

**Return to:**

**MONTANA BOARD OF HOUSING**  
**SCORE ADVANTAGE DOWN PAYMENT ASSISTANCE PROGRAM (DPA)**  
**SUBORDINATE TRUST INDENTURE**

THIS SUBORDINATE TRUST INDENTURE is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_. The grantor is \_\_\_\_\_, (“Borrower”). The trustee is \_\_\_\_\_, with principal office at \_\_\_\_\_, Montana, (“Trustee”). The beneficiary under this security instrument is \_\_\_\_\_ (“Lender”). Lender is a \_\_\_\_\_ organized and existing under the laws of Montana, with its principal office is at \_\_\_\_\_.

The term “Lender” includes any successors and assigns of Lender.

**W I T N E S S E T H:**

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 forty (40) acres in area, situated in the **County of** \_\_\_\_\_, State of Montana, particularly described as follows, to-wit:

**Legal description:**

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.

Which has an address of \_\_\_\_\_ . All of the above-

described premises and property is hereinafter sometimes referred to as the "Property".

**For the Purpose of Securing:** (1) Payment of the principal sum of \_\_\_\_\_ according to the terms of a Score Advantage Down Payment Assistance (DPA) Program Subordinate Loan Note dated this same date (and any extensions and/or renewals or modifications thereof) (the "Note"), which provides for monthly payments of principal and interest, with the entire outstanding indebtedness, if not paid or required to be paid earlier, due and payable on \_\_\_\_\_ (the "Maturity Date"); (2) Payment of all sums expended or advanced by Beneficiary under or pursuant to the terms hereof, together with interest thereon as herein provided; and (3) Performance of each agreement of Grantor contained herein and in said Note.

This Subordinate Trust Indenture and the Note which it secures are made under the Score Advantage Down Payment Assistance (DPA) Program of the Montana Board of Housing. This Subordinate Trust Indenture, and Note are related to and subordinate to a first priority note and trust indenture (respectively the "Superior Note" and "Superior Trust Indenture") of even date relating to a loan (the "Superior Loan") to be sold to Montana Board of Housing for the long term financing for the purchase of the Property. The documents evidencing or securing the Superior Loan and the obligations thereunder are collectively referred to herein as the "Superior Lien".

Notwithstanding the Maturity Date specified in Item (1) above, all sums secured under this Subordinate Trust Indenture and the Note shall immediately become due and payable upon either of the following: (a) any transfer of the Grantor's ownership interest in the Property; or (b) payment in full of the indebtedness secured by the Superior Lien.

**TO PROTECT THE SECURITY OF THIS SUBORDINATE 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 to 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. 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 perform all of the Grantor's obligations under the Superior Lien, including Grantor's covenants to make payments when due; to pay all taxes, assessments, charges, fines and impositions attributable to the Property which may attain priority over this Security Instrument, and leasehold payments or ground rents, if any, in the manner provided in the Superior Lien, or if not paid in that manner, Grantor shall pay them on time directly to the person owed payment, and upon request, promptly furnish to Beneficiary receipts evidencing the payments.
3. To maintain hazard insurance on said property of such type or types and amounts as may be required under the Superior Trust Indenture on the improvements now existing or hereafter erected or

placed on said property, and, upon request, provide proof of such insurance to Beneficiary.

4. 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 expenses, documentary taxes and Trustee's and attorney's fees as allowed by law.

5. 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.

6. 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:

7. 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 and 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.

8. 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.

9. Time is of the essence hereof. Upon default by Grantor in payment of any indebtedness secured hereby or in performance of any term or condition of this Trust Indenture or the Note, all sums secured hereby shall immediately become due and payable at the option of 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 the county where said property or some part thereof is situated. Beneficiary shall also deposit with Trustee, the Note and all documents evidencing expenditures secured hereby.

10. 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.

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

12. 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 for the foreclosure of mortgages on real property 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.

13. Except as may be otherwise provided herein, Grantor agrees to pay to Beneficiary or Trustee the costs and expenses, including a reasonable attorney's fee, 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.

14. 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

