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MTL S3637-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

Vol M02 Page 2664

State of Oregon, County of Klamath  
Recorded 01/15/2002 3:15 p. m.  
Vol M02, Pg 2664-80  
Linda Smith, County Clerk  
Fee \$ 101.00 # of Pgs 17

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."*

Prospective Purchaser Agreement

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

OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY

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

AmeriTitle

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

## PROSPECTIVE PURCHASER AGREEMENT

DEQ No. 01-04

BETWEEN: Oregon Department of Environmental Quality

AND: AmeriTitle

EFFECTIVE DATE: 9/5/2001 (Date of last signature below)

This Agreement is entered between the Oregon Department of Environmental Quality (DEQ) and AmeriTitle pursuant to ORS 465.260 and 465.327. This Agreement contains the following provisions:

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Attachment A -- Legal Description of Property	

1. RECITALS

A. The subject property (Property) is located at 404 South 4<sup>th</sup>, Klamath Falls, Oregon. The legal description of the Property is set forth as Attachment A to this Agreement.

B. The Property was at one time utilized as a commercial laundry (New City Laundry) prior to being part of the Modoc Lumber Company mill property in the mid-1940s. Under Modoc Lumber's ownership the northwestern portion of the Property contained a boiler house and office building. Adjacent to the boiler room were three underground heating oil storage tanks (USTs). South of the boiler house is the location of the former wood energy building used to make wood pellets in the late 1980's. The Mill closed down in 1994 and most of the buildings, including the ones on the Property were demolished between September 1995 and October 1996. Asbestos abatement occurred prior to demolition. During that time the heating oil USTs were also decommissioned. In addition to the decommissioning, contaminated soil and groundwater was removed from the tank pit. The boiler house foundation still remains on the parcel.

C. In 1995 the three USTs were decommissioned from the boiler house area. Approximately 60 cubic yards of petroleum contaminated soil was excavated and disposed of at the Klamath County landfill. Approximately 16,000 gallons of contaminated groundwater were removed, treated, and disposed into the City of Klamath

Falls sanitary sewer. Soil sampling of the pit contained TPH as diesel (TPH-D) up to 2,900 mg/kg and TPH as heavy oil (TPH-HO) up to 17,000 mg/kg.

D. In 1997 additional soil and groundwater sampling indicated the presence of TPH-D and TPH-HO as well as some poly nuclear aromatic hydrocarbon (PAH) compounds in groundwater. This included the presence of chrysene at 4.63 ppb. Further characterization of soil and groundwater was conducted in 1998 and 1999 and the tank area was issued a No Further Action under the Underground Storage Tank Rules (OAR 340-122-205 through 360) in April 2000.

E. In August and October 2000, under a Voluntary Cleanup Agreement with Pinecone LLC investigations were conducted to assess the boiler house, former laundry area and wood pellet facility in order to characterize the hazardous constituents of concern. The investigation found the area of the boiler house contained PAHs. Using screening level risk based levels from EPA Region 9 Preliminary Remediation Goals (PRGs) three PAHs, benzo(a)pyrene, benzo(b)fluoranthene, and ideno(1,2,3-cd)pyrene exceed the residential soil level. These three compounds and benzo(a)anthracene also exceed the PRG for groundwater.

F. The contaminants on the Property, diesel and heavy oil range petroleum hydrocarbons and PAH compounds, are "hazardous substances" within the meaning of ORS 465.200(15). The presence of hazardous substances at the Property constitutes a "release" of hazardous substances within the meaning of ORS 465.200(21), and makes the Property a "facility" within the meaning of ORS 465.200. Removal or remedial action is necessary at the Property to protect human health or the environment.

G. On May 9, 2001, AmeriTitle applied to DEQ for entry of this Agreement, and agreed to reimburse DEQ's costs of technical review and agreement preparation.

H. AmeriTitle is an Oregon corporation and a "person" within the meaning of ORS 465.200(20). According to information provided by AmeriTitle, AmeriTitle is not currently liable under ORS 465.255 for the release of hazardous substances existing at the facility as of the date of this Agreement.

