FIRST AMENDMENT TO CITY REDEVELOPMENT AGREEMENT FOR BREWERY IN MIDTOWN

THIS FIRST AMENDMENT TO CITY REDEVELOPMENT AGREEMENT FOR BREWERY IN MIDTOWN is entered into on of March 15, 2022 (although it may be executed on different dates), between:

- City of Ocala, a Florida municipal corporation ("*City*").
- Brewery in Midtown, LLC, a Florida limited liability company ("*Developer*").

WHEREAS:

A. On or about April 20, 2021, City and Developer entered into a *City Redevelopment Agreement for Brewery In Midtown* (the "*Original Agreement*") pursuant to which City agreed to convey the Property[1] to Developer for the construction of the Project, and to provide the City Incentives.

B. City and Developer now desire to amend the Original Agreement as set forth herein.

NOW, THEREFORE, in consideration of the foregoing, and other good and valuable considerations, and with the intention that they be legally bound by this Agreement, the parties do hereby agree as follows, which terms shall be binding upon the parties and their respective successors and assigns, as may be applicable.

1. **Final Legal Description**.

1.1. As set forth in paragraph 1.1.40 of the Original Agreement, the final description of the Property was to be determined by the Survey to be prepared by City under paragraph 4.1 of the Original Agreement.

1.2. Such Survey has been prepared and approved by the parties.

1.3. Therefore, the Original Agreement is amended to provide that the final legal description of the Property is set forth in the attached **Exhibit A**.

2. **Adequate Assurance**.

2.1. As set forth in paragraph 1.1.1.c of the Original Agreement, the Adequate Assurance to be provided by Developer to City at Closing could consist of "adequate financial assurance… reasonably approved by City."

2.2. Developer has proposed to provide the Adequate Assurance in the form of a Performance Bond (the "*Performance Bond*"), a specimen copy of which is attached hereto as **Exhibit B**.

2.3. City hereby accepts the Performance Bond as Adequate Assurance under this Agreement.

[1] Terms capitalized herein and not otherwise defined herein are defined in the Original Agreement or elsewhere in this Amendment.

2.4. The Performance Bond may be revised prior to Closing provided that the revisions are not material and do not adversely affect City, as determined by the City Manager and City Attorney in their sole discretion.

2.5. As set forth in paragraph 7.4.4 of the Original Agreement, the Adequate Assurance is to be maintained by Developer until Completion of the Project, with Completion being described in paragraph 1.1.19 of the Original Agreement.

2.6. The definition of Completion set forth in paragraph 1.1.19 is amended to add the following sentence:

> Completion shall not be deemed to have occurred until Developer has provided City with documentation pursuant to paragraph 8.2.3.b.2) establishing that Developer's Actual Development Costs incurred in connection with the Project were equal to, or in excess of, the amount of $750,000.00, and City has accepted such documentation as establishing the foregoing.

2.7. Paragraph 12.3 of the Original Agreement is amended to add a new paragraph 12.3.4 to read:

> 12.3.4. Any other remedy reasonably necessary for City to recover on any Adequate Assurance including terminating Developer's right to complete the Project.

3. **Occurrence of Conditions**. City and Developer acknowledge and agree as to the following:

3.1. The CDP Contingency has occurred.

3.2. Developer has accepted the title to the Property.

3.3. Developer has accepted the Survey of the Property.

3.4. Council determination made under paragraph 11.2 of the Original Agreement.

4. **Temporary Parking Easement**.

4.1. Pursuant to paragraph 5.3 of the Original Agreement, City agreed to provide Developer a Temporary Parking Easement for the use of an additional twenty-five (25) parking spaces.

4.2. City and Developer have agreed upon the form of the Temporary Parking Easement as set forth in the attached **Exhibit C**. Such form may be revised prior to Closing provided that the revisions are not material and do not adversely affect City, as determined by the City Manager and City Attorney in their sole discretion.

5. **Post-Closing Restrictions**. The provisions of paragraphs 8.12 and 8.13 of the Original Agreement shall be included in the deed to be executed by City at Closing and shall be deemed to run with title to the Property.

6. **Closing Date**.

6.1. Under the Original Agreement, the Closing Date was February 20, 2022.

6.2. By notice dated February 17, 2022, Developer extended the Closing Date pursuant to paragraph 7.1.1 of the Original Agreement, such that the rescheduled Closing Date is March 21, 2022 (since March 20, 2022 is on a weekend).

