

**DEED OF TRUST**

**THIS DEED OF TRUST ("this Deed of Trust")**, made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_, whose address is \_\_\_\_\_ (individually, collectively, jointly, and severally, "**Grantor**"), and Michael J. Funk, a resident of Berkeley County, West Virginia, whose business address is c/o Steptoe & Johnson, PLLC, 1250 Edwin Miller Blvd., Suite 300, Martinsburg, WV 25404 ("**Trustee**"), for the benefit of Lexington National Insurance Corporation, whose address is P.O. Box 6098, Lutherville, Maryland 21094 ("**Beneficiary**").

WITNESSETH:

This Deed of Trust is for the purpose of securing performance of each agreement of Grantor herein contained and securing payment to a maximum amount of \$\_\_\_\_\_ in the aggregate, (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**").

NOW, THEREFORE, THIS DEED OF TRUST WITNESSETH: That to secure the prompt payment of the Obligations and all charges as herein provided, Grantor, in consideration of the premises and the sum of One Dollar (\$1), paid to it, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby **GRANT** and **CONVEY** in fee simple unto Trustee, with power of sale, the land and premises described as follows:

A. All those certain lots, tracts or parcels of land, together with the improvements now or hereafter constructed and situate thereon and all appurtenances thereunto belonging, or in any wise appertaining situate, lying and being in \_\_\_\_\_ County, West Virginia, and having an address at \_\_\_\_\_, and more particularly described as follows:

Legal Description: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

B. All right, title, and interest of Grantor now owned or hereafter acquired in and to any and all sidewalks, alleys, streets, and all strips and gores of land adjacent to or used in connection with such real property and all easements and rights of way in connection therewith.

C. All buildings, improvements, and fixtures of every kind, and all machinery, equipment, and property that are or shall be attached to, or be deemed to be fixtures and a part of the real property herein conveyed.

D. All equipment, materials, supplies, and other property of every kind or nature whatsoever, now or hereafter owned by Grantor or in which it has or shall have an interest, procured for incorporation in or to be affixed to buildings or other improvements on the above described real property or appurtenance thereto.

E. All furniture, furnishings, equipment, and other items of tangible personal property now owned or hereafter acquired by Grantor that are used or useful in the buildings or other improvements on such real property.

F. All rentals, income, issues, and profits that may accrue from the such land and improvements or any part thereof; provided, however, that so long as Grantor shall not be in default hereunder Grantor shall be entitled to collect and receive such rents, income, issues, and profits.

All property described above, together with the real property described above, shall secure the Obligations, and all the foregoing property, interests in property, and other rights and interests are herein sometimes referred to collectively as the "**Property.**"

**TO HAVE AND TO HOLD** the Property unto Trustee and his or her successors in the trust forever; and Grantor does hereby covenant to and with Trustee and Beneficiary that Grantor will warrant generally the Property; that Grantor has the right to convey the Property to Trustee; that the same is free from any and all liens and encumbrances other than real estate taxes assessed but not yet due and payable, and any other exceptions that are approved in writing by Beneficiary; that Trustee will have quiet possession thereof and that Grantor will execute and deliver such further assurances of the Property as may be requisite.

**IN TRUST NEVERTHELESS** to secure the payment and performance of the Obligations at any time and from time to time arising hereunder.

Grantor covenants, represents, warrants, and agrees as follows:

1. That Grantor will, so long as all or any part of the Obligations remains outstanding: (a) pay as and when due and payable all of the Obligations that may be satisfied by payment of monies, and perform as and when due all of the Obligations that may be satisfied by performance; (b) pay as and when due and payable all taxes, assessments, and other governmental charges and fees that may be levied or assessed against the Property, including the buildings and improvements now situate on the Property, or that may hereafter be erected thereon, and any improvements and additions made therein or thereto from time to time and will furnish annually to Beneficiary receipts showing the payment of such taxes, assessments, charges, and fees; (c) have and keep the building and improvements now situate on the Property or that may hereafter be erected thereon, and all other insurable property covered by this Deed of Trust constantly insured against loss or damage by fire and such other casualties, contingencies, and hazards as Beneficiary may require, in one or more responsible and solvent insurance companies authorized to transact business in the State of West Virginia approved by Beneficiary, and in an amount satisfactory to Beneficiary, with a standard mortgagee clause, non-contributory, providing that loss or damage shall be payable to Beneficiary as its interest may appear, and will pay the premiums for such insurance as the same become due and

