

This Instrument Prepared By  
and Return To:  
W. Terry Costolo, Esq.  
Nelson Mullins Broad and Cassel  
390 North Orange Avenue, Suite 1400  
Orlando, Florida 32801

**E-RECORDED**  
ID: 6186047  
County: Collier County  
Date: 11/6/2022 Time: 8:37 p.m.  
Book 6067, Page 3064

Parcel Identification:00400246406

### NOTICE OF COMMENCEMENT

STATE OF FLORIDA  
COUNTY OF COLLIER

THE UNDERSIGNED hereby gives notice that improvement will be made to certain real property, and in accordance with Chapter 713, Florida Statutes, the following information is provided in this Notice of Commencement.

1. Description of property: See **Exhibit "A"** attached hereto and made a part hereof.

General description of improvements: Construction of a multifamily rental housing development located in Collier County, Florida known as Bembridge, together with related site improvements.

3. Owner information:

- a. Name and address: MHP Bembridge, LLC  
601 Brickell Key Drive, Suite 700  
Miami, Florida 33131  
(786) 257-2767

- b. Interest in property: Leasehold – Fee simple title is vested in Collier County, Florida, a political subdivision of the State of Florida

- c. Name and address of leasehold owner (if other than owner):

MHP Bembridge, LLC  
601 Brickell Key Drive, Suite 700  
Miami, Florida 33131  
(786) 257-2767

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and Return To:  
W. Terry Costolo, Esq.  
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General description of improvements: Construction of a multifamily rental housing development located in Collier County, Florida known as Bembridge, together with related site improvements.

3. Owner information:

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601 Brickell Key Drive, Suite 700  
Miami, Florida 33131  
(786) 257-2767

- b. Interest in property: Leasehold – Fee simple title is vested in Collier County, Florida, a political subdivision of the State of Florida

- c. Name and address of leasehold owner (if other than owner):

MHP Bembridge, LLC  
601 Brickell Key Drive, Suite 700  
Miami, Florida 33131  
(786) 257-2767

4. Contractor:

- a. Name and address: MHP Hennessy Construction, LLC  
2300 22<sup>nd</sup> St. North  
St. Petersburg, FL 33713
- b. Phone number: (727) 821-3223

5. Surety:

- a. Name and address: Frankenmuth Mutual Insurance Company  
1 Mutual Avenue  
Frankenmuth, MI 48787
- b. Amount of bond: \$15,499,456.00

A copy of the bond is attached hereto as **Exhibit "B"**

6. Lender:

- a. Name and address: Florida Housing Finance Corporation  
Attn: Executive Director  
227 N. Bronough Street, Suite 5000  
Tallahassee, Florida 32301  
Phone number: 850-488-4197
- b. Name and address: KeyBank National Association  
Mail Code OH-01-51-0311  
4910 Tiedeman Road, 3<sup>rd</sup> Floor  
Brooklyn, Ohio 44144
- c. Name and address: CREA SLP, LLC  
30 S. Meridian, Suite 400  
Indianapolis, IN 46204  
Attention: Mike Boyle  
Phone number: (813) 495-2149

7. Persons within the State of Florida designated by Owner upon whom notices or other documents may be served as provided in section 713.13(1)(a)7., Florida Statutes:

- a. Name and address: MHP Bembridge, LLC  
Attn: Christopher Shear  
601 Brickell Key Drive, Suite 700  
Miami, Florida 33131  
Phone number: 786-257-2767

8. In addition to himself, Owner designates the following person(s) to receive a copy of the Lienor's Notice as provided in Section 713.13(1)(b), Florida Statutes:

- a. Name and Address: Florida Housing Finance Corporation  
c/o First Housing Development Corporation of  
Florida  
107 S. Willow Avenue  
Tampa, Florida 33606-1945  
Attention: Loan Administration  
Telephone: (813) 289-9410  
Email: ConstructionAdmin@firsthousingfl.com
  
- b. Name and address: CREA SLP, LLC  
30 S. Meridian, Suite 400  
Indianapolis, IN 46204  
Attention: Mike Boyle  
Phone number: (813) 495-2149

9. Expiration date of notice of commencement: March 31, 2023.


**WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER PAYMENTS UNDER CHAPTER 713, PART I, SECTION 713.13, FLORIDA STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF COMMENCEMENT.**

Under penalty of perjury, I declare that I have read the foregoing Notice of Commencement and that the facts stated therein are true to the best of my knowledge and belief.