6.3. The Original Agreement is further amended to extend the Closing Date to a date, prior to April 30, 2022, selected by Developer upon at least ten (10) days' prior written notice to City. As Developer has already exercised its right to extend the Closing Date, it may not further do so without the necessity of amending this Agreement.

7. **Effect on Original Agreement**. Except as expressly set forth herein, the Original Agreement is not amended or modified. All references herein or in the Original Agreement to "this Agreement," "the Agreement," or similar terms shall be deemed to refer to the Original Agreement as amended hereby.

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SIGNATURES START ON NEXT PAGE

IN WITNESS WHEREOF, each of the parties hereto set their hand and seal on this Agreement as of the day and year set forth immediately beneath their respective signatures.

CITY

ATTEST:

City of Ocala, a Florida municipal corporation

_____

Angel B. Jacobs
City Clerk

_____

Ire Bethea, Sr., City Council President

Approved as to form and legality

_____

W. James Gooding III
Assistant City Attorney

DEVELOPER

Brewery in Midtown, LLC, a Florida limited liability company

By: _____
Thomas McDonald as Manager

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

PARCEL 3

COMMENCE AT THE POINT OF INTERSECTION OF THE NORTH RIGHT OF WAY LINE OF N.E. 2ND STREET (40.00 FEET WIDE) AND THE EAST RIGHT OF WAY LINE OF N.E. WATULA AVENUE (40.00 FEET WIDE) SAID POINT BEING 324.6 FEET, MORE OR LESS, WEST OF AND 40.0 FEET, MORE OR LESS, NORTH OF, THE SOUTHEAST CORNER OF LOT 50 OF CALDWELL'S ADDITION TO OCALA, AS RECORDED IN PLAT BOOK E, PAGE 4, OF THE PUBLIC RECORDS OF MARION COUNTY, FLORIDA; THENCE RUN N.00°00'41"E. ALONG SAID EASTERLY RIGHT OF WAY LINE OF N.E. WATULA AVENUE, FOR A DISTANCE OF 148.73 FEET; THENCE RUN N.89°43'10"E. FOR A DISTANCE OF 52.16 FEET TO THE POINT OF BEGINNING; THENCE RUN N.00°13'16"W. FOR A DISTANCE OF 14.90 FEET; THENCE RUN N.89°36'44"E. FOR A DISTANCE OF 20.04 FEET; THENCE RUN N.00°05'14"E. FOR A DISTANCE OF 84.86 FEET; THENCE RUN N.89°41'10"E. FOR A DISTANCE OF 96.32 FEET; THENCE RUN S.00°00'33"W. FOR A DISTANCE OF 99.78 FEET; THENCE RUN S.89°41'10"W. FOR A DISTANCE OF 116.42 FEET TO THE POINT OF BEGINNING.

PARCEL 4

COMMENCING 40.00 FEET NORTH AND 272.50 FEET WEST OF THE SOUTHEAST CORNER OF LOT 50, OF CALDWELL'S ADDITION TO OCALA, THENCE NORTH 150.00 FEET TO THE POINT OF BEGINNING; THENCE WEST 52.00 FEET; THENCE NORTH 276.60 FEET; THENCE EAST 168.50 FEET; THENCE SOUTH 176.60 FEET; THENCE WEST 96.50 FEET; THENCE SOUTH 85.00 FEET; THENCE WEST 20.00 FEET; THENCE SOUTH TO THE POINT OF BEGINNING.

LESS AND EXCEPT A PORTION THEREOF FOR ADDITIONAL RIGHT OF WAY; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING 40.00 FEET NORTH AND 272.50 FEET WEST OF THE SOUTHEAST CORNER OF LOT 50, OF CALDWELL'S ADDITION TO OCALA, THENCE NORTH 150.00 FEET;; THENCE WEST 52.00 FEET TO A POINT ON THE EAST RIGHT OF WAY LINE OF N.E. WATULA AVENUE (40 FEET WIDE), SAID POINT ALSO BEING THE POINT OF BEGINNING; THENCE NORTH, ALONG SAID EAST RIGHT OF WAY LINE, 276.60 FEET TO A POINT ON THE SOUTH RIGHT OF WAY LINE OF N.E. 3RD STREET (50 FEET WIDE); THENCE EAST, ALONG SAID SOUTH RIGHT OF WAY LINE, 168.50 FEET; THENCE DEPARTING SAID SOUTH RIGHT OF WAY LINE, SOUTH, 8.00 FEET; THENCE WEST, PARALLEL WITH AND 8.00 FEET DISTANT FROM SAID SOUTH RIGHT OF WAY LINE, 146.00 FEET; THENCE S.45°00'00"W., 24.75 FEET TO A POINT 5.00 FEET EAST OF, AS MEASURED PERPENDICULAR TO, THE AFORESAID EAST RIGHT OF WAY LINE OF N.E. WATULA AVENUE; THENCE SOUTH, PARALLEL WITH AND 5.00 FEET DISTANT FROM SAID EAST RIGHT OF WAY LINE, 251.10 FEET; THENCE WEST 5.00 FEET TO THE POINT OF BEGINNING.

