

**OREGON ECONOMIC AND COMMUNITY DEVELOPMENT DEPARTMENT And
KLAMATH COUNTY
AGREEMENT GRANTING EQUAL PRIORITY RIGHTS**

mtc 55425 -RR

PARTIES

GRANTOR: Spradley
John W/and Sydney L. Spradley
32848 Transformer Road
Malin, OR 97632

TITLE COMPANY: AmeriTitle
222 South Sixth Street
PO Box 5017
Klamath Falls, Oregon 97601

BENEFICIARIES: Oregon Economic and Community Development Department
775 Summer St. NE, Ste. 200
Salem, OR 97301-1280

Klamath County
c/o South Central Oregon Economic Development District
409 Pine Street, Suite 200
Klamath Falls, Oregon 97601

State of Oregon, County of Klamath
Recorded 11/21/01 11:17 a. m.
In Vol. M01, Page 59714
Linda Smith, County Clerk
Fee \$ 26.00 # of Pgs 4

PROPERTY

LAND IN KLAMATH COUNTY, OREGON DESCRIBED AS FOLLOWS:

See attached Exhibit "A". Property address is 32848 Transformer Road, Malin, OR.

THIS AGREEMENT GRANTING EQUAL PRIORITY RIGHTS (hereinafter "Agreement") is made as of the 24th day of October, 2001 between the STATE OF OREGON, acting by and through its Economic and Community Development Commission, herein called "Commission," and the KLAMATH COUNTY, herein called "COUNTY".

WHEREAS, the Commission has loaned to John W. and Sydney L. Spradley, 32848 Transformer Road, Malin, Oregon 97632 ("Borrower") the sum of NINETEEN THOUSAND SIX HUNDRED EIGHTY AND NO CENTS (U.S. \$19,680.00) for purposes of drilling a well, through the Oregon Business Development Fund ("Commission's Loan"), which is evidenced by a promissory note dated November 13, 2001 (as amended, renewed, or extended the "Commission's Note"), and a trust deed dated November 13, 2001 executed by John W. and Sydney L. Spradley and recorded on 11-21-01, 2001 in Book M01, Page 59760, as document number _____ in the records of Klamath County, Oregon (as amended from time to time the "Commission's Trust Deed"); and

WHEREAS, COUNTY has loaned to Borrower the sum of TWENTY FOUR THOUSAND SIX HUNDRED AND NO CENTS (U.S. \$24,600.00) for purposes of drilling a well, ("COUNTY's Loan"), which loan is evidenced by a promissory note dated November 13, 2001 (as amended, renewed, or extended the "COUNTY's Note"), and the repayment of which is secured a trust deed dated November 13, 2001 executed by John W. and Sydney L. Spradley and recorded on 11-21-01, 2001 in Book M01, Page 59761, as document number _____ in the records of Klamath County, Oregon (as amended from time to time the "COUNTY's Trust Deed") and

WHEREAS, the Commission's Trust Deed and the COUNTY's Collateral Documents encumber the following described property:

see Attachment A which is by this reference incorporated herein; and

WHEREAS, Commission and COUNTY wish to establish equal priorities as to the liens of the Commission's Trust Deed securing Commission's Loan and the COUNTY's Trust Deed securing the COUNTY's Loan on the following terms and conditions;

NOW, THEREFORE, in consideration of the mutual agreements hereinafter set forth, Commission and COUNTY agree as follows:

- Equal Priority Rights. The liens of the Commission and COUNTY in the property constituting collateral under the Commission's Trust Deed and the COUNTY's Trust Deed are equal, as though the Commission's Collateral Documents and the COUNTY's Collateral Documents were recorded simultaneously. It is the intent of this paragraph that any foreclosure sale will be conducted, and bids submitted, as though Commission and COUNTY were a single entity having a lien interest equivalent to their combined outstanding balance of the Commission's Loan and the COUNTY's Loan. Unless otherwise agreed, any bid made by Commission or COUNTY at any foreclosure sale shall equal such combined lien interest. It is also the intent of this paragraph that any remedy the Commission or COUNTY has under ORS chapter 79 shall be pursued as though Commission and COUNTY were a single entity having a secured interest equal to their combined outstanding balance of the Commission's Loan and the COUNTY's Loan.
- Proportionate Share. The parties shall share in any proceeds of any sale or disposition of the collateral under the Commission's Trust Deed and the COUNTY's Trust Deed and any proceeds of said collateral arising out of a foreclosure of any nature proportionately. Each party's share shall constitute a percentage represented by that fraction the numerator of which is the unpaid principal balances plus accrued unpaid interest of Commission's Loan or COUNTY's Loan, as the case may be, and the denominator of which is the combined unpaid principal balances plus accrued unpaid interest of both Commission's Loan and the COUNTY's Loan, which principal balances and accrued unpaid interest shall be determined as of the date any foreclosure or action under ORS chapter 79 is commenced.
- Limitations on Power of COUNTY and Commission. COUNTY and Commission agree that they will not, without the written consent of the other party:
 - make or consent to any material adverse alteration or amendment (including but not limited to any amendment to increase the principal amount or interest rate of a Loan) of the COUNTY's or Commission's Note, Trust Deed or any other document or instrument evidencing, securing or guaranteeing the COUNTY's Loan or Commission's Loan in whole or in part, which document or instrument was otherwise executed and/or delivered in connection

with the COUNTY's Loan or the Commission's Loan (all such documents being herein collectively called the "Loan Documents");

