

59490

TRUST DEED

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THIS TRUST DEED made this 11th day of March, 1986, between  
Donald L. Cabitto, Sr. and Donald L. Cabitto, Jr. as tenants in common.

as Grantor,

Jeffrey D. Bell, City Attorney, as Trustee, and

City of Klamath Falls, a municipal corporation,

as Beneficiaries.

## WITNESSETH:

Grantor irrevocably grants, bargains, sells and conveys to trustee in trust, with power of sale, the property  
Klamath  
County, Oregon, described as:

Lot 765, Block 106, HILLS ADDITION to the City of Klamath Falls, according to the  
official plat thereof on file in the office of the County Clerk of Klamath  
County, Oregon, free of all encumbrances, except reservations, restrictions,  
easements and rights-of-way of record and those apparent upon the land.

together with all and singular the tenements, hereditaments and appurtenances and all other rights thereunto belonging or in anywise  
pertaining, and the rents, issues and profits thereof and all fixtures now or hereafter attached to or used in connec-  
tion with said real estate.

FOR THE PURPOSE OF SECURING PERFORMANCE of each agreement of grantor herein contained and payment of the  
sum of

Fifteen thousand and 00/100ths

Dollars, with interest thereon according to the terms of a promissory  
note of same date herewith, payable to beneficiary or order and made by grantor, the final payment of principal and interest hereof, if  
not sooner paid, to be due and payable March 11, 2006.

The date of maturity of the debt secured by this instrument is the date, stated above, on which the final installment of said note  
becomes due and payable. To the extent the within described property, or any part thereof, or any interest therein is sold, agreed to be  
assigned, exchanged or alienated by the grantor without first having obtained the written consent or approval of the beneficiary,  
then, at the beneficiary's option, all obligations stated in this instrument, irrespective of the maturity dates expressed therein, or  
otherwise, shall become immediate due and payable.

The above described real property is not currently used for agricultural, timber or grazing purposes.

The grantor, the grantee of this trust deed, and the grantee  
and the grantee's successors and assigns and persons in possession  
and/or control of the property, do hereby agree that none of them  
shall, directly or indirectly, create any easement or encumbrance thereon.

1. The grantor, in consideration of the sum of \$15,000.00, paid and  
received by him from the grantee, does hereby sell, convey and  
transfer to the grantee, his heirs, executors, administrators and  
successors in title, all of his right, title and interest in and to  
the property herein described, subject to the conditions and  
covenants contained in this instrument.

2. The grantor and grantee acknowledge and agree that the  
grantee may, at any time, exercise his option to require the  
grantor to pay to him the full insurable value of the  
property herein described, less the amount of any unpaid  
principal and interest due and payable under this instrument.  
The grantor agrees to pay to the grantee the amount  
so required, plus interest thereon at the rate of six percent  
per annum, from the date of demand until paid, and to  
pay all costs and expenses of collection, including reasonable  
attorneys' fees, incurred in collecting such amount.

3. If the grantor fails to pay to the grantee the amount  
so required, plus interest, when due, the grantee may  
commence a proceeding against the grantor for the recovery  
of the amount so required, plus interest, and all other  
expenses and costs of collection, including reasonable  
attorneys' fees, and may, if he so elects, sue for and recover  
any judgment obtained in such proceeding, despite the  
fact that the grantor has no personal assets available  
for the payment of such judgment, and despite the fact  
that the grantee has no personal assets available  
for the payment of such judgment.

4. The grantor, in consideration of the sum of \$15,000.00,  
paid and received by him from the grantee, does hereby  
convey to the grantee, his heirs, executors, administrators  
and successors in title, all of his right, title and interest in and to  
the property herein described, subject to the conditions and  
covenants contained in this instrument.

5. The grantor and grantee acknowledge and agree that the  
grantee may, at any time, exercise his option to require the  
grantor to pay to him the full insurable value of the  
property herein described, less the amount of any unpaid  
principal and interest due and payable under this instrument.  
The grantor agrees to pay to the grantee the amount  
so required, plus interest thereon at the rate of six percent  
per annum, from the date of demand until paid, and to  
pay all costs and expenses of collection, including reasonable  
attorneys' fees, incurred in collecting such amount.

6. The grantor and grantee acknowledge and agree that the  
grantee may, at any time, exercise his option to require the  
grantor to pay to him the full insurable value of the  
property herein described, less the amount of any unpaid  
principal and interest due and payable under this instrument.  
The grantor agrees to pay to the grantee the amount  
so required, plus interest thereon at the rate of six percent  
per annum, from the date of demand until paid, and to  
pay all costs and expenses of collection, including reasonable  
attorneys' fees, incurred in collecting such amount.

