

2012-003623

Klamath County, Oregon

After Recording Return to:

Bear Cat, Inc.
3301 Broadmore Street
Klamath Falls, OR 97603



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04/09/2012 09:31:04 AM

Fee: \$62.00

Other Party to Document:

Albina Holdings, Inc.
801 Main Street, Vancouver WA 98660

ENVIRONMENTAL INDEMNIFICATION AGREEMENT

This ENVIRONMENTAL INDEMNIFICATION AGREEMENT (the "Agreement") is made and entered this 2nd day of ~~January~~ March, 2012, by and between BEAR CAT, INC., an Oregon corporation ("Bear Cat"), and ALBINA HOLDINGS, INC., an Oregon corporation ("Albina Holdings").

RECITALS

WHEREAS, Bear Cat is the owner of certain real property located at 3301 Broadmore Street in Klamath County, Oregon, which is more particularly described in the attached Exhibit A (the "Bear Cat Property"), and Albina Holdings is the owner of certain real property located at 2936 Hilyard Avenue in Klamath County, Oregon, which is more particularly described in the attached Exhibit B (the "Albina Property");

WHEREAS, Albina Holdings' predecessor(s) in ownership of the Albina Property operated an asphalt plant at the Albina Property, the operation of the asphalt plant resulted in releases of petroleum and organic solvents, and the releases caused contamination of the soil and groundwater at the Bear Cat Property, as described in the Contaminated Media Management Plan (the "CMMP");

WHEREAS, Albina Holdings bears sole responsibility and liability for the contamination of the soil and groundwater at the Bear Cat Property that resulted from the releases of hazardous substances at the Albina Property;

WHEREAS, Albina Holdings desires that Bear Cat execute and deliver an Easement and Equitable Servitudes (the "EES") in favor of the Oregon Department of Environmental Quality;

WHEREAS, Bear Cat desires that Albina Holdings indemnify, defend, and hold Bear Cat harmless from claims and liabilities relating to the historical operations and releases of hazardous substances at the Albina Property that contaminated the soil and groundwater at the Bear Cat Property; and

WHEREAS, Bear Cat is willing to execute and deliver the EES on the condition that Albina Holdings executes and delivers this Agreement;

NOW THEREFORE, in consideration of promises and covenants set forth in the EES and herein, Bear Cat and Albina Holdings agree as follows:

1. Definitions. As used in this Agreement, the following terms shall have the meaning set forth below:

- (a) "Environmental Contamination" shall mean the presence of, whether or not discovered, any hazardous substance, including, but not limited to, petroleum and organic solvents, in the

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soil, groundwater, or any other part of the Bear Cat Property as a result of operations and/or releases at the Albina Property.

(a) "Covered Claim" shall mean any claim for personal injury, property damage, nuisance, damage to natural resources, cleanup, remediation, abatement, containment, or removal made, asserted or prosecuted by or on behalf of any party (whether based on negligent acts or omissions, statutory liability, strict liability or otherwise), including, without limitation, any governmental entity (including, but not limited to a federal, state or local governmental entity), employee, former employee, or their respective legal representatives, heirs, beneficiaries and estates, arising out of or resulting from or alleged to arise out of or result from the Environmental Contamination and any damages or liability associated with resolving such claim.

(b) "Covered Cleanup Liability" shall mean any cost or expense of any nature whatsoever incurred to contain, remove, remedy, respond to, cleanup, or abate the Environmental Contamination, including any cost or expense incurred by Bear Cat and/or its successors if and at such time they elect to develop, improve, re-zone, or otherwise alter the Bear Cat Property.

2. Environmental Indemnification and Liabilities.

(a) Albina Holdings shall continue to bear the risk of and sole responsibility and liability for any and all Environmental Contamination.

(b) In the event a Covered Claim or Covered Cleanup Liability arises or is asserted or brought, Albina Holdings shall remedy and indemnify and hold Bear Cat, as well as its respective agents, employees, representatives, officers, directors, shareholders, successors and assigns, harmless from and against any and all such Covered Claims or Covered Cleanup Liability. This obligation shall include, but shall not be limited to, the burden and expense of defending all claims, suits, and administrative proceedings (with counsel reasonably approved by Bear Cat), even if such claims, suits or proceedings are groundless, false or fraudulent, and conducting all negotiations of any description, and paying and discharging, when and as the same shall become due, any and all judgments, penalties and other sums due against such indemnified persons. Bear Cat, at its sole expense, may employ additional counsel of its choice to associate with counsel representing Albina Holdings.