**BORROWER**

**MHP BEMBRIDGE, LLC**, a Florida limited liability company

By: MHP Bembridge Member, LLC, a Florida limited liability company, its Managing Member

By:   
W. Patrick McDowell  
Chief Executive Officer

STATE OF FLORIDA  
COUNTY OF Miami-Dade

The foregoing instrument was acknowledged before me, by means of  physical presence or  online notarization, this 17 day of December, 2021, by W. Patrick McDowell, as Chief Executive Officer of MHP Bembridge Member, LLC, a Florida limited liability company, the Managing Member of MHP BEMBRIDGE, LLC, a Florida limited liability company, on behalf of the companies, who  is personally known to me, or  produced \_\_\_\_\_ as identification.

Catalina Gonzalez  
Signature of Notary  
NOTARY PUBLIC STATE OF FLORIDA  
My Commission HH069952  
Expires: DEC 7 2024



Catalina Gonzalez  
Comm. #HH069952  
Expires: Dec. 7, 2024  
Bonded Thru Aaron Notary

EXHIBIT A

LEGAL DESCRIPTION

The land referred to herein below is situated in the County of Collier, State of Florida, and described as follows:

A PARCEL OF LAND LOCATED IN SECTION 4, TOWNSHIP 50 SOUTH, RANGE 26 EAST, COLLIER COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE WEST QUARTER CORNER OF SECTION 4, TOWNSHIP 50 SOUTH, RANGE 26 EAST, COLLIER COUNTY, FLORIDA; THENCE NORTH 88°49'24" EAST, A DISTANCE OF 60.00 FEET TO THE EASTERLY RIGHT OF WAY LINE OF SANTA BARBARA BOULEVARD, OF COLLIER COUNTY, FLORIDA; THENCE SOUTH 01°02'25" EAST ALONG THE SAID EASTERLY RIGHT OF WAY LINE OF SANTA BARBARA BOULEVARD, A DISTANCE OF 120.00 FEET TO THE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN DESCRIBED; THENCE NORTH 88°50'38" EAST LEAVING THE SAID EASTERLY RIGHT OF WAY LINE OF SANTA BARBARA BOULEVARD, A DISTANCE OF 343.48 FEET; THENCE SOUTH 00°47'41" EAST, A DISTANCE OF 481.27 FEET; THENCE SOUTH 88°55'35" WEST, A DISTANCE OF 341.42 FEET TO A POINT OF THE EASTERLY RIGHT OF WAY LINE OF SANTA BARBARA BOULEVARD; THENCE NORTH 01°02'25" WEST ALONG THE SAID EASTERLY RIGHT OF WAY OF SANTA BARBARA BOULEVARD, A DISTANCE OF 480.77 FEET TO THE POINT OF BEGINNING.

**EXHIBIT B**  
**(Copy of Bond)**

Bond No. SUR0004529

# Document A312™ – 2010

Conforms with The American Institute of Architects AIA Document 312

## Performance Bond

**CONTRACTOR:**  
(Name, legal status and address)

MHP - Hennessy Construction LLC  
2300 22nd St. North  
St. Petersburg, FL 33713

**OWNER:**  
(Name, legal status and address)

MHP Bembridge LLC  
c/o McDowell Housing Partners, LLC  
601 Brickell Key Drive, Suite 700  
Miami, FL 33131

**CONSTRUCTION CONTRACT**

Date: April 19, 2021

Amount: \$ 15,849,385.00 Fifteen Million Eight Hundred Forty-nine Thousand Three Hundred Eighty-five & 00/100

Description: The Harmony on Santa Barbara Apartments  
(Name and location) Santa Barbara Blvd, Collier County  
Clubhouse and Two (2) Apartment Buildings with 82 Units and Related Work

**SURETY:**  
(Name, legal status and principal place of business)

Frankenmuth Mutual Insurance Company  
1 Mutual Avenue  
Frankenmuth, MI 48787  
Mailing Address for Notices

Same as above

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

**BOND**

Date:

