

NOTE 859160-KR

2009-014899

Klamath County, Oregon

TRUST DEED



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11/19/2009 03:14:13 PM

Fee: \$67.00

**Grantor's Name & Address**

Klamath Memorial Park, LLC  
2680 Memorial Drive  
Klamath Falls, OR 97601

**Beneficiary's Name & Address**

City of Klamath Falls  
500 Klamath Avenue  
Klamath Falls, OR 97601  
Attn: Chief Finance Officer

**After Recording Return To:**

City Recorder  
City of Klamath Falls  
500 Klamath Avenue  
Klamath Falls, OR 97601

THIS TRUST DEED, made this 18<sup>th</sup> day of November, 2009, between Klamath Memorial Park, LLC, an Oregon limited liability corporation, as Grantor, Rick Whitlock, City Attorney for Klamath Falls, as Trustee, and City of Klamath Falls, an Oregon municipal corporation, as Beneficiary.

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

(SEE ATTACHED EXHIBIT "A," Hereinafter referred to as "Subject Property")

together with all and singular the tenements, hereditaments and appurtenances and all other rights thereunto belonging or in any wise now or hereafter attached to or used in connection with the said real estate.

FOR THE PURPOSE OF SECURING PERFORMANCE of each agreement of Grantor herein contained and payment of the sum of \$225,000.00 Dollars, with interest thereon according to the terms of an Installment Promissory Note of even date herewith, payable to Beneficiary and made by Grantor, the final payment of principal and interest hereof, if not sooner paid, to be due and payable upon any sale or transfer of the Subject Property or on December 15, 2012, whichever shall first occur.

The date of maturity of the debt secured by this instrument is the date, stated above, on which the final installment of the note becomes due and payable. Should the Grantor either agree to, attempt to, or actually sell, convey, or assign all (or any part) of the property of all (or any part) of Grantor's interest in it without first obtaining the written consent or approval of the Beneficiary, then, at the Beneficiary's option, all obligations secured by this instrument, irrespective of the maturity dates expressed therein, or herein, shall become immediately due and payable. The execution by Grantor of an earnest money agreement does not constitute a sale, conveyance or assignment.

To protect the security of this trust deed, Grantor agrees:

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1. To protect, preserve and maintain Subject Property in good condition and repair, not to remove or demolish any building or improvement thereon, not to commit or permit any waste of the property.

2. To complete or restore promptly and in good and habitable condition any building or improvement which may be constructed, damaged or destroyed thereon, and pay when due all costs incurred therefore.

3. To comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting Subject Property, including all applicable building codes.

4. To provide and continuously maintain casualty insurance on the buildings and structures now or hereafter erected on the Subject Property against loss or damage by fire and such other hazards as the Beneficiary may require, in an amount not less than the real market value of the buildings and structures, including, without limitation, the renovation costs with Beneficiary designated on said policies. Such beneficiary policies of insurance shall be delivered to the Beneficiary to insert in Grantor's file; if Grantor shall fail for any reason to procure any such insurance and to deliver the policies to the Beneficiary at least within fifteen (15) days of signing this TRUST DEED, Beneficiary may procure the same at Grantor's expense. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at the option of Beneficiary, the entire amount so collected, or any part thereof, may be released to Grantor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

5. To keep the Subject Property free from construction liens and to pay all taxes, assessments and other charges that may be levied or assessed upon or against the property before any part of such taxes, assessments and other charges become past due or delinquent and promptly deliver receipts therefore to Beneficiary; should the Grantor fail to make payment of any taxes, assessments, insurance premiums, liens or other charges payable by Grantor, either by direct payment or by providing Beneficiary with funds with which to make such payment, Beneficiary may, at its option, make payment thereof, and the amount so paid, with interest at the rate set forth in the note secured hereby, together with the obligations described in paragraph 6 of this trust deed, shall be added to and become a part of the debt secured by this trust deed, without waiver of any rights arising from breach of any of the covenants hereof and for such payments, with interest as aforesaid, the Subject Property, as well as the Grantor, shall be bound to the same extent that they are bound for the payment of the obligation herein described, and all such payments shall be immediately due and payable without notice, and the nonpayment thereof shall, at the option of the Beneficiary, render all sums secured by this trust deed immediately due and payable and constitute a breach of this trust deed.