EXHIBIT B
PERFORMANCE BOND

See attached.

LEXINGTON NATIONAL INSURANCE CORPORATION

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: BOND NUMBER: _____
That

Brewery in Midtown, LLC, a Florida limited liability company,
(Name and address of Principal)

as Principal (hereinafter the "Principal") and Lexington National Insurance Corporation a corporation organized and existing under the laws of the State of Florida as an authorized Surety (hereinafter the "Surety"), whose address is P.O. Box 6098, Lutherville, Maryland 21094, are held and firmly bound unto:

City of Ocala, a Florida municipal corporation; Attn: City Manager, 110 SE Watula Avenue, Ocala, FL 34471
(Name and address of Owner)

as Obligee (hereinafter the "Obligee"), in the sum of: Three Hundred Sixty Thousand and 00/100 DOLLARS ($ 360,000.00) (hereinafter the "Penal Sum") for the payment whereof the Principal and Surety bind themselves and their respective heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has entered into a certain City Redevelopment Agreement for a Brewery in Midtown (the "Contract") with Obligee, effective the April 20, 2021, which Contract, including any amendments thereto, for development of the Project (as defined in the Contract) as required by paragraph 8.2 of the Contract.

The Contract is by reference made a part hereof, provided however that, in the event of any conflict or inconsistency between the terms, conditions or limitations of this Bond including but not limited to the Penal Sum and the terms of the Contract, then the terms, conditions and limitations of this Bond shall take precedence over the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if the Principal shall perform the Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect, subject to the conditions set forth hereinbelow.

1. The Surety's obligations and undertakings hereunder shall arise only in the event that the Obligee is not itself in default or breach of any provision or provisions of the Contract.

2. If the Obligee is not in default or breach, and the Obligee contends that the Principal is in default under the Contract, the Surety's obligations hereunder shall arise only after:

2.1. The Obligee has notified the Surety and the Principal, in writing, by registered or certified mail, return receipt requested, describing with reasonable particularity the basis for the Obligee's contention that the Principal is in default, and requested a meeting to occur among representatives of the Obligee, the Principal and the Surety not later than fifteen days after the receipt of such notice, to discuss the matters raised in the notice and the further performance of the Contract; and

2.2. The Obligee has declared the Principal to be in default and formally terminated the Principal's right to complete the Contract. The Obligee shall not declare the Principal to be in default earlier than twenty days after the Surety and the Principal have received notice as provided in paragraph 2.1 above, and

2.3. The Obligee has agreed to cooperate with Surety in the investigation of the claim, including but not limited to, providing copies of all records requested by the Surety as well as complying with any other reasonable request of the Surety.

2.4. The Obligee has acknowledged the Surety's superior rights to complete the remaining work under Paragraph 3.

3. After the Obligee has satisfied the conditions of Paragraphs 2.1, 2.2, and 2.3, and 2.4 above, then the Surety, at its option and at its expense, shall take one of the following actions:

3.1. Arrange for the Principal or other contractor to perform the Contract as conditioned and limited by the terms of this Bond; or

3.2. After investigation, determine the amount of money, if any, required to complete the Contract and tender payment therefor to the Obligee; or

3.3. Deny liability in whole or in part.

4. The responsibilities of the Surety to the Obligee hereunder shall not in any event be greater than those of the Principal to the Obligee under the Contract. The responsibilities of the Obligee to the Surety shall not be greater than those of the Obligee under the Contract. Under any circumstances, the Surety's liability hereunder shall not exceed the Penal Sum of this Bond.

5. The Surety shall not be liable to the Obligee or others for any consequential damages or for any obligations of the Principal that are unrelated to the Contract. No right of action shall accrue on this Bond to any person or entity other than the Obligee.

6. Any proceeding, legal or equitable, under this Bond, must be instituted in a court of competent jurisdiction in the jurisdiction in which the Project or any part of it is located. Any proceeding, legal or equitable, must be instituted, if at all, within one year after the Principal first defaulted or was declared by the Obligee to be in default, or within one year after the Principal ceased work on the Project, or within one year after the Surety has refused to perform pursuant to this Bond, whichever first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitations available to sureties as a defense in the jurisdiction where any proceeding is instituted shall apply.

