

PREPARED BY:
Lexington National Insurance Corporation
Attn: Mark T. Holtschneider, Esq.
P.O. Box 6098
Lutherville, Maryland 21094

Mortgage Amount \$ _____

DEED OF TRUST AND ASSIGNMENT OF RENTS

This **DEED OF TRUST AND ASSIGNMENT OF RENTS** (this "**Deed of Trust**") made _____, 20____ by and among _____, whose marital status is _____, and _____, whose marital status is _____, whose address is _____ (individually, collectively, jointly, and severally, "**Grantor**"); Ronald A. Frank and/or Lisa Slater, whose address is P.O. Box 6098, Lutherville, Maryland 21094, ("**Trustee**"); and Lexington National Insurance Corporation, whose address is P.O. Box 6098, Lutherville, Maryland 21094 ("**Beneficiary**"). Beneficiary and Trustee are the grantees hereunder for indexing purposes by the clerk of court.

WITNESSETH:

This Deed of Trust is for the purpose of securing performance of each agreement of Grantor herein contained and securing payment to Beneficiary (a) of all monies due to Beneficiary pursuant to the Bail Bond Application and Agreement and the Indemnitor Application and Agreement, executed and delivered by Grantor on or about the date of this Deed of Trust (individually or collectively, the "**Agreements**"), (b) of all losses, damages, attorneys' fees, investigation fees, forfeitures, judgments, court assessments, and liabilities suffered, sustained, or incurred by Beneficiary arising out of or relating to one or more bail bonds posted on behalf of defendant _____ in the amount of \$_____ in the case of _____ v. _____ ("**Action**"), Power Number(s) (if known) _____, and (c) on account of or related to the execution of any other bail bond executed or posted by or for Beneficiary in connection with or related to the Action or Agreements (all of the foregoing items described in clauses (a) through (c) above sometimes referred to collectively in this Deed of Trust as the "**Obligations**").

In consideration of these premises and for other consideration, Grantor does grant and convey unto Trustee, as trustee for Beneficiary in fee simple, all of Grantor's right, title, and interest now owned or hereafter acquired in and to each of the following (collectively, the "**Property**"): (i) all those certain tracts of land in the District of Columbia described as follows ("**Land**"): _____

[insert legal description—include lot and square reference]

(ii) all buildings and improvements now or hereafter erected on the Land; (iii) all fixtures attached to the Land or any buildings or improvements situated thereon; and (iv) all estates, rights, tenements, hereditaments, privileges, rents, issues, profits easements, and appurtenances of any kind benefiting the Land; all means of access to and from the Land, whether public or private; and all water and mineral rights.

TO HAVE AND TO HOLD the Property and all the estate, right, title, and interest, in law and in equity, of Grantor's in and to the Property unto Trustee, its successors and assigns, in fee simple, forever.

IN TRUST, HOWEVER, that if all Obligations are timely paid and performed and each representation, warranty, agreement, and condition of this Deed of Trust is complied with and abided by, this Deed of Trust and the estate hereby created shall cease and be null, void, and canceled of record at the request and expense of Grantor, and if Default occurs, Trustee is authorized to foreclose and sell the Property under power of sale or by judicial proceeding according to applicable law and as provided herein.

Grantor WARRANTS AND REPRESENTS that Grantor is lawfully seized of the Property, in fee simple, absolute, that Grantor has the legal right to convey and encumber the same, and that the Property is free and clear of all liens and encumbrances excepting those appearing of record as of the date hereof. Grantor further warrants and will forever defend all and singular the Property and title thereto to Trustee, Beneficiary and Beneficiary's successors and assigns, against the lawful claims of all persons whomsoever.

To protect the security of this Deed of Trust, Grantor further represents and agrees with Trustee and Beneficiary as follows:

1. **PAYMENT AND PERFORMANCE OF OBLIGATIONS.** That the Obligations shall be timely paid and performed.

