



Sedgwick County
Register of Deeds - Bill Meek
DOC.#/FLM-PG: 29221651

Receipt #: 1783780
Pages Recorded: 11
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Recording Fee: \$48.00
Authorized By: 

Date Recorded: 6/2/2011 12:17:31 PM



Grantor	<u>KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT</u>
Grantee	<u>UNION OIL COMPANY OF CALIFORNIA</u>
Type of Document	<u>MISCELLANOUS AGREEMENT</u>
Recording Fees	<u>\$48.00</u>
Mtg Reg Tax	<u>\$0.00</u>
Total Amount	<u>\$48.00</u>
Return Address	<u>URS CORPORATION</u>
	<u>ATTN TINA STEPHENS</u>
	<u>9400 AMBERGLEN</u>
	<u>AUSTIN TX 78729</u>

RECEIVED

JUN 24 2011

BUREAU OF
ENVIRONMENTAL REMEDIATION

DOCUMENT NUMBER: 09-EUC-0011
PROJECT NUMBER: C2-087-00431
PROPERTY CATEGORY: 2

ENVIRONMENTAL USE CONTROL AGREEMENT

Union Oil Company of California, a California corporation, having a mailing address of 6111 Bollinger Canyon Road, BR1-Y3424, San Ramon, California, 94583, hereinafter referred to as "the Owner", is the owner of real property known as the Unocal Former Chemical Distribution Facility, Wichita Site, at 2100 East 37th Street North, City of Wichita, Sedgwick County, Kansas, as shown on the map attached hereto as Exhibit A, hereinafter referred to as "the Property", and more particularly described by the following legal descriptions:

Parcel 1:

Commencing at the SE Corner of the SW-1/4 of Section 27, T26S, R1E of the 6th P.M., Sedgwick County, Kansas; thence north on the east line of said SW-1/4, 40 feet; thence west parallel to the south line of said SW-1/4 332.9 feet to a point of beginning; thence north at right angles 243.7 feet to a point 15 feet south of the center line of a Rock Island R.R. spur track; thence south-easterly parallel to and 15 feet from the center line of said Rock Island R.R. spur track, 414.33 feet, more or less, to a point 40 feet north of the south line of said SW-1/4; thence west 294.15 feet to the point of beginning.

Parcel 2:

Commencing at a point located in the intersection of the south line of Section Twenty Seven (27), Township Twenty Six (26) South, Range One (1) East, with the north and south center line of said Section Twenty Seven (27); thence north along the said north and south center line of said section Twenty Seven (27), for a distance of forty (40) feet; thence west, parallel with the south line of said Section Twenty Seven (27), for a distance of three hundred thirty-two and nine-tenths (332.9) feet to the point of beginning; thence continuing west, parallel, with the south line of Section Twenty Seven (27) and forty (40) feet distant there from, for a distance of two hundred (200) feet; thence north at right angles to the south line of said Section Twenty Seven (27) for a distance of two hundred fifty (250) feet; thence east at right angles for a distance of two hundred (200) feet; thence south at right angles for a distance of two hundred fifty (250) feet to the said point of beginning.

And which shall likewise include any and all parcels contained therein.

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WHEREAS the Owner has requested, by application to the Kansas Department of Health and Environment, hereinafter referred to as "KDHE", to restrict, prohibit and/or limit certain uses of the Property in accordance with Kansas Statutes Annotated (K.S.A.) 2009 Supp. 65-1,221 *et seq.*

KDHE has approved the Owner's application to restrict, prohibit, and/or limit certain uses of the Property since residual contamination, which exceeds department standards for unrestricted residential use, remains on the Property.

The conditions at the Property as of the date of KDHE's approval of the application are as follows:

The Property was developed and utilized as a chemical storage and distribution facility from 1953 until 1992. Chemicals stored and handled at the Property included various solvents and petrochemicals. Volatile organic compound (VOC) concentrations have been identified in soil (chlorinated solvents) and groundwater (chlorinated solvents and petroleum related constituents) at the Property exceeding either their corresponding KDHE Tier 2 RSK non-residential screening values as established in the *Risk-Based Standards for Kansas RSK Manual – 5th Version*, dated October 2010 or the primary maximum contaminant levels as promulgated by the federal Safe Drinking Water Act. A variety of VOC contaminants have been identified in groundwater emanating from numerous known source areas on the Property. The following interim measures have been implemented at the Property to reduce contaminant concentrations and limit future off-Property migration of contamination: soil vapor extraction; groundwater pump and treat; soil excavation and off-site disposal. Enhanced reductive dechlorination and phytoremediation are still being conducted at the Property.

KDHE has determined, based on conditions at the Property, the application and other information pertaining to the Property, that environmental use controls are appropriate to ensure future protection of public health and the environment, subject to the conditions herein. Therefore, in accordance with K.S.A. 2009 Supp. 65-1,226 and the rules and regulations promulgated thereunder, the Property is hereby designated by KDHE as a Category 2 property.

The Owner acknowledges that this Agreement runs with the land and is binding on all successors in interest in the Property pursuant to K.S.A. 2009 Supp. 65-1,227(b); and is enforceable by KDHE pursuant to K.S.A. 2009 Supp. 65-1,229, unless and/or until such requirements are mutually terminated in writing by KDHE and Owner or Owner's successor in interest. For purposes of the obligations set forth in this document, "Owner" shall be deemed to include the current Owner and any and all successors in interest.

