

1999 SEP -3 PM 3: 36

MTD 48884-KR
TRUST DEED

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1999 SEP 16 PM 3: 42
After recording, return to:
Kevin J. Keillor
747 SW Industrial Way
Bend, Oregon 97702

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This trust deed is made on this 2nd day of September, 1999, between William W. Madewell and Gloria J. Madewell, husband and wife (hereinafter, "Grantors"), AmeriTitle, an Oregon corporation (as "Trustee"), and Adrian Mitchell, an individual (hereinafter, "Beneficiary").

1. **Conveyance.** For value received, Grantors hereby grant, bargain, sell and convey to Trustee, in trust with power of sale, the property in Klamath County, Oregon, commonly known as Whispering Pines Motel at Diamond Lake Junction, Oregon, and more particularly described as follows:

The N1/2 of the E1/2 of the NE1/4 of the NE1/4, Section 12, Township 29 South, Range 7 East of the Willamette Meridian, Klamath County, Oregon, EXCEPTING any portion contained in the rights of way of the Dalles California Highway U.S. 97 and East Diamond Lake Highway State 230.

Together with all the appurtenances, tenements, hereditaments, fixtures, rents, issues, profits, water rights, easements, or privileges now or hereafter belonging to, derived from or in any way pertaining to the property.

2. **Obligation Secured.** This trust deed is intended to secure the following:

a. Each agreement of Grantors contained herein;

b. The payment of a certain note dated September 2, 1999, in the original amount of \$160,000 made by Grantors payable to Beneficiary, together with interest as provided in the note, and any renewals, modifications, or extensions thereof. The due date for final payment on the note and maturity date of the trust deed is September 1, ~~2009~~ 2019. *W.M. E.M.*

c. All other presently existing or future obligations owing from Grantors to Beneficiary.

3. **Warranty of Title.** At the time of execution and delivery of this trust deed, Grantors are the owners of the property and any improvements thereon, Grantors have the right and authority to encumber the premises as provided in this trust deed and the premises are free and clear of all liens and encumbrances, except the following:

(a) Right of Way, as disclosed by instrument, recorded October 18, 1955 in Volume 278, page 314, Deed Records of Klamath County, Oregon, to wit:

"Subject to a right of way granted to the Bonneville Power Administration under the Act of February 5, 1948 (62 Stat. 17)."

(b) Right of Way, subject to the terms and provisions thereof, from Delford Land. et ux. to the State of Oregon, by and through its State Highway Commission, recorded November 25, 1955 in Volume 279, page 323, Deed Records of Klamath County, Oregon.

(c) Certificate of Right of Way, subject to the terms and provisions thereof, as set forth in an instrument recorded August 18, 1958 in Deed Volume 302, page 225, Deed of Records of Klamath County, Oregon.

4. **Payment of Taxes and Utilities.** Grantors shall pay when due all taxes and assessments imposed against the property and keep the property free from all liens not specifically permitted under this deed of trust. Grantors shall provide proof of payment of taxes to Beneficiary promptly after payment is made. Grantors shall pay the monthly demands arising from Grantors' use of occupancy of the property.

5. **Liens.** Grantors shall not permit any lien prior or equal to Trustee's title to be imposed upon the trust property, except liens for taxes or assessments assessed but not yet due.

6. **Grantors' Right to Contest.** Grantors may withhold any payments of taxes, assessments, claims or demands or may elect to contest any lien if Grantors are in good faith conducting appropriate proceedings to contest their obligation to pay and for as long as the Trustee's interest in the property is not jeopardized. If the property is subject to a lien which is not discharged within thirty (30) days from the date that the notice claim of lien is filed, the Grantors shall deposit or cause to be deposited with Beneficiary cash, a sufficient corporate security bond or other security reasonably satisfactory to Beneficiary in the amount adequate to provide for discharge of the lien, plus any interest, costs, attorney fees or other charges that could accrue as the result of foreclosure or sale. In any contest, Grantors shall at Grantors' expense defend themselves, Trustee and Beneficiary, and shall satisfy any adverse judgment before enforcement against the property.