2. **LEASES, SUBLEASES AND EASEMENTS.** Grantor shall maintain, enforce, and cause to be performed all of the terms and conditions under any lease, sublease, or easement that may constitute or encumber all or any portion of the Property. Grantor shall not, without Beneficiary's consent, enter into any new lease of all or any portion of the Property, agree to the cancellation or surrender under any lease of all or any portion of the Property, agree to prepayment of rents, issues, or profits (other than rent paid at the signing of a lease or sublease), modify any such lease so as to shorten the term, decrease the rent, accelerate the payment of rent, or change the terms of any renewal option; and any such purported new lease, cancellation, surrender, prepayment, or modification made without the consent of Beneficiary shall be void as against Beneficiary.

3. **REQUIRED INSURANCE.** Grantor shall maintain with respect to the Property (a) insurance against loss or damage by fire and other casualties and hazards by insurance written on a basic, broad, or special causes of loss form, in an amount not less than the replacement cost thereof, including coverage for loss of rents or business interruption if applicable, naming Beneficiary as loss payee and mortgagee; and (b) such other insurance as Beneficiary may require from time to time (collectively, the "**Insurance**"). All property insurance policies shall contain an endorsement or agreement by the insurer (i) in form satisfactory to Beneficiary that any loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of Grantor and (ii) waiving rights of subrogation against Beneficiary, and rights of set-off, counterclaim or deductions against Grantor. All insurance policies shall be in form, provide coverages, be issued by companies and be in amounts satisfactory to Beneficiary. At least 30 days prior to the expiration of each such policy, Grantor shall furnish Beneficiary with evidence satisfactory to Beneficiary that such policy has been renewed or replaced or is no longer required hereunder. All such policies shall provide that the policy will not be canceled or materially amended without at least 30 days prior written notice to Beneficiary. Grantor is liable for all premiums for Insurance.

4. **INSURANCE PROCEEDS.** After occurrence of any loss to any of the Property, Grantor shall give prompt written notice thereof to Beneficiary. In the event of such loss all insurance proceeds, including unearned premiums, shall be payable to Beneficiary, and Grantor hereby authorizes and directs any affected insurer to make payment of such proceeds directly to Beneficiary and not to Beneficiary and Grantor jointly. Beneficiary is hereby authorized by Grantor to make proof of loss if not promptly made by Grantor, settle, adjust, or compromise any claims for loss or damage under any policy or policies of insurance and Grantor appoints Beneficiary as its attorney-in-fact to receive and endorse any insurance proceeds to Beneficiary, which appointment is coupled with an interest and shall be irrevocable as long as any Obligations remain unsatisfied. Grantor shall pay the costs of collection, including attorneys' fees, of insurance proceeds payable on account of such damage or destruction. Grantor shall have no claim against the insurance proceeds, or be entitled to any portion thereof, and all rights to the insurance proceeds are hereby assigned to Beneficiary as security for payment of the Obligations. In the event of any damage to or destruction of the Property, Beneficiary shall have the option of applying or paying all or part of the insurance proceeds to (i) the Obligations in such order as Beneficiary may determine, (ii) restoration, replacement, or repair of the Property as Beneficiary may require, or (iii) Grantor. Nothing herein shall be deemed to excuse Grantor from restoring, repairing, and maintaining the Property as required herein.

5. **IMPOSITIONS.** Grantor is liable for all taxes, levies, assessments, and other fees and charges imposed upon or that may become a lien upon the Property under any law or ordinance (collectively the "**Impositions**").

6. **USE OF PROPERTY.** Grantor shall use and operate the Property in compliance with all applicable laws and ordinances, covenants, and restrictions, and with all applicable requirements of any lease or sublease now or hereafter affecting the Property. Grantor shall not permit any unlawful use of the Property or any use that may give rise to a claim of forfeiture of any of the Property. Grantor shall not allow changes in the stated use of Property from that disclosed to Beneficiary at the time of execution hereof.