6. To appear in and defend any action or proceeding purporting to affect the security rights or powers of Beneficiary or Trustee, and in any suit, action or proceeding in which the Beneficiary or Trustee may appear, including any suit for the foreclosure of this deed or any suit or action related to this instrument, including, but not limited to its validity and/or enforceability, to pay all costs and expenses, including evidence of title and the attorney fees of Beneficiary or Trustee; the amount of attorney fees mentioned in this paragraph 6 in all cases shall be fixed by the trial court and in the event of an appeal from any judgment or decree of the trial court, Grantor further agrees to pay such sums the appellate court shall adjudge reasonable as the attorney fees of Beneficiary or Trustee on such appeal.

It is mutually agreed that:

7. In the event that any portion or all of Subject Property shall be taken under the right of eminent domain or condemnation, Beneficiary shall have the right if it so elects, to require that all or any portion for the monies payable as compensation for such taking, which are in excess of the amount required to pay all reasonable costs, expenses and attorney fees necessarily paid or incurred by Grantor in such proceedings, shall be paid to Beneficiary.

8. Upon any default by Grantor hereunder, Beneficiary may at any time without notice, either in person, by agent or by a receiver to be appointed by a court and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of the Subject Property and

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 fees upon any indebtedness secured hereby, and in such order as Beneficiary may determine operation and collection, including reasonable attorney's fees upon any indebtedness secured hereby, and in such order as Beneficiary may determine .

9. Upon default by Grantor in payment of any indebtedness secured hereby or in Grantor's performance of any agreement hereunder, time being of the essence with respect to such payment and/or performance, the Beneficiary may declare all sums secured hereby immediately due and payable. In such an event, the Beneficiary may elect to proceed to foreclose this trust deed in equity as a mortgage or direct the Trustee to foreclose this trust deed by advertisement and sale, or may direct the Trustee to pursue any other right or remedy, either at law or in equity, which the Beneficiary may have. In the event the Beneficiary elects to foreclose by advertisement and sale, the Beneficiary or the Trustee shall execute and cause to be recorded a written notice of default and election to sell the Subject Property to satisfy the obligation secured hereby, whereupon the Trustee shall fix the time and place of sale, give notice thereof as then required by law and proceed to foreclose this trust deed in the manner provided in ORS 86.735 to 86.795.

10. After the Trustee has commenced foreclosure by advertisement and sale, and at any time prior to 5 days before the date the Trustee conducts the sale, the Grantor or any other person so privileged by ORS 86.753, may cure the default or defaults. If the default consists of a failure to pay, when due, sums secured by the trust deed, the default may be cured by paying the entire amount due at the time of the cure other than such portion as would not then be due had no default occurred. Any other default that is capable of being cured may be cured by tendering the performance required under the obligation of trust deed. In any case, in addition to curing the default or defaults, the person effecting the cure shall pay to the Beneficiary all costs and expenses actually incurred in enforcing the obligation for the trust deed together with Trustee's fees and attorney fees not exceeding the amounts provided by law.

11. 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 the sale may be postponed as provided by law. The Trustee may sell the Subject 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 its deed in form as required by law conveying the property so sold, but without any covenant or warranty, express or implied. The recitals 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.

12. When Trustee sells pursuant to the powers provided herein, Trustee shall apply the proceeds of sale to payment of (1) the expenses of sale, including the compensation of the Trustee and a reasonable charge by Trustee's attorney, (2) to the obligation secured by the trust deed, (3) to all persons having recorded liens subsequent to the interest of the Trustee in the trust deed as their interests may appear in the order of their priority and (4) the surplus, if any, to the liens subsequent to the interest of the Trustee in the trust deed as their interests may appear in the order of their priority and (4) the surplus, if any, to the Grantor or to any successor in interest entitled to such surplus.

13. Beneficiary may from time to time appoint a successor or successors to any Trustee named herein or to any Successor Trustee appointed hereunder. Upon such appointment, and without conveyance to the Successor Trustee, the latter shall be vested with all title, powers and duties conferred upon any Trustee herein named or appointed hereunder. Each such appointment and substitution shall be made by written instrument executed by Beneficiary, which, when recorded in the mortgage records of the county in which the property is situated, shall be conclusive proof of proper appointment of the Successor Trustee.