I. The Property is located on the edge of downtown Klamath Falls. It has been vacant for five years. Development of the Property is critical to the revitalization of the downtown area. The development proposed by AmeriTitle will redevelop a vacant property, provide jobs and office space in the proposed office building, provide off street parking, and facilitate public access to Lake Ewauna. These uses will enhance the downtown revitalization efforts, thus encouraging continued economic development in Klamath Falls' downtown core.

J. AmeriTitle agrees to perform the activities described in Section 2 of this Agreement at its expense. AmeriTitle will conduct the activities described in Section 2 under the oversight of DEQ's Project Manager. DEQ has determined that a "substantial public benefit" will result from this Agreement, within the meaning of ORS 465.327 (1)(d).

K. Based upon the information submitted by AmeriTitle, DEQ has further determined that the proposed development activities at the Property will not contribute to

or exacerbate existing contamination, increase health risks, or interfere with remedial measures necessary at the Property.

L. In determining to enter this Agreement, DEQ has consulted with the City of Klamath Falls and has considered reasonably anticipated future land uses at the Property and surrounding properties.

M. AmeriTitle recognizes that implementation of remedial measures at the Property in the future might interfere with AmeriTitle's use of the Property.

2. MEASURES TO BE UNDERTAKEN

A. AmeriTitle agrees to work under DEQ oversight to implement the soil remedy for the Property as selected in the DEQ staff report, dated August 2, 2001. The elements of the remedy are listed below:

1. Before commencing any development activities on the Property, provide a DEQ-approved soil management plan which describes how contaminated soil and existing foundations will be managed during redevelopment of the site.
2. Provide a DEQ-approved cap over the entire Property which may include building foundations, asphalt pavement and landscaping to prevent direct contact to site soils.
3. Sign and record an Easement and Equitable Servitude (deed restriction) with DEQ to limit land use on the Property to industrial/commercial purposes.

B. Upon satisfactory completion by AmeriTitle of the remedial actions under 2.A. above, DEQ will provide a written notice that such measures have been completed. If DEQ issues a determination of No Further Action or Certificate of Completion for the Property, such determination or Certificate shall serve as notice of completion of the remedial actions required under 2.A.

C. DEQ agrees that AmeriTitle may coordinate the remedial activities described in the attached work plan and required under 2.A. above, with development of the Property. In the event AmeriTitle fails to begin implementation of the remedial activities with three (3) years from the date of this Agreement, AmeriTitle agrees that DEQ may at its discretion terminate this agreement upon thirty (30) days notice to AmeriTitle, or may issue a Unilateral Administrative Order directing AmeriTitle to begin the remedial activities.

Before AmeriTitle begins development of the property and implementation of the remedial activities, AmeriTitle shall follow the procedures described in 2.D. below. AmeriTitle shall not begin development of the Property or implementation of the remedial measures without prior approval from DEQ.

D. Any development, construction, or other use of the Property shall be consistent with and shall not interfere with investigative or remedial activities necessary at the Property. To ensure such consistency and prevent exacerbation of existing contamination at the Property, AmeriTitle must notify DEQ before any material physical changes or disturbances are made to any area of the Property that is subject to use restrictions under Section 2.D and 3.C. At DEQ's request, AmeriTitle must submit for

DEQ review and approval, development, use, and building plans, or other similar and adequate documentation, for the proposed activities before any material changes or disturbances occur to any area of the Property that is subject to such use restrictions.

E. AmeriTitle shall require all tenants, employees, authorized and regular users, and other occupants of the Property who perform activities on the Property that might affect the soils, groundwater, other contaminated media, or affect necessary investigator and/or remedial measures, to also submit development and/or construction plans to AmeriTitle for review by DEQ, as per Subsection 2.D. of this Agreement. This requirement is necessary to ensure that the actions of others do not exacerbate existing contamination. This review and approval requirement will expire upon the Property receiving a No Further Action determination or Certificate of completion from DEQ.