7. **Insurance.** Grantors will keep the buildings and improvements now erected, or which may hereafter be erected on the property insured under loss or damage by fire with extended coverage endorsement, written by a responsible insurance company or insurance company satisfactory to Beneficiary, with a standard mortgage clause in favor of the Beneficiary and the holder of any prior trust deed, mortgage or contract. Promptly after the signing of this trust deed, Grantors shall deliver to Beneficiary a certificate of insurance evidencing the coverage set forth in this paragraph. The certificate shall contain a stipulation that coverage will not be canceled or diminished without a minimum of ten (10) days advance written notice to Beneficiary. Grantors shall also deliver to Beneficiary at least ten (10) days prior to the expiration of any insurance policy required by this paragraph, a certificate showing the placement of a renewal or substitute policy of insurance.

WARNING

Unless you provide Beneficiary with evidence of the insurance coverage as required by this deed of trust, Beneficiary may purchase insurance at your expense to protect Beneficiary's interest. This insurance may, but need not, also protect your interest. If the collateral becomes damaged, the coverage Beneficiary purchases may not pay any claim you make or any claim made against you. You may later cancel this coverage by providing evidence that you have obtained property coverage elsewhere.

You are responsible for the cost of any insurance purchased by Beneficiary. The cost of this insurance may be added to your loan balance. If the cost is added to your loan balance, the interest rate on the underlying contract or loan will apply to this added amount. The effective date of coverage may be the date your prior coverage lapsed or the date you failed to provide proof of coverage.

The coverage Beneficiary purchases may be considerably more expensive than insurance you can obtain on your own and may not satisfy any need for property damage coverage or any mandatory liability insurance requirements imposed by applicable law.

8. **Disposition of Insurance Proceeds.** Any insurance funds paid to Beneficiary as a result of damage or loss to the property may, at the option of Beneficiary, and, subject to the terms of any prior trust deed, mortgage or contract of sale, be released to Grantors to be expended in the repair, restoration or replacement of the premises so damaged or lost, or be retained by Beneficiary and applied toward the payment of all or such of the items of indebtedness secured by this trust deed as Beneficiary may elect. Grantors hereby appoint Beneficiary as their agent to collect all amounts payable under the policies to Grantors, and amounts retained by Beneficiary after the cost of collection, shall be applied (subject to the terms of any prior trust deed, mortgage or contract of sale) to payment of the principal sum and interest thereon, and other sums secured by this trust deed.

9. **Hazardous Substances.** Grantors shall comply fully with all laws pertaining to the protection of human health and the environment, including but not limited to employee and community right-to-know laws and all laws regarding the use, generation, storage, transportation, treatment, disposal or other handling of hazardous substances. Grantors shall promptly advise Beneficiary in writing of any hazardous substances regulated by such laws that are used, generated, manufactured, stored, transported or otherwise handled on the property. Grantors shall exercise extreme care in handling any hazardous substances and shall not cause or permit hazardous substances to be spilled, leaked, disposed of, or otherwise released on the property.

10. **Condemnation.** In the event all or any portion of the property shall be taken by eminent domain, the Beneficiary shall have the right to require that all or any portion of the monies payable as compensation for such taking, in excess of the amount required to pay reasonable costs and attorney fees incurred by the Grantors in such proceedings, shall be paid to the Beneficiary and applied by it first to any costs and expenses necessarily paid or incurred by the Beneficiary in such proceedings, and the balance shall be applied to the note secured hereby against the payments last becoming due thereon. All such compensation, awards, damages, rights of action and proceeds

becoming due thereon. All such compensation, awards, damages, rights of action and proceeds awarded to Grantors are hereby assigned to Beneficiary and Grantors agree to execute such further assignments to the condemnation proceeds as Beneficiary may require.

11. **Use, Maintenance and Alteration.** Grantors shall maintain the property in good condition and repair and promptly perform all repairs and maintenance necessary to preserve its value. Grantors shall not conduct or permit any nuisance on the property nor commit or suffer any strip or waste thereof. Grantors shall not demolish or remove any improvements on the property without the prior written consent of Beneficiary. Grantors shall make no alterations or improvements without the prior written consent of Beneficiary. Grantors will permit Beneficiary and Beneficiary's agents to enter upon the property at all reasonable times to inspect the property. Grantors shall promptly comply with all laws, ordinances and regulations of all governmental authorities applicable to the use or occupancy of the property. Grantors may contest in good faith any such law, ordinance or regulation and withhold compliance during any proceeding, including appropriate appeals as long as Beneficiary's and Trustee's interests in the property are not jeopardized.