14. Trustee accepts this trust when this deed, duly executed and acknowledged is made a public record as provided by law. Trustee is not obligated to notify 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.

The Grantor covenants and agrees to and with the Beneficiary, and those claiming under him, that he is lawfully seized in fee simple of Subject Property and has a valid, unencumbered title thereto, and that he will warrant and forever defend the same against all persons whomsoever.

*WARNING: Unless Grantor provides Beneficiary with evidence of insurance coverage as required by the contract or loan agreement between them, Beneficiary may purchase insurance at Grantor's expense to protect Beneficiary's interest. This insurance may, but need not also protect Grantor's interest. If the collateral becomes damaged, the coverage purchased by Beneficiary may not pay any claim made by or against Grantor. Grantor may later cancel the coverage by providing evidence that Grantor has obtained property coverage elsewhere. Grantor is responsible for the cost of any insurance coverage purchased by Beneficiary, which cost may be added to Grantor's contract or loan balance. If it is so added, the interest rate on the underlying contract or loan will apply to it. The effective date of coverage may be the date Grantor's prior coverage lapsed or the date Grantor failed to provide proof of coverage. The coverage Beneficiary purchases may be considerably more expensive than insurance Grantor might otherwise obtain alone and may not satisfy any need for property damage coverage or any mandatory liability insurance requirements imposed by applicable law.*

The Grantor warrants that the proceeds of the loan represented by the above described note and this trust deed are exclusively for payment of Federal tax arrearages incurred by Grantor.

This deed applies to, inures 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 pledges, or the contract secured hereby, whether or not named as a Beneficiary herein. In construing this deed and whenever the context so requires, the masculine gender includes the feminine and the neuter, and the singular number includes the plural, and that generally all grammatical changes shall be made, assumed and implied to make the provisions hereof apply equally to corporations and to individuals.

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

**Grantor: Klamath Memorial Park, LLC**

By: William F. Davenport, member By: Paul W. Davenport, member  
William F. Davenport, Member Paul W. Davenport, Member

STATE OF OREGON           )  
  )ss.  
County of Klamath        )

This instrument was acknowledged before me on November 18, 2009, by William F. Davenport and Paul W. Davenport, as Members of Klamath Memorial Park, LLC.



Kristi L. Redd  
Notary Public for Oregon  
My Commission Expires: 11/16/2011

**REQUEST FOR FULL CONVEYANCE**  
*(To be used only when obligations have been paid)*

To: City Attorney Rick Whitlock, Trustee

The undersigned is the legal owner and holder of all indebtedness secured by the foregoing trust deed. All sums secured by the trust deed have been fully paid and satisfied. You are hereby directed, on payment to you of any sums owing to you under the terms of the trust deed, or pursuant to statute, to cancel all evidences of indebtedness secured by the trust deed (which are delivered to you herewith together with the trust deed) and to reconvey, without warranty, to the parties designated by the terms of the trust deed the estate now held by you under the same.

Mail reconveyance and documents to: City Attorney, City of Klamath Falls, 500 Klamath Avenue, Klamath Falls, Oregon 97601.

DATED: \_\_\_\_\_

CITY OF KLAMATH FALLS, Beneficiary

By: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

**PARCEL 1:**

That portion of the following described property lying Southwest of Memorial Drive and North of the Southside Bypass being in the NW1/4 of Section 8, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at the Northeast corner of the NW1/4 NE1/4 of Section 8, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, which point is on the Northwesterly right of way line of the Great Northern Railroad and marked by a galvanized iron pipe; thence North 89° 25' West a distance of 1320.0 feet, more or less, to the one quarter corner common to Sections 5 and 8 of said township and range; thence North 89° 23' 15" West a distance of 6.38 feet to the Northeast corner of Westover Terraces, a platted subdivision in said Section 8 in Klamath County, Oregon; thence along the boundary of said Westover Terraces, as follows: South 0° 38' East 1140.0 feet; South 89° 22' West 468.87 feet; South 24° 45' East 82.9 feet; South 0° 38' East 255.64 feet; South 89° 22' West 885.0 feet; to the Southwest corner of said Westover Terraces, which point is marked by a stone monument and is the point of beginning of the survey of said Westover Terraces; thence South 0° 38' East 700.00 feet; thence North 89° 22' East 1320.32 feet to the East line of said Westover Terraces extended Southerly; thence North 0° 38' West along said extended East line of Westover Terraces, a distance of 270.0 feet; thence North 89° 22' East to the Westerly right of way line of the Great Northern Railroad; thence Northeasterly along said right of way line to the point of beginning, being a parcel of land lying in Section 8, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon.

