

ROTHGERBER, APPEL, POWERS & JOHNSON

SUITE 3000

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WALTER M APPEL (1879 1961)

ONE TABOR CENTER

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CABLE ADDRESS  
APROPO DENVER

KEITH BLOCK

July 16, 1990

DIRECT DIAL (303) 628 9507

16938  
RECORDATORY NO FILED 1425

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

JUL 19 1990 - 3:00 PM  
INTERSTATE COMMERCE COMMISSION

JUL 19 3 23 PM '90  
MOTOR OPERATING UNIT

Office of Recordation  
Interstate Commerce Commission  
12th & Constitution, N.W.  
Washington, D.C. 20423

RE: Recording of Trust Indenture and Security Agreement

Dear Secretary:

Please find enclosed three certified true copies of the Trust Indenture and Security Agreement ("Indenture") by and among First Continental Corporation as the Grantor, The Aetna Casualty & Surety Company as the Beneficiary and First Montana Title Insurance Company as the Trustee dated as of March 6, 1980.

The Indenture is a mortgage and a "primary document" under 49 C.F.R. Section 1177.1 and should be recorded in the Interstate Commerce Commission ("ICC") records pursuant to Section 11303 of Title 49 of the U.S. Code.

The names and addresses of the parties to the Indenture are as follows:

Grantor: First Continental Corporation  
P.O. Box 31775  
Billings, Montana 59107

Beneficiary: The Aetna Casualty & Surety Company  
Attn: Real Estate Investment Department  
1 Civic Center Plaza  
P.O. Box 1414  
Hartford, Connecticut 06143

Trustee: First Montana Title Insurance Company  
17 5th Street North  
Great Falls, Montana 59401

A description of the equipment covered by the Indenture is as follows:

All of First Continental Corporation's chattels, furniture, furnishings, equipment, fixtures and personal property now or hereafter attached to, placed in or upon or necessary in connection with the use of

Office of Recordation  
July 16, 1990  
Page 2

the Land and Buildings described in the Trust Indenture and Security Agreement including, but not limited to, the locomotive described on Exhibit A attached hereto and incorporated herein by this reference.

A short summary of the Indenture to appear in the index for the ICC records is as follows:

Trust Indenture and Security Agreement between First Continental Corporation ("Grantor") whose address is P.O. Box 31775, Billings, Montana 59107, The Aetna Casualty & Surety Company ("Beneficiary") whose address is Attn: Real Estate Investment Department, 1 Civic Center Plaza, P.O. Box 1414, Hartford, Connecticut 06143, and First Montana Title Insurance Company ("Trustee") whose address is 17 5th Street North, Great Falls, Montana 59401 dated as of March 6, 1980, and covering a variety of equipment including, but not limited to, One (1) 600 Horsepower, 100 Ton, EMD Locomotive (Unit #84, SW-1) with Engine 6-567 B1 (Serial No. 727), Main Generator D-4A (Serial No. G84), 10 Kilowatt Auxiliary Generator, and all accessions, accessories, additions, attachments, modifications, replacements, and substitutions thereto.

Enclosed is a check in the amount of \$15.00 for the filing fee in connection with the recordation of the Indenture.

Do not hesitate to contact me if you have any questions on this matter. I would appreciate your assistance in date-stamping and returning to me the recorded Indenture and the additional copies of that document in the enclosed stamped and self-addressed return envelope.

Very truly yours,

ROTHGERBER, APPEL, POWERS & JOHNSON



Keith Block

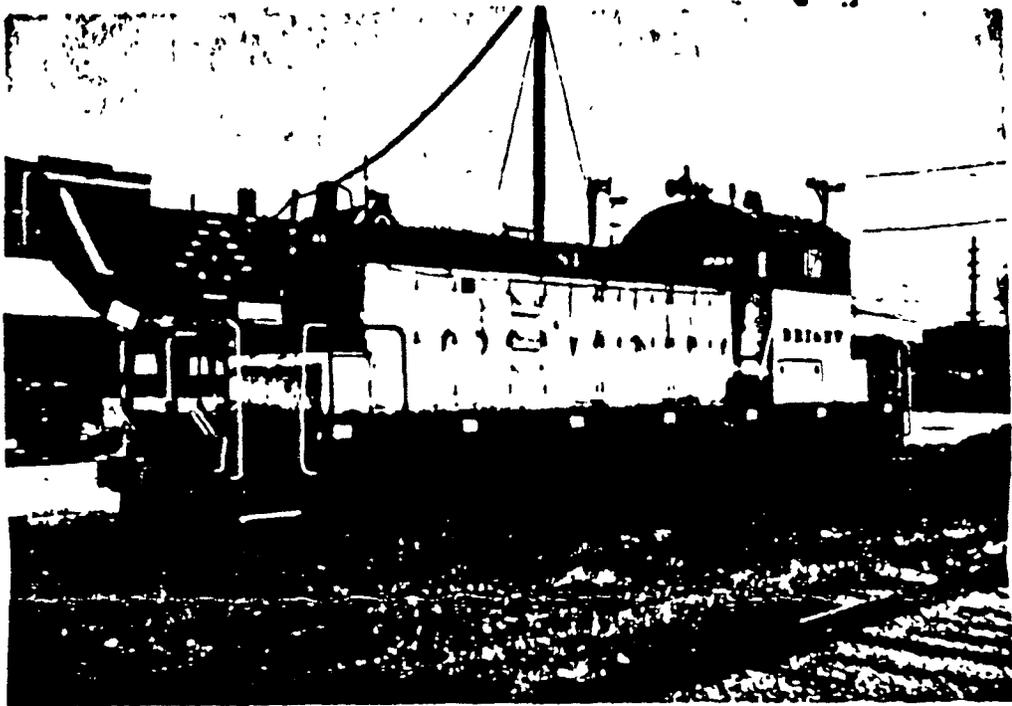
KB:ss

Enclosures

cc: Edward Buckley

The Aetna Casualty & Surety Company  
Thomas Young

The Aetna Casualty & Surety Company  
Robert G. Mitchelotti  
Glen A. Burbridge



Unit #84, SW-1, 600 HP, 100 Ton, EMD Locomotive

Engine: 6-567 B1, Serial #727  
Main Generator: D-4A, Serial #C84  
Auxiliary Generator: 10KW  
Wheel Report:

L-1	2 3/8"	R-1	2 3/8"
L-2	2 3/8"	R-2	2 3/8"
L-3	1 1/2"	R-3	1 7/16"
L-4	1 1/4"	R-4	1 3/8"

Brake Schedule: H-6  
Air Compressor: WXD  
Journals Friction: 6 1/2 x 12  
Fuel Capacity: 600 Gallons  
Gear Ratio: 65-12

1. Equipped with FRA Glazing
2. Equipped with a chest type water cooler
3. Footboards have been removed and modified to FRA
4. Cut levers have been modified to FRA
5. Equipped with seal beam headlights
6. Equipped with an amber flashing light mounted on the cab floor



Interstate Commerce Commission  
Washington, D.C. 20423

7/20/90

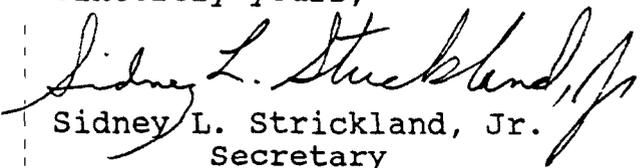
OFFICE OF THE SECRETARY

Keith Block  
Rothgerber Appel Powers & Johnson  
One Tabor Center Suite 3000  
1200 Seventeenth Street  
Denver Colorado 80202

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 7/19/90 at 3:30pm, and assigned recordation number(s). 16938

Sincerely yours,

  
Sidney L. Strickland, Jr.  
Secretary

This Trust Indenture Security Agreement is both a Trust Indenture under the Small Tract Financing Act of Montana and a Pledge and Assignment of Personal Property, and is, among other things, a Security Agreement. This Trust Indenture and Security Agreement contains After-Acquired Property Provisions.