7. **MAINTENANCE, REPAIRS AND ALTERATIONS.** Grantor shall keep and maintain the Property in good condition and repair and fully protected from the elements to the satisfaction of Beneficiary. Grantor will not remove, demolish, or structurally alter any of the buildings or other improvements on the Property (except such alterations as may be required by laws, ordinances, or regulations) without the prior written consent of Beneficiary. Grantor shall promptly notify Beneficiary in writing of any material loss, damage, or adverse condition affecting the Property.

8. **EMINENT DOMAIN.** Should the Property or any interest therein be taken or damaged by reason of any public use or improvement or condemnation proceeding ("**Condemnation**"), or should Grantor receive any notice or other information regarding such Condemnation, Grantor shall give prompt written notice thereof to Beneficiary. Beneficiary shall be entitled to all compensation, awards, and other payments or relief granted in connection with such Condemnation and, at its option, may commence, appear in, and prosecute in its own name any action or proceedings relating thereto. Beneficiary shall be entitled to make any compromise or settlement in connection with such taking or damage. All compensation, awards, and damages awarded to Grantor related to any Condemnation ("**Proceeds**") are hereby assigned to Beneficiary and Grantor agrees to execute such further assignments of the Proceeds as Beneficiary may require. Beneficiary shall have the option of applying or paying the Proceeds in the same manner as insurance proceeds as provided herein. Grantor appoints Beneficiary as its attorney-in-fact to receive and endorse the Proceeds to Beneficiary, which

appointment is coupled with an interest and shall be irrevocable as long as any Obligations remain unsatisfied.

9. **APPRAISALS.** Grantor agrees that Beneficiary may obtain an appraisal of the Property when required by the regulations of any regulatory agency or at such other times as Beneficiary may reasonably require. Such appraisals shall be performed by an independent third party appraiser selected by Beneficiary. The cost of such appraisals shall be borne by Grantor. Grantor agrees to pay the cost of such appraisal within 10 days after receiving an invoice for such appraisal.

10. **INSPECTIONS.** Beneficiary, or its representatives or agents, are authorized to enter at any reasonable time upon any part of the Property for the purpose of inspecting the Property and for the purpose of performing any of the acts it is authorized to perform under the terms of this Deed of Trust.

11. **LIENS AND SUBROGATION.** Grantor shall pay and promptly discharge all liens, claims, and encumbrances upon the Property. Beneficiary shall be subrogated to any liens, claims, and encumbrances against Grantor or the Property that are paid or discharged through payment by Beneficiary or with loan proceeds, notwithstanding the record cancellation or satisfaction thereof.

12. **WAIVER OF GRANTOR'S RIGHTS.** To the fullest extent permitted by law, Grantor waives the benefit of all laws now existing or that hereafter may be enacted providing for (i) any appraisement before sale of any portion of the Property, (ii) in any way extending the time for the enforcement of the collection of the Obligations, and any rights to hearing prior to the exercise by Beneficiary of any right, power, or remedy herein provided to Beneficiary. To the full extent Grantor may do so, Grantor will not at any time insist upon, plead, claim, or seek to take the benefit or advantage of any law now or hereafter in force providing for any exemption (including homestead exemption), appraisement, valuation, stay, extension or redemption, and Grantor for itself and its representatives, successors, and assigns, and for any and all persons claiming any interest in the Property, to the extent permitted by law, hereby waive and release all rights of valuation, appraisement, redemption, stay of execution, the benefit of all exemption laws, notice of election to mature or declare due the Obligations and marshaling in the event of foreclosure of the liens hereby created.