**PARCEL 2:**

That portion of the following described property lying Southwest of Memorial Drive and being in the NW1/4 of Section 8, Township 39 South, Range 9 East of the Willamette Meridian, Oregon, more particularly described as follows:

Beginning at the Southwest corner of Westover Terraces, a platted subdivision Klamath County, Oregon; thence North 0° 38' West along the West line of said subdivision, a distance of 665.48 feet; thence North 46° 58' East, a distance of 965.91 feet, to the South line of Greenbriar Terrace, a dedicated street in said Westover Terraces; thence North 89° 22' East, a distance of 152.86 feet, along the South line of said street, to the Northwest corner of Lot 7, Block 5 of said Westover Terraces; thence North 0° 38' West, a distance of 138.87 feet, across Greenbriar Terrace and along the line between Lots 6 and 7, Block 2 of said subdivision; thence North 46° 58' East, a distance of 44.07 feet to the North line of said subdivision; thence South 89° 23' 15" East, a distance of 427.56 feet, to the Northeast corner of said Westover Terraces; thence South 0° 38' East, along the East line of said subdivision, a distance of 1,140.0 feet; thence South 89° 22' West, along the Southerly line of said Westover Terraces, a distance of 468.87 feet to the centerline of Cumberland Road; thence South 24° 45' East, along said centerline, a distance of 82.9 feet, to its intersection with the East line of Maywood Road; thence South 0° 38' East along the East line of said Maywood Road, a distance of 255.64 feet, to its intersection with the Southerly boundary of said Westover Terraces; thence South 89° 22' West, along said South boundary, a distance of 885.0 feet to the point of beginning; being all that portion of Westover Terraces, a platted subdivision in Klamath County, Oregon, excepting portions of Lots 7 and 8, Block 2, of said subdivision, lying Southeasterly from the proposed new location of the Dalles-California State Highway.

(Legal Description Continued)

EXCEPTING THEREFROM that property described in Deed Volume M92 Page 12957, Deed Volume M00 Page 4227, Deed Volume 2006-01829, Deed Volume 2009-011008, Deed Volume 2009-011009, and Deed Volume 2009-011010; the boundary of said parcels, situated in the NE1/4 of the NW1/4 of Section 8, Township 39 south, Range 9 East of the Willamette Meridian, Klamath County, more particularly described as follows:

Beginning at a 3/4 inch iron pin on the southwesterly right-of-way line of Memorial Drive, said point being the southeast corner of that property described in Deed Volume M92 Page 12957; thence North 23°53'40" West, along said southwesterly right-of-way line, a distance of 289.40 feet to the northeast corner of that property described in Deed Volume 2009-011010; thence South 66°06'20" West, 115.00 feet, along the north line of said Deed Volume 2009-011010; thence South 23°53'40" East, parallel with said southwesterly right-of-way line of Memorial Drive, a distance of 289.40 feet to the southwest corner of that property described in Deed Volume M92 Page 12957; thence North 66°06'20" East, 115.00 feet to the point of beginning. Basis of Bearings is Property Line Adjustments 7-09, 8-09, and 9-09 on file in the office of the Klamath County Surveyor.

In addition to the real property parcels described above, the Subject Property includes the following:

1. The grant and conveyance of Klamath Project irrigation rights in the Klamath River to irrigate the property described above (approximately 30.5 acres, more or less). These irrigation rights are appurtenant to and run with the "Subject Property" and are part of the security for repayment of the Installment Promissory Note executed contemporaneously with this Trust Deed.
2. An easement and use agreement, in a form acceptable to Davenports and City, granting Davenports the right to use the existing irrigation system piping and pump to transport irrigation water from the Klamath River to the Property. These easement/agreement rights are appurtenant to and run with the "Subject Property" and are part of the security for repayment of the Installment Promissory Note executed contemporaneously with this Trust Deed.