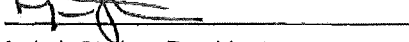
(Not earlier than Construction Contract Date) December 15, 2021

Amount: \$ 15,849,385.00 Fifteen Million Eight Hundred Forty-nine Thousand Three Hundred Eighty-five & 00/100

Modifications to this Bond:  None  See Section 16

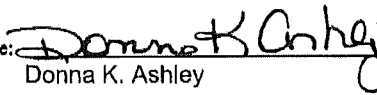
**CONTRACTOR AS PRINCIPAL**

Company: (Corporate Seal)  
MHP - Hennessy Construction LLC

Signature:   
Name Mark J. Stalker, President  
and Title:

**SURETY**

Company: (Corporate Seal)  
Frankenmuth Mutual Insurance Company

Signature:   
Name Donna K. Ashley  
and Title: Attorney-in-Fact



(Any additional signatures appear on the last page of this Performance Bond.)

(FOR INFORMATION ONLY — Name, address and telephone)

**AGENT or BROKER:**  
USI Holdings Corporation  
6100 Fairview Rd.  
Charlotte, NC 28210  
704-543-0258

**OWNER'S REPRESENTATIVE:**  
(Architect, Engineer or other party.)  
Fugleberg Koch  
2555 Temple Trail  
Winter Park, FL 32789  
407-629-0595



§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

- .1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
- .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
- .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§ 4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

§ 5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§ 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

§ 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

§ 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

§ 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
- .3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

#### § 14 Definitions

§ 14.1 **Balance of the Contract Price.** The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 **Construction Contract.** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 **Contractor Default.** Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 **Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 **Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 16 Modifications to this bond are as follows:

- NOTWITHSTANDING ANYTHING IN THE PAYMENT BOND OR THE CONSTRUCTION CONTRACT TO THE CONTRARY, THE PROVISIONS AND LIMITATIONS OF SECTION 713.23, FLORIDA STATUTES, INCLUDING BUT NOT LIMITED TO THE TIME LIMITATIONS ARE INCORPORATED IN THIS BOND BY REFERENCE.

- Dual Obligee Rider is attached hereto and incorporated herein by reference.

*(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)*

**CONTRACTOR AS PRINCIPAL**

Company: \_\_\_\_\_  
*(Corporate Seal)*

**SURETY**

Company: \_\_\_\_\_  
*(Corporate Seal)*

Signature: \_\_\_\_\_  
Name and Title:  
Address

Signature: \_\_\_\_\_  
Name and Title:  
Address

Bond No. SUR0004529

# Document A312™ – 2010

Conforms with The American Institute of Architects AIA Document 312

## Payment Bond

**CONTRACTOR:**  
*(Name, legal status and address)*

MHP - Hennessy Construction LLC  
2300 22nd St. North  
St. Petersburg, FL 33713

**SURETY:**  
*(Name, legal status and principal place of business)*

Frankenmuth Mutual Insurance Company  
1 Mutual Avenue  
Frankenmuth, MI 48787  
**Mailing Address for Notices**

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

**OWNER:**  
*(Name, legal status and address)*

MHP Bembridge LLC  
c/o McDowell Housing Partners, LLC  
601 Brickell Key Drive, Suite 700  
Miami, FL 33131

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

Same as above

**CONSTRUCTION CONTRACT**

Date: April 19, 2021

Amount: \$ 15,849,385.00 Fifteen Million Eight Hundred Forty-nine Thousand Three Hundred Eighty-five & 00/100

Description: The Harmony on Santa Barbara Apartments  
*(Name and location)* Santa Barbara Blvd, Collier County  
Clubhouse and Two (2) Apartment Buildings with 82 Units and Related Work

**BOND**

Date:

*(Not earlier than Construction Contract Date)* December 15, 2021

Amount: \$ 15,849,385.00 Fifteen Million Eight Hundred Forty-nine Thousand Three Hundred Eighty-five & 00/100

Modifications to this Bond:  None  See Section 18

**CONTRACTOR AS PRINCIPAL**

Company: *(Corporate Seal)*

MHP - Hennessy Construction LLC

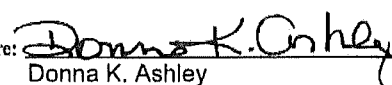
Signature: 