16938

RECORDATION NO. FILED 1425

JUL 19 1990 - 3 00 PM

INTERSTATE COMMERCE COMMISSION

TRUST INDENTURE AND SECURITY AGREEMENT

BY AND AMONG

FIRST CONTINENTAL CORPORATION

Grantor,

THE AETNA CASUALTY AND SURETY COMPANY

Beneficiary

and

FIRST MONTANA TITLE INSURANCE COMPANY

Trustee

Dated as of March 6, 1980

Industrial Development Revenue Note  
(First Continental Corporation Project)

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(Not a Part of This Agreement)

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THIS TRUST INDENTURE AND SECURITY AGREEMENT dated as of March 2, 1980, between FIRST CONTINENTAL CORPORATION, a Montana corporation (the Grantor), FIRST MONTANA TITLE INSURANCE COMPANY, with its office at 17 Fifth Street North, Great Falls, Montana 59401 (the Trustee), and THE AETNA CASUALTY AND SURETY COMPANY, a Connecticut corporation with its principal office in Hartford, Connecticut (the Beneficiary);

W I T N E S S E T H

WHEREAS, the City of Billings (the Municipality) is authorized by Montana Code Annotated, Title 90, Chapter 5, Part 1 (herein referred to as the Act) to issue and sell its revenue bonds and to loan the proceeds thereof to finance the costs of acquiring real property and acquiring, constructing or installing buildings, improvements and personal property on such real property for the public purposes expressed in the Act; and to enter into a loan agreement for that purpose upon certain terms; and

WHEREAS, the Beneficiary has agreed to purchase an Industrial Development Revenue Note (herein referred to as the Note) to be issued by the Municipality pursuant to the Act and the Note Resolution, as herein defined, in the principal amount of \$2,797,041.00; and

WHEREAS, the Municipality has entered into a Loan Agreement of even date herewith (the Agreement) with the Grantor pursuant to which the Municipality will loan the proceeds of the Note to the Grantor for the purpose of financing part of the Grantor's costs of acquiring and constructing a project within the corporate limits of the Municipality consisting of certain real property, improvements and equipment thereon suitable and proposed initially to be used as a commercial grain terminal facility (herein referred to as the Project) which will be of the character and accomplish the purposes provided by the Act; and

WHEREAS, the Municipality and the Beneficiary have required, as a condition for the purchase of the Note by the Beneficiary, that the Grantor secure said Note and its obligations under the Agreement by this Trust Indenture; and

WHEREAS, the amount estimated to be necessary to finance a portion of the Cost of the Project, including the costs and estimated costs permitted by the Act, will require the issuance, sale and delivery of the Note in the principal amount of \$2,797,041, as hereinafter provided and the Note shall bear interest at the rate of 9% per annum and shall mature not later than January 1, 1995.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, THIS TRUST INDENTURE WITNESSETH:

The Grantor, in consideration of the premises, the issuance of the Note by the Municipality, the execution of the Agreement by the Municipality, the acceptance by the Trustee of the trust hereby created and of the purchase and acceptance of the Note by the Beneficiary and as security for, the payment of principal of and interest on the Note by the Municipality and the observance and performance by the Grantor of each of its covenants and obligations under the Agreement, the Grantor does hereby irrevocably grant, convey, warrant and assign to the Trustee, in trust, with the power of sale the following properties (all herein referred to as the Trust Estate) and also hereby grants, to the Trustee, in trust, a security interest in all of said properties constituting goods, fixtures and other items of personal property tangible and intangible subject to the operation of the Montana Uniform Commercial Code:

FIRST

The Grantor's entire estate and interest in the real estate described in Exhibit A attached hereto and made a part thereof, which does not exceed fifteen (15) acres in area; situated in the County of Yellowstone and State of Montana;

SECOND

The Grantor's entire estate and interest in and to all buildings, structures, additions, improvements and fixtures now or hereafter located on the real estate described in Exhibit A together with all rights in and to lands lying in streets, alleys and woods adjoining said real estate and all water and ditch rights, rights of way, all tenements, hereditaments, appurtenances, rights, privileges and immunities thereunto belonging or appertaining whether now owned or hereafter acquired however evidenced, used or enjoyed with said property;

THIRD

The Grantor's entire estate and interest in and to all items of chattels, furniture, furnishings, equipment, fixtures and personal property now or hereafter made a part of the Project, all as more specifically hereinafter defined as Equipment;

FOURTH

All rights, interest and privileges of the Grantor in and to the Project including, but not limited to all rentals, revenues and income derived by the Grantor from the Project, and all rentals, revenues and income derived by the Grantor from the leasing, subleasing or licensing of said Project, or any part thereof;

FIFTH

Any and all awards or compensation made by any governmental or other lawful authority for the taking or damaging by eminent domain of the whole or any part of the Project, including any awards for a temporary taking, change of grade of streets, or taking of access.

SIXTH

All right, title and interest hereinafter acquired in or to any of the property, real or personal, described above, hereby also releasing, relinquishing and waiving all exemptions in or to said property, vested or inchoate.

SEVENTH

All proceeds from any property described in the Granting Clauses hereof, and any and all other property of every name and nature from time to time hereafter by delivery or by writing of any kind conveyed, pledged, assigned or transferred, as and for additional security hereunder by the Grantor or by anyone in its behalf or with its written consent to the Trustee, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof; and

TO HAVE AND TO HOLD all the same with all privileges and appurtenances hereby conveyed and assigned, or agreed or intended so to be to the Trustee and its successors and to them and their assigns forever;

SUBJECT TO Permitted Encumbrances as defined in Section 1-1 hereof;

FOR THE PURPOSE OF SECURING: (a) Payment of the principal sum of \$2,797,041 with interest thereon according to the terms of the Note, and any extensions and/or renewals or modifications thereof, and the last installment of principal of which, unless sooner paid, will be due and payable on January 1, 1995; (b) payment of all other sums, with interest thereon at the same rate

specified in the Note, becoming due or payable under the provisions hereof, either to the Trustee or Beneficiary; and (c) performance of each agreement and covenant of Grantor contained herein, in the Agreement and the Guaranty of even date herewith from the Grantor and John J. Greytak to the Beneficiary, and in any other note, indebtedness or instrument secured hereby.

PROVIDED, HOWEVER, that if the Grantor, its successors or assigns, shall well and truly pay, or cause to be paid, the principal of the Note and the interest due or to become due thereon, at the times and in the manner mentioned in the Note according to the true intent and meaning thereof, and shall well and truly keep, perform and observe all the covenants and conditions pursuant to the terms of this Trust indenture and the Agreement to be kept, performed and observed by it, and shall pay to the Beneficiary all sums of money due or to become due to it in accordance with the terms and provisions thereof, then upon the written request of Beneficiary stating that all sums secured hereby have been paid, surrender of this Trust Indenture, the Note and all other evidences of indebtedness secured hereby to Trustee for cancellation and retention and payment of all fees, expenses and charges of the Trustee, the Beneficiary and the Municipality; the Trustee shall release to the Grantor, without warranty, the Project then held hereunder. The Grantor in such release may be described as "the person or persons legally entitled thereto."

The Grantor, the Trustee, and the Beneficiary mutually covenant and agree as follows:

ARTICLE ONE

DEFINITIONS, EXHIBITS AND RULES OF INTERPRETATION

Section 1-1. Definitions. In this Trust Indenture the following terms have the following respective meanings unless the context hereof clearly requires otherwise:

Act: Montana Code Annotated, Title 90, Chapter 5, Part 1, and all amendments thereto;

Agreement: The Loan Agreement, including any amendments thereof or supplements thereto entered into in accordance with the provisions thereof;

Architect: any architect or engineer duly licensed to practice in the State of Montana;

Beneficiary: The Aetna Casualty and Surety Company and its successors and assigns under this Trust Indenture;

Borrower and Grantor: First Continental Corporation, its successors and assigns, and any surviving, resulting or transferee corporation which may assume its obligations in accordance with the provisions of the Agreement and this Trust Indenture.

Borrower Certificate: a written certificate or statement from the Borrower duly executed by a Borrower Representative;

Borrower Representative: a person designated to act on behalf of the Borrower as evidenced by a written certificate furnished to the Municipality, Trustee and Beneficiary containing the specimen signature of such person and signed for the Borrower by its President or any Vice-President;

Business Day: any day other than a Saturday or Sunday or other day on which commercial banks in the city in which the principal office of the Beneficiary is located are not open for business;

Code: the Internal Revenue Code of 1954, as amended;

Commitment: the Mortgage Loan Application made by Borrower to Beneficiary dated September 15, 1979, as

amended by the loan commitment letter dated January 18, 1980 from the Beneficiary to the Borrower, as further amended by a letter from Beneficiary to the Borrower dated February 26, 1980, and all amendments thereto;

Cost of the Project: the sum of the Project cost items enumerated in Section 3.03 of the Agreement;

Counsel: an attorney designated by or acceptable to the Beneficiary and which may include Bond Counsel;

Default: any event which is, or after notice or lapse of time or both would be, an Event of Default under this Trust Indenture or the Agreement;

Determination of Taxability: The issuance by the Internal Revenue Service of any ruling (including a private ruling), proposed deficiency letter ("30-day letter"), other order or directive by the Internal Revenue Service, Department of the Treasury, or any other governmental agency having jurisdiction therein, the effect of which is to establish with particular reference to the Note an Event of Taxability;

Equipment: all chattels, furniture, furnishings, equipment, fixtures and personal property now or hereafter attached to, placed in or upon or necessary in connection with the use of the Project, including but not limited to all such items acquired in whole or in part from the proceeds of the Note and all items described on Exhibit B attached hereto, and all items substituted therefor, exclusive however of items released from the lien of this Trust Indenture or the Agreement pursuant to the provisions thereof and exclusive of inventory;

Event of Default: any of the events referred to as such in Section 6-1 hereof;

Financing Statements: UCC-1 Financing Statements acceptable to the Beneficiary covering the Equipment, to be recorded in the county or state offices designated by the Beneficiary;

Holder: the Registered Holder of the Note;

Improvements: the grain terminal buildings and all other facilities and improvements forming a part of the Project, and not constituting Equipment, referred to in Section 3.01 of the Agreement, as completed on the Land in accordance with the Plans and Specifications, and all other buildings, structures, fixtures and improvements now or hereafter located on the Land, as they may at any time exist;

