



200412230136
Skagit County Auditor

12/23/2004 Page 1 of 9 3:35PM

RECORDING REQUESTED BY:

Chicago Title Company
839 S. Burlington Boulevard
Burlington, Washington 98233

WHEN RECORDED RETURN TO:

Union Oil Company of California
Attn: Karen Bruton
376 South Valencia Avenue
Brea, California 92823

DOCUMENT TITLE(s)

(Title Order issued by Chicago Title Insurance Company, 839 S. Burlington Boulevard, Burlington, Washington Title Order No. C29804)

Agreement and Declaration of Covenants, Conditions, Environmental Restrictions, Waiver and Release

GRANTORS

College Way Retail, LLC
Attn: John Graham
1133 164th St. S.W., Suite 107
Lynnwood, Washington 98037

GRANTEE

Union Oil Company of California
Attn: Karen Bruton
376 South Valencia Avenue, AD-202
Brea, California 92823

ABBREVIATED LEGAL DESCRIPTION

Ptn. NW SW, Sec. 17, T34N, R4E, W.M.

TAX PARCEL ACCOUNT NUMBER

340417-0-057-0009

Note: This cover sheet is prepared to conform to the requirements of Chapter 143, Laws of 1996. Nothing on this sheet alters the names, legal description or other information in the attached document. The only purpose of this cover sheet is to assist the auditor in indexing the document in conformance with statute. The recorder will rely on this information provided on this form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

RECORDING REQUESTED BY:

Chicago Title Company
839 S. Burlington Boulevard
Burlington, Washington 98233

WHEN RECORDED MAIL TO:

Union Oil Company of California
Attn: Karen Bruton
376 South Valencia Avenue, AD-202
Brea, California 92823

Abbreviated Legal Description: Ptn. NW SW, Sec. 17, T34N, R4E, W.M.
Tax Account No.: 340417-0-057-0009, Property No.: P25596

**AGREEMENT AND
DECLARATION OF COVENANTS, CONDITIONS, ENVIRONMENTAL RESTRICTIONS,
WAIVER AND RELEASE**

This Agreement and Declaration of Covenants, Conditions, Environmental Restrictions, Waiver and Release (this "Agreement") is made this 9th day of December, 2004, by **UNION OIL COMPANY OF CALIFORNIA**, a California corporation ("Unocal") and **COLLEGE WAY RETAIL, LLC**, a Washington limited liability company ("Owner").

RECITALS

A. Owner and Unocal entered into the Sale Agreement, as defined below, pursuant to which Owner acquired title to the Property, as defined below.

B. Pursuant to the provisions of the Sale Agreement, Owner and Unocal agreed to record this Agreement concurrently with the recording of the deed conveying title to the Property to Owner.

NOW THEREFORE, in consideration of value, the receipt and sufficiency of which are hereby acknowledged, Unocal and Owner agree as follows:

1. As used herein, the following terms shall have the respective meanings set forth below:

"Agency" shall mean any federal, state, or local government authority actually asserting jurisdiction over conditions of Contamination over the Property.

"Applicable Contamination" shall mean any Contamination which resulted during Unocal's ownership of the Property from Unocal's products or related wastes, or from Unocal's use of the Property as a facility for the sale or resale of gasoline or other petroleum products and/or the performance of automotive service activities.

"Contamination" shall mean any hazardous or toxic material, substance, chemical or waste, contaminant, emission, discharge or pollutant or comparable material listed, identified or regulated pursuant to any federal, state or local law.

Bulk Plant 0826
620 College Way
Mount Vernon, Washington



200412230136
Skagit County Auditor

ordinance or regulation which has as a purpose the protection of health, safety or the environment, including but not limited to petroleum or petroleum products or wastes derived therefrom.

"Property" shall mean that certain real property described on Exhibit "A" hereto.

"Sale Agreement" shall mean that certain Agreement for Sale of Real Property and Escrow Instructions executed by Unocal, as Company, and Owner, as Buyer, pertaining to the Property and resulting in recordation of this Agreement.