7. The grantor and grantee acknowledge and agree that the  
grantee may, at any time, exercise his option to require the  
grantor to pay to him the full insurable value of the  
property herein described, less the amount of any unpaid  
principal and interest due and payable under this instrument.  
The grantor agrees to pay to the grantee the amount  
so required, plus interest thereon at the rate of six percent  
per annum, from the date of demand until paid, and to  
pay all costs and expenses of collection, including reasonable  
attorneys' fees, incurred in collecting such amount.

8. Consent to the making of any map or plat of said property; (b) join in  
granting any easement or creating any restriction thereon; (c) join in any  
subdivision or other agreement affecting this deed; (d) the lien or charge  
thereon; (e) reconvey, without warranty, all or any part of the property. The  
grantee, in any reconveyance, may be described as "the person or persons  
legally entitled thereto"; and the recitals therein of any matters or facts shall  
be conclusive proof of the truthfulness thereof. Trustee's fees for any of the  
work mentioned in this paragraph shall be not less than \$5.

10. Upon any default by grantor hereunder, beneficiary may at any  
time, without notice, either in person, by agent or by a receiver to be ap-  
pointed by a court, and without regard to the adequacy of any security for  
the indebtedness hereby secured, enter upon and take possession of said prop-  
erty or any part thereof, in its own name sue or otherwise collect the rents,  
issues and profits, including those past due and unpaid, and apply the same,  
less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as bene-  
ficiary may determine.

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

12. Upon default by grantor in payment of any indebtedness secured  
herein in his performance of any agreement hereunder, the beneficiary may  
declare all sums secured hereby immediately due and payable. In such an  
event the beneficiary, at his election, may proceed to foreclose this trust deed  
by action or mortgage or direct the trustee to foreclose this trust deed by  
advice and counsel, recorded his written notice of default and his election  
to foreclose the said trust deed, and property to satisfy the obligation secured  
herein, whereupon the trustee shall, at the time and place of sale, give notice  
thereof to the grantor, that, at the time and place of sale, give notice  
thereof as herein required by law, and proceed to foreclose this trust deed in  
the manner provided in ORS 86.735 to 86.795.

13. After the trustee has commenced foreclosure by advertisement and  
sale, and at any time prior to 3 days before the date the trustee conducts the  
sale, the grantor or any other person so privileged by ORS 86.735, may cure  
the default or defaults. If the default consists of a failure to pay, when due,  
the amount secured by the trust deed, the default may be cured by paying the  
amount secured due at the time of the cure other than such portion as would  
not have been paid had no default occurred. Any other default that is capable  
of being cured may be cured by tendering the performance required under the  
defaulted trust deed. In any case, in addition to curing the default or  
defect, the person effecting the cure shall pay to the beneficiary all costs  
and expenses actually incurred in enforcing the obligation of the trust deed  
together with trustee's and attorney's fees not exceeding the amounts provided  
by law.

14. Otherwise the sale shall be held on the date and at the time and  
place designated in the notice of sale or the time to which said sale may  
be postponed as provided by law. The trustee may sell said property either  
in one parcel or in separate parcels and shall sell the parcel or parcels at  
auction to the highest bidder for cash, payable at the time of sale. Trustee  
shall deliver to the purchaser his deed in form as required by law conveying  
the property so sold, but without any covenant or warranty, express or implied.  
The results in the deed of any matters of fact shall be conclusive proof  
of the truthfulness thereof. Any person, excluding the trustee, but including  
the grantor and beneficiary, may purchase at the sale.

15. When trustee sells pursuant to the powers provided herein, trustee  
shall apply the proceeds of sale to payment of (1) the expenses of sale, in-  
cluding the compensation of the trustee and a reasonable charge by trustee's  
attorneys; (2) to the obligation secured by the trust deed; (3) to all persons  
having valid liens subsequent to the interest of the trustee in the trust  
deed, in their priority as appears in the order of their priority and (4) the  
amount, if any, to the grantor or to his successor in interest entitled to such  
portion.

16. Beneficiary may from time to time appoint a successor or success-  
ors to the trustee named herein or to any successor trustee appointed here-  
under. The officer shall be vested with all title, powers and duties conferred  
upon the trustee herein named or appointed hereunder. Each such appointment  
and succession shall be made by written instrument executed by beneficiary,  
which instrument, when recorded in the mortgage records of the county or counties in  
which the property is situated, shall be conclusive proof of proper appointment  
of the named trustee.

17. Trustee accepts this trust when this deed, duly executed and  
witnessed, is made a public record as provided by law. Trustee is not  
obligated to make any party hereto of pending sale under any other deed of  
trust or of any action or proceeding in which grantor, beneficiary or trustee  
shall be a party unless such action or proceeding is brought by trustee.