Land: the real estate and interests in real estate and other rights, licenses and permits with respect to real estate, all of which are described in Exhibit A attached hereto;

Loan: the loan by the Municipality to the Borrower of the proceeds of the Note;

Loan Repayments: the payments required to be made by the Borrower pursuant to Section 4.02 of the Agreement;

Municipality: the City of Billings, Montana, its successors and assigns;

Municipal Representative: the Mayor, the City Clerk, or any other person at any time designated in writing by the Municipality to act in such capacity;

Net Proceeds: with respect to any insurance payment or condemnation award, the amount remaining therefrom after payment of all expenses (including attorneys' fees and any extraordinary fee or expense of the Grantor, the Beneficiary and the Municipality) incurred in the collection thereof;

Note: the Industrial Development Revenue Note (First Continental Corporation Project) of even date herewith in the principal amount of \$2,797,041 to be issued by the Municipality pursuant to the Note Resolution;

Note Register: the register maintained by the Municipality pursuant to the Note Resolution;

Note Resolution: the resolution of the Municipality adopted February 25, 1980, pursuant to which the Note is issued, including any amendment thereto or supplement thereof;

Noteholder: the Holder of any Note;

Opinion of Counsel: a written opinion of Counsel;

Payment Date: a date on which interest and principal, if any, is due on the Note;

Permitted Encumbrances: the Trust Indenture and, as of any particular time,

(A) liens for taxes and special assessments not then delinquent, or delinquent but being contested by the Grantor in accordance with Section 4-3 hereof;

(B) any mechanic's, laborer's, materialman's, supplier's or vendor's lien or right in respect thereof if payment is not yet due under the contract in question or if the lien or right is being contested by the Borrower in accordance with Section 4-2 hereof;

(C) easements, restrictions and encumbrances shown on Exhibit A;

Plans and Specifications: the plans and specifications for the construction of the Project, which have been approved by the Borrower and Beneficiary and are now on file in the offices of the Borrower and Beneficiary, together with any modifications thereof and additions thereto;

Principal Balance: the aggregate original principal amount of the Note less the aggregate amount of installments thereon, theretofore paid in accordance with the terms of such Note and the Note Resolution which are attributable to payment of principal.

Project: The Land, the Improvements and the equipment, as they may at any time exist;

Registered Holder: the person in whose name the Note is registered in the Note Register;

Small Tract Financing Act of Montana: Montana Code Annotated, Title 71, Chapter 1, Part 3 and amendments hereinafter enacted;

Term: the duration of the Agreement, which shall be from the date thereof until January 1, 1995 unless the Agreement is sooner terminated in accordance with its terms;

Trust Estate: the property and funds described in the Granting Clauses of this Trust Indenture.

Trust Indenture: this Trust Indenture and Security Agreement including any instruments supplemental hereto entered into in accordance with the provisions hereof;

Trustee: the First Montana Title Insurance Company in Great Falls, Montana, or any successor trustee appointed, qualified and acting as such under the provisions of this Trust Indenture.

Section 1-2. Exhibits. Attached to and by reference made a part of this Trust Indenture are: Exhibit A, the legal description of the Land, and Exhibit B, a list of items of Equipment initially to be included in the Project.

Section 1-3. Rules of Interpretation.

(1) This Trust Indenture shall be interpreted in accordance with and governed by the laws of the State of Montana and more particularly is executed pursuant to and is to be interpreted in accordance with the Small Tract Financing Act of Montana.

(2) The words "herein" and "hereof" and "hereunder" and words of similar import, without reference to any particular section or subdivision, refer to this Trust Indenture as a whole rather than to any particular section or subdivision hereof.

(3) Any terms not defined herein but defined in the Agreement shall have the same meaning herein unless the context hereof requires otherwise.

(4) The Table of Contents and headings of articles and sections herein are for convenience only and are not a part of this Trust Indenture.

(5) Unless the context hereof clearly requires otherwise, the singular shall include the plural and vice versa, and the masculine shall include the feminine and vice versa.

ARTICLE TWO

...1216 PAGE2471

GENERAL COVENANTS

Section 2-1. Title and Instruments of Further Assurance. The Grantor represents, warrants, covenants and agrees that it is the lawful owner of the Land and that it has good, right and lawful authority to grant, convey, warrant and assign the same as provided herein; and that it does warrant and will defend the Title to the Trust Estate; and that it has not made, done, executed or suffered, and will not make, do, execute or suffer, any act or thing whereby its estate or interest in and title to the Trust Estate or any part thereof shall or may be impaired or changed or encumbered in any manner whatsoever except by Permitted Encumbrances; and that it will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, such instruments supplemental hereto and such further acts, instruments and transfers as the Trustee or Beneficiary may reasonably require for the better assuring, transferring, pledging, assigning and confirming unto the Trustee and Beneficiary all and singular the property herein described and the revenues assigned and pledged hereby to the payment of the principal of and interest on the Note.

Section 2-2. Rights Under the Agreement. The Agreement sets forth the covenants and obligations of the Grantor and the Municipality including a provision that the Agreement may not be effectively amended, changed or modified without the written consent of the Beneficiary, and reference is hereby made to the same for a detailed statement of said covenants and obligations. The Grantor agrees to perform and observe its obligations, agreements and covenants and agrees that the Trustee or Beneficiary in their name or in the name of the Grantor may enforce all obligations of the Grantor under and pursuant to the Agreement for and on behalf of the Trustee or Beneficiary.

Section 2-3. Performance of and Authority for Covenants. The Grantor covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in the Agreement and this Trust Indenture, that it is duly authorized under the laws of the State of Montana and its corporate articles and bylaws and has the power by proper corporate action, to authorize the execution of the Agreement and this Trust Indenture, to convey in trust and to grant a security

interest in the property described and secured herein and to assign and pledge the revenues in the manner and to the extent herein set forth; and that all necessary corporate action on its part for the execution and delivery of this Trust Indenture and the Agreement has been duly and effectively taken.

Section 2-4. Recording and Filing. The Grantor covenants that it will do all things reasonably required of it, at its own expense, to cause this Trust Indenture and all supplements hereto, and all Financing Statements and continuations thereof, to be kept, recorded and filed in such manner and in such places as may be required by law in order to preserve and fully protect the security of the Trustee and Beneficiary hereunder.

Section 2-5. Improvements and Equipment Covenants.

The Grantor warrants, represents, and covenants as follows:

(a) Except for Permitted Encumbrances, the Grantor is and as to portions of the Improvements and Equipment to be acquired after the date hereof will be, the sole owner of the Improvements and Equipment, free from any adverse lien, security interest, encumbrance or adverse claims thereon of any kind. The Grantor will notify the Beneficiary of, and will defend the Improvements and Equipment against, all claims and demands of all persons at any time claiming the same or any interest therein, except as otherwise permitted herein.

(b) The Grantor will not lease, sell, convey or in any manner transfer the Improvements and Equipment without the prior written consent of Beneficiary.

(c) The Improvements and Equipment will be kept on or at the Land and the Grantor will not remove the Improvements and Equipment from the Land, without the prior written consent of Beneficiary, except such portions or items of Improvements and Equipment which are consumed or worn out in ordinary usage, all of which shall be promptly replaced with new items of equal to or greater quality by the Grantor.

POSSESSION AND USE OF THE TRUST ESTATE  
AND POWERS OF BENEFICIARY AND TRUSTEE

Section 3-1. Possession and Use. Subject to the terms of the Agreement and this Trust Indenture, the Grantor shall be permitted to possess, use and enjoy the Trust Estate and to receive and use the rents, issues, revenues, royalties and profits of the Project.

Section 3-2. Powers of Beneficiary and Trustee. Without affecting the liability of any person, including the Municipality, for the payment of any indebtedness secured hereby or the lien of this Trust Indenture on the remainder of the Trust Estate for the full amount of any indebtedness unpaid, the Beneficiary and Trustee are respectively empowered as follows: the Beneficiary may from time to time, without notice and without regard to the consideration, if any, paid therefor, and notwithstanding the existence at that time of any inferior liens thereon: (a) release any person, other than the Grantor, liable for the 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; or (d) accept any additional security or resort to any security in such order as the Beneficiary may determine. The Trustee may from time to time, upon the written request of the Beneficiary: (a) consent to the making of any map or plat of the Project (b) join in granting any easement or creating any restrictions thereon; (c) join in any subordination or other agreement affecting this Trust Indenture or the lien or charge thereof; (d) reconvey, without warranty, all or any part of the Project or (e) release from lien of this Trust Indenture all or part of the Land or items of Equipment.

The Beneficiary shall not be required, prior to exercising its rights against any person or at any other time, by reason of any demand or otherwise, to commence proceedings against any person liable under this Trust Indenture or under any indebtedness secured hereby.

