

CASE #PL2021-256



LAND TYPE Torrens (T)

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PROOF OF LIGHTING AGREEMENT

THIS PROOF OF LIGHTING AGREEMENT is made effective as of this 31st day of August, 2022, by and between the City of Bloomington, a Minnesota municipal corporation, 1800 West Old Shakopee Road, Bloomington, Minnesota 55431 ("City"), Afrique Hospitality Group, LLC, a Minnesota limited liability company with a registered office address of 1701 American Boulevard East, #15A, Bloomington, Minnesota 55425-5542 ("Applicant"), and 1701 American Blvd, LLC, a Minnesota limited liability company with a registered office address of 7401 Bush Lake Road, Edina, Minnesota 55439.

RECITALS

1701 American Blvd, LLC ("Fee Owner") is the owner of real property located at 1701 American Boulevard East in the City of Bloomington, Minnesota, and legally described as:

Lot 2, Block 1, Cedar Park Addition, according to the recorded plat thereof, Hennepin County, Minnesota

Torrens (the "Property").

On December 8, 2021, Applicant filed a development application (Case #PL2021-256) for the City's approval of a conditional use permit to operate a cultural campus at the Property.

The City Council of the City of Bloomington, Minnesota, at its regular meeting of January 24, 2022, approved the above-referenced application for conditional use permit (the "Council Approval") 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).

Condition #6 of the Council Approval requires that parking lot and site security lighting plans satisfy the requirements of City Code § 21.301.07. Execution of this Agreement is authorized by City Code § 21.307.01(c)(11) and allows Applicant to meet the parking lot and security lighting requirements of City Code § 21.307.07. The primary parking areas anticipated to serve the proposed use are located in the western and southern portions of the Property, in proximity to the primary campus entrances. The northern and northeastern parking areas primarily serve non-associated office occupancies that operate during typical daytime business hours. As such, the application of proof of lighting in these areas is a reasonable intervention.

This Agreement sets forth the obligations of the parties and the conditions that govern the Condition #6 of the Council 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.

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. **Execution and Recording.** Applicant shall execute and record this Agreement with the office of the Hennepin County Recorder and/or Registrar of Titles, as applicable, paying all costs associated therewith, and provide the City with written proof of said recording. No permits shall be issued by the City in connection with the Council Approval until such proof of recording has been provided.
3. **Notice from the City.** The City may direct the construction of the Proof of Lighting, as identified in the approved lighting plan incorporated herein as **Exhibit A**, at such time as the City, in its sole discretion and based on the observed use of parking in the nighttime hours, determines there is a need for the parking spaces and therefore, the addition of the Proof of Lighting. This direction shall be given in writing and shall be mailed or delivered in accordance with the notice provisions described herein. The notice shall specify the lighting to be constructed and shall state the time frame within which it shall be constructed. The time frame set by the City for the construction of the Proof of Lighting shall take into account the work to be done and seasonal construction limitations and considerations, and it shall be a minimum of ninety (90) days from the date of the notice.
4. **Construction of the Proof of Lighting.** Applicant shall, at its sole expense, construct the Proof of Lighting upon the direction of the City to do so and shall do so within the time frame specified in the notice. The Proof of Lighting shall be constructed in accordance with the **Exhibit A**, the approved lighting plan. Applicant shall obtain all appropriate permits for the construction of the Proof of Lighting.

5. **Default by Applicant.** Failure by Applicant to construct compliant Proof of Lighting in a timely manner shall be considered a default. In the event of Applicant's default, the City may take whatever action at law or equity as may appear necessary or desirable to the City to enforce performance of this Agreement, including but not limited to the revocation of City approvals. Applicant shall be liable to the City for the costs and expenses of such enforcement actions and proceedings, including attorney's fees.

6. **Notices and Demands.** 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:

Afrique Hospitality Group, LLC
ATTN: Mukhtar Sharif, CEO
1701 American Boulevard East, #15A
Bloomington, MN 55425

7. **Entire Agreement.** This Agreement and Exhibit A represent the entire Agreement between Applicant and the City. Subsequent changes shall not be binding unless reduced to writing and signed by the parties hereto.

8. **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.

9. **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.

10. **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.

11. **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. 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.

12. **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 one (1) original of this Agreement for City records; Applicant to retain one (1) fully executed original; Hennepin County will require one (1) original 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]

Signature Page for the City of Bloomington, Minnesota

CITY OF BLOOMINGTON

DATED: 8/31/2022

By: [Signature]
James D. Verbrugge
Its: City Manager

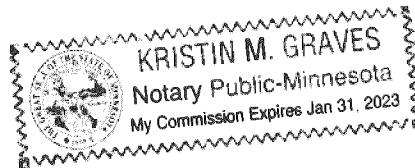
Reviewed and approved by the City Attorney.

[Signature]
City Attorney

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

This instrument was acknowledged before me on this 31st day of August, 2022, by James D. Verbrugge, the City Manager of the City of Bloomington, under the laws of the State of Minnesota, on behalf of the City of Bloomington.

[Signature]
Notary Public



Signature Page for Fee Owner and Applicant

Signature of Fee Owner

1701 AMERICAN BLVD, LLC

DATED: 8/24/22

By: [Signature]

Rustam Muharamov, Secretary

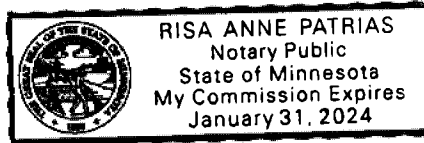
STATE OF MINNESOTA)

) SS.

COUNTY OF HENNEPIN)

This instrument was acknowledged before me this 24th day of August, 2022, by Rustam Muharamov, Secretary, on behalf of 1701 American Blvd, LLC.

[Signature]
Notary Public



Signature of Applicant

AFRIQUE HOSPITALITY GROUP, LLC

DATED: 8/24/22

By: [Signature]

Mukhtar Sharif, CEO

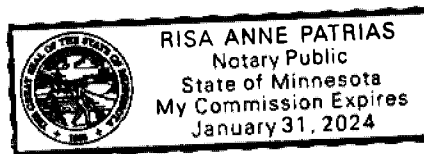
STATE OF MINNESOTA)

) SS.

COUNTY OF HENNEPIN)

This instrument was acknowledged before me this 24th day of August, 2022, by Mukhtar Sharif, CEO, on behalf of Afrique Hospitality Group, LLC.

[Signature]
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 PROOF OF LIGHTING AGREEMENT
BETWEEN THE CITY OF BLOOMINGTON & APPLICANT

LIGHTING PLAN

CASE #PL2021-256

[illegible][illegible]Daniel
Budke

Typically approved by David M. Allen
 DUM (non-Devised) Bulletin 00-000000
 Executive, 00-000000 Executive
 00-000000 (not in action) 00-000000
 00-000000 00-000000
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LIGHTING PLAN APPROVED
NMJ
08.18.2032

MM:1
08:18:2032

1910

Proof of Lighting

Proof of Lighting

WITNESS
My hand and seal this _____ day of _____, 2007.