F. AmeriTitle shall record and abide by any necessary use restrictions on the Property, which restrictions, pursuant to ORS 465.327(5), shall run with the land. These restrictions are described in Subsection 3.C. of this Agreement. AmeriTitle shall also impose and abide by any use and/or deed restrictions on the Property required by the final remedy selected for the Property. The final remedy for the Property may incorporate, eliminate, or modify the restrictions in Subsection 3.C. of this Agreement. If the restrictions in Subsection 3.C. of this Agreement are incorporated into the final remedy, they will be restated as such and subject to public notice and comment requirements for proposed remedial actions. Any use restrictions contained in a final remedy selected or approved by DEQ after public participation will supersede the restrictions set forth in Subsection 3.C. of this Agreement.



3. GENERAL PROVISIONS

A. DEQ Oversight

DEQ shall provide review, approval/disapproval, and oversight as described in Section 2 and Subsection 3.F.(2) of this Agreement. Where DEQ approval is required for any plan or activity under this Agreement, AmeriTitle shall not proceed to implement the plan or activity until DEQ approval is received. DEQ will make good faith efforts to conduct plan and activity review promptly so that any proposed development activities are not unduly delayed.

B. DEQ Access

(1) AmeriTitle grants an irrevocable right of entry to DEQ and its authorized representatives to enter and move freely about the Property at all reasonable times for purposes of overseeing implementation of this Agreement, or conducting removal or remedial measures DEQ deems necessary.

(2) AmeriTitle shall allow DEQ to inspect and copy all records in AmeriTitle's possession or control relating to measures undertaken at the Property under this Agreement. AmeriTitle shall preserve all such records for six (6) years after the effective date of this Agreement, and, after such six-year period, shall provide DEQ with sixty (60) days notice before destruction or other disposal of such records and make the records available for inspection and copying.

(3) AmeriTitle may assert a claim of confidentiality regarding any records submitted to or copied by DEQ pursuant to this Agreement. DEQ shall treat documents and records for which a claim of confidentiality has been made in accordance with ORS 192.410 to 192.505. If AmeriTitle does not make a claim of confidentiality at the time the records are submitted to or copied by DEQ, the records may be made available to the public without notice to AmeriTitle. DEQ reserves any rights to obtain documents withheld from DEQ as privileged.

C. Use Restrictions

Use restrictions for the site as proposed in the staff report, include the land use restrictions as stated in the E&ES (Section 2A of this agreement) and restriction on installation of water wells without prior approval by DEQ.

D. Notice

All reports, notices, and other communications required under or relating to this Agreement shall be directed to:

For DEQ:

N. Toby Scott DEQ Project Manager  
2146 NE 4<sup>th</sup>, #104  
Bend, Oregon 97701  
Tel: (541) 388-6146 x246  
FAX: (541) 388-8283

For AmeriTitle:

Linda Stelle  
15 Oregon Avenue  
Bend, Oregon 97701  
Tel: (541) 389-7711  
Fax: (541) 389-0506

E. Progress Reports

On a quarterly basis upon commencement and continuing until completion of the development activities described in this Agreement, AmeriTitle shall submit to DEQ one

(1) copy of a progress report describing its activities at the Property under this Agreement.

DEQ anticipates that the progress report will not exceed two (2) pages in length. The progress report shall address, at a minimum, the following:

- (1) Activities undertaken by AmeriTitle at the Property during the previous quarter;
- (2) Actions scheduled to be taken by AmeriTitle in the next quarter;
- (3) Sampling and test results and any other data generated by AmeriTitle during the previous quarter; and
- (4) A description of any problems experienced by AmeriTitle during the previous quarter and the actions taken to resolve them.

F. DEQ Costs

(1) DEQ shall submit to AmeriTitle a monthly statement of costs incurred after the effective date of this Agreement by DEQ in connection with the oversight of AmeriTitle's implementation of this Agreement. DEQ shall apply as a credit against costs any balance remaining of AmeriTitle's advance deposit.