7. Notice to the Surety, the Obligee and/or the Principal shall be mailed or delivered to the addresses shown hereinabove.

8. If and when this Bond has been furnished to comply with any statutory or other legal requirement pertaining in any location where the Project is located, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom, and the minimum provisions conforming to such statutory or other legal requirements shall be deemed incorporated herein.

9. Surety's rights as set forth herein are in addition to, and not in derogation of, those provided at common law and pursuant to industry custom and trade usage. Notwithstanding anything to the contrary in the initial contract the Surety expressly reserves all rights and defenses available to it or the Principal.

10. Notwithstanding any requirement that may exist in the Contract requiring arbitration, the Surety shall have the right to have any Surety defenses available to it tried before a state or federal court of appropriate jurisdiction.

IN WITNESS WHEREOF, the Principal and Surety have hereunto caused this Bond to be duly executed and acknowledged as set forth below this _____ day of _____, 20 _____.

ATTEST:

By: _____ (SEAL)

(Name) (Title)

ATTEST:

Lexington National Insurance Corporation

By: _____ (SEAL)

(Name) (Title)

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EXHIBIT C
TEMPORARY PARKING EASEMENT

See attached.

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AGREEMENT CONCERNING TEMPORARY PARKING EASEMENT

THIS AGREEMENT CONCERNING TEMPORARY PARKING EASEMENT ("Parking Easement") is entered into effective _____, 2022 (the "Easement Effective Date") between:

- City of Ocala, a Florida municipal corporation ("City").
- Brewery in Midtown, LLC, a Florida limited liability company ("Developer").

WHEREAS:

A. City and Developer are parties to a *City Redevelopment Agreement for Brewery In Midtown* dated April 20, 2021, as amended (the "Redevelopment Agreement").

B. Pursuant to the Redevelopment Agreement, City agreed to provide an additional 25 parking spaces at a location to be determined by City and, until such parking spaces were provided, to grant to Developer a temporary parking easement.

C. City and Developer are entering into this Agreement pursuant to the Redevelopment Agreement to establish such temporary parking easement and the terms and conditions thereof.

NOW THEREFORE, in consideration of the matters set forth above (which are incorporated herein by reference), the exchange of the mutual promises set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Grant of Parking Easement**. City hereby grants, bargains, sells and assigns to Developer, its successors or assigns, a temporary nonexclusive easement (the "Parking Easement"), for the benefit of Developer, and of Developer's employees, agents, guests and other invitees (collectively, the "Permitted Users"), over and across the real property (the "Parking Easement Area") owned by City and described in the attached **Exhibit A**. The Parking Easement permits Developer and its Permitted Users to park in the parking lot in the Parking Easement Area. The Parking Easement shall be appurtenant to the real property owned by Developer and described in the attached **Exhibit B**.

2. **Maintenance**. Developer shall, at its own expense and risk, maintain and repair the Parking Easement Area, including the parking lot, and all improvements located therein in good repair and condition at all times.

3. **Duration of Parking Easement**. The Parking Easement is temporary and shall expire on the date that City completes construction of the additional parking spaces pursuant to paragraph 9.2.1.b(2) of the Redevelopment Agreement. At such time, City and Developer will enter into a recordable instrument acknowledging the termination of the Parking Easement.

4. **Non-Exclusive**. The Parking Easement is non-exclusive and may be utilized by City and members of the public for parking.

5. **Improvements**. Developer may not cause any improvements to be performed on the Parking Easement Area without the express written consent of City which may be withheld or conditioned by City in its sole discretion.

6. **Condition of Parking Easement Area**.

6.1. Developer's Acceptance of Parking Area. DEVELOPER ACCEPTS THE PARKING EASEMENT AREA IN THE CONDITION IT IS IN ON THE DATE OF THIS AGREEMENT "AS IS," AND WITH NO REPRESENTATIONS, WARRANTIES OF ANY KIND.

6.2. Damage to the Parking Easement. On the City's demand, Developer shall pay for all damages to the Parking Easement Area that are caused by the act or neglect of Developer or its Permitted Users.

6.3. City Not Responsible.

6.3.1. Developer acknowledges that the vehicles driven and parked within the Parking Easement Area are entirely at the risk of Developer and its Permitted Users.

6.3.2. City shall not be liable for any damage to property of Developer, or its Permitted Users, or of others located in or about the Parking Easement Area nor for the loss of or damage to any property of Developer or its Permitted Users, or of others by theft or misappropriation or otherwise. City shall not be liable for any such damage caused by occupants of adjacent property or by the public.