13. **PAYMENTS BY BENEFICIARY.** In the event of Default in the timely payment or performance of any of the Obligations, Beneficiary, at its option and without any duty on its part to determine the validity or necessity thereof, may pay the sums for which Grantor is obligated. Beneficiary may pay such sums as Beneficiary deems appropriate for the protection and maintenance of the Property including, without limitation, sums to pay Impositions and other levies, assessments or liens, maintain insurance, make repairs, secure the Property, maintain utility service, intervene in any condemnation and pay attorneys' fees and other fees and costs to enforce this Deed of Trust or protect the lien hereof (including foreclosure) or collect the Obligations, without limitation, including those incurred in any proceeding including bankruptcy. Any amounts so paid shall bear interest at the lesser of the rate of 10% per annum or the maximum rate permitted by applicable law, and shall be secured by this Deed of Trust.

14. **INDEMNIFICATION.** Grantor shall protect, indemnify, and save harmless Beneficiary from and against all losses, liabilities, obligations, claims, damages, penalties, fines, causes of action, costs, and expenses (including, without limitation, reasonable attorneys' fees and expenses) (collectively, "**Damages**") imposed upon, incurred by, or asserted or assessed against Beneficiary on account of or in connection with (i) any failure or alleged failure of

Grantor to comply with any of the terms of, or the inaccuracy or breach of any representation in, this Deed of Trust; (ii) any claim of loss or damage to the Property or any injury or claim of injury to, or death of, any person or property that may be occasioned by any cause whatsoever pertaining to the Property or the use, occupancy, or operation thereof, (iii) any failure or alleged failure of Grantor to comply with any law, rule, or regulation applicable to it or to the Property or the use, occupancy or operation of the Property, provided that such indemnity shall be effective only to the extent of any Damages that may be sustained by Beneficiary in excess of any net proceeds received by it from any insurance of Grantor for such Damages, (iv) any Damages whatsoever by reason of any alleged action, obligation, or undertaking of Beneficiary relating in any way to or any matter contemplated by this Deed of Trust, or (v) any liability arising from any leases related to the Property. Nothing contained herein shall require Grantor to indemnify Beneficiary for any Damages resulting from Beneficiary's gross negligence or its willful and wrongful acts. The indemnity provided for herein shall survive payment and performance of the Obligations and shall extend to the officers, members, directors, employees and duly authorized agents of Beneficiary. If Beneficiary incurs any Damages arising out of or in any way relating to the transaction contemplated by this Deed of Trust, the amounts of such Damages shall be added to the Obligations and shall bear interest as provided in the preceding section from the date incurred until paid and shall be payable on demand.

15. **ASSIGNMENT OF RENTS.** Grantor hereby absolutely assigns and transfers to Beneficiary all the leases, rents, issues, and profits of the Property (collectively "**Rents**"). Although this assignment is effective immediately, so long as no Default exists, Beneficiary gives to and confers upon Grantor the privilege under a revocable license to collect as they become due, but not prior to accrual, the Rents and to demand, receive, and enforce payment, give receipts, releases, and satisfactions, and sue in the name of Grantor for all such Rents. Grantor represents there has been no prior assignment of leases or Rents, and agrees not to further assign such leases or Rents. Upon any occurrence of Default, the license granted to Grantor herein shall be automatically revoked without further notice to or demand upon Grantor, and Beneficiary shall have the right, in its discretion, without notice, by agent or by a receiver appointed by a court, and without regard to the adequacy of any security for the Obligations, (i) to enter upon and take possession of the Property, (ii) notify tenants, subtenants, and any property manager to pay Rents to Beneficiary or its designee, and upon receipt of such notice such persons are authorized and directed to make payment as specified in the notice and disregard any contrary direction or instruction by Grantor, and (iii) in its own name, sue for or otherwise collect Rents, including those past due, and apply Rents, less costs and expenses of operation and collection, including attorneys' fees, to the Obligations in such order and manner as Beneficiary may determine or as otherwise provided for herein. Beneficiary's exercise of any one or more of the foregoing rights shall not cure or waive any Default or notice of Default hereunder.