"Owner Group" shall mean, individually and collectively, Owner and its parent, subsidiary and affiliated companies; their respective agents, employees, partners, officers, shareholders and directors; their respective guardians, trustees, executors and administrators; their respective successors and assigns; and any subsequent owner of any interest whatsoever and however acquired in the Property.

2. Owner hereby acknowledges for itself and the Owner Group that:

(a) The Property has been used, among other uses, as a bulk plant facility for the storage and sale or resale of gasoline or other petroleum products;

(b) Unocal has remediated any Applicable Contamination found in, on, or about the Property in compliance with Agency requirements applied to the Property by said Agency, and has obtained a "no further action" letter from the Agency;

(c) Notwithstanding the remediation of Applicable Contamination as described above, some Contamination may remain in, on, or about the Property, and Owner has released and indemnified Unocal in the Sale Agreement with respect to Contamination and remediation thereof.

3. Owner hereby further acknowledges for itself and the Owner Group that the following provisions are binding upon Owner and the Owner Group:

It is the express intent of the parties that (i) the risk of any Contamination on, within or emanating from the Property shall shift to Owner, and (ii) Unocal shall have no obligation for any Contamination, on, within or emanating from the Property, including but not limited to any remediation thereof. Expressly, but without limiting the generality of the foregoing, Unocal shall have no liability for remediation of any Contamination of the Property, for changes in any law, regulations, guidelines, or other criteria concerning appropriate levels of cleanup of such Contamination, or for any third-party claims resulting from any such Contamination. Owner, for itself and the Owner Group, hereby releases Unocal from all claims, liability, damages, demands, costs, and causes of action of all kinds arising out of or in connection with the existence, assessment or remediation of Contamination upon, under, in, or emanating from the soils or groundwater of the Property, including without limitation any claims for bodily injury, illness, death, property damage, any special, indirect or consequential damages, loss of use, rents, anticipated profit or business opportunity, or business interruption, diminution in value, or mental or emotional distress or fear of injury or illness, trespass, nuisance or

Bulk Plant 0826
620 College Way
Mount Vernon, Washington

3



200412230136
Skagit County Auditor

12/23/2004 Page 3 of 9 3:35PM

UNIVERSITY OF WASHINGTON

otherwise for any response costs it may incur with respect to the Property under any existing or future federal, state or local law, statute, ordinance, regulation, legal cause of action or theory of any kind, including but not limited to any claim under CERCLA (42 USC 9601 et seq.), RCRA (42 USC 6901 et seq.) or similar or comparable state, federal, or local laws (individually and collectively, "Released Claims"). Owner, for itself and the Owner Group, further recognizes that there is a risk that subsequent to the close of escrow Owner or a member of the Owner Group will incur Released Claims or suffer loss, damage or injuries which are in some way caused by the matters which are the subject of this release and which may be unknown or unanticipated at the time of close of escrow, and Owner, for itself and the Owner Group, assumes this risk and agrees that this release shall apply to all such unknown or unanticipated Released Claims, loss, damage, or injury, and hereby waives any and all rights under the Washington Civil Code or any equivalent California law, including California Civil Code §1542. California Civil Code §1542 reads as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

4. Owner further acknowledges for itself and the Owner Group that:

(a) The provisions contained herein are not a representation or warranty by Unocal that the Property contains no Contamination or Applicable Contamination;

(b) The provisions contained herein are not an admission by Unocal as to the existence of any Contamination or Applicable Contamination on the Property;

(c) The provisions contained herein are not an indemnity by Unocal of Owner, any member of the Owner Group, or any third party regarding any environmental or other matter concerning the Property; and

(d) The provisions contained herein create no rights in Owner, any member of the Owner Group, or any third party.

