORE, in consideration of these premises, the covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

1. Ratification. The Parties acknowledge each of the foregoing recitations and adopt the same as material parts of this Agreement.
2. Approval of Conditional Use Permit. The Settling Parties acknowledge the Islamic Center enters into this Agreement contingent on the approval of a Conditional Use Permit, which resolves alleged RLUIPA claims against the City of Lexington. Should the City of Lexington not approve the Conditional Use Permit, the Islamic Center may, at its sole option, terminate this Agreement. Said Conditional Use Permit shall govern the Islamic Center's use of the Subject Property following its' approval by the City of Lexington.
3. Release
 - a. Subject to the performance of the approval of the Conditional Use Permit, the Settling Parties hereby fully and finally waive, release, and permanently discharge each other (and their respective officers, employees, agents, representatives, and attorneys)(the "Releasees"), from any and all past, present, or future matters, claims, demands, obligations, liens, actions or causes of action, suits in law or equity, or claims for damages or injuries, whether known or unknown, which they now own, hold or claim to have or at any time heretofore have owned, held, or claimed to have held against each other by reason of any matter or thing alleged or referred to, or in any connected with, arising out of or in any way relating to any of the matters, acts, events, or occurrences alleged or referred to in any of pleadings filed in the Dawson County District Court, any claimed or unclaimed violations of RLUIPA, or any and all other claims arising from Islamic Center's use of the Subject Property (collectively, "Released Claims"). Said Released Claims does not include any future matters, future claims, future causes of action, future demands, future damages or injuries, in regards to the Islamic Center's use of the Subject Property pursuant to the Conditional Use Permit referenced above.
 - b. The Settling Parties understand and acknowledge that that foregoing release extends to any claims or damages, without limitation, arising out of the Released Claims that may exist, which, if known, would have materially affected their decision to execute this Agreement, regardless of whether their lack of knowledge is a result of ignorance, oversight, error, negligence, or any other cause.
 - c. Each Party acknowledges and agrees that this Agreement is a compromise and settlement of their disputes and differences, and is not an admission of liability or wrongdoing by any Party.
 - d. Each of the Parties waives any and all claims for the recovery of damages, costs, expenses, fees, including attorney fees, associated with the matters and claims released in this Agreement.
4. Representations and Warranties

- a. Both the City and Islamic Center represent and warrant the following:
 - i. Each has received all corporate and other approvals necessary to enter into this Agreement on its behalf and that the persons signing this Agreement on its behalf are fully authorized to commit and bind the Islamic Center and the City to each and all of the commitments, terms and conditions hereof, and to release the claims described herein, and that all documents and instruments are enforceable in accordance with their respective terms.
 - ii. Each has made such investigation of the facts pertaining to this Agreement as it deems necessary.
 - iii. Each has, prior to execution of this Agreement, obtained the advice of independent legal counsel of its own selection regarding the substance of this Agreement and the claims released herein.
 - iv. Each party represents and warrants that they have not relied upon any statement or representation of any person regarding any facts not expressly set forth in this Agreement.
 - v. The representations and warranties of this Agreement will survive the execution and delivery of the Agreement and are a material part of the consideration to the City of Lexington and Islamic Center entering into this Agreement.

5. Miscellaneous.

- a. Interpretation. The Settling Parties have cooperated in the drafting and preparation of this Agreement and in any construction or interpretation to made of this Agreement, the same shall not be construed against any party. This Agreement is a product of bargained for and arms length negotiations between the Settling Parties and their counsel. This Agreement is a joint product of the Settling Parties.
- b. Amendments. This Agreement may be amended or modified in whole or in part only by an agreement in writing executed by all parties hereto and making specific reference to this Agreement.
- c. Waiver. No waiver of any provision of this Agreement shall be deemed or shall constitute a waiver of any other provision whether or not similar, nor shall any waived be deemed a continuing waiver; and no waiver shall be implied from delay or be binding unless executed in writing by the party making the waiver.
- d. Binder. This Agreement shall be binding upon, inure to the benefit of and be enforceable by and against the parties hereto and their respective heirs, personal representatives, successors and assigns in accordance with the terms hereof.
- e. Severability. In the event that any one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the

remaining provisions of this Agreement and any other application thereof shall not in any way be affected or impaired thereby; provided, however, that to the extent permitted by applicable law, any invalid, illegal, or unenforceable provision may be considered for the purpose of determining the intent of the parties in connection with the other provisions of this Agreement.

- f. Further Assurances. Each undersigned party will, whenever it shall be reasonably requested to do so by the other, promptly execute, acknowledge, and deliver, or cause to be executed, acknowledged, or delivered, any and all such further conveyances, confirmations, instruments, or further assurances and consents as may be necessary or proper, in order to effectuate the covenants and agreements herein provided. Each of the undersigned parties shall cooperate in good faith with the other and shall do any and all other acts and execute, acknowledge and deliver any and all documents so requested in order to satisfy the conditions set forth herein and carry out the intent and purposes of this Agreement.
- g. Entire Agreement; Law Governing. All prior negotiations and agreements between the parties hereto are superseded by this Agreement, and there are no representations, warranties, understandings or agreements other than those expressly set forth herein, except as modified in writing concurrently herewith or subsequent hereto. This Agreement shall be governed by and construed and interpreted according to the internal laws of the United States of America and the State of Nebraska.
- h. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

City of Lexington:

Islamic Center of Lexington, Inc.

By _____
John Fagot, Mayor

By _____

By _____