16. **TRANSFERS.** Grantor shall not (i) sell, convey, transfer, or encumber the Property, or any part thereof or interest therein, whether legal or equitable, (ii) cause or permit any transfer of the Property or any part thereof, whether voluntarily, involuntarily, or by operation of law, or (iii) enter into any agreement or transaction to transfer, or accomplish in form or substance a transfer, of the Property.

17. **REMEDIES OF BENEFICIARY ON DEFAULT.** Failure of Grantor or any other person liable to timely pay or perform any of the Obligations is a default ("**Default**") under this Deed of Trust. Upon the occurrence of Default the following remedies are available, without limitation, to Beneficiary: (i) Beneficiary may exercise any or all of Beneficiary's remedies under this Deed of Trust; (ii) Beneficiary may take immediate possession of the Property or any part thereof (which Grantor agrees to surrender to Beneficiary) and manage, control, or lease the

same to such persons and at such rental as it may deem proper and collect and apply Rents to the payment of: (a) the Obligations, together with all costs and attorneys' fees; (b) all Impositions and any other levies, assessments, or liens that may be prior in lien or payment to the Obligations, and premiums for Insurance, with interest on all such items; and (c) the cost of all alterations, repairs, replacements, and expenses incident to taking and retaining possession of the Property and the management and operation thereof; all in such order or priority as Beneficiary in its sole discretion may determine. The taking of possession shall not prevent concurrent or later proceedings for the foreclosure sale of the Property; (iii) Beneficiary may apply to any court of competent jurisdiction for the appointment of a receiver for all purposes including, without limitation, to manage and operate all or any part of the Property, and to apply the Rents therefrom as hereinabove provided. In the event of such application, Grantor consents to the appointment of a receiver, and agrees that a receiver may be appointed without notice to Grantor, without regard to whether Grantor has committed waste or permitted deterioration of the Property, without regard to the adequacy of any security for the Obligations, and without regard to the solvency of Grantor or any other person or entity who or that may be liable for the payment or performance of the Obligations; (iv) upon application of Beneficiary, Trustee shall sell the Property and pay the proceeds of sale according to the following terms and conditions: (a) Trustee shall foreclose upon this Deed of Trust and sell all or any part of the Property, at public sale conducted according to applicable law ("**Trustee's Sale**"); (b) Trustee shall provide such notice and shall advertise a Trustee's Sale in the manner required by applicable law; (c) Trustee shall conduct additional Trustee's Sales as may be required until all of the Property is sold or the Obligations are satisfied; (d) Trustee may receive bids at Trustee's Sale from the Beneficiary and may accept from Beneficiary as successful bidder, credit against the Obligations as payment of any portion of the purchase price; (e) Trustee may receive a reasonable fee for Trustee's services hereunder, not to exceed the maximum fee allowed by applicable law; and (f) Trustee shall apply the proceeds of Trustee's Sale, first to any permitted Trustee's fee, second to expenses of foreclosure and sale, third to the Obligations, and any remaining proceeds as required by law; and (v) with respect to any portion of the Property governed by the Uniform Commercial Code, Beneficiary shall have all of the rights and remedies of a secured party thereunder. Beneficiary may elect to foreclose upon any Property that is fixtures under law applicable to foreclosure of interests in real estate or law applicable to personal property.

18. **SUBSTITUTE TRUSTEE.** Beneficiary may, at any time and from time to time, without notice, at Beneficiary's discretion, remove Trustee and appoint a substitute trustee ("**Substitute Trustee**") by filing in the records where this Deed of Trust is recorded an instrument affecting such removal and appointment. A Substitute Trustee shall be vested with title to the Property and with all rights, powers, and duties of the original Trustee herein and all provisions hereof pertaining to the Trustee shall similarly affect any Substitute Trustee. Any oath or bond by the Trustee is hereby waived.