5. The above covenants, conditions, restrictions, waivers, releases and agreements are deemed to constitute a condition and restriction on the conveyance of the Property by Unocal to Owner, and to each and every subsequent transfer of an estate or any interest other whatsoever in the Property to any member of the Owner Group.

6. The above covenants, conditions, restrictions, waivers, releases and agreements are covenants running with the land that shall bind each and every member of the Owner Group.

7. This instrument shall be deemed to be delivered to Unocal concurrently with the delivery by Unocal of the deed to the Property pursuant to the provisions of the Sale Agreement.

8. As used herein, the plural shall include the singular.

Bulk Plant 0826
620 College Way
Mount Vernon, Washington

4



200412230136
Skagit County Auditor

9. If any provision of this Agreement is held by a court of competent jurisdiction as void or unenforceable and all avenues of appeal have been exhausted, time to appeal has lapsed and an appeal has been abandoned, then that provision of this Agreement shall be deemed to have been deleted, and this Agreement as so modified shall remain in full force and effect.

10. This instrument shall be construed pursuant to the laws of the State of Washington, except that in the event this Agreement or a provision(s) thereof would be found to be unenforceable or otherwise invalid under Washington law, and the Agreement or such provision(s) would not be so found under California law, then California law shall apply to the Agreement or such provision(s) only.

11. This Agreement may be executed in several counterparts and all counterparts so executed shall constitute one Agreement binding on the parties hereto.

OWNER

COLLEGE WAY RETAIL, LLC,
a Washington limited liability company

By: _____

Its: _____

Attest:

By: _____

Title: _____

UNOCAL

UNION OIL COMPANY OF CALIFORNIA,
a California corporation

33 By: *Brian J Kelly*
BRIAN J KELLY
ATTORNEY-IN-FACT

Attach Appropriate Notary Acknowledgments

Bulk Plant 0826
620 College Way
Mount Vernon, Washington



200412230130
Skagit County Auditor

9. If any provision of this Agreement is held by a court of competent jurisdiction as void or unenforceable and all avenues of appeal have been exhausted, time to appeal has lapsed and an appeal has been abandoned, then that provision of this Agreement shall be deemed to have been deleted, and this Agreement as so modified shall remain in full force and effect.

10. This instrument shall be construed pursuant to the laws of the State of Washington, except that in the event this Agreement or a provision(s) thereof would be found to be unenforceable or otherwise invalid under Washington law, and the Agreement or such provision(s) would not be so found under California law, then California law shall apply to the Agreement or such provision(s) only.

11. This Agreement may be executed in several counterparts and all counterparts so executed shall constitute one Agreement binding on the parties hereto.

OWNER

COLLEGE WAY RETAIL, LLC,
a Washington limited liability company

By: [Signature]

Its: Manager

Attest:

By: [Signature]

Title: Notary Public

UNOCAL

UNION OIL COMPANY OF CALIFORNIA,
a California corporation

By: [Signature]
BRIAN J KELLY
ATTORNEY-IN-FACT

Attach Appropriate Notary Acknowledgments

Bulk Plant 0826
620 College Way
Mount Vernon, Washington



200412230136

Skagit County Auditor

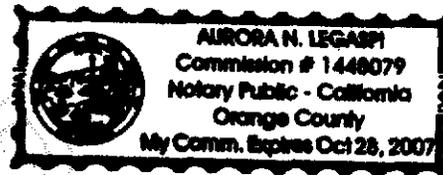
ALL PURPOSE ACKNOWLEDGEMENT

STATE OF CALIFORNIA)
) SS.
COUNTY OF ORANGE)

On December 9, 2004, before me, Aurora N. Legaspi, a Notary Public, personally appeared Brian J. Kelly, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument on behalf of said corporation.

Witness my hand and official seal.

Aurora N. Legaspi
Notary Public



ATTENTION NOTARY: Although the information requested below is optional, it could prevent fraudulent attachment of this certification to unauthorized document.

THIS CERTIFICATE
MUST BE ATTACHED
TO THE DOCUMENT
DESCRIBED AT RIGHT.

