

## MONTANA TRUST INDENTURE

THIS TRUST INDENTURE, Made this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, between  
GRANTOR: \_\_\_\_\_

TRUSTEE: \_\_\_\_\_

BENEFICIARY: \_\_\_\_\_

WITNESSETH: That Grantor hereby irrevocably GRANTS, BARGAINS, SELLS, CONVEYS AND WARRANTS TO TRUSTEE IN TRUST, nevertheless, WITH POWER OF SALE that certain real property, which does not exceed thirty (30) acres in area, situated in the County of \_\_\_\_\_, State of Montana, particularly described as follows, to-wit:

TOGETHER WITH: (1) All buildings, fixtures and improvements thereon and all water rights, rights-of-way, tenements, hereditaments, privileges and appurtenances thereunto belonging, now owned or hereafter acquired, however evidenced, used or enjoyed with said premises or belonging to the same; (2) All right, title and interest hereafter acquired in or to any of said premises, hereby also releasing, relinquishing and waiving all exemptions, rights of dower and homestead, in or to said premises, vested or inchoate; (3) All heating, air conditioning, plumbing and lighting facilities, equipment and fixtures now or hereafter installed upon or within said premises, used or proper or necessary to constitute the said premises a habitable, usable or operating unit -- all of said property being designated and deemed for the purposes of this instrument a part of the realty; and (4) All of the rents, issues and profits of said premises, SUBJECT, HOWEVER, to the right, power and authority hereinafter conferred upon Beneficiary to collect and apply such rents, issues and profits;

FOR THE PURPOSE OF SECURING: (1) Payment of the principal sum of Dollars (\$) with interest thereon according to the terms of a promissory note, dated (and any extensions and/or renewals or modifications thereof), made by Grantor payable to the order of Beneficiary in installments, the last of which, unless sooner paid, will be due and payable on ; (2) Payment of all sums expended or advanced by Beneficiary under or pursuant to the terms hereof, together with interest thereon as herein provided; (3) Performance of each agreement of Grantor herein and in said note contained; and (4) Payment of any future advances, in no event exceeding Dollars, now in contemplation of the parties, if the Beneficiary at its sole option elects to make any advances whatsoever.

TO PROTECT THE SECURITY OF THIS TRUST INDENTURE, AND FOR OTHER PURPOSES, GRANTOR AGREES:

1. To keep said property in good condition and repair; not to remove or demolish any building thereon; to complete and restore promptly and in a good and workmanlike manner any building which may be constructed, damaged or destroyed thereon, and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws, covenants and restrictions affecting said property; not to commit or permit waste thereof; not commit, suffer or permit any act upon said property in violation of the law; to do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general; and

if the loan secured hereby or any part thereof is being obtained for the purpose of financing construction of improvements on said property, Grantor further agrees:

- (a) To commence construction promptly and to pursue the same with reasonable diligence to completion in accordance with plans and specifications satisfactory to the Beneficiary, and
- (b) To allow Beneficiary to inspect said property at all times during construction.

Trustee, upon presentation to it of an affidavit signed by Beneficiary, setting forth facts showing a default by Grantor under this numbered paragraph, is authorized to accept as true and conclusive all facts and statements therein, and to act thereon as provided in this instrument, and as allowed by law.

2. To provide, maintain and deliver to Beneficiary, insurance of such type or types and amounts as Beneficiary may require, on the improvements now existing or hereafter erected or placed on said property. Such insurance shall be carried in companies approved by the Beneficiary with loss payable clause in favor of and in form acceptable to Beneficiary. In the event of loss, Grantor shall give immediate notice to Beneficiary, who may make proof of loss and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Beneficiary instead of to Grantor and Beneficiary jointly, and the insurance proceeds, or any part thereof, may be applied by Beneficiary, at its option, to the reduction of the indebtedness hereby secured or to the restoration or repair of the property damaged.

3. To deliver to, pay for and maintain with Beneficiary until the indebtedness secured hereby is paid in full, such evidence of title as Beneficiary may require, including abstracts of title or policies of title insurance and any extensions or renewals thereof or supplements thereto.

4. To pay before delinquent all taxes and assessments, including interest and penalties, affecting said premises and improvements; to promptly pay and discharge all encumbrances, charges and liens on said property which at any time are, or appear to be, prior or superior hereto. In addition to the payments due in accordance with the terms of the note hereby secured, Grantor shall, at the option and on demand of the Beneficiary, pay to the Beneficiary monthly and concurrently with payment of principal and interest, a sum equal to one-twelfth (1/12th) of the annual taxes, assessments, insurance premiums, maintenance and other charges upon the property, as estimated by the Beneficiary, in trust nevertheless for Grantor's use and benefit and for payment by Beneficiary of any such items when due. The failure of Grantor to make any of such payments shall constitute a default under this trust.

5. Except as otherwise expressly provided herein, to pay all costs fees and expenses of this trust, including cost of search and evidence of title, advertising and recording expense, documentary taxes and Trustee's and attorney's fees as allowed by law.