payable and deliver the policy or policies of such insurance and all renewals thereof, to Beneficiary and if such property shall be damaged by fire or other casualty insured against Beneficiary shall be entitled to receive the proceeds of such insurance to the extent of the unpaid balance of the Obligations and shall apply such proceeds, in Beneficiary's discretion, to the Obligations or to restore the Property; (d) keep and maintain the Property in good condition and repair and not abandon all or any part of the Property, nor commit or permit the commission of waste on or in all or any part of the Property, or permit any building or improvement to be removed, destroyed, demolished, or structurally altered in whole or in part, and Grantor shall comply, and cause all occupants of the Property or those in possession thereof to comply, with all laws, ordinances, rules, and regulations relating to the use or maintenance of the Property and with all requirements, directions, and orders and notices of violations thereof issued by any governmental agency, body, or officer; (e) permit Trustee or Beneficiary, or any of them, or their respective agents, to enter and inspect the Property at all reasonable times; and (f) pay to Trustee, or to Beneficiary, upon demand, any sums of money, including all costs, expenses, and reasonable attorneys' fees, which Trustee or Beneficiary, or any of them, may incur or expend in any action or proceeding that may concern the Property, or any part thereof or interest therein, including, without limitation, any eminent domain proceeding, or any action or proceeding to sustain the lien of this Deed of Trust or its priority or in defending any party thereto, or any party secured hereby, against the liens, demands, or claims of title of any person or entity asserting priority over this Deed of Trust, or asserting title adverse to the title under which Trustee holds, or in the discharge of any such liens, demands, or claims, or in connection with any action to foreclose this Deed of Trust, or to recover any of the Obligations.

2. If Grantor fails (a) to comply with, perform, or carry out any of the provisions of Section 1 above, or (b) to perform any of the terms, covenants, or agreements by Grantor to be performed under this Deed of Trust or the Agreements or is otherwise in default under this Deed of Trust or the Agreements, then, and in any such event, Beneficiary shall have the right, without notice to or demand upon Grantor or any other person, to take any such action or do any such thing as, in the exercise of Beneficiary's discretion, may be determined to be reasonably necessary to protect the lien and security hereof as fully and completely as if Grantor made each such payment when due, and kept, complied with, performed, and carried out the provisions of Section 1 above and the Agreements in every respect. Without limiting the generality of the foregoing, Beneficiary may, in any such event, (i) obtain the required insurance covering the Property and pay the premiums thereon or pay any unpaid premiums on any insurance procured by Grantor; (ii) pay such taxes, assessments, and other governmental charges and fees together with any penalties and interest accrued thereon, and redeem the Property from a tax sale if it has been sold, and shall be subrogated to the lien of the governmental body to which such payment was made; (iii) make and pay for any repairs that Beneficiary deems necessary to place or keep the Property in good condition and repair; (iv) stop or mitigate waste on or in the Property or any part thereof; (v) stop or prevent the removal, destruction, demolition, or structural alteration of any building or improvement on the Property; (vi) stop or prevent the violation of any law, ordinance, rule, or regulation relating to the use or maintenance of the Property or of any requirement, direction, or order or notice of violation thereof issued by any governmental agency, body, or officer; and (vii) pay all or any part of any sum or sums of money that may be due or payable under the provisions of Section 1 above; and Grantor hereby promises to pay to Beneficiary, upon demand, any sums of money paid out or expended by Beneficiary, for any of the purposes set out in this Section, together with interest thereon from the date of payment at 10% per annum (but in no event higher than the highest rate allowed by law) ("**Default Rate**"), and agrees that any sum or sums of money so paid by Beneficiary or by Trustee, or any of them, shall thereupon be and become a part of the Obligations, and shall be collectible as such, all without waiver of any right arising from the

breach of or default in the performance of any warranty, covenant, condition, provision, or agreement herein contained, including the right to enter and take possession of the Property, and rent and manage the same, and the right to foreclose this Deed of Trust; but nothing herein contained shall be construed as imposing any duty or obligation upon Beneficiary, or upon Trustee, to pay any such sum or sums of money herein authorized to be paid, or to take any other action authorized hereunder.