(2) DEQ oversight costs payable by AmeriTitle shall include both direct and indirect costs. Direct costs include site-specific expenses, DEQ contractor costs, and DEQ legal costs. Indirect costs include general management, support, and program development costs of DEQ and the Land Quality Cleanup Division allocable to DEQ oversight of this

Agreement and not charged as direct site-specific costs. Indirect costs are based on a percentage of direct personal service costs.

(3) Within thirty (30) days of receipt of the monthly statement, AmeriTitle shall pay the amount of costs billed by check made payable to the "State of Oregon, Hazardous Substance Remedial Action Fund." AmeriTitle shall pay simple interest of 9% per annum on the unpaid balance of any oversight costs, which interest shall begin to accrue at the end of the 30-day payment period, unless dispute resolution has been invoked.

G. Dispute Resolution

In the event of any disagreement between DEQ and AmeriTitle regarding implementation of this Agreement, including but not limited to review and approval of a plan or activity or DEQ costs, DEQ and AmeriTitle shall, in the following order:

- (1) Make a good faith effort to resolve the dispute between project managers;
- (2) If necessary, refer the dispute for resolution by the immediate supervisors of the project managers; and
- (3) If necessary, provide to each other their respective positions in writing and refer the dispute for resolution to DEQ's Administrator of the Land Quality Division or Eastern Regional Division Administrator, and AmeriTitle's Linda Stelle. DEQ's final decision after such dialogue shall be enforceable in accordance with Subsection 3.H. of this Agreement.

H. Enforcement of Agreement and Reservation of Rights

- (1) In the event of any failure of AmeriTitle to comply with any obligation of this Agreement, DEQ may enforce this Agreement under ORS 465.260(5) or exercise any

authority or pursue any claim or cause of action that DEQ might have. AmeriTitle reserves any defenses or counterclaims it might have in the event of such action by DEQ.

(2) Except as provided in Subsections 3.I and 3.J of this Agreement, DEQ and AmeriTitle reserve any claim or cause of action they respectively have as to any person or entity not a signatory to this Agreement.

(3) AmeriTitle does not admit any liability or violation of law by virtue of entering this Agreement.

(4) DEQ reserves its authority to perform remedial measures regarding a release of hazardous substances at or from the Property.

I. Waivers

(1) AmeriTitle waives any claim or cause of action it might have against the State of Oregon arising from contamination at the Property existing as of the date of acquisition of ownership or operation of the Property.

(2) AmeriTitle waives any right it might have under ORS 465.260(7) to seek reimbursement from the Hazardous Substance Remedial Action Fund or the Orphan Site Account for cost incurred under this Agreement.

J. Hold Harmless and Indemnification

AmeriTitle shall save and hold harmless the State of Oregon and its commissions, agencies, officers, employees, contractors, agents, and authorized representatives, and indemnify the foregoing, from and against any and all claims arising from acts or omissions related to this Agreement of AmeriTitle or its officers, employees, contractors,

agents, receivers, trustees, or assigns. DEQ shall not be considered a party to any contract made by AmeriTitle or its agents in carrying out activities under this Agreement.

K. Public Notice

(1) Upon execution of this Agreement, DEQ will provide public notice of this Agreement in a local newspaper of general circulation, describing the measures to be undertaken under this Agreement. Copies of the Agreement will be made available to the public. DEQ shall provide AmeriTitle a draft of such notice and consider any comments by AmeriTitle on the draft notice, before publication. AmeriTitle is responsible for the publication costs, if any, of such notice per Subsection 3.F. of this Agreement.

(2) Before approval of any remedial action, DEQ will provide public notice and opportunity for comment on the proposed remedy in accordance with ORS 465.320.

L. Recording

Within thirty (30) days of the date AmeriTitle receives an ownership interest in the Property, AmeriTitle shall submit a copy or original of this Agreement (whichever is required by the county) to be recorded in the real property records of Klamath County, State of Oregon. AmeriTitle shall provide DEQ with written evidence of such recording within seven (7) days of recording.