Name Mark J. Stalker, President  
and Title:

**SURETY**

Company: *(Corporate Seal)*

Frankenmuth Mutual Insurance Company

Signature: 

Name Donna K. Ashley  
and Title: Attorney-in-Fact



*(Any additional signatures appear on the last page of this Payment Bond.)*

*(FOR INFORMATION ONLY — Name, address and telephone)*

**AGENT or BROKER:**

USI Holdings Corporation  
6100 Fairview Rd.  
Charlotte, NC 28210  
704 -543-0258

**OWNER'S REPRESENTATIVE:**

*(Architect, Engineer or other party:)*  
Fugleberg Koch  
2555 Temple Trail  
Winter Park, FL 32789  
407-629-0595

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

**§ 10** The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

**§ 11** The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

**§ 12** No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

**§ 13** Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

**§ 14** When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

**§ 15** Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

#### **§ 16 Definitions**

**§ 16.1 Claim.** A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

**§ 16.2 Claimant.** An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

**§ 16.3 Construction Contract.** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

§ 16.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

- NOTWITHSTANDING ANYTHING IN THE PAYMENT BOND OR THE CONSTRUCTION CONTRACT TO THE CONTRARY, THE PROVISIONS AND LIMITATIONS OF SECTION 713.23, FLORIDA STATUTES, INCLUDING BUT NOT LIMITED TO THE TIME LIMITATIONS ARE INCORPORATED IN THIS BOND BY REFERENCE.

- Dual Oblgee Rider is attached hereto and incorporated herein by reference

*(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)*

**CONTRACTOR AS PRINCIPAL**

Company: \_\_\_\_\_  
*(Corporate Seal)*

**SURETY**

Company: \_\_\_\_\_  
*(Corporate Seal)*

Signature: \_\_\_\_\_  
Name and Title:  
Address

Signature: \_\_\_\_\_  
Name and Title:  
Address

**DUAL  
OBLIGEE  
RIDER**

This Rider is to be attached to and forms a part of Performance and Payment Bonds No. SUR0004529 (hereinafter individually referred to as "Performance Bond" or "Payment Bond", and collectively referred to as "Bonds") issued by Frankenmuth Mutual Insurance Company, (hereinafter referred to as "Surety"), as Surety, on the 19 day of April, 2021.

WHEREAS, on or about the 19th day of April, 2021, MHP-Hennessy Construction LLC (hereinafter called the "Principal"), entered into a written agreement with MHP Bembridge LLC (hereinafter called the "Primary Obligee") for the construction of the The Harmony on Santa Barbara Apartments (hereinafter called the "Contract"); and

WHEREAS, the Principal and the Surety executed and delivered to said Primary Obligee the Bonds in connection with the Contract; and

WHEREAS, the Primary Obligee has requested the Principal and the Surety to execute and deliver this Rider.

NOW, THEREFORE, the undersigned hereby agree and stipulate that CREA SLP, LLC ISAOA and CREA The Harmony on Santa Barbara, LLC ISAOA and Florida Housing Finance Corporation, Its Successors and/or assigns, as their interest may appear and KeyBank National Association, its successors and assigns.

shall be added to the Bonds as a named obligee (hereinafter referred to as "Additional Obligee"), subject to the conditions set forth below:

1. The Surety shall not be liable under the Bonds to the Primary Obligee, the Additional Obligee, or any of them, unless the Primary Obligee, the Additional Obligee, or any of them, shall make payments to the Principal (or in the case the Surety arranges for completion of the Contract, to the Surety) strictly in accordance with the terms of said Contract as to payments and shall perform all other obligations to be performed under said Contract at the time and in the manner therein set forth.

2. The aggregate liability of the Surety under the Performance Bond, to any or all of the obligees (Primary and Additional Obligees), as their interests may appear, is limited to the penal sum of the Performance Bond; the Additional Obligee's rights hereunder are subject to the same defenses Principal and/or Surety have against the Primary Obligee, and the total liability of the Surety shall in no event exceed the amount recoverable from the Principal by the Primary Obligee under the Contract. At the Surety's election, any payment due under the Performance Bond may be made by joint check payable to one or more of the obligees.