Section 3-3 Protection of Security. If the Grantor defaults hereunder in any respect, or if the Beneficiary or Trustee in their sole judgment and discretion deem it necessary to disburse funds, appear in actions or take other action to protect the full security

interest intended to be created by this instrument, then the Beneficiary or Trustee, without obligation to do so, without notice to or demand upon Grantor, and without releasing Grantor from any obligation hereunder, may make such appearances, disburse such funds and take such action as either may deem necessary to protect the security hereof, Beneficiary and Trustee being authorized to enter upon the Project for such purposes. Grantor will on demand reimburse the Beneficiary and Trustee for all amounts expended, including reasonable attorneys' fees, pursuant to this paragraph, together with interest thereon at the rate stated in the Note for the indebtedness, and all such amounts shall be secured hereby.

## ARTICLE FOUR

MAINTENANCE, MODIFICATION, TAXES, INSURANCE  
and FINANCIAL STATEMENTS

Section 4-1. Maintenance. During the term of the Agreement, the Grantor will keep the Project in good repair and operating condition and in as safe condition as its operations will reasonably permit, making all repairs thereto and renewals and replacements thereof which may be necessary for this purpose, in the reasonable judgment of the Grantor, so that the Project will remain suitable for use as a facility of the character described in and contemplated by the Agreement, or such other uses as are not inconsistent with the Act. The Grantor will maintain and observe the requirements of all licenses, permits and franchises for the ownership, operation and use of its properties required by any federal, state or local governmental unit or authority having jurisdiction with respect thereto.

Section 4-2. Liens. The Grantor will not permit any mechanics' or other liens to be filed or established or to remain against the Project for labor or materials furnished in connection with completion of the Project or any additions, modifications, improvements, repairs, renewals or replacements; provided, that if the Grantor shall first notify the Beneficiary of its intention so to do, it may in good faith contest any mechanics' or other liens filed or established and in such event may permit the items contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom, unless the Beneficiary shall notify the Grantor that, in the opinion of Counsel, by nonpayment of any such items the lien of the Trust Indenture as to any part of the Project will be materially endangered or the Project or any part thereof will be subject to loss or forfeiture, in which event the Grantor shall promptly pay all such unpaid items and cause them to be satisfied and discharged, or shall apply for and obtain a release of the lien by proceeding in accordance with Montana Code Annotated, Section 71-3-516. The Beneficiary and Trustee will cooperate fully with the Grantor in any such contest, provided that the Grantor shall undertake to pay all costs and expenses incurred by the Beneficiary and Trustee and to indemnify the Beneficiary and Trustee and save it harmless against any risks, claims or liabilities arising out of such contest.

Section 4-3. Modifications. The Grantor may from time to time, at its own expense, make any additions, modifications or improvements to the Project, located wholly within the boundary lines of the Land that it may deem desirable for its business purposes and that do not adversely affect the value of the Improvements; provided that such additions, modifications or improvements will conform to the policies and purposes of the Act and shall be made in such a manner or to such an extent as to not affect the exemption from federal taxation of the interest on the Note and that the prior written approval of the Beneficiary is obtained for each addition, modification or improvement which is estimated by the Grantor to cost in excess of \$50,000. All additions, modifications and improvements made by the Grantor within the boundary lines of the Land shall become a part of the Project and the lien of this Trust Indenture shall immediately attach thereto.

Section 4-4. Taxes and Other Governmental Charges and Utility Charges. (1) The Grantor will make promptly all payments due during the Term on taxes and special assessments lawfully levied upon or with respect to the Project, other charges lawfully made by any governmental body for public improvements that may be or become secured by a lien on the Project, and utility and other charges incurred in the operation, maintenance, use, occupancy, and upkeep of the Project, including but not limited to taxes or governmental charges on any property of the Grantor brought in or upon the Project, sales and other excise taxes on products thereof, and any taxes levied upon or with respect to income or profits from the Project which, if not paid, would become a lien thereon prior to or on a parity with the pledge and assignment of such revenues and receipts made in this Trust Indenture. With respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, with or without interest, the Grantor shall be obligated to pay only such installments and interest as are required to be paid during the Term.

(2) To insure prompt payment of all real property taxes, assessments and similar charges, unless waived by the Beneficiary, the Grantor shall pay on the first day of each month, in addition to each semiannual payment to the Beneficiary, an amount estimated by the Beneficiary to be sufficient to enable the Beneficiary to pay, at least thirty (30) days before they become due, all taxes, assessments and other similar charges against the Project. Such added payments shall not be, nor be deemed

to be, trust funds, but may be commingled with the general funds of the Beneficiary and no interest shall be payable thereon. Upon demand of the Beneficiary, the Grantor will deliver to the Beneficiary such additional monies as are necessary to make up any deficiency in the amount necessary to enable the Beneficiary to pay the foregoing. In the event of a default by the Grantor in the performance of any of the terms, covenants, or conditions herein, the Beneficiary may apply on the indebtedness evidenced by the Note, in such manner as the Beneficiary shall determine, any funds of Grantor then in Beneficiary's possession under this Section.

(3) The Grantor shall have the right to contest by legal proceedings, at its own expense and, if necessary, in the name of the Trustee and Beneficiary, the validity or amount of any imposition of said real property taxes and assessments; provided, however, that any unpaid amount shall also be escrowed with the Beneficiary, together with Beneficiary's reasonable estimate of penalties and interest thereon, pursuant to the foregoing provisions and disbursed by the Beneficiary either in accordance with the resolution of said legal proceedings or prior thereto if at any time the Project or any part thereof shall, in Beneficiary's reasonable opinion, be in danger of being forfeited or sold by reason of the nonpayment of taxes or assessments.

It is recognized by the Grantor that under the provisions of Montana Code Annotated, Section 90-5-110, the Project is subject to taxation in the same amount, to the same extent and under the same circumstances as privately owned properties in similar circumstances.

Section 4-5. Insurance. (1) The Grantor shall procure and maintain continuously in effect with respect to the Project policies of insurance against such risks and in such amounts as are customary for a prudent owner of properties comparable to those comprising the Project. Without limiting the generality of the foregoing provision, unless and until the Beneficiary notifies the Grantor to the contrary, the Grantor shall specifically maintain the following insurance:

(A) Direct damage insurance covering all risks of loss, including, but not limited to, the following:

(i) Fire;

- (ii) Extended Coverage Perils;
- (iii) Vandalism and Malicious Mischief;
- (iv) Boiler Explosion (but only if steam boilers are present);
- (v) Water Damage;
- (vi) Demolition Cost;
- (vii) Debris removal; and
- (viii) Collapse;

on a replacement cost basis in an amount equivalent to the full insurable value thereof but not less than \$2,700,000. ("Full insurable value" shall include the actual replacement cost of the Improvements and contents thereof, architectural, engineering, legal, and administrative fees without deduction for depreciation.) The policies required by this paragraph (A) shall contain the "Replacement Cost Endorsement" clause. The policies may contain a deductibility provision not exceeding \$1,000.

(B) In time of war, when the United States of America is a belligerent, such insurance as may be available from the United States of America or reputable insurance companies to the extent of the full insurable value.

(C) Business interruption insurance when completed, covering the exposures and perils as stipulated in Clause (1), in an amount sufficient for payment of principal and interest on the Note for one year and to continue operations by the Grantor for such period.

(D) General liability insurance against liability for injuries to or death of any person or damage to or loss of property arising out of or in any way relating to the condition of the Project or any part thereof, in amounts not less than \$500,000 for death of or personal injury to any one person, \$1,000,000 for all personal injuries and deaths resulting from any one accident and \$300,000 for property damage in any one accident.

(E) Workmen's compensation insurance or qualified self-insurance against liability for compensation under a workmen's compensation act now or

hereafter enacted in Montana to cover all persons employed by the Grantor and to cover liability for compensation under any such act.

(F) Such additional insurance as is necessary to keep the Project insured against such other casualties and contingencies as the Beneficiary may from time to time require, if such insurance against other casualties and contingencies is available, all in such manner and for such amounts as may be reasonably satisfactory to the Beneficiary.

(2) All policies of insurance required in paragraphs (A), (B), if any, and (C) of Subsection (1) of this Section 4-5 shall be written in the names of Grantor, Beneficiary and the Trustee as their respective interests may appear. These policies shall provide that the proceeds of such insurance shall be payable to the Beneficiary by means of a standard mortgagee clause. The policies of insurance required under paragraph (D) of Subsection (1) of this Section 4-5 shall be endorsed to show the Municipality, Trustee and the Beneficiary as additional insureds.

(3) All insurance required in this Section 4-5 shall be taken out and maintained in responsible insurance companies selected by the Grantor and approved by the Beneficiary and licensed to do business in the State of Montana. The Grantor will deposit with the Beneficiary policies evidencing all such insurance, or a certificate or certificates of the respective insurers stating that such insurance is in force and effect. Each policy of insurance herein required shall contain a provision that the insurer shall not cancel, refuse to renew or materially modify it without giving written notice to the Municipality and the Beneficiary at least fifteen (15) days before the cancellation, non-renewal or modification becomes effective. Before the expiration of any policy of insurance herein required, the Grantor shall furnish the Beneficiary evidence satisfactory to the Beneficiary that the policy has been renewed or replaced by another policy conforming to the provisions of this Section 4-5, or that there is no necessity therefor under the terms thereof. In lieu of separate policies, the Grantor may maintain blanket policies having the coverage required herein, in which event it shall deposit with the Beneficiary a certificate or certificates of the respective insurers as to the amount of coverage in force upon the Project.

