

# LEXINGTON NATIONAL INSURANCE CORPORATION

## PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:  
That

BOND NUMBER: \_\_\_\_\_

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 Oblige (hereinafter the "Oblige"), 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 Oblige, 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 Oblige is not itself in default or breach of any provision or provisions of the Contract.

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

2.1. The Oblige 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 Oblige's contention that the Principal is in default, and requested a meeting to occur among representatives of the Oblige, 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 Oblige has declared the Principal to be in default and formally terminated the Principal's right to complete the Contract. The Oblige 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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