7. **Insurance, Indemnity**.

7.1. General Liability Insurance. Developer shall maintain during the duration of the Parking Easement, such general liability insurance as will provide coverage for claims for damages for personal injury, including accidental death, as well as for claims for property damage, which may arise directly or indirectly from the Parking Easement or Developer's use of the Parking Easement, with combined single limits of not less than $1,000,000 per occurrence and with a $2,000,000 aggregate. The "City of Ocala" shall be named as an Additional Insured.

7.2. Deductibles. Developer's self-insured retentions other than normal policy deductibles shall be disclosed to City and may be disapproved by the latter. They shall be reduced or eliminated at the option of City upon recommendation of City's Risk Management Department. Developer is responsible for the amount of any deductible or self-insured retention.

7.3. Insurance Requirements. These insurance requirements shall not relieve or limit the liability of Developer. City does not in any way represent that these types or amounts of insurance are sufficient or adequate to protect Developer's interests or liabilities, but are merely the minimums. No insurance is provided by City under this Agreement to cover Developer or its contractors or sub-contractors.

7.4. Duplicate Insurance. Insurance required of Developer or any other insurance of Developer which covers City shall be considered primary, and insurance or self-insurance of City shall be considered excess, as may be applicable to claims against City which arise out of this Agreement.

7.5. Certificates. Developer shall provide a Certificate of Insurance issued by a company authorized to do business in the State of Florida and with an A.M. Best rating of at least A, which provide for at least 30 days' notice of cancellation to be given to City.

7.6. City May Change Limits. City reserves the right to increase or decrease, or expand or narrow, the minimum limits or amounts of insurance requirements set forth above whenever the liability of City under Florida law (including the Florida Tort Claims Act) increases or City's areas of liability or risk are expanded.

7.7. Failure to Provide Insurance. In the event that Developer shall fail to obtain or maintain in full force and effect any insurance coverage required to be obtained by Developer under this Agreement, City may procure same from such insurance carriers as City may deem proper, irrespective that a lesser premium for such insurance coverage may have been obtained from another insurance carrier, and Developer shall pay as additional rent, upon demand of City, any and all premiums, costs, charges and expenses incurred or expended by City in obtaining such insurance. Notwithstanding the foregoing sentence, in the event City shall procure insurance coverage required of Developer hereunder, City shall in no manner be liable to Developer for any insufficiency or failure of coverage with regard to such insurance or any loss to Developer occasioned thereby, and additionally, the procurement of such insurance by City shall not relieve Developer of its obligations under this Agreement to maintain insurance coverage in the types and amounts herein specified, and Developer shall nevertheless hold City harmless from any loss or damage incurred or suffered by City from Developer's failure to maintain such insurance.

7.8. Own Insurance. Developer shall be responsible for carrying such insurance as Developer may desire to protect Developer's, or its Employees', equipment, contents, personal property and other property on the Parking Easement.

8. **Liens on the Parking Easement**. Developer shall not subject the City's interest or estate to any liability under any construction or other lien law. No provisions of this Agreement may be construed as to imply that the City has consented to Developer incurring such a lien.

9. **Default by Developer**.

9.1. Events of Default. Upon the happening of one or more of the events set forth below (any of which is referred to hereinafter as an "Event of Default"), City shall have any and all rights and remedies hereinafter set forth:

9.1.1. If Developer violates any other term, condition or covenant herein on the part of Developer to be performed and such failure continues for thirty (30) days after City provides Developer with written notice of such failure; provided, however, if the default is one which cannot be cured within such

time period, Developer will have such additional time as may be required so long as Developer diligently pursues the remedy. Notwithstanding the foregoing:

a. If Developer has previously defaulted under a term, condition or covenant of this Agreement and is provided with notice of and an opportunity to clear such breach, any subsequent breach of the same term, condition, or covenant within twelve (12) consecutive months following the previous default shall constitute a breach of this Agreement without further notice or opportunity to cure; or

b. If the failure consists of a failure to provide insurance, only five (5) days' notice and opportunity to cure need be provided.

9.2. City's Remedies. If any Event of Default occurs, City shall have the right, at the option of City, to terminate the Parking Easement by providing written notice of such termination to Developer, in addition to all other remedies available at law or in equity.