(4) To insure prompt payment of all property insurance premiums, unless waived by the Beneficiary, the Grantor shall pay on the first day of each month, in addition to each semiannual payment, an amount estimated by the Beneficiary to be sufficient to enable the Beneficiary to pay, at least thirty (30) days before they become due, all such insurance premiums. Such added payments shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of the Beneficiary, and no interest shall be payable thereon. Upon demand of the Beneficiary, the Grantor will deliver to the Beneficiary such additional monies as are necessary to make up any deficiency in the amount necessary to enable the Beneficiary to pay the foregoing. In the event of a default by the Grantor in the performance of any of the terms, covenants, or conditions herein, the Beneficiary may apply on the indebtedness evidenced by the Note, in such manner as the Beneficiary shall determine, any funds of Grantor then in Beneficiary's possession under this Section.

(5) On or before January 1 in each year during the Term, the Grantor will file with the Beneficiary a certificate of a Borrower Representative stating that said Representative has reviewed the provisions of this Section 4-5 of this Trust Indenture; that the Grantor has insurance in force which fully complies with the provisions of this section; and that the Beneficiary has been furnished current copies of said insurance policies or certificates evidencing proper coverage.

Section 4-6. Advances. If the Borrower shall fail to make all repairs, pay all liens, taxes, assessments and other charges and maintain all insurance required in this Article 4 the Trustee or the Beneficiary may, but shall not be obligated to, take such action as may be necessary to cure such failure, including advancement of money, and the Grantor shall be obligated to repay all such advances on demand, with interest at the rate of 9% per annum or at such higher annual rate as the Grantor may consent to in writing, from the date of each such advance.

Section 4-7. Financial and Operating Statements. The Grantor agrees to furnish the Beneficiary with an annual operating or financial statement in a form satisfactory to the Beneficiary, showing all items of income and expense for operation of the Project within 120 days of the close of each operating year of the Grantor for the term of the Note. The Grantor will, within 60

days of the date of this Trust Indenture, give notice to the Beneficiary as to the commencement of its operating year. In the event the Grantor has its operating or financial statements audited it shall provide to the Beneficiary a report of its audit as soon as possible.

Section 4-8. Removal of Equipment. The Grantor will not remove or permit the removal of any Equipment except with the written consent of the Beneficiary which consent shall not be unreasonably withheld. If no replacement or substitution is to be made for the equipment to be removed a Borrower Representative shall first certify to the Trustee that such removal will not materially reduce the taxable value of the Project or the employment thereat or the Grantor shall obtain the written consent of the Municipality, which consent shall not be unreasonably withheld.

ARTICLE 5

DAMAGE, DESTRUCTION AND CONDEMNATION

Section 5-1. Grantor to Repair, Replace, Rebuild or Restore. If there is any outstanding Principal Balance when all or any part of the Project is taken by eminent domain, or destroyed or damaged:

(1) The Grantor shall proceed promptly, subject to the provisions of subsection (2), to replace, repair, rebuild and restore the Project to substantially the same condition as existed before the taking or event causing the damage or destruction, with such changes, alterations and modifications (including substitution or addition of other property) as may be desired by the Grantor, will be suitable for continued operation of the Project for the business purposes of the Grantor, will be consistent with the policies and purposes of the Act, and are approved by the Beneficiary

(2) All Net Proceeds of the condemnation award or insurance claim shall be paid directly to the Beneficiary, and Beneficiary shall be entitled at its option to commence, appear in and prosecute in its own name any action or proceedings. Beneficiary shall also be entitled to make any compromise or settlement in connection with such taking or change. In the event any portion of the Project is so taken or damaged, the Beneficiary shall have the option, in its sole and absolute discretion, to apply all such Net Proceeds, after deducting therefrom all costs and expenses (regardless of the particular nature thereof and whether incurred with or without suit), including attorney's fees, incurred by it in connection with such Net Proceeds, upon any indebtedness secured hereby and in such order as the Beneficiary may determine, or to apply all such Net Proceeds, after such deductions, to the restoration of the Project upon such conditions as the Beneficiary may determine. If the Net Proceeds are not sufficient to pay such costs in full, the Grantor will nonetheless complete the same and will pay that portion of the cost thereof in excess of the amount of the Net Proceeds. All Net Proceeds received from the condemnation of unimproved land and any balance of Net Proceeds remaining after payment of all costs of any repair, rebuilding, replacement or restoration shall be paid to the Beneficiary and considered a loan prepayment and the Principal Balance of the Note shall be reduced thereby (such reduction to be made first to the last maturing installments of principal, without penalty).

(3) The Grantor shall not, by reason of the payment of any costs of repair, rebuilding, replacement or restoration, be entitled to any reimbursement from the Municipality or any abatement of the Loan Repayments payable under Article 4 or the other sums payable by the Borrower under the Agreement, nor shall such application of Net Proceeds cure or waive any default hereunder or invalidate any act done pursuant to such default.

(4) All buildings, improvements and equipment acquired in the repair, rebuilding, replacement or restoration of the Project, together with any interests in land acquired by the Grantor as necessary for such restoration, shall be deemed a part of the Project and available for use and occupancy by the Grantor without the payment of any additional amounts other than those provided in Article 4 of the Agreement, to the same extent as if they had been specifically described and demised in the Agreement; provided that no land, interest in land, buildings, improvements or equipment shall be acquired subject to any lien or encumbrance, other than Permitted Encumbrances.

Section 5-2. Cooperation of the Municipality and Beneficiary. The Trustee and Beneficiary will cooperate fully with the Grantor in filing any proof of loss with respect to any insurance policy covering casualties referred to in Section 5.01 hereof and in the handling and conduct of any litigation, including appeals, arising with respect thereto, and in the handling and conduct of any prospective or pending condemnation proceedings affecting the Project or any part thereof, and will, to the extent they may lawfully do so, permit the Grantor to litigate in any such litigation or proceeding in the name and on behalf of the Trustee and Beneficiary. Nevertheless the Beneficiary may voluntarily settle or consent to the settlement of any proceeding arising out of any insurance claim, or any prospective or pending condemnation proceeding, with respect to the Project or any part thereof with or without the written consent of the Trustee or Grantor. The Municipality and the Grantor will cooperate fully in securing the payment to the Beneficiary, from any funds deposited in court or paid to either of them with respect to any condemnation award, of such amounts.

ARTICLE SIX

DEFAULT PROVISIONS AND REMEDIES  
OF BENEFICIARY

Section 6-1. Events of Default. If any of the following events occur, it is hereby defined as and declared to be and to constitute an Event of Default:

(A) If default shall be made in the due and punctual payment of any interest on the Note hereby secured (in which event interest shall be payable to the extent permitted by law on the overdue installment of interest, in each case at the interest rate borne by the Note in respect of which such interest is overdue); or

(B) If default shall be made in the due and punctual payment of the principal of the Note hereby secured whether at a stated Payment Date thereof or at the date fixed for redemption thereof, or upon the maturity thereof by declaration, plus redemption premium, if any; or

(C) If default shall be made in the due and punctual payment of any other moneys required to be paid under the provisions of this Trust Indenture; or

(D) If default shall be made in the performance or observance of any other of the covenants, representations, warranties, agreements or conditions on the part of the Grantor in this Trust Indenture, or the Municipality in the Agreement, the Note or the Note Resolution or the Grantor or John J. Greytak in the Guaranty;

(E) If all or any part of the Project or any interest therein is sold, conveyed, transferred or further mortgaged or encumbered, except by Permitted Encumbrances, or if the rents of the Project or any part thereof are assigned, or if any person other than the Grantor, Beneficiary or Trustee obtains any interest in or right to acquire the Project, without the prior written consent of Beneficiary;

(F) If a Determination of Taxability (as such term is defined in Section 1-1 hereof) is made, and the Grantor fails to pay the principal of, accrued interest on and any other indebtedness due under the Note within ten (10) days of such Determination of Taxability;

(G) If an event of default occurs under Section 8.01 of the Agreement.

Section 6-2. Acceleration. Upon the occurrence of an Event of Default, the Beneficiary may declare the principal of and the accrued interest on the Note and all sums advanced hereunder, with interest, to be forthwith due and payable, and thereupon the Note, including the principal and all interest accrued thereon, and all sums advanced hereunder and interest thereon, shall become immediately due and payable without presentment, demand or further notice of any kind.