6. Should Grantor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, without obligation so to do and without notice to or demand upon Grantor and without releasing Grantor from any obligation hereof, may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes.

7. To pay immediately and without demand all sums expended hereunder by Beneficiary or Trustee, with interest from date of expenditure at the rate of eight per cent (8%) per annum until paid, and the payment thereof shall be secured hereby.

IT IS MUTUALLY AGREED THAT:

8. Without affecting the liability of any person, including Grantor, for the payment of any indebtedness secured hereby, or the lien of this Trust Indenture on the remainder of the property for the full amount of any indebtedness unpaid, Beneficiary and Trustee are respectively empowered as follows; Beneficiary may from time to time without notice:

- (a) Release any person liable for payment of any of the indebtedness,

(b) Extend the time or otherwise alter the terms of payment of any of the indebtedness,

(c) Alter, substitute or release any property securing the indebtedness;

Trustee may, at any time and from time to time, upon the written request of Beneficiary:

(a) Consent to the making of any map or plat of the property,

(b) Join in granting any easement or creating any restriction thereon,

(c) Join in any subordination or other agreement affecting this Trust Indenture or lien or charge thereof,

(d) Reconvey, without warranty, all or any part of the property.

9a. Both parties agree that Beneficiary may, if Beneficiary so elects, procure and thereafter continue during the term of this Indenture, for as long as Beneficiary desires, a form of insurance acceptable to Beneficiary insuring Beneficiary against any loss sustained by Beneficiary by reason of any default in payment by Grantor of the secured indebtedness. If Beneficiary elects to procure such insurance, Grantor shall promptly reimburse Beneficiary the full amount of the initial premium for such insurance. During the term of this Indenture, Grantor shall each month deposit in escrow with Beneficiary 1/12th of the next following anticipated annual premium for such insurance, said deposit to be made at the same time and place as Grantor makes monthly payments on the aforementioned promissory note. Beneficiary may thereafter pay all annual renewal premiums from such escrow. Should the amount deposited in escrow be insufficient to pay any renewal premium in full as the same become due, Grantor shall immediately upon demand deposit with or pay to Beneficiary such additional amount as may be sufficient to pay the renewal premium in full. Failure of Grantor to pay or deposit any of the amounts referred to herein shall constitute a default of the terms of this Indenture. Mortgagor further agrees to deposit in escrow with Beneficiary 1/12 of the annual premium for hazard insurance coverage and annual taxes and assessments each month. Failure of the Grantor to deposit any of the above amounts in the escrow account shall constitute a default of the terms of this indenture.

9b. Upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Trust Indenture and said note to Trustee for cancellation and retention and upon payment by Beneficiary of its fees, Trustee shall reconvey to Grantor, without warranty, the property then held hereunder.

10. As additional security, Grantor hereby assigns to Beneficiary, during the continuance of these trusts, all rents, issues, royalties, and profits of the property affected by this Trust Indenture and of any personal property located thereon. Until Grantor shall default in the payment of any indebtedness secured hereby or in the performance of any agreement hereunder, Grantor shall have the right to collect all such rents, issues, royalties, and profits earned prior to default as they become due and payable. If Grantor shall default as aforesaid, Grantor's right to collect any of such monies shall cease and Beneficiary shall have the right, with or without taking possession of the property affected hereby, to collect all rents, royalties, issues, and profits. Failure or discontinuance of Beneficiary at any time or from time to time to collect any such monies shall not in any manner affect the subsequent enforcement by Beneficiary of the right, power, and authority to collect the same. Nothing contained herein, nor the exercise of the right by Beneficiary to collect, shall be, or be construed to be, an affirmation by Beneficiary of any tenancy, lease or option, nor an assumption of liability under, nor subordination of the lien or charge of this Trust Indenture to any such tenancy, lease or option.

11. Upon any default by Grantor hereunder, Beneficiary may at any time without notice, either in person, by agent, or by receiver to be appointed by a court (Grantor hereby consenting to the appointment of Beneficiary as such receiver), and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in its own name sue for or otherwise collect said rents, issues, and profits, including those past due and unpaid, and apply the same, less cost and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine.

12. The entering upon and taking possession of said property, the collection of such rents, issues, and profits, or the proceeds of fire or other insurance policies, or compensation or awards for any taking or damage of said property, and the application or release thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

13. Time is of the essence hereof. Upon default by Grantor in the payment of any indebtedness secured hereby or in the performance of any agreement hereunder, all sums secured hereby shall immediately become due and payable at the option of the Beneficiary. In the event of such default, Beneficiary may execute or cause Trustee to execute a written notice of default and of election to cause such property to be sold to satisfy the obligations hereof, and Trustee or Beneficiary shall file such notice for record, in each county wherein said property or some part thereof is situated. Beneficiary shall also deposit with Trustee, the note and all documents evidencing expenditures secured hereby.