(c) To the extent any Covered Claims or Covered Cleanup Liability arises against Albina Holdings under this Agreement, Bear Cat shall cooperate with Albina Holdings and/or its contractors in an effort to properly manage the cost effectiveness of remedying the situation and facilitating a speedy resolution. Such cooperation and facilitation shall include, but shall not be limited to: abiding by and implementing, at Albina Holdings sole expense, any source control measures (e.g., secondary containment) required by government agencies as part of any remediation or monitoring effort, and/or granting reasonable additional time as may be needed to adequately characterize and/or remediate any of the Bear Cat Property. Albina Holdings shall cooperate and act with Bear Cat to complete any necessary remediation in a timely manner and to minimize the interference with Bear Cat's ongoing operations to the extent feasible.

(d) When Bear Cat becomes aware of a Covered Claim or Covered Cleanup Liability, Bear Cat shall notify Albina Holdings as soon as reasonably practicable of the nature of the

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Covered Claim or Covered Cleanup Liability by facsimile, personal delivery or overnight mail to Albina Holdings as follows;

Albina Holdings, Inc.
Attn: Jeff Arnston
801 Main Street
Vancouver, Washington 98660
Phone: (360) 816-8016
Fax: (360) 816-8017

Notwithstanding the foregoing paragraph, the failure to provide such notice will not limit the rights of Bear Cat to indemnification under this Agreement except to the extent that such failure materially increases the dollar amount of any such claim for indemnification or materially prejudices the ability of Albina Holdings to defend such claim.

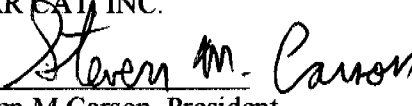
(e) If Albina Holdings does not act as required by Sections 2(b) and 2(c) to either diligently defend any such third-party claim or settle the same and/or to satisfy its obligation(s), then, Bear Cat, in its sole discretion, may undertake and control the remedial action, may defend of such claim, and shall have full power to settle the claim on terms that Bear Cat deems appropriate. Albina Holdings shall reimburse Bear Cat, upon being billed for the same, for any payment (including without limitation payments made in settlement) made by Bear Cat in respect of any such claim and all cost and expenses incurred in connection therewith (including reasonable attorneys' fees).

3. Binding Effect. The covenants, obligations, and rights of the parties under this Agreement shall run with the land described on Exhibits A and B, and shall be binding on and inure to the benefit the parties' successor(s) in interest in their respective properties. This Agreement shall remain in full force and effect for so long as any of the Environmental Contamination exists.
4. Governing Law. The interpretation and construction of this Agreement and all matters relating hereto, shall be governed by the laws of the State of Oregon.
5. Entire Agreement. This Agreement and the attached Exhibit(s) constitutes the entire agreement among the parties with regard to indemnification and supersedes all prior and contemporaneous agreements, representations, correspondence or understandings of the parties.

Bear Cat:

BEAR CAT, INC.


By


Steven M Carson, President

Albina Holdings

ALBINA HOLDINGS, INC.

By


JEFFREY A. ARNSTON, President

STATE OF OREGON)

) ss:
County of Klamath)

This instrument was acknowledged before me on 3.22.12, 2012, by Steven M. Carson as President of Bear Cat, Inc.



Wendy Young
Signature of notarial officer

My commission expires: 8.31.2015

STATE OF OREGON)

) ss:
County of Walt.

This instrument was acknowledged before me on 3/19, 2012, by JEFFREY A. ARNTSON as President of Albina Holdings, Inc.



Debra Anne Chapin
Signature of notarial officer

My commission expires: 4/3/14

EXHIBIT A

LEGAL DESCRIPTION

A tract of land situated in the NW1/4 NW1/4 of Section 10, Township 39 S., Range 9 E., W.M., Klamath County, Oregon, being Parcel 2 as shown on the recorded plat of Major Land Partition No. 79-37.

EXHIBIT B

LEGAL DESCRIPTION

A tract of land in the N1/2 of the NW1/4 of Section 10, Township 39 S., Range 9 E., W.M., Klamath County, Oregon, being that portion of that certain 2.9 acre tract of land described in deed dated October 27, 1939 from Western Cities Company to Great Northern Railway Company recorded in Volume 125, page 487, record of said county, lying Northerly of the following descried line:

Commencing at a point on the South line of Hiyard Avenue, 867.74 feet East (932.35 feet as disclosed by County survey No. 1709) of the intersection of the South line of Hilyard Avenue and the East line of Washburn Way; thence South 0°26'25" West, 907.89 feet to the True Point of Beginning for the line herein described; thence East 455.00 feet to point of ending.