Section 6-3. Beneficiary's Remedies. In the event of the happening of any Event of Default then and in every such case the Beneficiary may:

- (a) Proceed to protect and enforce its rights by a suit or suits in equity or at law, either for the specific performance of any covenant or agreement contained herein or in the Note, or in aid of the execution of any power herein or therein granted, or for the foreclosure of this Trust Indenture as a mortgage, or for the enforcement of any other appropriate legal or equitable remedies; or
- (b) Execute or cause the Trustee to execute a written notice of default and of election to cause the property comprising the Trust Estate to be sold to satisfy the obligations hereof, and the Trustee or Beneficiary shall file such notice for record, in each county wherein said property or some part thereof is situated. The Beneficiary shall also deposit with the Trustee, the Note and all documents evidencing expenditures secured hereby. 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 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 the 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. The 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 the Beneficiary (but excluding the Trustee) may bid at the sale. After deducting all costs and expenses of exercising the power of sale and of the sale, including costs of search and evidence of title, advertising and recording expenses, documentary taxes and the Trustee's and attorney's fees, the Trustee shall apply the proceeds of sale to payment of all indebtedness secured hereby as provided in Section 6-4 and then all amounts expended by Trustee and Beneficiary, or either of them, with accrued interest thereon at the rate stated in the Note, 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. The Trustee is authorized to accept an affidavit signed by the Holder of the Note (or any officer of a corporate Holder) setting forth facts showing a default by the Grantor hereunder, as true and conclusive and to act thereon as provided in this instrument and as allowed by law; or

- (c) In addition, the Beneficiary, in exercising its rights hereunder shall also have, without limitations, all of the rights and remedies provided by the Montana Uniform Commercial Code, including the right to proceed under the provisions thereof governing default as to any personal property which may be included in the Trust

Estate separately from the real estate included herein, or to proceed as to all of the property included in the Trust Estate in accordance with its rights and remedies in respect of said real estate. If the Beneficiary shall elect to proceed separately as to such personal property, the Grantor agrees to make such personal property available to the Beneficiary at a place or places reasonably acceptable to the Beneficiary, and if any notification of intended disposition of any of such personal property is required by law, such notification shall be deemed commercially reasonable and reasonably and properly given if given at least ten (10) days prior to such intended disposition and may be given by posting or advertisement in a newspaper accepted for legal publications, either separately or as part of a notice given to sell or foreclose the real property or may be given by private notice if such parties are known to the Beneficiary; or

- (d) Whether before or after the institution of legal proceedings, the Beneficiary shall have the right, with or without taking possession of the Trust Estate, to collect all rents, issues, royalties and profits from the Trust Estate, whether due or to become hereafter due. At any time after an Event of Default, without regard to whether the Trust Estate is in danger of being lost or materially damaged or injured, or to the adequacy of any security for the indebtedness hereby secured, or to the solvency or insolvency of the Grantor, the Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court (the Grantor hereby consenting to the appointment of any person or corporation including the Beneficiary as such receiver) enter upon and take possession of the Trust Estate or any part thereof. The Beneficiary, or its agent or receiver shall apply all rents, issues, royalties and profits collected, including those past due and unpaid, to the cost and expenses of collection, including reasonable attorney's

fees, to the payment of taxes, assessments, and insurance premiums and expenditures for the upkeep of the Trust Estate, to the performance of the Grantor's and Municipalities obligation under the Agreement, and to any indebtedness secured hereby, all in such order as the Beneficiary may determine. After taking such possession, the Beneficiary, its agents or such receiver shall have full authority to hold, operate, manage and control the Trust Estate and enforce any such leases or agreements for use and occupancy with full power to cancel and terminate any lease for cause or on grounds which would entitle the Grantor to cancel the same and to elect to disaffirm any lease subordinate to the lien hereof. The Beneficiary shall not be obligated to perform or discharge any obligation under any of the said leases or agreements and the Grantor shall and does hereby agree to indemnify and hold the Beneficiary harmless of and from any and all expenses, liability, loss or damage which it might incur under said leases or agreements or under or by reason of this assignment. Neither anything contained herein, nor the exercise of rights hereunder by the Beneficiary, shall be construed or considered to waive any defaults of the Grantor hereunder, or as an affirmation of any tenancy, lease or option, or a subordination of the lien or charge of this Trust Indenture to such tenancy, lease or option, or as in any way operating to prevent hereafter the exercise of any remedies Beneficiary has under the terms of this Trust Indenture, or as in any way constituting the Beneficiary a mortgagee in possession. The rights contained are in addition to and shall be cumulative with the rights given in a separate instrument, if any, assigning any leases, rents, royalties or profits of the Trust Estate and shall not amend or modify the rights in any such separate agreement.

Section 6-4. Application of Payments. Except as otherwise required by law or this Trust Indenture, all

payments made to Beneficiary and any amount applied to the indebtedness secured hereby shall be applied to the various amounts secured hereby in any order Beneficiary may determine.

Section 6-5. Surrender of Possession After Sale. The Grantor agrees to surrender possession of the Trust Estate to the purchaser at the aforesaid sale on the tenth (10) day following said sale, in the event such possession has not previously been delivered by Grantor.

Section 6-6. Title Evidence and Insurance Policies. Each title insurance policy, all other evidences of title and all insurance policies placed or deposited with the Beneficiary (including proceeds from such policies) shall be deemed an incident to the title to the Project 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 the payment of the indebtedness secured hereby.

Section 6-7. Effect of Discontinuance of Proceedings. The Beneficiary shall have the unqualified right, after requesting the Trustee to invoke any remedy permitted under this Trust Indenture, to discontinue the same, and in such event the Grantor, Trustee and Beneficiary shall be restored to their former positions with respect to the indebtedness secured hereby; and this Trust Indenture, the Trust Estate and all rights, remedies and recourse of the Beneficiary shall continue as if the same had not been invoked.

Section 6-8. Costs of Invoking Remedies. Except as may be otherwise provided herein, Grantor agrees to pay to the Beneficiary and Trustee the costs and expenses, including reasonable attorney's fees, incurred by either of them, (a) in instituting, prosecuting or defending any court action in which the 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, including but not limited to an action to obtain possession of the Trust Estate after exercise of the power of sale granted hereunder; and (b) in attempts, which fall short of instituting an action or commencing foreclosure, to secure performance hereof.

Section 6-9. Waivers, Cumulative Rights, Etc. Waiver by Beneficiary of any default by Grantor, or acceptance of payment in default or partial payment, shall not constitute a waiver by the Beneficiary of any

continuing or subsequent default. Failure by the Beneficiary to exercise any right, power, privilege or remedy which the Beneficiary may have by reason of a default by the Grantor shall not preclude the exercise of such right, power, privilege or remedy so long as such default remains uncured or if a subsequent default occurs. Each right, power, privilege and remedy herein conferred upon the Beneficiary is cumulative and in addition to every other right, power, privilege and remedy available to the Beneficiary at law or in equity, under the Montana Uniform Commercial Code, or under any other agreement, and each and every right, power, privilege and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the Beneficiary and such exercise shall not be a waiver of the right to exercise at any time thereafter any other right, power, privilege or remedy.

ARTICLE SEVEN

MISCELLANEOUS

Section 7-1. Supplements or Amendments to this Trust Indenture. This Trust Indenture may not be supplemented or amended without the written consent of the Grantor, the Beneficiary, the Trustee and the Municipality.

Section 7-2. Interest Limitations. No provision of this Trust Indenture, the Agreement, the Note, or any other instrument securing the Note shall require the payment or permit the collection in interest in excess of the maximum permitted by law; accordingly, if from any circumstances the Beneficiary should ever receive as interest any amount that would exceed the highest lawful rate, the amount that would be excessive interest shall be applied to the reduction of the principal amount owed under the Note, and not to the payment of interest, or shall be refunded to the Grantor, or Municipality. This provision shall control any provisions of this Trust Indenture, the Agreement, or any other instruments securing the Note which are inconsistent with this paragraph.

Section 7-3. Subrogation. If the proceeds of the loan made by the Beneficiary to the Municipality, the repayment of which is hereby secured, or any part thereof, or any amount paid out or advanced by Beneficiary, is used directly or indirectly to pay off, discharge, or satisfy, in whole or in part, any prior lien or encumbrance upon said Project above described, or any part thereof, then the Beneficiary shall be subrogated to such other lien or encumbrance and to any additional security held by the holder thereof and shall have the benefit of the priority of all of the same.

Section 7-4. Further Assurances. Grantor agrees upon reasonable request by the Beneficiary to execute and deliver such further security agreements, financing statements under the Montana Uniform Commercial Code and other agreements as may be necessary or proper to carry out more effectively the purposes of this Trust Indenture or any property intended to be subjected hereto by the Granting Clause hereof or give notice or perfect the lien of this Trust Indenture.

Section 7-5. Right to Deal With Successors. If ownership of the Project becomes vested in a person or persons other than Grantor, the Beneficiary may continue to deal with the Grantor without any obligation to deal

with such successor until notified of such vesting. Upon such notification, the Beneficiary may thereafter deal with such successor in place of the Grantor without any obligation to thereafter deal with the Grantor and without waiving any liability of Grantor hereunder or under the Note. The Grantor shall give immediate written notice to Beneficiary of any change of ownership of the Trust Estate but nothing in this paragraph shall constitute consent of the Beneficiary to any such change or negate any provisions elsewhere in this Trust Indenture giving the Beneficiary the right to declare the entire unpaid balance of the indebtedness secured hereby due and payable immediately on such vesting.