9.3. City May Cure Developer's Defaults. If Developer shall default in the performing of any covenant or condition of this Agreement, City may, at its sole discretion, perform the same for the account of Developer and Developer shall reimburse City for any expense incurred therefore together with interest thereon at the highest legal rate. This provision imposes no duty on City nor waives any right of City otherwise provided in this Agreement.

10. **Default by City**.

10.1. City's Default. City will be deemed in default of this Agreement if City fails to perform or observe any agreement or condition of this Agreement on its part to be performed or observed and if such failure continues for thirty (30) days after Developer provides City with written notice of such failure. If the default is one that cannot be cured within thirty (30) days, City will have such additional time as may be required so long as City diligently pursues the remedy.

10.2. Remedies upon City's Default. If City defaults in the performance of any of the obligations or conditions required to be performed by City under this Agreement, Developer may, as its sole remedies, pursue a remedy of specific performance or terminate the Parking Easement by providing written notice thereof to City. Under no circumstances shall City be liable for ordinary, special or consequential damages (including lost profits) to Developer, such right being expressly waived.

11. **Destruction or Damage to the Parking Easement from Casualty**. If, at any time during the term of this Agreement, any improvements are destroyed or damaged in whole or in part by casualty or other cause, Developer shall: (a) promptly after the improvements are so destroyed or damaged cause the improvements to be repaired, replaced or rebuilt to substantially the condition as they existed immediately prior to the casualty event; or (b) terminate the Parking Easement whereupon City and Developer will execute a recordable instrument acknowledging such termination. Developer shall make its election within ten (10) days of a written request therefor by City, failing which Developer shall be deemed to have elected the option set forth in phrase (b) of the preceding sentence.

12. **Miscellaneous Provisions**.

12.1. No Third-Party Beneficiaries. There are no intended third-party beneficiaries of this Agreement, and no person other than the parties hereto have any rights hereunder.

12.2. Exclusive Venue. The parties agree that the exclusive venue for any litigation, suit, action, counterclaim, or proceeding, whether at law or in equity, which arises out of concerns, or relates to this Agreement, any and all transactions contemplated hereunder, the performance hereof, or the relationship created hereby, whether sounding in contract, tort, strict liability, or otherwise, shall be in Marion County, Florida.

12.3. JURY WAIVER. EACH PARTY HEREBY COVENANTS AND AGREES THAT IN ANY LITIGATION, SUIT, ACTION, COUNTERCLAIM, OR PROCEEDING, WHETHER AT LAW OR IN EQUITY, WHICH ARISES OUT OF CONCERNS, OR RELATES TO THIS AGREEMENT, ANY AND ALL TRANSACTIONS CONTEMPLATED HEREUNDER, THE PERFORMANCE HEREOF, OR THE RELATIONSHIP CREATED HEREBY, WHETHER SOUNDING IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, TRIAL SHALL BE TO A COURT OF COMPETENT JURISDICTION AND NOT TO A JURY. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY. ANY PARTY MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS AGREEMENT WITH ANY COURT, AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO OF THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY. NEITHER PARTY HAS MADE OR RELIED UPON ANY ORAL REPRESENTATIONS TO OR BY THE OTHER PARTY REGARDING THE ENFORCEABILITY OF THIS PROVISION. EACH PARTY HAS READ AND UNDERSTANDS THE EFFECT OF THIS JURY WAIVER PROVISION.

12.4. Notices.

12.4.1. All notices, requests, consents and other communications required or permitted under this Agreement shall be in writing (including faxed communication) and shall be (as elected by the person giving such notice) hand delivered by messenger or courier service, faxed, or mailed by Registered or Certified Mail (postage pre-paid), Return Receipt Requested, addressed to the address set forth at the address of a party as set forth below or to such other addresses as any party may designate by notice complying with the terms of this paragraph.

a. For City: City Manager, 110 SE Watula Avenue, Ocala, FL 34471; email: swilson@ocalafl.org.

1). With copy to: Aubrey Hale, City of Ocala, Chief Development Official 201 SE 3rd Street, 2nd Floor, Ocala, FL 34471; email: ahale@ocalafl.org.

b. For Developer: Mailing address: P.O. Box 1563, Ocala, FL 34471; Physical address: _____; email: Tom@InfiniteAleWorks.com.

12.4.2. Each such Communication shall be deemed delivered:

a. On the date of delivery if by personal delivery;

b. On the date of email transmission if by email (subject to paragraph 13.4.5); and

c. If the Communication is mailed, on the earlier of: (a) the date upon which the Return Receipt is signed; or (b) the date upon which delivery is refused.

d. Notwithstanding the foregoing, service by personal delivery delivered, or by email sent, after 5:00 p.m. shall be deemed to have been made on the next day that is not a Saturday, Sunday or legal holiday.