3. The aggregate liability of the Surety under the Payment Bond to any or all of the obligees (Primary and Additional Obligees), and persons or entities that are entitled to make claim under the Payment Bond (hereinafter, "Claimants"), as their interests may appear, is limited to the penal sum of the Payment Bond; the Additional Obligee's rights hereunder, if any, are subject to the same defenses Principal and/or Surety have against the Primary Obligee and/or the Claimants under the Payment Bond. At the Surety's election, any payment due under the Payment Bond may be made by joint check payable to one or more of the obligees and/or Claimants.

Except as herein modified, the Bonds shall be and remains in full force and effect.

Signed this 15 day of December, 2021.

MHP - Hennessy Construction LLC  
(Principal)

By: \_\_\_\_\_

Mark J. Stalker, President

(Primary Obligee)

By: \_\_\_\_\_

Frankenmuth Mutual Insurance Company

By: \_\_\_\_\_

Donna K. Ashley

, Attorney-in-Fact





FRANKENMUTH MUTUAL INSURANCE COMPANY

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that Frankenmuth Mutual Insurance Company (the "Company"), a corporation duly organized and existing under the laws of the State of Michigan, having its principal office at 1 Mutual Avenue, Frankenmuth, Michigan 48787, does hereby nominate, constitute and appoint: Donna K. Ashley

Their true and lawful attorney(s)-in-fact, each in their separate capacity if more than one is named above, to make, execute, seal, acknowledge and deliver any and all bonds, contracts and undertakings of suretyship, with the exception of Financial Guaranty Insurance, provided, however, that the penal sum of any one such instrument shall not exceed the sum of:

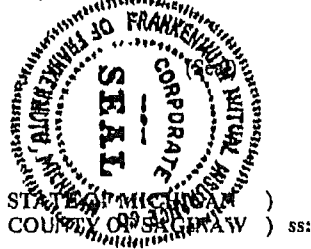
Fifty Million and 00/100 Dollars (\$50,000,000)

Bond No: SUR0004529
Principal Name: MHP - Hennessy Construction LLC
Obligee Name: MHP Bembridge LLC

This Power of Attorney is granted pursuant to the following Resolution duly adopted at a meeting of the Board of Directors of Frankenmuth Mutual Insurance Company:

"RESOLVED, that the President, Senior Vice President or Vice President and each of them under their respective designations, hereby is authorized to execute powers of attorney, and such authority can be executed by use of facsimile signature, which may be attested or acknowledged by any officer of the Company, qualifying the attorney(s) named in the given power of attorney, to execute on behalf of, and acknowledge as the act and deed of Frankenmuth Mutual Insurance Company on all bonds, contracts and undertakings of suretyship, and to affix the corporate seal thereto."

IN WITNESS WHEREOF, the Company has caused these presents to be signed and attested by its appropriate officers and its corporate seal hereunto affixed this 10th day of September, 2018.



Frankenmuth Mutual Insurance Company
By Frederick A. Edmond, Jr.,
President and Chief Operating Officer

Sworn to before me, a Notary Public in the State of Michigan, by Frederick A. Edmond, Jr., to me personally known to be the individual and officer described in, and who executed the preceding instrument, deposited and said the Corporate Seal and his signature as Officer were affixed and subscribed to said instrument by the authority of the Company.

IN TESTIMONY WHEREOF, I have set my hand, and affixed my Official Seal this 10th day of September, 2018.

Dianne L. Voss (Seal)
Dianne L. Voss, Notary Public
Saginaw County, State of Michigan
My Commission Expires July 23, 2024



I, the undersigned, Vice President of Frankenmuth Mutual Insurance Company, do hereby certify that the foregoing is a true, correct and complete copy of the original Power of Attorney; that said Power of Attorney has not been revoked or rescinded and is in full force and effect as of this date.

IN WITNESS WHEREOF, I have set my hand and affixed the Seal of the Company, this 15 day of December, 20 21.

Andrew H. Knudsen
Andrew H. Knudsen, Vice President

ALL CORRESPONDENCE RELATED TO BOND VALIDATION AND/OR A CLAIM SHOULD BE DIRECTED TO THE DIRECTOR OF SURETY, 701 US ROUTE ONE, SUITE 1, YARMOUTH, ME 04096