3. This Deed of Trust is also security for taxes, insurance premiums, and other obligations, including interest thereon at the Default Rate, undertaken by Beneficiary or Trustee pursuant to the provisions of this Deed of Trust.

4. The occurrence of any of the following events shall constitute an event of default hereunder ("**Event of Default**"), and upon the occurrence of any Event of Default the Obligations shall at the option of Beneficiary immediately become due and payable without notice to or demand on Grantor, or any other person: (a) if default shall be made in the payment as and when due of any amounts due to Beneficiary pursuant to the Agreement or of the other Obligations; (b) if default shall be made in the payment as and when due of any sum due under the provisions of this Deed of Trust or the interest thereon; (c) if default shall be made in the payment, as and when due and payable, of any tax, assessment, or other governmental charge or fee or of any insurance premium or if the required insurance is not effected by Grantor or the policies delivered to Beneficiary as herein required; (d) if there shall be a breach of or default in the performance of any covenant, condition, agreement, warranty, or provision contained in this Deed of Trust; (e) if Grantor shall become insolvent or make an assignment for the benefit of creditors, or if any petition for bankruptcy or arrangement pursuant to the Federal Bankruptcy Act, or any similar federal or state law, shall be filed by or against any of Grantor; (f) if any representation or warranty made or furnished to Beneficiary by Grantor in connection with this Deed of Trust proves to have been materially untrue; (g) if there shall now or hereafter exist upon all or any part of the Property any claim, lien, or encumbrance, other than real estate taxes assessed but not yet due and payable or other liens and encumbrances, if any, approved in writing by Beneficiary, which is or might be superior to the lien of this Deed of Trust; (h) if all or any part of the Property shall be sold, conveyed, or transferred (or if Grantor is a corporation, limited liability company, or partnership, any of its capital stock or membership or partnership interests are transferred or Grantor is dissolved, merged, or reorganized) without the prior written consent of Beneficiary; or (h) if Grantor shall do or suffer to be done any act or thing that would impair the security for the Obligations.

5. If any one or more Events of Default shall occur and be continuing, any one or more of the following rights and remedies shall exist, any two or more of which may be exercised concurrently:

(a) Trustee or Beneficiary may forthwith, without notice, separately or jointly: (i) enter into and upon all of the Property, either in person or by agent, and take possession of the Property without process of law, without liability to Grantor or other owner or owners of the Property, and manage and rent all or any part of the Property, collect and receive the rents, issues, and profits thereof (past due, due, or to become due) and apply the same to the payment of the Obligations, after first deducting the costs and expenses incurred in managing the Property and in collecting such rents, issues, and profits (including a commission of 10% of the total amount collected, which shall be paid to Beneficiary, or to Trustee, as the case may be, for managing the same and collecting and disbursing such rents, issues, and profits accruing therefrom), and after deducting such further amount or amounts as may be necessary to pay or reimburse Beneficiary and Trustee for any sum or sums of money paid by them, or any of them,

under the provisions hereof, together with interest thereon at the Default Rate to the date of payment; (ii) have a receiver appointed by any court having jurisdiction to take charge of the Property and collect, receive, and apply the rents, issues, and profits thereof. In either case, any person or persons in possession of all or any part of the Property shall be deemed a tenant at will and shall at once surrender such possession on demand of Beneficiary, Trustee, or a receiver. Nothing herein contained shall be construed as a substitute for, or in derogation of, the right to foreclose this Deed of Trust or as imposing any duty or obligation upon Beneficiary or upon Trustee, or any of them, to take charge of the Property or to collect such rents, issues, or profit or to have a receiver appointed for such purposes; or (iii) exercise any or all of the rights and remedies provided for in this Section 5.