- (b) make or consent to any release, substitution, or exchange of any security for the COUNTY's Loan or the Commission's Loan, as the case may be, except for release, if any, to be made pursuant to the provisions of the applicable Collateral Documents;
 - (c) waive any covenant or condition which is required to be kept and performed by Borrower under that party's Loan Documents, except that either party may extend for reasonable periods of time the performance of any covenant or condition under that party's own Loan Documents;
 - (d) waive or release, in whole or in part, any obligation of any guarantor in respect of any of that party's Loan Documents;
 - (e) consent to the sale or transfer of Borrower's interest in the property encumbered by the COUNTY's or Commission's Collateral Documents, without accelerating the entire unpaid balance of the COUNTY's or Commission's Note and all other charges and accrued interest.
4. Default by Borrower. Each party retains all rights with respect to the enforcement, collection and administration of its own Loan and the security therefore; provided, however, that each party shall, promptly after having knowledge of the occurrence thereof, and in no event later than 30 days, inform the other party of any default by Borrower under any of its Loan Documents and of any material fact relating to any other aspect of its Loan which might have an adverse effect on the value of its lien and/or security interest. As used in this paragraph, default as to a party means a default under that party's Loan Documents.
5. Commencement of Foreclosure or Remedies Under Chapter 79. Upon any default by Borrower, Commission and COUNTY shall promptly consult and attempt to agree upon a mutually acceptable course of action to take with respect to such default, and then to pursue such course of action without delay and with due diligence. The parties (and the Borrower by signing below) agree that a default under the Commission's Loan Documents or COUNTY's Loan Documents shall be deemed to be a default under COUNTY's Loan Documents and the Commission's Loan documents, respectively. Commission shall have the authority to pursue such course of action on behalf of both parties if agreement is reached. If Commission and COUNTY cannot agree upon a mutually acceptable course of action within fifteen (15) days after the notification referred to above, then either party may purchase the other's proportionate share which, for purposes only of this paragraph, shall be defined as the unpaid principal balance of the Commission's Loan or COUNTY's Loan, as the case may be, plus all unpaid and accrued interest thereon.
- In the event the Commission commences judicial or non-judicial foreclosure proceedings or other proceedings permitted by ORS chapter 79 in accordance with this Agreement and on behalf of both parties, the Commission shall indicate by appropriate recordation, pleading, affidavit, or admission that COUNTY has an equal priority right in any proceeds from foreclosure or other proceedings permitted by ORS chapter 79. Both parties further agree that in the event of judicial foreclosure they will ensure that any decree of foreclosure specifies the equality of priority and interest of each for the purpose of any foreclosure sale.
6. Effect of Remedial Actions Under Paragraph 5. After payment of all reasonable costs and expenses in pursuing the remedies under paragraph 5, Commission shall promptly remit to COUNTY its proportionate share of all remaining net proceeds. If either Commission or COUNTY acquires title or certificate of sale to the property through foreclosure or by a deed in lieu of foreclosure, the other party shall have an undivided ownership interest in the property equal to its proportionate share.
7. Assignments. Without the prior written consent of the other, neither party shall assign or otherwise dispose of all or any part of its interest in this Agreement or any of the Loan Documents.
8. No Third Party Beneficiaries. All of the understandings and agreements contained herein are solely for the benefit of the Commission and COUNTY, and there are no other parties (including Borrower or any Guarantor) who are intended to be benefitted, in any way whatsoever, by this Agreement.
9. Security Interest Not Limited. Nothing contained in this Agreement is intended to affect or limit, in any way whatsoever, the security interests that each of the parties hereto has in any and all of the assets of Borrower, whether tangible or intangible, insofar as the rights of Borrower and third parties are involved. The parties hereto specifically reserve any and all of their respective rights, security interests, and rights to assert security interests as against Borrower and any third parties.
10. Priorities. The priorities specified hereinabove are applicable irrespective of the time or order of attachment or perfection of the security interests or other interests referred to herein, the time or order of filing of the Commission's or COUNTY's Collateral Documents or financing statements, the acquisition of purchase money or other security interests or liens, or the time of giving or failure to give notice of the acquisition or expected acquisition of purchase money or other security interests.