12.4.3. If a Communication is delivered by multiple means, the Communication shall be deemed delivered upon the earliest date determined in accordance with the preceding subparagraph.

12.4.4. If the above provisions require Communication to be delivered to more than one person (including a copy), the Communication shall be deemed delivered to all such persons on the earliest date it is delivered to any of such persons.

12.4.5. Concerning Communications sent by email:

a. The Communication shall not be deemed to have been delivered if the sender receives a message from the sender's or the recipient's internet service provider or otherwise that the email was not delivered or received but, if the email was sent by the sender on the last day of a deadline or other time period established by this Agreement, the time for the sender to re-send the Communication by a different authorized means shall be extended one (1) business day;

b. If the sender receives an automatic reply message indicating that the recipient is not present to receive the email (commonly referred to as an "out of the office message"), the email shall not be deemed delivered until the recipient returns but, if the email was sent by the sender on the last day of a deadline or other time period established by this Agreement, the time for the sender to re-send the Communication by a different authorized means shall be extended one (1) business day;

c. Any email that the recipient replies to, or forwards to any person, shall be deemed delivered to the recipient.

d. The sender must print the email to establish that is was sent (though it need not do so at the time the email was sent); and

e. The sender shall maintain the digital copy of the email in its email system for a period of no less than one year after it was sent.

12.5. Governing Laws. This Agreement and all transactions contemplated by this Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Florida without regard to principles of conflicts of laws.

12.6. Attorney's Fees. If any legal action or other proceeding (including, without limitation, appeals or bankruptcy proceedings) whether at law or in equity, which: arises out of, concerns, or relates to this Agreement, any and all transactions contemplated hereunder, the performance hereof, or the relationship created hereby; or is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs and all expenses even if not taxable as court costs, incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

12.7. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute the same instrument.

12.8. Severability Clause. Provisions contained in this Agreement that are contrary to, prohibited by or invalid under applicable laws or regulations shall be deemed omitted from this document and shall not invalidate the remaining provisions thereof.

12.9. Waiver. A failure to assert any rights or remedies available to a party under the terms of this Agreement, or a waiver of the right to remedies available to a party by a course of dealing or otherwise shall not be deemed to be a waiver of any other right or remedy under this Agreement, unless such waiver of such right or remedy is contained in a writing signed by the party alleged to have waived his other rights or remedies.

12.10. Entire Understanding. This Agreement represents the entire understanding and agreement between the parties with respect to the subject matter hereof, and supersedes all other negotiations (if any) made by and between the parties. The provisions of this Agreement may not be amended, supplemented, waived, or changed orally but only by a writing making specific reference to this Agreement signed by the party as to whom enforcement of any such amendment, supplement, waiver or modification is sought.

IN WITNESS WHEREOF, the parties have executed this Agreement effective the Easement Effective Date set forth above.

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SIGNATURES START ON NEXT PAGE

CITY

City of Ocala, a Florida municipal corporation

_____
Witness

_____
Ire Bethea, Sr., City Council President

_____
Print Witness Name

Date: _____

_____
Witness

_____
Print Witness Name

ATTEST:

_____
Angel B. Jacobs
City Clerk

Approved as to form and legality

_____
Robert W. Batsel, Jr.
City Attorney

STATE OF FLORIDA
COUNTY OF MARION

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this ____ day of _____, 2022, Ire Bethea, Sr., as President for the Ocala City Council.

_____
Notary Public, State of Florida
Name: _____
(Please print or type)

Commission Number:_____
Commission Expires: _____

Notary: Check one of the following:
___ Personally known OR
___ Produced Identification (if this box is checked, fill in blanks below).
Type of Identification Produced: _____

DEVELOPER

Brewery in Midtown, LLC, a Florida limited liability company

By: _____
Thomas McDonald as Manager

Date: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this ____ day of _____, 2022, Thomas McDonald, as Manager of Brewery in Midtown, LLC, a Florida limited liability company.