Section 7-6. No Claim Against Beneficiary or Trustee. Nothing contained in this Trust Indenture shall constitute any consent or request by the Beneficiary or Trustee, expressed or implied, for the performance of any labor or services or for the furnishing of any materials or other property in respect of the Project or any part thereof, nor as giving the Grantor or any party in interest with Grantor any right, power or authority to contract for or permit the performance of any labor or services for the furnishing of any materials or other property in such fashion as would create any personal liability against the Beneficiary or Trustee in respect thereof or would permit the making of any claim that any lien based on the performance of such labor or services or the furnishing of any such materials or other property is prior to this Trust Indenture. The Grantor will permit Beneficiary's authorized representatives to enter the Project at all times for the purpose of inspecting the same; provided the Beneficiary shall have no duty to make such inspections and shall not incur any liability or obligation for making or not making any such inspections.

Section 7-7. Binding on Successors. Subject to paragraph 2-4 hereof, this Trust Indenture shall apply to, inure to the benefit of, and bind all parties hereto, their heirs, legatees, devisees, administrators, executors, personal representatives, successors and assigns.

Section 7-8. Trustee. The Trustee accepts this trust when this Trust Indenture, duly executed and acknowledged, is made a public record as provided by law. The 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 the Grantor, Beneficiary or Trustee shall be a party unless brought by the Trustee.

Section 7-9. Request For Notice of Default. The Grantor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to him at the address hereinafter set forth.

Section 7-10. Security Interest. This Trust Indenture constitutes a security agreement, as that term is used in the Montana Uniform Commercial Code, in the Equipment and Improvements. The security interest of the Beneficiary shall be perfected by the filing of Financing Statements at such places and in such form as to fully comply with the requirements of the Montana Uniform Commercial Code. The Grantor hereby covenants that it will, at its sole expense, file or cause to be filed all necessary continuation statements in the manner and within the time prescribed by the Montana Uniform Commercial Code so as to continue such security interests to the end that the rights of the Beneficiary shall be fully preserved as against creditors of, or purchasers for value from the Grantor.

Section 7-11. Severability. If any provision of this Trust Indenture shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions or in all cases because it conflicts with any provisions or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever.

The invalidity of any one or more phrases, sentences, clauses or paragraphs in this Trust Indenture contained shall not affect the remaining portions of this Trust Indenture or part thereof.

Section 7-12. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by registered mail, postage prepaid, with proper address as indicated below. The Grantor, Municipality and the Beneficiary may, by written notice given by each to the others, designate any other address or addresses to which notices, certificates or other communications to them shall be sent when required as contemplated by this Trust Indenture. Until otherwise provided by the respective parties, all notices, certificates and communications to each of them shall be addressed as follows:

To the Municipality: City of Billings  
Attn: City Administrator  
City Hall  
Billings, Montana 59101

To the Grantor: First Continental Corporation  
Attn: John J. Greytak  
P. O. Box 31775  
Billings, Montana 59107

To the Beneficiary: The Aetna Casualty and  
Surety Company  
Attn: Real Estate  
Investment Department  
1 Civic Center Plaza  
P.O. Box 1414  
Hartford, Connecticut 06143

To the Trustee: First Montana Title Insurance  
Company  
17 Fifth Street North  
Great Falls, Montana 59401

Section 7-13. Counterparts. This Trust Indenture may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 7.14. Montana Law. This Trust Indenture is made within the State of Montana pursuant to the Small Tract Financing Act of Montana and Act, and the parties intend that the said Small Tract Financing Act and the Act and any other applicable Montana law govern this Trust Indenture, and all rights and indebtedness secured hereby. This Trust Indenture is not taken in substitution for a mortgage in existence on the effective date of said Small Tract Financing Act.

IN WITNESS WHEREOF, First Continental Corporation, has caused these presents to be signed in its name and behalf by its duly authorized officer and attested by its Secretary and its corporate seal to be hereunto affixed, and The Aetna Casualty and Surety Company has caused these presents to be signed in its name and behalf by its duly authorized officer attested by its Secretary, and its official seal to be hereunto affixed and the First Montana Title Insurance Company in Great Falls, Montana, has caused these presents to be signed in its name and behalf as Trustee by its duly authorized officer, attested by its Secretary, and its official seal to be hereunto affixed, all as of the date first above written.

FIRST CONTINENTAL CORPORATION  
as Grantor

By [Signature]  
Its [Signature]

ATTEST

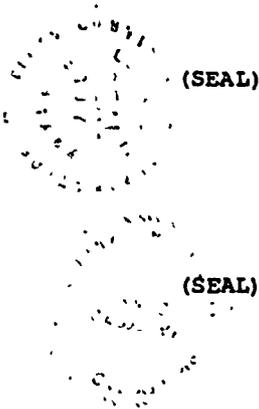
By [Signature]  
Its Secretary

THE AETNA CASUALTY AND  
SURETY COMPANY  
as Beneficiary

By [Signature]  
Its ASSISTANT VICE PRESIDENT

Attest:

By [Signature]  
Its Assistant Secretary



FIRST MONTANA TITLE INSURANCE  
COMPANY  
as Trustee

(SEAL)

By \_\_\_\_\_  
Its \_\_\_\_\_

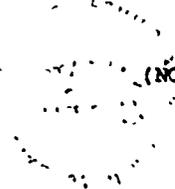
Attest:

By \_\_\_\_\_  
Its \_\_\_\_\_

STATE OF MONTANA )  
                          ) SS.  
COUNTY OF Yellowstone )

On this 6th day of March, 1980, before me the undersigned, a Notary Public for the State of Montana, personally appeared John J. Greytak and Wayne G. Linnell, known to me to be the President and Secretary of the First Continental Corporation and who acknowledged that they executed the within instrument for and on behalf of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year in this certificate first above written.



(NOTARIAL SEAL)

Walter P. Brundage  
Notary Public for the  
State of Montana  
Residing at: Neenah, 1982 Montana  
My commission expires:

CONNECTICUT  
STATE OF ~~MONTANA~~ )  
                          ) SS.  
COUNTY OF HARTFORD )

On this 4th day of March, 1980, before me the undersigned, a Notary Public for the State of Conn personally appeared Robert A. Holman and Edward C. Bannon known to me to be the Asst Vice Pres. and Asst Secretary of the The Aetna Casualty and Surety Company and who acknowledged that they executed the within instrument for and on behalf of said company.





FIRST MONTANA TITLE INSURANCE COMPANY as Trustee

BY Ronald D. Bricks Its EXECUTIVE VICE PRESIDENT

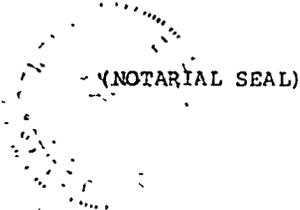
Attest:

BY Daniel B. Levine IES Vice President

STATE OF MONTANA ) ) SS. COUNTY OF CASCADE )

On this \_\_\_ day of \_\_\_, 1980, before me the undersigned, a Notary Public for the State of Montana, personally appeared Ronald D. Bricks and Daniel B. Levine, known to me to be the Executive Vice President and Vice President of the First Montana Title Insurance Company and who acknowledged that they executed the within instrument for and on behalf of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year in this certificate first above written.



Geneva Roberts Notary Public for the State of Montana Residing at: Great Falls Montana My commission expires: 10-28-81

STATE OF MONTANA ) ) SS. COUNTY OF \_\_\_\_\_ )

~~On this \_\_\_ day of \_\_\_, 1980, before me the undersigned, a Notary Public for the State of Montana, personally appeared \_\_\_\_\_ and \_\_\_\_\_, known to me to be the \_\_\_\_\_ and \_\_\_\_\_ of the The Aetna Casualty and Surety Company and who acknowledged that they executed the within instrument for and on behalf of said company.~~

REQUEST FOR FULL RECONVEYANCE

TO: TRUSTEE

\_\_\_\_\_, 19\_\_

The undersigned is the holder of the note or notes secured by this Trust Indenture. Said note or notes, together with all other indebtedness secured by this Trust Indenture has been paid in full. You are hereby directed to cancel said note or notes and this Trust Indenture, which are delivered hereby, and to reconvey, without warranty, all the estate now held by you under this Trust Indenture to the person or persons legally entitled thereto.

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

Mail Reconveyance to:

\_\_\_\_\_

EXHIBIT B

Itemized Collateral Description

SERIAL NUMBERS FOR EQUIPMENT AT F.C.C.