(b) Without notice to or demand on Grantor or any other person or entity, Beneficiary may at its option declare the Obligations to be immediately due and payable and upon the exercise of such option the Obligations may be collected by proper action, foreclosure of this Deed of Trust, trustee's sale under this Deed of Trust, or any other legal or equitable proceeding.

(c) At any time after the exercise by Beneficiary of the option to declare the Obligations to be immediately due and payable, Beneficiary may invoke the power of sale and any other remedies permitted by law. If Beneficiary invokes the power of sale, Trustee, upon the written request of Beneficiary, shall sell the Property to satisfy the Obligations at public auction at the front door of the courthouse of the county in which the Property is situate, for cash in hand on the day of sale, after first giving notice of such sale by publishing such notice for the time and in the manner prescribed by applicable law and after serving such notice by certified mail to Grantor and to any subordinate lienholder who has previously notified Beneficiary by certified mail of the existence of a subordinate lien, at least 20 days prior to the sale, and no other notice of such sale shall be required. Out of the proceeds of such sale Trustee shall pay, first, the costs and expenses of executing this trust, including an amount equal to 2% of the gross proceeds of sale, or the sum of \$100, whichever amount shall be greater, to Trustee, or to the one so acting, as his or her commission hereunder; second to Beneficiary and Trustee all moneys that they or any of them may have paid for taxes, assessments, or other governmental charges or fees, insurance, repairs, court costs, and all other costs and expenses incurred or paid under the provisions of this Deed of Trust, together with interest thereon at the Default Rate from the date of payment; third to Beneficiary the Obligations; and fourth, any balance to Grantor or Grantor's heirs, personal representatives, successors, or assigns as their interests may appear, upon delivery of and surrender to the purchaser or purchasers of possession of the Property less any expense of obtaining such possession. This Deed of Trust shall, with respect to all items of personal property and fixtures subject to the lien hereof, be deemed to grant a security interest to Beneficiary under the Uniform Commercial Code of West Virginia ("**Code**") and constitute a "fixture filing" under the Code. In the event of the occurrence of any Event of Default, in addition to the rights, remedies, and powers hereinabove set forth, Beneficiary and Trustee shall have as to any and all fixtures and personal property covered by this Deed of Trust, all rights, remedies, and powers of a secured party under the Code.

(d) Beneficiary or Beneficiary's designee may purchase the Property at any sale.

6. Grantor agrees that any sale made hereunder may be adjourned from time to time without notice other than oral proclamation of such adjournment at the time and place of sale, or at the time and place of any adjourned sale.

7. If foreclosure proceedings are instituted hereunder but are not completed, Trustee shall be reimbursed for all costs and expenses incurred by him or her in commencing such proceedings, and, in addition, shall be entitled to, and paid a commission of 1% of the Obligations that are outstanding at the time such proceedings are instituted, but in no event shall such commission be less than \$100; and all costs and expenses so incurred by Trustee, and such commission, together with interest thereon until paid at the Default Rate, shall be payable by Grantor on demand, and shall be and become a part of the Obligations and shall be collectible as such.

8. Trustee, or the survivor thereof, may act in the execution of this trust. Trustee is hereby authorized to act by agent or attorney in the execution of this trust. It shall not be necessary for Trustee to be present in person at any foreclosure sale hereunder.

9. Beneficiary may, at any time and from time to time hereafter, without notice, appoint and substitute another Trustee or Trustees, entities, or persons, in place of the Trustee herein named to execute the trust herein created. Upon such appointment, either with or without a conveyance to such substituted Trustee or Trustees by the Trustee herein named, or by any substituted Trustee in case such right of appointment is exercised more than once, the new and substituted Trustee or Trustees in each instance shall be vested with all the rights, titles, interests, powers, duties, and trusts in the premises that are vested in and conferred upon the Trustee herein named; and such new and substituted Trustee or Trustees shall be considered the successors and assigns of the Trustee who is named herein within the meaning of this instrument, and substituted in his or her place and stead. Each such appointment and substitution shall be evidenced by an instrument in writing that shall recite the parties to, and the book and page of record of, this Deed of Trust, and the description of the real property herein described, which instrument, executed and acknowledged by Beneficiary and recorded in the office of the Clerk of the County Commission of the County wherein the Property is situate, shall be conclusive proof of the proper substitution and appointment of such successor Trustee or Trustees, and notice of such proper substitution and appointment to all parties in interest.