12. **Beneficiary's Right to Advance Funds.** If Grantors fail to perform any obligation required of Grantors under this trust deed, Beneficiary may, after providing thirty (30) days written notice take any steps necessary to remedy such failure. Grantors shall reimburse Beneficiary for all amounts expended in so doing on demand with interest at a rate equal to the current interest rate of the promissory note being secured hereby from the date of expenditure until repaid. The amounts so advanced with interest as stated above shall be secured by this trust deed. Such action by Beneficiary shall not constitute a waiver of a default or any of the right or remedy with Beneficiary may have on account of Grantors' default.

13. **Encumbrances.** Grantors shall strictly perform all the terms and conditions of any prior mortgage, trust deed or contract of sale now or thereafter existing against the property, and pay any amounts secured thereby when due. In the event that Grantors shall default under any prior mortgage, trust deed or contract of sale on the property, Beneficiary may at Beneficiary's option make any payment or take any steps necessary to remedy such default. Grantors shall reimburse Beneficiary for all amounts expended in so doing on demand with interest at a rate equal to the current interest rate of the promissory note being secured hereby from the date of expenditure until repaid. Such action by Beneficiary shall not constitute a waiver of any right arising to Beneficiary from Grantors' breach.

14. **Events of Default.** The following shall constitute events of default:

- a. **Nonpayment.** Failure of Grantors to make any payment required by the note.
- b. **Breach of other Covenant.** Failure of Grantors to perform any obligation contained in this trust deed within thirty (30) days after notice from Beneficiary (or Beneficiary's representative) specifying the nature of the default or, if the default cannot be cured within thirty (30) days, failure within such time to commence and pursue with reasonable diligence curative action.

c. **Sale or Transfer of Possession.** The sale or transfer of possession of the property or any part thereof in any manner by Grantors whether by deed, contract of sale or similar agreement without the prior written consent of Beneficiary.

15. **Remedies in Case of Default.** In the event of default, Beneficiary or Trustee, as the case may be, may exercise any of the following rights and remedies. In addition, to any other remedies which may be available at law, in equity, or otherwise:

a. **Acceleration.** Beneficiary may declare all sums secured by this trust deed, including all interest and prepayment penalties to be immediately due and payable.

b. **Receiver.** Beneficiary shall be entitled to the appointment of a receiver of the trust property. Employment by Trustee or Beneficiary shall not disqualify a person from serving as a receiver. Grantors consent to appointment of a receiver at Beneficiary's option.

c. **Possession.** Beneficiary may, either through a receiver or as a lender-in-possession, take possession of all or part of the trust property, and Grantors shall peaceably surrender the same.

d. **Foreclosure.** Beneficiary may obtain a decree foreclosing Grantors' interest in all or any part of the trust property.

e. **Power of Sale.** Beneficiary may direct Trustee and Trustee shall be empowered to foreclose the trust property by advertisement and exercise of the power of sale under applicable law.

f. **Cumulative Remedies.** Election to pursue one remedy shall not exclude resorting to any other remedy, and unless the context otherwise requires, all remedies under this trust deed are cumulative and not exclusive. An election by Beneficiary to cure the default shall neither prejudice the right to declare a default, nor constitute a waiver of the breached term or any of the remedies provided herein. No delay or omission in exercising any right or remedy shall impair that or any other right or remedy nor shall be construed to be a waiver of the default.

16. **Receiver.** Upon taking possession of all or any part of the property, receiver or Trustee, or Beneficiary or Beneficiary's representative may:

a. Collect all rents, revenues, income, issues and profits from the property and apply such sums to the expenses of use, operation, management, maintenance and improvements.

b. At its option, complete any construction in progress on the property, and in that connection, pay bills, borrow funds, employ contractors and make any changes in plans and specifications as it deems appropriate.

If the revenues produced by the property are insufficient to pay expenses, including without limitation any disbursements made by Beneficiary or Trustee pursuant to this paragraph, a receiver may borrow, or Beneficiary or Trustee may advance, such sums upon such terms as it deems

necessary for the purposes stated in this paragraph, and repayment of such sum shall be secured by this trust deed. Amounts borrowed or advanced shall bear interest at the same rate as the note secured hereby and shall be payable by Grantors to Beneficiary or Trustee on demand.

17. **Assignment of Rents.** Grantors assign and transfer to Beneficiary all leases, subleases and rental contracts, whether now existing or hereafter arising, and relating to the occupancy or use of all or any portion of the property, and all rents, revenues, issues and profits derived from the property and the lease, rental or license of all or any portion thereof. This assignment is intended by Grantors and Beneficiary to create a present and unconditional assignment to Beneficiary, subject only to a revokable license hereby granted to Grantors to collect such rents as long as Grantors are not in default under this deed of trust. Upon a default by Grantors, Beneficiary may notify any and all tenants to make rent payments directly to Beneficiary and exercise any and all rights of the lessor under the leases.