IN WITNESS WHEREOF, the parties have affixed their signatures hereto, this 11th day of March, 1986, in the presence of Donald L. Cabitto, Sr., a member of the Oregon State Bar, a bank, trust company  
or law firm, and Donald L. Cabitto, Jr., a member of the Oregon State Bar, a title insurance company authorized to insure title to real  
property of the state of Oregon, all of whom are active members of the Oregon State Bar.

The grantor covenants and agrees to hold with the beneficiary and those claiming under him, that he is lawfully entitled in fee simple of said described real property and has a valid, unencumbered title thereto.

and shall be well warrant and forever defend the same against all persons whomsoever.

The grantor warrants that the proceeds of the loan represented by the above described note and this trust deed are: held primarily for personal, family, household or agricultural purposes (see Important Notice below).

~~TRUST DEED FOR THE USE OF PERSONAL PROPERTY HELD PRIMARILY FOR PERSONAL, FAMILY, HOUSEHOLD OR AGRICULTURAL PURPOSES~~

P.R.C. 1980

This deed applies to, relates to the benefit of and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, personal representatives, successors and assigns. The term "beneficiary" shall mean the holder and owner, including pledgee, of the recorded instrument, whether or not named as a named party herein. In construing this deed and whenever the context so requires, the masculine gender includes the feminine and the singular number includes the plural.

IN WITNESS WHEREOF, said grantor has hereunto set his hand the day and year first above written.

*Don L. Cabitto Sr.  
Donald L. Cabitto Jr.*

\* IMPORTANT NOTICE: Unless, by being set, whichever occurs (a) or (b) is applicable and the beneficiary is a creditor or not, the provisions (a) or (b) of the Truth-in-Lending Act and Regulation Z, the so-called TILA, namely with the Act and Regulation by making required disclosures. For this purpose, if this instrument is to be a TILA item in finance documents, the predecessor of a debtholder, the unrecorded Form No. 1301 or equivalent; if this instrument is to be a first item, or is not to bear on the purchase of a dwelling, the unrecorded Form No. 1306, or equivalent. If compliance with either Act is not required, disregard this notice.

If the signer of the above is a corporation, see Form 1306.

STATE OF OREGON, )  
County of Klamath ) ss.  
March 11, 1980

Personally appeared the above named  
Donald L. Cabitto, Sr. and  
Donald L. Cabitto, Jr. as tenants  
in common

and acknowledged the foregoing instrument  
to be their voluntary act and deed  
Notary Public for Oregon  
My commission expires: 4-30-80

STATE OF OREGON, County of ..... ss.

....., 19.....  
Personally appeared ..... and  
..... who, each being first  
duly sworn did say that the former is the  
president and that the latter is the  
secretary of .....

a corporation, and that the seal affixed to the foregoing instrument is the  
corporate seal of said corporation and that the instrument was signed and  
sealed in behalf of said corporation by authority of its board of directors;  
and each of them acknowledged said instrument to be its voluntary act  
and deed.  
Before me:

Notary Public for Oregon

My commission expires:

(OFFICIAL  
SEAL)

#### REQUEST FOR FULL RECONVEYANCE

To be filed only when obligations have been paid.

TO:

Trustee

The grantor paid to the legal trustee and holder of all indebtedness secured by the foregoing trust deed. All sums secured by said instrument have been fully paid and satisfied. With him/her are directed, on payment to you of any sums owing to you under the terms of said instrument, to cancel or otherwise discharge, or cancel all evidence of indebtedness secured by said trust deed (which are delivered to you and shall stand or remain pending his/her death, or cancellation), and to reconvey, without warranty, to the parties designated by the terms of said trust deed the specifically described real estate therein (debt) and to reconvey, without warranty, to the parties designated by the terms of said trust deed the specifically described real estate therein (debt). Mail reconveyance documents to

NOTARY

Beneficiary

Do not file or record this deed on the mortgagor's record. Both must be delivered to the trustee for cancellation before reconveyance will be made.

## TRUST DEED

RECEIVED AND INDEXED  
RECORDED IN THE OFFICE OF THE CLERK OF THE COUNTY OF KLA  
Donald L. Cabitto, Sr.

Donald L. Cabitto, Jr.

Grantor

CITY OF Klamath Falls, .....  
Planning Department  
City of Klamath Falls  
P.O. Box 237  
Klamath Falls, OR 97601

SPACE RESERVED  
FOR  
RECORDER'S USE

STATE OF OREGON,  
County of Klamath } ss.

I certify that the within instrument  
was received for record on the 24th day  
of March, 1986  
at 2:11 o'clock P.M., and recorded  
in book/reel/volume No. M86 on  
page 4829 or as fee/file/instru-  
ment/microfilm/reception No. 59490  
Record of Mortgages of said County.

Witness my hand and seal of  
County affixed.

Evelyn Biehn, County Clerk

NAM..... TITLE.....  
By..... Deputy.....  
*John Smith*

Fee: \$9.00