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04/23/2012 09:09:51 AM

Fee: \$62.00

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After recording, return to:

Oregon DEQ
700 SE Emigrant, Suite 330
Pendleton, OR 97801
Att: Katie Robertson

EASEMENT AND EQUITABLE SERVITUDES

This grant of Easement and acceptance of Equitable Servitudes is made
4/12/12 between Bear Cat, Inc. ("**Grantor**") and the State of
Oregon, acting by and through the Oregon Department of Environmental Quality
("**DEQ**" or "**Grantee**").

RECITALS

A. Grantor is the owner of certain real property located at 3301 Broadmore Steet in Klamath Falls, Klamath County, Oregon in Klamath County Tax Map 390910BB, Tax Lot 203 (the "**Property**") the location of which is more particularly described in Attachment A to this Easement and Equitable Servitudes, and referenced under the name Chemtura Asphalt Plant, ECSI #1751 in the files of DEQ's Environmental Cleanup Program. Interested parties may contact the Pendleton Office to review a detailed description of the residual risks present at the Property and found in the *Conditional No Further Action Decision Document* dated April 18, 2011.

B. On April 18, 2011, the Director of the Oregon Department of Environmental Quality or delegate selected the remedial action for the Property set forth in the *Conditional No Further Action Decision Document* for the Property. The remedial action selected requires, among other things: institutional controls.

C. On September 21, 2009, Albina Fuel Company entered into an Independent Cleanup Agreement (**Agreement**) with DEQ, under which Albina Fuel Company agreed to implement the selected remedial action, including the required institutional controls.

D. The provisions of this Easement and Equitable Servitudes are intended to further the implementation of the selected remedial action and thereby protect human health and the environment.

1. DEFINITIONS

- 1.1 "Acceptable risk level" has the meaning set forth in Oregon Revised Statute (ORS) 465.315 and Oregon Administrative Rule (OAR) 340-122-0115.
- 1.2 "Beneficial use" has the meaning set forth in OAR 340-122-0115.
- 1.3 "DEQ" means the Oregon Department of Environmental Quality, and its employees, agents, and authorized representatives. "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.
- 1.4 "Ecological receptor" has the meaning set forth in OAR 340-122-0115.
- 1.5 "Engineering control" has the meaning set forth in OAR 340-122-0115.
- 1.6 "Hazardous substance" has the meaning set forth in ORS 465.200
- 1.7 "Owner" means any person or entity, including Grantor, who at any time owns, occupies, or acquires any right, title, or interest in or to any portion of the Property or a vendee's interest of record to any portion of the Property, including any successor, heir, assign or holder of 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 and does not possess or control use of the Property.
- 1.8 "Property" means the real property described in Exhibit A to this Easement and Equitable Servitudes.

2. GENERAL DECLARATION

Grantor, in consideration of Grantee's Conditional No Further Action determination, grants to DEQ an Easement for access and accepts the Equitable Servitudes described in this instrument and, in so doing, declares that the Property described in Attachment A to this Easement and Equitable Servitudes, is now subject to and shall in future be conveyed, transferred, leased, encumbered, occupied, built upon, or otherwise used or improved, in whole or in part, subject to this Easement and Equitable Servitudes. Each condition and restriction set forth in this Easement and Equitable Servitudes touches and concerns the Property and the equitable servitudes granted in Section 3 and easement granted in Section 4 below, shall run with the land for all purposes, shall be binding upon all current and future owners of the Property as set forth in this Easement and Equitable Servitudes, 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 Servitudes.

3. EQUITABLE SERVITUDES (RESTRICTIONS ON USE)

3.1 **Groundwater Use Restrictions:** Owner shall not extract through wells or by other means or use the shallow groundwater at the Property for consumption or other beneficial use, as long as the hazardous substance concentrations exceed the acceptable risk level. This prohibition shall not apply to extraction of groundwater associated with groundwater treatment or monitoring activities approved by DEQ or to temporary dewatering activities related to construction, development, or the installation of sewer or utilities at the Property. Owner shall conduct a waste determination on any groundwater that is extracted during such monitoring, treatment, or dewatering activities and handle, store and manage waste water according to applicable laws.

3.2 **Groundwater Well Installation Restrictions:** Any new water well installed on the Property to extract groundwater from the deeper aquifers is required to have a minimum of a 40 foot below ground surface well seal. This well seal exceeds the minimum well seal required by the Oregon Water Resource Department who regulates water well installations.

