

mtc 53637-KR

**RECORDING COVER SHEET**  
**ALL TRANSACTIONS, PER ORS 205.234**

*THIS COVER SHEET HAS BEEN PREPARED BY THE PERSON  
PRESENTING THE ATTACHED INSTRUMENT FOR  
RECORDING. ANY ERRORS IN THIS COVER SHEET  
DO NOT AFFECT THE TRANSACTION(S) CONTAINED  
IN THE INSTRUMENT ITSELF.*

**AFTER RECORDING RETURN TO**  
*name and address of the person authorized to receive the  
instrument after recording, as required by ORS 205.180(4)  
and ORS 205.238.*

AmeriTitle  
222 S. Sixth Street  
Klamath Falls, OR 97601

State of Oregon, County of Klamath  
Recorded 01/15/2002 3:15 p. m.  
Vol M02, Pg 2658-63  
Linda Smith, County Clerk  
Fee \$ 46<sup>00</sup> # of Pgs 6

1. **NAME(S) OF THE TRANSACTION(S)**, described in the attached instrument and required by ORS 205.234(a).  
*Note: Transaction as defined by ORS 205.010 "means any action required or permitted by law to be recorded including, but not limited to, any transfer, encumbrance or release affecting title to or an interest in real property."*

EASEMENT AND EQUITABLE SERVITUDE

2. **DIRECT PARTY**, name(s) of the person(s) described in ORS 205.125(1)(b) or  
**GRANTOR**, as described in ORS 205.160.

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3. **INDIRECT PARTY**, name(s) of the person(s) described in ORS 205.125(1)(a) or  
**GRANTEE**, as described in ORS 205.160.

OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY

4. **TRUE AND ACTUAL CONSIDERATION PAID** for instruments conveying or contracting to convey fee title to any  
real estate and all memoranda of such instruments, reference ORS 93.030.

N/A

5. **UNTIL A CHANGE IS REQUESTED, ALL TAX STATEMENTS SHALL BE SENT TO THE FOLLOWING  
ADDRESS** for instruments conveying or contracting to convey fee title to any real estate, reference ORS 93.260.

AmeriTitle  
P.O. Box 752, BEND, OR 97709

6. **FULL OR PARTIAL SATISFACTION, IF ANY, OF THE LIEN CLAIM CREATED BY THE ORDER or  
WARRANT**, for instruments to be recorded in County Clerk Lien Records, reference ORS 205.125(1)(e).

N/A

7. **THE AMOUNT OF THE CIVIL PENALTY OR THE AMOUNT, INCLUDING PENALTIES, INTEREST AND  
OTHER CHARGES, FOR WHICH THE WARRANT, ORDER OR JUDGMENT WAS ISSUED**, for instruments to  
be recorded in County Clerk Lien Records, reference ORS 205.125(1)(c) and ORS 18.325.

N/A

In accordance with ORS 93.808, the Oregon Department of Environmental Quality approves the conveyance set forth in this instrument.

OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY

Joni Hammond      1-9-02  
Name                      Date

EASEMENT AND EQUITABLE SERVITUDE

This Easement and Equitable Servitude is made January 11, 2002 between Amerititle (Grantor) and the Oregon Department of Environmental Quality (DEQ or Grantee).

RECITALS

A. Grantor is the owner of certain real property (Property) located at 404 South 4<sup>th</sup> St., Klamath Falls, Klamath County, Oregon, the location of which is more particularly described in Attachment A to this Easement and Equitable Servitude.

B. On August 2, 2001, the Director of the Oregon Department of Environmental Quality selected the remedial action for the Property set forth in the Record of Decision for the Property (ROD). The remedial action selected in the ROD requires institutional controls to:

1. Provide potential future owners or lessees with knowledge of site conditions;
2. Prohibit the installation and operation of water supply wells on the property without written approval of DEQ;
3. Assure monitoring and maintenance of the cap over residual contaminated soils;
4. Assure proper handling and disposal of contaminated soils should excavation of such materials occur as part of future site development or use under an approved soil management plan; and
5. Assure that the site remain in industrial or commercial use.

C. On September 5, 2001, Amerititle entered a Perspective Purchaser Agreement (PPA), under which Amerititle agreed to implement the institutional controls required by the ROD.

D. The provisions of this Easement and Equitable Servitude are intended to protect human health and the environment.

NOW THEREFORE, in consideration for the foregoing, which is incorporated by reference, and the promises and obligations herein, the parties agree as follows:

#### 1. GENERAL DECLARATION

Grantor declares that all real property located in Klamath County, State of Oregon, and described in Attachment A to this Easement and Equitable Servitude, is and shall be conveyed, transferred, leased, encumbered, occupied, built upon, or otherwise used or improved, in whole or in part, subject to this Easement and Equitable Servitude. Each condition and restriction set forth in this Easement and Equitable Servitude touches and concerns the Property and the easement granted in paragraph 4 herein, shall run with the land for all purposes, shall be binding upon all Owners as set forth in this Easement and Equitable Servitude, and shall inure to the benefit of the State of Oregon. Grantor further conveys to DEQ the perpetual right to enforce the conditions and restrictions set forth in this Easement and Equitable Servitude.