REC-1216 PAGE 2500

Fill	Tank A B C Conveyer				
	Brownie Gear Reducer	Serial #	7907		
	AJAX Motor I.D.	# R.O.	20-Y164961978		
	Sweet Conveyer	Serial #	WP 40351		
Fill	Tank D E F				
	B	G	R	S	# 7907
	Ajax	M	I.D.		# R.O. 2016511 1978
	S	C		S	# WP 40351
Fill	Stars Conveyer				
	B	G	R	S	# 7510
	15 h.p. Ajax	M	I.D.		# R.O. 15-Y54769C9
	S	C		S	# WP 40351
Fill	Tanks T U V W				
	B	G	R	S	# 7903
	AJ	M	I.D.		# R.O.-25-19220
	S	C		S	# WP 40351
Fill	SRQP				
	B	G	R	S	# 7903
	AJ	M	I.D.		# R.O.-30-19350
	S	C		S	# WP 40351
Fill	Elevator to Brownie Tower				
	B	G	R	S	# 7504
	AJ	M	I.D.		# R.O.-15-Y54767 C9
	S	C		S	# WP 40351
Return	A B C				
	B	G	R	S	# 7906
	20 h.p. AJ	M	I.D.		# RO-20-199439
	S	C		S	# WP 40351
Return	D E F to U Trough				
	B	G	R	S	# 7903
	20 h.p. AJ	M	ID.		# R.O. 20-199390
	S	C		S	# WP 40351

(Exhibit C continued on next page)

Return T U V W to Stars Conveyor  
 B G R S # 7906  
 30 h.p. AJ M I.D. # R.O. 30-19325  
 S C S # WP 40351

Return Stars Conveyor to Cross Conveyor  
 B G R S # 7907  
 AJ M I.D. # R.O. 15Y5477309  
 S C S # WP 40351

Return Cross Conveyor to U Trough  
 B G R S # 7907  
 15 H.P. AJ M I.D. # R.O. 15Y6478409  
 S C S # WP 40351

Return U Trough to Leg  
 B G R S # 7904  
 AJ M I.D. # R.O.-15Y 5479709

Return P Q R'S to Cross Conveyor 30 h.p.  
 B G R S # 7903  
 AJ M I.D. # R.O. 30-19356  
 S C S # WP 40351

East Leg  
 Serial # WP 40352  
 Gear Reducer Serial # 7903  
 Motor I.D. # R.O. 40-2013009

West Leg  
 Serial # WP 40352  
 Gear Reducer Serial # 7903  
 Motor I.D. # R.O. 40-NR72306  
 Scale Auger  
 Gear Reducer # 7905  
 Motor I.D. # R.O. 90-19941  
 Serial # for Auger & Dump Hopper A.S.S.N. 0000 1002

Train Load-out  
Serial # A.S.S.N. 0000 1001

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Sampler  
Serial # 7797508  
Serial # 7797506  
Motor Serial # R 479111  
Slo Syn. Motor Serial # N966236

Car Pulleys  
Serial # A.S.S.N. 15756  
Serial # A.S.S.N. 15757  
1-20 H.P. Motor Ajax I.D. # R.O. 20 Y 165011978- North track car puller  
1-20 H.P. Motor Ajax I.D. # R.O. 20Y 6562 1978-North track conveyor  
1-20 H.P. Motor Ajax-I.D. # R.O. 20-Y16505 1978-South Track carpuller  
Link Belt G. Reducer # 1952Y188 F-24 to 1-Southtrack loadout carpuller  
1-215D25 Link Belt-Reducer -# 1952 x120A 15 to 1-North track gear  
reducer conveyor  
  
1-215D25 Link Belt Reducer #1952Y 188F 24 to 1-North track car puller  
Serial # No Serial #

North Load-out (Train) A.S.S.N. 0000 1003

Belt Conveyor for Big Sky Unloading A.S.S.N. 0000 1004

Sheaves A.S.S.N. 13758  
Sheaves A.S.S.N. 13759

Tank G	Unloading Auger-10 H.P. I.D.# R.O. 10 26/5077 Sweep-R.O. 5-22/22629
Tank H	Unloading Auger 10 H.P. I.D. # R.O. 1026/5033 Sweep-R.O. 5-22/22698
Tank I	Unloading Auger 10 H.P. I.D. # R.O. 01026/5010 Sweep-R.O. 5-22/22691
Tank J	Unloading Auger 10 H.P. I.D. # R.O. 1026/5031 Sweep-R.O. 5-22/22678
Tank K	Unloading Auger 10 H.P. I.D. # R.O. 1026/4992 Sweep 5 H.P. I.D. # R.O. 522/22689

(Exhibit C continued on next page)

Tank L Unloading Auger R.O. 10-26-5027  
 Sweep 5 H.P. I.D. # R.O. 5-22-22627  
 Tank M Unloading Auger R.O. 10-26/5026  
 Sweep 5 H.P. I.D. # R.O. 5-22-22079  
 Tank N Unloading Auger R.O. 10-26-5029  
 Sweep 5 H.P. I.D. # R.O. 5-22/22634  
 Tank O Unloading Auger R.O. 10-26/5034  
 Sweep 5 H.P. I.D. # R.O. 5-22-22695

Jordan Motors to open rack and pinion in Tunnels

Tank T SM 1530-1126J79-28524  
 Tank U SM 1530-1131J79-28524  
 Tank V SM 1530-1136J79-28524  
 Tank W SM 1530-1130J79-28524  
 Tank A Model # SM-1530-Serial # 1127J79-28524  
 Tank B Model # SM-1530-Serial # 1139J79-28524  
 Tank C Model # SM-1530-Serial # 1136J79-28524  
 Tank D Model # SM-1530-Serial # 1128J79-28524  
 Tank E Model # SM-1530-Serial # 1138J79-28524  
 Tank F Model # SM-1530-Serial # 1125J79-28524

3 Hopper Dump Scale T.S. 15, RPM 10  
 Hopper Scale

Hopper Printer Mdl. #50-4100-Serial # G853722TC  
 Model Console-Mdl. #--- Serial # G853730-1TC

Truck Scale

Truck Printer-Model #50-3524-Serial # G850959 RC

Console-Model #907300-Serial # G84980800-Capacity-12,000

Big Sky Belt Conveyor-Ajax-3 phase 2 h.p. motor no Serial #

U-Trough Motor running south from North between tanks T & U

Westinghouse 7.5 H.P. 3 phase, Serial # 11-66F750

Gear Motor-Output RPM-155, ratio 11.3 Serial # 98748

U-Trough Motor running west from east dumping into U-Trough  
 underneath railroad track.

Warter 5 H.P. motor-3 phase-Serial # 1111

Truck Loadout U-Trough-R.O. 10-26/5030

Railroad Car Loadout U-Trough R.O. 10-26/6032

(Exhibit C continued on next page)

EXHIBIT A  
Legal Description

PARCEL A:

Lots 1A and 13, of SUBURBAN SUBDIVISION, South-Amended, in Yellowstone County, Montana, according to the official plat thereof on file and of record in the office of the Clerk and Recorder of said County, under Document No. 594091.

PARCEL B:

Lots 2 and 3, of SUBURBAN SUBDIVISION, (Lying South of the N.P. Right of Way), in Yellowstone County, Montana, according to the official plat thereof on file and of record in the office of the Clerk and Recorder of said County.

Subject to the following Permitted Encumbrances;

1. Easement for Spur Track dated December 13, 1917, granted by Russell Miller Milling Company, a corporation, to Northern Pacific Railway Company, a corporation; recorded December 13, 1917 in Book 65, page 258.
2. Easements to the Northern Pacific Railway Company, a corporation, as disclosed by Warranty Deed, dated June 28, 1957, by and between Russell Miller Milling Co., a corporation and Midland Feeds Company, a corporation; recorded August 12, 1957 in Book 613, page 53.
3. An overhead bulk feed line as disclosed by a physical inspection of the property.
4. Utility and power line easements along the Southern boundary and a utility easement extending through interior of property, as disclosed by a physical inspection of the property.
5. Lease to:  

<del>Farmers Union Central Exchange</del>	<del>Occupies 2 Buildings</del>
<del>Annual Rental \$15,600.00</del>	<del>(6350 Sq. Ft.)</del>
6. Lease to:  

Big Sky Feeds	Occupies 1250 Sq. Ft
Annual Rental \$36,000.00	

(Exhibit C continued)

BOOK 1216 PAGE 2505

- Tank P Model # SM-1530-Serial # 113379-25524
- Tank Q Model # SM-1530-Serial # 113779-25524
- Tank R Model # SM-1530-Serial # 113479-25524
- Tank S Model # SM-1530-Serial # 112979-25524

1158499

TRUST INDENTURE AND SECURITY AGREEMENT

FIRST CONTINENTAL CORP.

to

FIRST MONTANA TITLE INSURANCE CO.

for THE MONTANA CASHIERS AND SURETY CO.



STATE OF MONTANA, )  
County of Yellowstone, ) ss

I hereby certify that the within instrument was filed in my office for record on this 6

day of March 19 80  
at 4:03 o'clock P M, and is duly recorded in Book 1216 of          on page 2458

Witness my hand and official seal

MERRILL H KLUNDT  
County Clerk & Recorder

By [Signature] Deputy

FEF: \$96.00 B-24920

RETURN TO: FIRST MONTANA TITLE COM

CERTIFICATE

STATE OF MONTANA, }  
County of Yellowstone, } ss.

I hereby certify that this sheet and all sheets identified by impression of my Official Seal, are each and all true and correct copies of originals filed in my office on the

6 day of March, 1990  
at 4:03 o'clock P.M. under Document  
Number 1158499

IN TESTIMONY WHEREOF, I have here unto set my hand and affixed my seal of

Office the 12 day of July  
A. D. 1990.

MERRILL H. KLUNDT  
County Clerk & Recorder

By: K J Dool  
Deputy.