_____
Notary Public, State of Florida
Name: _____
(Please print or type)

Commission Number:_____
Commission Expires: _____

Notary: Check one of the following:
___ Personally known OR
___ Produced Identification (if this box is checked, fill in blanks below).
Type of Identification Produced: _____

EXHIBIT A
PARKING EASEMENT AREA

Real Property with Marion County Tax Parcel ID No.: 2820-050-002 described as follows:

SEC 17 TWP 15 RGE 22
PLAT BOOK E PAGE 004
CALDWELLS ADD OCALA
COM AT THE SE COR OF LOT 50 TH N 00-29-06 E 40 FT TH N 89-33-16 W 17 FT TO THE POB TH CONT N 89-33-16 W 307.10 FT TH N 00-23-25 E 148.73 FT TH S 89-51-02 E 168.69 FT TH S 00-25-18 W 20.30 FT TH S 89-34-30 E 138.63 FT TH S 00-29-06 W 129.34 FT TO THE POB

EXHIBIT B
DEVELOPER PROPERTY

PARCEL 3

COMMENCE AT THE POINT OF INTERSECTION OF THE NORTH RIGHT OF WAY LINE OF N.E. 2ND STREET (40.00 FEET WIDE) AND THE EAST RIGHT OF WAY LINE OF N.E. WATULA AVENUE (40.00 FEET WIDE) SAID POINT BEING 324.6 FEET, MORE OR LESS, WEST OF AND 40.0 FEET, MORE OR LESS, NORTH OF, THE SOUTHEAST CORNER OF LOT 50 OF CALDWELL'S ADDITION TO OCALA, AS RECORDED IN PLAT BOOK E, PAGE 4, OF THE PUBLIC RECORDS OF MARION COUNTY, FLORIDA; THENCE RUN N.00°00'41"E. ALONG SAID EASTERLY RIGHT OF WAY LINE OF N.E. WATULA AVENUE, FOR A DISTANCE OF 148.73 FEET; THENCE RUN N.89°43'10"E. FOR A DISTANCE OF 52.16 FEET TO THE POINT OF BEGINNING; THENCE RUN N.00°13'16"W. FOR A DISTANCE OF 14.90 FEET; THENCE RUN N.89°36'44"E. FOR A DISTANCE OF 20.04 FEET; THENCE RUN N.00°05'14"E. FOR A DISTANCE OF 84.86 FEET; THENCE RUN N.89°41'10"E. FOR A DISTANCE OF 96.32 FEET; THENCE RUN S.00°00'33"W. FOR A DISTANCE OF 99.78 FEET; THENCE RUN S.89°41'10"W. FOR A DISTANCE OF 116.42 FEET TO THE POINT OF BEGINNING.

PARCEL 4

COMMENCING 40.00 FEET NORTH AND 272.50 FEET WEST OF THE SOUTHEAST CORNER OF LOT 50, OF CALDWELL'S ADDITION TO OCALA, THENCE NORTH 150.00 FEET TO THE POINT OF BEGINNING; THENCE WEST 52.00 FEET; THENCE NORTH 276.60 FEET; THENCE EAST 168.50 FEET; THENCE SOUTH 176.60 FEET; THENCE WEST 96.50 FEET; THENCE SOUTH 85.00 FEET; THENCE WEST 20.00 FEET; THENCE SOUTH TO THE POINT OF BEGINNING.

LESS AND EXCEPT A PORTION THEREOF FOR ADDITIONAL RIGHT OF WAY; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING 40.00 FEET NORTH AND 272.50 FEET WEST OF THE SOUTHEAST CORNER OF LOT 50, OF CALDWELL'S ADDITION TO OCALA, THENCE NORTH 150.00 FEET;; THENCE WEST 52.00 FEET TO A POINT ON THE EAST RIGHT OF WAY LINE OF N.E. WATULA AVENUE (40 FEET WIDE), SAID POINT ALSO BEING THE POINT OF BEGINNING; THENCE NORTH, ALONG SAID EAST RIGHT OF WAY LINE, 276.60 FEET TO A POINT ON THE SOUTH RIGHT OF WAY LINE OF N.E. 3RD STREET (50 FEET WIDE); THENCE EAST, ALONG SAID SOUTH RIGHT OF WAY LINE, 168.50 FEET; THENCE DEPARTING SAID SOUTH RIGHT OF WAY LINE, SOUTH, 8.00 FEET; THENCE WEST, PARALLEL WITH AND 8.00 FEET DISTANT FROM SAID SOUTH RIGHT OF WAY LINE, 146.00 FEET; THENCE S.45°00'00"W., 24.75 FEET TO A POINT 5.00 FEET EAST OF, AS MEASURED PERPENDICULAR TO, THE AFORESAID EAST RIGHT OF WAY LINE OF N.E. WATULA AVENUE; THENCE SOUTH, PARALLEL WITH AND 5.00 FEET DISTANT FROM SAID EAST RIGHT OF WAY LINE, 251.10 FEET; THENCE WEST 5.00 FEET TO THE POINT OF BEGINNING.