18. **Application of Proceeds.** All proceeds realized from the exercise of the rights and remedies under this trust deed shall be applied as follows:

- a. To pay the costs of exercising such rights and remedies, including the costs of any sale, the costs and expenses of any receiver, and the costs and expenses provided for herein.
- b. To pay all other amounts owed by Grantors, payment of which is secured by this trust deed; and
- c. The surplus, if any, shall be paid to the clerk of the court in the case of a judicial foreclosure, or otherwise to the person or persons legally entitled thereto.

19. **General Provisions.**

a. **Reconveyance Upon Payment.** Upon written request of Beneficiary, Beneficiary's agent or representative, stating that all sums secured hereby have been paid, surrender of this trust deed and the note to Trustee for cancellation and retention and payment of its fees, Trustee shall reconvey, without warranty, the trust property then held hereunder. The recitals in any reconveyance executed under this trust deed of any matters of fact shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

b. **Substitute Trustee.** In the event of dissolution or resignation of the Trustee, Beneficiary may substitute one or more trustees to execute the trust hereby created, and the new trustee(s) shall have all of the powers and duties of prior trustees.

c. **Trust Deed Binding on Successors and Assigns.** This trust deed shall be binding on and inure to the benefit of the successors and assigns of Grantors, Trustee and Beneficiary.

d. **Notice.** Any notice under this trust deed shall be in writing. Any notice to be given or document to be delivered under this trust deed shall be effective when either delivered

in person or deposited as registered or certified mail, postage prepared, addressed to the party at the address first stated in this trust deed; provided that any notice pursuant to exercise of the Trustee's power of sale in the event of default shall be sufficient if such notice complies with all provisions of Oregon law applicable to exercise of such powers of sale. Any party may, by notice to the others, designate a different address.

e. **Expenses and Attorney Fees.** In the event that Beneficiary or Trustee shall take any action, judicial or otherwise, to enforce the note or any provision of this trust deed or if Beneficiary or Trustee shall be required to appear in any proceeding to protect and maintain the priority of Trustee's title to the property, Trustee or Beneficiary (or both) shall be entitled to recover from Grantors all expenses which may be reasonably incurred in taking such action, including but not limited to costs incurred in searching records, the cost of title reports and surveyors' reports, and attorneys fees, whether incurred in a suit or action or any appeals from any judgment or decree therein or petition for review, or in connection with nonjudicial action.

f. **Applicable Law.** This trust deed shall be governed by the laws of the State of Oregon.

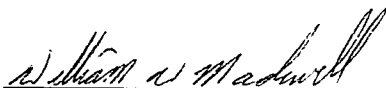
g. **Time of Essence.** Time is of the essence of this trust deed.

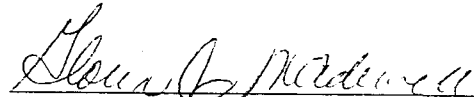
h. **Severability.** If any provision of this trust deed shall be held to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect any other provisions of this trust deed, but this trust deed shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

i. **Entire Agreement.** This trust deed and the note contain the entire agreement of the parties with respect to the matters covered, and no other previous agreement, statement or promise made by any party to this trust deed which is not contained in its terms or in the terms of the note shall be binding or valid.

IN WITNESS WHEREOF, Grantors have caused this Trust Deed to be executed on the day first above written.

GRANTORS:


William W. Madewell


Gloria J. Madewell

37080

35638

STATE OF OREGON, County of Klamath, ss:The foregoing instrument was acknowledged before me this 2nd day of September 1999, by William W. Madewell.Kristi L. Redd
Notary Public for OregonMy Commission Expires: 11/16/99STATE OF OREGON, County of Klamath, ss:The foregoing instrument was acknowledged before me this 2nd day of September 1999, by Gloria J. Madewell.Kristi L. Redd
Notary Public for OregonMy Commission Expires: 11/16/99

State of Oregon, County of Klamath

Recorded 9/03/99, at 3:36 p.m.In Vol. M99 Page 35632Linda Smith,County Clerk RR Fee\$ 40.00

State of Oregon, County of Klamath

Recorded 9/16/99, at 3:42 p.m.In Vol. M99 Page 37073Linda Smith,County Clerk Fee\$ 40.00