The priorities specified hereinabove are expressly conditioned upon the nonavoidability and perfection of the lien of the Commission and COUNTY; and if the security interest or lien, as the case may be, is not perfected or is avoidable, for any reason, then the relative priority agreements provided for herein shall not be effective as to the particular collateral which is the subject of the unperfected or avoidable security interest or lien.

11. Notice of Sale or Disposition. Each party agrees to give the other written notice of the time and place of any public sale or the time after which any private sale or other intended disposition is to be made by either of them of the collateral which is the subject of this Agreement. This Agreement is intended, in part, to constitute a request for notice and a written notice of a claim by each party hereto to the other of an interest in said collateral in accordance with the provisions of ORS 79.504 and 79.505.
12. Applicable Law; Entire Agreement. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Oregon without regard to the principles of conflicts of law. This Agreement constitutes the entire understanding between the parties on the subject matter hereof and may be amended, modified, or terminated only by an instrument signed by the parties.
13. Notices. Any notices which may be required herein shall be in writing and shall be considered to have been given as of the date and time when the same is deposited in the United States Mail with postage prepaid and mailed by registered or certified mail, return receipt requested, to the following addresses:

Oregon Economic and Community Development Commission
c/o Oregon Economic and Community Development Department
775 Summer Street N.E., Ste. 200
Salem, Oregon 97301-1280
Attn: Manager, Business Finance

Klamath County

c/o South Central Oregon Economic Development District
409 Pine Street, Suite 200
Klamath Falls, Oregon 97601

59716

Each party may designate a change of address by notice to the other party.

14. Granting of Equal Priority Not a Security; No Pledge or Joint Venture. The granting of priority rights represented by this Agreement shall not be deemed to be a security within the meaning of the Securities Act of 1933, the Securities Exchange Act of 1934, or the Oregon Securities Law (ORS chapter 59). This Agreement shall not be deemed to represent a pledge of any interest in Commission's Loan to COUNTY, or in COUNTY's Loan to Commission. In addition, this Agreement shall not be construed to create a joint venture or partnership between Commission or COUNTY.
15. Successors. All rights, benefits, burdens, and obligations set forth in this Agreement shall bind and inure to all successors in interest of each of the parties.

IN WITNESS WHEREOF, Commission and COUNTY have duly executed this Agreement as of the day and year first above written.

STATE OF OREGON, acting by and through its Oregon Economic and Community Development Commission

By: [Signature]
Mark D. Huston, Manager, Business Finance

Date: 10-24-2001

KLAMATH COUNTY

By: [Signature]
Joseph S. McBride, Chairman, Drought Relief Loan Fund

Date: 11/5/01

AGREED:

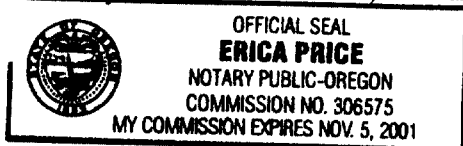
[Signature]
John W. Spradley

Date: 11/13/2001

[Signature]
Sydney L. Spradley

Date: 11/13/2001

STATE OF OREGON)
County of Marion)



This instrument was acknowledged before me on
) 10-24-01 by Mark D. Huston,
as Manager, Business Finance, Oregon Economic and Community
Development Department

[Signature]
Notary Public for Oregon
My commission expires: Nov. 5, 2001

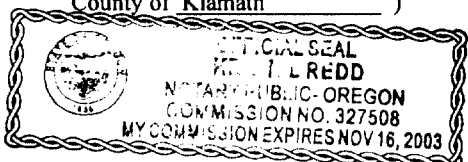
STATE OF OREGON)
County of Klamath)



This instrument was acknowledged before me on
) November 14, 2001 by Joseph S. McBride,
as Chairman of Drought Relief Loan Fund, Klamath County.

[Signature]
Notary Public for Oregon
My commission expires: 8/1/05

STATE OF OREGON)
County of Klamath)



The foregoing instrument was acknowledged
) ss. before me this 13th day of November, 2001, by
John W. Spradley.

[Signature]
Notary Public for Oregon
My commission expires: 11/16/2003

STATE OF OREGON)
County of Klamath)



The foregoing instrument was acknowledged
) ss. before me this 13th day of November, 2001, by
Sydney L. Spradley.

[Signature]
Notary Public for Oregon
My commission expires: 11/16/2003

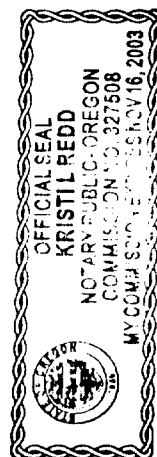


EXHIBIT "A"

The NW1/4 of the SW1/4 of Section 2, Township 41 South, Range 12 East of the Willamette Meridian, Klamath County, Oregon, EXCEPT that portion thereof lying within the boundaries of Transformer Road.