

MORTGAGE

THIS MORTGAGE (“**this Mortgage**”), made this _____ day of _____, 20__ between _____ and _____, whose address is _____ (individually, collectively, jointly, and severally, “**Mortgagor**”), and Lexington National Insurance Corporation, whose address is P.O. Box 6098, Lutherville, Maryland 20194 (“**Mortgagee**”).

This Mortgage is for the purpose of securing performance of each agreement of Mortgagor herein contained and securing payment to Mortgagee of (a) all monies due to Mortgagee pursuant to the Bail Bond Application and Agreement and the Indemnitor Application and Agreement, executed and delivered by Mortgagor on or about the date of this Mortgage (individually or collectively, the “**Agreements**”), (b) all losses, damages, attorneys’ fees, investigation fees, forfeitures, judgments, court assessments, and liabilities suffered, sustained, or incurred by Mortgagee 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 Mortgagee 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 Mortgage as the “**Obligations**”).

WITNESSETH, That Mortgagor, for and in consideration of foregoing paragraph, does by these presents grant, bargain, sell, and convey to Mortgagee, its heirs, executors, administrators, successors, and assigns, forever, all the following described real estate in _____ County, North Dakota, described as follows, to wit (“**Property**”):

Legal Description: _____

TO HAVE AND TO HOLD THE SAME, together with all the hereditaments and appurtenances thereunto belonging or in anywise appertaining, unto Mortgagee, its heirs, executors, administrators, successors, and assigns, FOREVER.

And Mortgagor hereby covenants with Mortgagee, its heirs, executors, administrators, successors, and assigns, as follows: That Mortgagor has good right to convey the same, that the same are free from all encumbrances (except for matters of record as of the date hereof) and that Mortgagee, its heirs, executors, administrators, successors, and assigns, shall quietly enjoy and possess the same, and that Mortgagor will warrant and defend the title to the same against all lawful claims, hereby relinquishing and conveying all right of homestead, and all contingent claims and rights whatsoever in and to the Property.

PROVIDED, NEVERTHELESS, That if Mortgagor, its heirs, executors, or administrators, shall well and truly pay, or cause to be paid, to Mortgagee, its heirs, executors, administrators, successors, or assigns, the amounts due under the Agreements according to the conditions thereof and shall also keep and perform all and singular the Obligations, then this Mortgage to be null and void, and the Property hereby conveyed to be released at the cost of Mortgagor; otherwise to remain in full force and effect.

And Mortgagor does covenant and agree with Mortgagee, its heirs, executors, administrators, successors, and assigns to pay such amounts as above specified; to pay as a part of the debt hereby secured, in case of each or any foreclosure or commencement of foreclosure of this mortgage, all costs and expenses and statutory attorneys' fees in addition to all sums and costs allowed in that behalf by law; to permit no waste, and to do or permit to be done, to the Property, nothing that may in any manner impair or weaken the security under this Mortgage; to pay all taxes or assessments that may be assessed against or be a lien on the Property, or any part thereof, or upon this Mortgage or the Agreements or the legal holder thereof, before the same shall become delinquent; to keep the buildings on the Property adequately insured, in companies acceptable to Mortgagee, with loss payable to Mortgagee or its assigns; and in case of failure so to pay such taxes or assessments, or any of the Obligations, or in case there exists any claim, lien, or encumbrance upon the Property, which is prior to this Mortgage, Mortgagee, its heirs, executors, administrators, successors, or assigns may at its option, pay and discharge such taxes or other obligation, and the sum or sums of money that may so be paid, with interest from the time of payment at 10% per annum (but in no event higher than the highest rate allowed by law), shall be deemed and are hereby declared to be a part of the debt secured by this Mortgage and shall be immediately due and payable.

Mortgagor assigns to Mortgagee all of the rents, issues, and profits of the Property. So long as there is no default by Mortgagor in the performance or observance of any Obligations secured by this Mortgage, Mortgagor shall have the right to collect the rents, issues, and profits, but no more than one month in advance. This paragraph constitutes an absolute and present assignment of the rents, issues, and profits of the Property, subject, however, to a conditional license given to Mortgagor to collect and use same to the extent provided above.

But if default shall be made in the payment of such sum of money, or interest, or the taxes, or any part thereof, at the time and in the manner hereinbefore or hereinafter specified for the payment thereof, Mortgagor, in such cases does hereby authorize and fully empower Mortgagee, its heirs, executors, administrators, successors, or assigns, to sell the Property and convey the same to the purchaser, in fee simple agreeably to the statute in such case made and provided, and out of the moneys arising from such sale to retain the principal and interest that shall then be due under this Mortgage and the Agreements, and all taxes upon such lands, together with all costs and charges, and statutory attorneys' fees, and pay any surplus to Mortgagor, its heirs, executors, administrators, or assigns. If default be made by Mortgagor in any of the foregoing provisions or any of the Obligations it shall be lawful for Mortgagee, its heirs, executors, administrators, successors, or assigns or its attorney to declare the whole sum above specified to be due.

If any provision or clause of this Mortgage or the Agreements conflict with applicable law, such conflict shall not affect other provisions of this Mortgage or the Agreements that can be given effect without the conflicting provision. To this end the provisions of this Mortgage are declared to be severable.

IN TESTIMONY WHEREOF, Mortgagor has hereunto set its hand the day and year first above written.

WITNESSES:

MORTGAGOR:

[if Mortgagor is married, husband and wife must sign]

STATE OF NORTH DAKOTA, _____ COUNTY

I HEREBY CERTIFY, that on _____, 20____, before me, a Notary Public of the State of North Dakota, personally appeared _____ and _____, known to me (or satisfactorily proven) to be the person whose name(s) is/are subscribed to the within Instrument, who acknowledged that he [she/they] executed the same for the purpose therein contained.

WITNESS my hand and Notarial Seal.

Notary Public
My Commission Expires: _____

AFTER RECORDING, PLEASE RETURN TO:

Lexington National Insurance Corporation
Attn: Mark T. Holtschneider, Esquire
P.O. Box 6098
Lutherville, Maryland 21095

DRAFTING NOTES [DO NOT RECORD; REMOVE THIS PAGE FROM THIS INSTRUMENT BEFORE RECORDING]:

1. If Mortgagor is married, please make sure both spouses execute the document.
2. The Mortgage is silent as to whether it secures bail bond premiums. For maximum protection against the argument that the Mortgage 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 Mortgagor may prevail in arguing that the Mortgage impermissibly secures a bail bond premium. On the other hand, if you want the strongest argument that unpaid premiums are covered by the Mortgage, 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 Mortgage. Venable does not opine whether any state or federal mortgage licensing laws apply to securing unpaid premium with a mortgage or deed of trust.
3. Notary acknowledgement required.
4. A higher rate of interest may not be charged after default.