19. **MISCELLANEOUS PROVISIONS.** Grantor agrees to the following: (i) all remedies available to Beneficiary with respect to this Deed of Trust or available at law or in equity shall be cumulative and may be pursued concurrently or successively. No delay by Beneficiary in exercising any remedy shall operate as a waiver of that remedy or of any Default. Any payment by Beneficiary or acceptance by Beneficiary of any partial payment shall not constitute a waiver by Beneficiary of any Default; (ii) Grantor represents that Grantor (a) is (1) an adult individual and is sui juris, or (2) a corporation, general partnership, limited partnership, limited liability company, or other legal entity, duly organized, validly existing and in good standing under the laws of its state of organization or formation, and is authorized to do business in each other jurisdiction wherein its ownership of property or conduct of business legally requires such organization (b) has the power and authority to own its properties and

assets and to carry on its business as now being conducted and as now contemplated; and (c) has the power and authority to execute, deliver and perform, and by all necessary action has authorized the execution, delivery, and performance of, all of its Obligations under this Deed of Trust; (iii) the provisions hereof shall be binding upon and inure to the benefit of Grantor, its heirs, personal representatives, successors and assigns, and shall be binding upon and inure to the benefit of Beneficiary, its successors and assigns; (iv) any notices, demands, or requests shall be sufficiently given Grantor if in writing and mailed or delivered to the address of Grantor shown above or to another address as provided herein and to Beneficiary if in writing and mailed or delivered to the address set forth in the preamble hereof or such other address as Beneficiary may specify from time to time and if Grantor changes Grantor's address at any time prior to the date the Obligations are paid in full, that party shall promptly give written notice of such change of address by certified mail, return receipt requested, all charges prepaid; (v) this Deed of Trust may be terminated or modified only by an instrument in writing signed by the Beneficiary and Grantor and may be modified without Trustee joining or signing such instrument; (vi) all references to "Beneficiary" shall mean to "Beneficiary (for itself and its affiliate)"; (vii) the captions or headings at the beginning of each paragraph hereof are for the convenience of the parties and are not a part of this Deed of Trust; (viii) if the lien of this Deed of Trust is invalid or unenforceable as to any part of the Obligations, the unsecured portion of the Obligations shall be completely paid (and all payments made shall be deemed to have first been applied to payment of the unsecured portion of the Obligations) prior to payment of the secured portion of the Obligations and if any clause, provision, or obligation hereunder is determined invalid or unenforceable the remainder of this Deed of Trust shall be construed and enforced as if such clause, provision or obligation had not been contained herein; (ix) this Deed of Trust shall be governed by and construed under the laws of the jurisdiction where this Deed of Trust is recorded; (x) Grantor by execution and Beneficiary by acceptance of this Deed of Trust agree to be bound by the terms and provisions hereof.

20. **FINAL AGREEMENT.** This Deed of Trust represents the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

[Signature Page Follows]

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BEFORE FILING**

THIS PAGE SHOULD NOT BE FILED

DC Deed of Trust Drafting Notes

1. If Grantor is married, please make sure both spouses execute the document.
2. The Deed of Trust is silent as to whether it secures **bail bond premiums**. For maximum protection against the argument that the Deed of Trust cannot secure bail bond premiums, consider adding a specific exclusion for bail bond premiums in the first paragraph after the word “liabilities” so that it reads as follows: “liabilities (excluding, however, any bail bond premiums)” If this parenthetical is not included, there is a risk that the Grantor may prevail in arguing that the Deed of Trust impermissibly secures a bail bond premium. On the other hand, if you want the strongest argument that unpaid premiums are covered by the Deed of Trust, you should add the Promissory Note and Installment Payment Plan for Unpaid Premium to the definition of “Agreements”. If this language is not added, the debtor may have an argument that unpaid premiums are not covered by the Deed of Trust. Lexington National does not opine whether any state or federal mortgage licensing laws apply to securing unpaid premium with a mortgage or deed of trust.
3. Witnesses are not required for signatures by individuals.
4. Individuals or corporations can serve as trustees, and there is no residency requirement.
5. The District imposes a recordation tax on deeds of trust (subject to certain exemptions).
6. The District is not a community property jurisdiction.