Agreement and Declaration of
Covenants, Conditions, Environmental

Title or Type of Document: Restrictions, Waiver and Release

Number of Pages: 5 page including Exhibit A total of 6

Date of Document: December 9, 2004

Capacity of Signer: Attorney-in-Fact

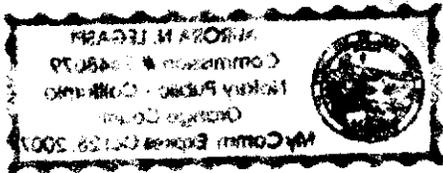
Signer Represents: Union Oil Company of California

Signer(s) Other Than Named Above: College Way Retail, LLC



200412230136
Skagit County Auditor

UNOFFICIAL DOCUMENT



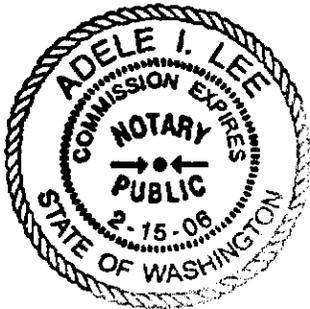
STATE OF WASHINGTON)
)
COUNTY OF SNOHOMISH)

On this day personally appeared before me John Graham, to me known as the Manager of College Way Retail, LLC, described in and who executed the within and foregoing instrument, and acknowledged the he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned and on oath stated that he was authorized to sign for the company.

GIVEN under my hand and official seal this 17th day of December, 2004.

Adele I. Lee

Notary Public in and for the State of Washington
Residing at Lynnwood



200412230136
Skagit County Auditor

EXHIBIT "A"

**TO THE AGREEMENT AND DECLARATION OF COVENANTS,
CONDITIONS, ENVIRONMENTAL RESTRICTIONS,
WAIVER AND RELEASE.**

LEGAL DESCRIPTION

Bulk Plant No.: 0826
620 East College Way
Mount Vernon, Washington

The property described is situated in the City of Mount Vernon, County of Skagit, State of Washington.

That portion of the northwest quarter of the southwest quarter of Section 17, Township 34 North, Range 4 East of the Willamette Meridian, described as follows:

Beginning at a point where the South right-of-way line of the Furber Road No. 208, now known as State Route 538, as said road existed on August 25, 1921, intersects the West right-of-way line of the Great Northern Railway Company, the said point being 30 feet South and 1,158.95 feet East along the East and West center line from the West quarter corner of Section 17, Township 34 North, Range 4 East of the Willamette Meridian;

Thence South 58° 41' West along the West line of the right-of-way of the Great Northern Railway Company a distance of 759.6 feet, more or less, to the North line of the South half of the northwest quarter of the southwest quarter of said Section 17;

Thence West along said North line a distance of 63.5 feet, more or less, to the East line of the right-of-way of the Pacific Northwest Traction Co.;

Thence North along the East line of the right-of-way of the Pacific Northwest Traction Co. a distance of 654.4 feet, more or less, to the South line of the right-of-way of said Furber Road No.208;

Thence East along the South line of said right-of-way of said Furber Road No. 208 a distance of 368.61 feet to the point of beginning;

EXCEPT that portion conveyed to the State of Washington for highway purposes by deed recorded July 30, 1951, under Auditor's File No. 463811, records of Skagit County, Washington;

ALSO EXCEPT all portion of said premises lying northerly of a line drawn parallel with and 40 feet southerly of, when measured at right angles to, the SR 538 survey line of SR 538, Jct. SR 5 to Laventure Road, as conveyed by right-of-way deed recorded on September 13, 1991, under Auditor's File No. 9109130066, records of Skagit County, Washington.

Real Property Tax Account No.: 340417-0-057-0009
Property No.: P25596

Bulk Plant 0826
620 College Way
Mount Vernon, Washington



200412230136
Skagit County Auditor