M. Transfer of Interest

Upon transfer of any interest in the Property, or a portion of the Property, from AmeriTitle to another person or entity, AmeriTitle shall provide written notice to the DEQ project manager within thirty (30) days of such transfer.

4. RELEASE FROM LIABILITY

A. Subject to the satisfactory performance by AmeriTitle of its obligations under this Agreement, AmeriTitle shall not be liable to the State of Oregon under ORS 465.200 through 465.455 and 465.900 for any release of the hazardous substances described in Section 1 above at the Property existing as of the date of AmeriTitle's acquisition of its interest in or operation of the Property. AmeriTitle shall bear the burden of proving that any hazardous substance release existed before the date of acquisition of its interest in or operation of the Property.

B. The release from liability under Subsection 4.A of this Agreement shall not apply to any liability regarding:

- (1) A release of hazardous substances at the Property after the date of acquisition of an interest in or operation of the Property;
- (2) Contribution to or exacerbation of a release of hazardous substances;
- (3) Interference or failure to cooperate with DEQ, or with persons conducting remedial measures under DEQ's oversight at the Property;
- (4) Failure to exercise due care or take reasonable precautions with respect to any hazardous substance at the Property;
- (5) Violation of federal, state, or local law;
- (6) Any ownership, operation, or release of hazardous substances at the Property by AmeriTitle before the effective date of this Agreement;
- (7) Any ownership, operation, or other ground of liability of AmeriTitle for a release of hazardous substances at an off-site location affecting the Property; and

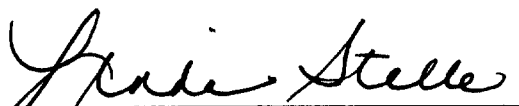
(8) Any matters as to which the State of Oregon is owed indemnification under Subsection 3.I of this Agreement.

5. PARTIES BOUND

A. This Agreement shall be binding on the signatories and their respective commissions, agencies, officers, assigns, successors, employees, contractors, agents, and authorized representatives. The undersigned representative of each party certifies that he or she is fully authorized to execute and bind such party to this Agreement. No change in ownership or corporate or partnership status relating to the Property shall in any way alter AmeriTitle's obligations under this Agreement, unless approved otherwise in writing by DEQ.

E. The benefits and burdens of this Agreement shall run with the land; however, the release from liability set forth in Subsection 4.A of this Agreement shall limit or otherwise affect the liability only of persons who are not potentially liable under ORS 465.255 for a release of hazardous substances at the Property as of the date of that person's acquisition of ownership or operation of the Property and who assume and are bound by the terms of this Agreement applicable to the Property as of the date of their acquisition of ownership or operation of the Property.

6. SIGNATURES

  
\_\_\_\_\_  
Linda Stelle  
President  
AmeriTitle

Date:

9/5/2001



SUBSCRIBED AND SWORN TO BEFORE ME this 5<sup>th</sup> day of  
Sept., 2001 by Linda Stelle in her capacity as President of  
AmeriTitle.



[Signature]  
NOTARY PUBLIC FOR OREGON

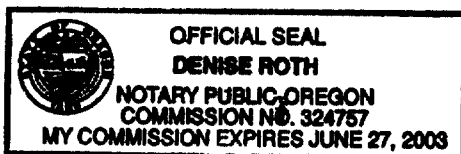
My Commission expires: 12/26/01

[Signature]  
Paul Slyman, Administrator  
Land Quality Division

Date: 9/17/01

Oregon Department of Environmental Quality

SUBSCRIBED AND SWORN TO BEFORE ME this 17<sup>th</sup> day of  
September, 2001 by, Paul Slyman in his capacity as Administrator  
of the Land Quality Division, Oregon Department of Environmental  
Quality.



[Signature]  
NOTARY PUBLIC FOR OREGON

My Commission expires: 6.27.03