14. After the lapse of such time as may then be required by law following the recordation of said notice of default and of election to cause said property to be sold, and notice of default and notice of sale having been given as then required by law, Trustee, or its attorney, without demand on Grantor, shall sell said property on the date and at the time and place designated in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine (but subject to any statutory right of Grantor to direct the order in which such property, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder, the purchase price payable in cash in lawful money of the United States at the time of sale. The person conducting the sale may, for any cause he deems expedient, postpone the sale for a period not exceeding fifteen (15) days by public proclamation by such person at the time and place fixed in the notice of sale, and no other notice of the postponed sale need be given. Trustee shall execute and deliver to the purchaser its deed conveying said property so sold, but without any covenant of warranty, express or implied. The recitals in the deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person including Beneficiary (but excluding Trustee) may bid at the sale. After deducting all costs and expenses of exercising the power of sale and of the sale, including cost of search and evidence of title, advertising and recording expense, documentary taxes and Trustees' and attorney's fees, Trustee shall apply the proceeds of sale to payment of all amounts secured hereby and due hereunder, including all sums expended by the Trustee and Beneficiary, or either of them, with accrued interest thereon at the rate of eight percent (8%) per annum from the date of expenditure thereof, and the surplus, if any, to the person or persons legally entitled thereto; provided that the Trustee, in its discretion, may deposit such surplus with the County Clerk and recorder of the county in which the sale took place.

15. Grantor agrees to surrender possession of the hereinabove described trust property to the purchaser at the aforesaid sale on the tenth (10th) day following said sale, in the event such possession has not previously been delivered by Grantor.

16. Each abstract of title, title insurance policy and all other evidences of title, and all hazard insurance policies placed or deposited with the Beneficiary shall be deemed an incident to the title to the trust property and upon foreclosure by exercise of power of sale, or otherwise, shall pass to the purchaser and the same are hereby pledged as additional security for payment of the indebtedness secured hereby.

17. Upon the occurrence of any default hereunder, Beneficiary shall have the option to declare all sums secured hereby immediately due and payable and foreclose this Trust Indenture in the manner provided by law either through judicial proceedings or by notice and private sale, and Beneficiary shall be entitled to recover in such proceedings all costs and expenses incident thereto, including a reasonable attorney's fee in such amount as shall be fixed by the Court.

18. Except as may be otherwise provided herein, Grantor agrees to pay to Beneficiary or Trustee the costs and expenses, including attorney's fee as allowed by statute, or as incurred by either of them in instituting, prosecuting or defending any Court action in which Grantor does not prevail, if such action involves the interpretation hereof or performance hereunder by a party hereto or the breach of any provision hereof by a

party hereto, including but not limited to an action to obtain possession of the above described property after exercise of the power of sale granted hereunder.

19. This Trust Indenture shall apply to, inure to the benefit of and bind all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. All obligations of Grantor hereunder are joint and several. The term "Beneficiary" shall mean the owner and holder, including any pledgee, of the note secured hereby. In this Trust Indenture, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

20. Trustee accepts this Trust when this Trust Indenture, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of a pending sale under any other trust indenture or of any action or proceeding in which Grantor, Beneficiary, or Trustee shall be a party, unless brought by Trustee.

21. This Trust Indenture is made within the State of Montana pursuant to the Small Tract Financing Act of Montana is not made or taken in substitution for any mortgage in existence on the effective date of said Act.

22. Grantor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to him at the address hereinabove set forth.

23. In the event Grantor sells, transfers, assigns or in any way conveys all or any part of his interest in and to the property herein described during the term of the note secured by this obligation, or any extensions thereof, the whole of the unpaid balance of the note shall, at Beneficiary's election, become immediately due and payable. Should Beneficiary, his successors or assigns consent to any transfer of interest by Grantor during the term of the note secured hereby and waive entitlement to acceleration of the remaining balance due, such consent shall be valid only if evidenced by written consent executed by the holders of the obligation secured hereby.

24. Any payment not made within fifteen (15) days of its due date shall accrue a late payment penalty in the amount of five (5) percent of the amount of the payment. No payment made more than fifteen (15) days after its due date will be deemed paid unless accompanied by the late payment fee.

25. Should Grantor default on the payment obligation secured hereby, or fail to satisfactorily perform any other term or requirement set forth in this indenture, and his interest be declared by the Beneficiary to be in default, any balance remaining due on the promissory note secured hereby shall, from the date default is declared accrue interest in lieu of any other interest provided for in the note at the rate of thirteen (13) percent per annum.

IN WITNESS WHEREOF, the Grantors hereunto set their hands the day and year first hereinabove written.

\_\_\_\_\_  
\_\_\_\_\_

STATE OF \_\_\_\_\_ )  
  ) ss  
County of \_\_\_\_\_ )

This instrument was acknowledged before me on \_\_\_\_\_, \_\_\_\_\_ by  
\_\_\_\_\_.

(Seal, if any)

\_\_\_\_\_  
Notary Public for the State of Montana  
Residing at: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_