10. A copy of any notice of trustee's sale under this Deed of Trust shall be served on Grantor by certified mail, return receipt requested, directed to Grantor at the address stated above or such other address given to Beneficiary in writing by Grantor, after the execution and delivery of this Deed of Trust. Any other notice (except notice of other liens that may be given to Beneficiary under W. Va. Code § 38-1-14), shall be effective upon the deposit of such notice, in writing, in the regular United States mail, postage prepaid, addressed to the party or parties who receive such notice at the addresses above or at such other addresses any such party may give to the other parties in writing. Notice of other liens given under W. Va. Code § 38-1-14 shall be given to Beneficiary at the above address and shall be effective upon receipt by Beneficiary.

11. Upon final satisfaction and discharge of the Obligations, Beneficiary shall release this Deed of Trust without charge to Grantor. Grantor shall be responsible for payment of all costs of recordation of the release.

12. No failure of Beneficiary or Trustees to exercise any option herein contained shall constitute a waiver of any right or privilege herein given or granted to Beneficiary or Trustee, and a waiver by Beneficiary or Trustee of the right to exercise any option as to any breach or default shall not constitute a waiver of the right to exercise the same option, or any other option herein contained, as to another or any continuing or subsequent breach or default.

13. If any term or provision of this Deed of Trust should contravene or be in conflict with any law of the State of West Virginia or any other applicable law or regulation, such term or provision is amended and modified to conform with such law. Each party hereto, at all times with respect to this Deed of Trust and all actions and courses of conduct contemplated, required or permitted hereunder, abide by the requirement of applicable law, regardless whether such requirements are expressly set forth herein.

14. All covenants, agreements, representations, and warranties are made and given jointly and severally by each party signing as Grantor and shall extend to and bind their heirs, devisees, personal representatives, successors and assigns, and shall inure to the benefit of Beneficiary, and Trustee, their successors and assigns.

15. Grantor hereby irrevocably waives any and all right that it may have to a trial by jury in any action, proceeding, or claim of any nature relating to this Deed of Trust, any documents executed in connection with this Deed of Trust, or any transaction contemplated in any of such documents. Grantor acknowledges that the foregoing waiver is knowing and voluntary. Grantor hereby agrees that the Circuit Court of the County in which the real property is located and the United States District Court for the District of West Virginia that has jurisdiction over the real property shall have exclusive jurisdiction to hear and determine any claims or disputes between the parties pertaining directly or indirectly to this Deed of Trust or to any matter arising therefrom. Grantor hereby expressly submits and consents in advance to such jurisdiction in any action or proceeding commenced by, or in any action against, Beneficiary in either of such Courts, hereby waiving personal service of the summons and complaint, or other process or papers issues therein, and agreeing that service of such summons and complaint, or other process or papers may be made by registered or certified mail addressed to Grantor at the address to which notices are to be sent pursuant to this Deed of Trust.

**WITNESS** the following signatures:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print or type name here)

\_\_\_\_\_  
(Print or type name here)

STATE OF \_\_\_\_\_,  
COUNTY OF \_\_\_\_\_, to-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ and \_\_\_\_\_.

My commission expires \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

STATE OF \_\_\_\_\_,  
COUNTY OF \_\_\_\_\_, to-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ and \_\_\_\_\_.

My commission expires \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

This Deed of Trust was prepared by:  
Lexington National Insurance Corporation  
Attn: Mark T. Holtschneider, Esq.  
P.O. Box 6098  
Lutherville, Maryland 21094