3.3 **Contaminated Media Management Plan:** Any subsurface activities that are likely to encounter contaminated soil or groundwater shall be performed in accordance with the Contaminated Media Management Plan. Any proposed deviations from the Contaminated Media Management Plan are required to be reviewed and approved by DEQ. A copy of the Contaminated Media Management Plan may be obtained from DEQ.

3.4 **Use of the Property.** Owner shall not occupy or allow other parties to occupy the Property unless the controls listed in this Section 3 are maintained.

3.5 **Notice of Transfer.** Owner 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 Owner's interest in or occupancy of the Property, or the start of any development activities or change in use of the Property that might expose human or ecological receptors to hazardous substances at the Property. Notwithstanding the foregoing, Owner shall not commence any development inconsistent with the conditions or restrictions in this Section 3 without prior written approval from DEQ as provided in Paragraph 3.2 or removal of the condition or restriction as provided in Paragraph 5.1 below.

3.6 **Zoning Changes.** Owner shall notify DEQ no less than thirty (30) days before 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 Klamath County zoning code or any successor code. As of the date of this Easement and Equitable Servitudes, the base zone of the Property is heavy industrial.

4. EASEMENT (RIGHT OF ENTRY)

During reasonable hours and subject to reasonable security requirements, DEQ shall have the right to enter upon and inspect any portion of the Property to determine whether the requirements of this Easement and Equitable Servitudes have been or are being complied with. DEQ shall have the right, privilege, and license to enter upon the Property at any time to abate, mitigate, or cure at the expense of the Owner the violation of any condition or restriction contained in this Easement and Equitable Servitudes, provided DEQ first gives written notice of the violation to Owner describing what is necessary to correct the violation and 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 Owner for such entry and any action taken to abate, mitigate, or cure a violation.

5. GENERAL PROVISIONS

5.1 Each condition and restriction contained in this Easement and Equitable Servitudes shall be recited in any deed conveying the Property or any portion of the Property, and shall run with the land so burdened until such time as the condition or restriction is removed by written certification from DEQ, recorded in the Deed Records of the County in which the Property is located, certifying that the condition or restriction is no longer required in order to protect human health or the environment.

5.2 Upon the recording of this Easement and Equitable Servitudes, all future Owners, as defined in Paragraph 1.7 above, shall be conclusively deemed to have consented and agreed to every condition and restriction contained in this Easement and Equitable Servitudes, whether or not any reference to this Easement and Equitable Servitudes is contained in an instrument by which such person or entity occupies or acquires an interest in the Property.

5.3 Upon any violation of any condition or restriction contained in this Easement and Equitable Servitudes, DEQ, in addition to the remedies described in Section 4 above, may seek any available legal or equitable remedy to enforce this Easement and Equitable Servitudes.

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

GRANTOR: Bear Cat, Inc.

By: Steven M. Carson

Date: 3-22-12

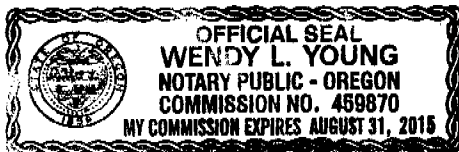
Name:

Title:

STATE OF OREGON)

County of Klamath) ss.

The foregoing instrument is acknowledged before me this 22 day of March, 2012, by Steven M. Carson of Bear Cat, Inc., on its behalf.



Wendy L. Young

NOTARY PUBLIC FOR OREGON

My commission expires: 8.31.2015

GRANTEE: State of Oregon, Department of Environmental Quality

By: Linda Hayes-Gorman

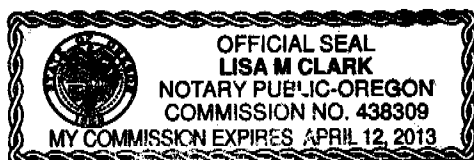
Date: 4/12/12

Linda Hayes-Gorman, Administrator, Eastern Region

STATE OF OREGON)

County of Deschutes) ss.

The foregoing instrument is acknowledged before me this 12 day of April, 2012, by Linda Hayes-Gorman of the Oregon Department of Environmental Quality, on its behalf.



Lisa M. Clark

NOTARY PUBLIC FOR OREGON

My commission expires: 4/12/2013

ATTACHMENT A

Legal Description of the Property

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.