#### 2. DEFINITIONS

2.1 "DEQ" means the Oregon Department of Environmental Quality, and its employees, agents, and authorized representatives acting on its behalf. "DEQ" also means any successor or assign of DEQ under the laws of Oregon, including but not limited to any entity or instrumentality of the State of Oregon authorized to perform any of the functions or to exercise any of the powers currently performed or exercised by DEQ.

2.2 "Owner" means any person or entity, including Grantor, who is the record owner of fee simple title or a vendee's interest of record to any portion of the Property,

including any successor or holder of fee simple title or a vendee's interest of record to any portion of the Property, excluding any entity or person who holds such interest solely for the security for the payment of an obligation.

### 3. EQUITABLE SERVITUDE (RESTRICTIONS ON USE)

3.1 No use shall be made of shallow (less than 25 feet) groundwater at the Property, by extraction through wells or by other means, which use involves consumption or other beneficial use of the groundwater. This prohibition shall not apply to extraction of groundwater associated with temporary dewatering activities related to construction, development, or the installation of sewer or utilities at the Property.

3.2 Except upon prior written approval from DEQ, no operations or uses shall be made on or of the Property that will or likely will penetrate the surface cover or jeopardize the cover's functional integrity, including without limitation any excavation, drilling, scraping, or erosion. The Owner of the Property shall maintain the surface cover and any other permanent feature of the remedy described in the ROD in accordance with a monitoring and maintenance plan approved in writing by DEQ.

3.3 The following operations and uses are prohibited on the Property:

- 3.3.a Residential use of any type; and
- 3.3.b Agricultural use of any type.

### 4. EASEMENT (RIGHT OF ENTRY)

During reasonable hours and subject to reasonable security requirements, DEQ as Grantee shall have the right to enter upon and inspect any portion of the Property to determine whether the requirements of this Easement and Equitable Servitude have been or are being complied with. Violation of any condition or restriction contained in this Easement and Equitable Servitude shall give to DEQ the right, privilege, and license to enter upon the Property

where such violation exists and to abate, mitigate, or cure such violation at the expense of the Owner, provided written notice of the violation is given to the Owner describing what is necessary to correct the violation and the Owner fails to cure the violation within the time specified in such notice. Any such entry by DEQ shall not be deemed a trespass, and DEQ shall not be subject to liability to the Owner of the Property for such entry and any action taken to abate, mitigate, or cure a violation.

## 5. GENERAL PROVISIONS

5.1 Grantor shall record this Easement and Equitable Servitude in the records of deeds of real property in the county where the Property is located, such recordation being expressly authorized by statute including, without limitation, ORS 93.710.

5.2 All conditions and restrictions contained in this Easement and Equitable Servitude shall run with the land, until such time as any condition or restriction is removed by written certification from DEQ that the condition or restriction is no longer required in order to protect human health or the environment.

5.3 Any person who at any time owns, occupies, or acquires any right, title, or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to every condition and restriction contained in this Easement and Equitable Servitude, whether or not any reference to this Easement and Equitable Servitude is contained in the instrument by which such person or entity acquired an interest in the Property.

5.4 The Owner of any portion of the Property shall notify DEQ at least ten (10) days before the effective date of any conveyance, grant, gift, or other transfer, in whole or in part, of the Owner's interest in the Property.

5.5 The Owner of the Property shall notify DEQ within thirty (30) days following Owner's petitioning for or filing of any document initiating a rezoning of the Property that would change the base zone of the Property under the City of Klamath Falls zoning code or any successor code.

5.6 Upon any violation of any condition or restriction contained in this Easement and Equitable Servitude, DEQ, in addition to the remedies described in paragraph 4, may enforce this Easement and Equitable Servitude as provided in the PPA, or may seek any other available legal or equitable remedy to enforce this Easement and Equitable Servitude.

IN WITNESS WHEREOF Grantor and Grantee have executed this Easement and Equitable Servitude as of the date and year first set forth above.

GRANTOR:

Linda Steele,  
Amerititle Pres.

STATE OF OREGON )  
 ) ss.  
County of Deschutes )

The foregoing instrument is acknowledged before me this 4<sup>th</sup> day of JANUARY, 2001, by LINDA STEELE of AMERITITLE, on its behalf.



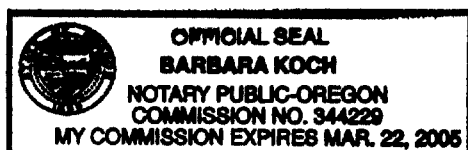
[Signature]  
NOTARY PUBLIC FOR OREGON  
My commission expires: 3-27-05

GRANTEE:

Joni Hammond  
State of Oregon Department  
of Environmental Quality

STATE OF OREGON )  
 ) ss.  
County of UMATILLA )

The foregoing instrument is acknowledged before me this 9<sup>th</sup> day of JANUARY, 2002, by Joni Hammond of DEPT OF ENVIRONMENTAL QUALITY, on its behalf.



Barbara Koch  
NOTARY PUBLIC FOR OREGON  
My commission expires: MARCH 22, 2005