This Agreement shall be recorded, by the Owner, with the Sedgwick County Register of Deeds for the purposes of providing notice of the environmental use controls, protecting public health and the environment, and to prevent interference with the operation, performance, and/or maintenance of any remedial actions on the Property.

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RESTRICTIONS, PROHIBITIONS AND LIMITATIONS:

Due to the environmental conditions described above, it is the desire and intention of the Owner to restrict, prohibit, and/or limit the following uses of the Property:

- A. The Property shall not be used for residential purposes of any type including, but not limited to, a residence or dwelling, including a house, apartment, mobile home, nursing home, or condominium; or public use area, including a school, educational center, day care center, playground or similar structure, unrestricted outdoor recreational area, or park.
- B. The Owner shall not allow water wells to be drilled, constructed, or used on the Property for the purposes of domestic, lawn and gardening, or other means, which use involves or may involve human consumption and/or other possible human contact uses. This restriction does not prohibit drilling, construction or use of water wells for the purpose of containing product or contamination, or for contaminated ground water recovery, monitoring, or other remediation activities as approved in writing by KDHE.
- C. KDHE shall be provided with notification fifteen (15) calendar days prior to any excavation activities. KDHE may require sampling of soils prior to any excavation activities. Based on the potential hazards associated with the soil disturbance activities, KDHE may require specific protective or remedial actions before allowing such soil disturbance activities to occur on the Property.
- D. The Owner shall inform all lessees, easement holders, contractors and/or other workers performing any excavation activities on the Property, prior to such activities, of the potential hazards associated with the direct contact and/or transport of any potentially contaminated and/or hazardous soil or other material from the Property. Easement holders, contractors and/or workers shall also be informed by the Owner of any potential hazards associated with releases from contaminated media located on the Property.
- E. The Owner shall not file or petition to initiate re-zoning of the Property without fifteen (15) calendar days prior notification to KDHE.
- F. The Owner shall obtain prior written authorization from KDHE before undertaking any of the following:
 - 1. Performing work on any monitoring devices or systems on the Property except for routine maintenance and emergency maintenance, in which case KDHE shall be notified of such maintenance as soon as is practicable;
 - 2. Undertaking any construction of drainage ditches on the Property;
 - 3. Producing food chain crops on the Property; and/or

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4. Removing any security fencing, signs or devices installed to restrict public access to the Property.
- G. Prior to the design and construction of all new buildings or building extensions on the Property, the vapor intrusion pathway must be further investigated, or all new buildings or building extensions must include construction elements that would protect against potential vapor intrusion including, but not limited to, installing vapor barriers or vapor mitigation systems.

LOCAL ORDINANCES AND ZONING:

The Owner and KDHE acknowledge that the following local ordinances and zoning requirements in place at the time of recording this Agreement shall be used in addition to the restrictions, prohibitions and limitations set forth in this Agreement.

The Property is zoned GI General Industrial District by Wichita-Sedgwick County Metropolitan Area Planning Development.

The Property is located within the North Industrial Corridor Site in Wichita, Kansas and therefore governed by a City of Wichita water well ordinance passed on June 25, 1996. The City Ordinance is Municipal Code of Ordinances, Title 7, Chapter 7.30, section 7.30.105 and prohibits the use or installation of drinking water wells within an area deemed by the City to be contaminated.

ACCESS:

The Owner hereby agrees and conveys to KDHE, its agents, contractors, and employees, access to the Property for the term of this Agreement to enter or come upon the Property to inspect the Property and perform any required action (i.e., monitoring, sampling, etc.) KDHE deems necessary for any one or more of the following purposes:

1. Ensuring that use, occupancy, and activities of and at the Property are consistent with this Agreement;
2. Inspecting protective structures and any other remedial systems to ensure their designed operation, performance and structural integrity;
3. Documenting environmental conditions of and at the Property;
4. Ensuring implementation and enforcement of the requirements, restrictions, prohibitions, and other limitations described in this Agreement; and/or
5. Performing any additional investigations or remediation deemed necessary by KDHE to protect public health and the environment.

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FUNDING:

The Owner hereby agrees to submit to KDHE a one-time payment of \$10,000 to compensate KDHE for costs incurred to perform inspections, monitoring, and tracking of the terms and requirements of this Agreement. The Owner acknowledges that the funding requirement for this Agreement is based on the size of the Property, physical properties of residual contamination, types of protective structures at the Property, frequency of KDHE's anticipated inspections and anticipated inspection costs.

DURATION:

The Owner hereby agrees that this Agreement extends in perpetuity unless and/or until removal following approval by KDHE pursuant to K.S.A. 2009 Supp. 65-1,227.

MONITORING AND INSPECTION REQUIREMENTS:

Groundwater monitoring, currently overseen by the KDHE/Bureau of Environmental Remediation under the auspices of the State Cooperative Program, is conducted under a Consent Order Agreement (Case No. 91-E-206) mutually agreed to by KDHE and UNOCAL Corporation in 1992.

The Owner shall visually inspect the Property on an annual basis. The initial inspection shall occur within the same year this Agreement is recorded. The Owner shall provide at least seven (7) days advance notification to KDHE before conducting the initial inspection. The Owner shall submit to KDHE a written report documenting the inspection findings and condition of those areas delineated in Exhibit A within thirty (30) days from the date that an inspection has been completed. The report shall include information on current uses of the Property, photo documentation and any other information required to verify if the terms and conditions of this Agreement are being fulfilled. Subsequent inspections shall occur annually thereafter within the same month as established by the initial inspection.

The Owner may submit and KDHE shall consider modifications of the frequency of inspection and reporting if warranted by technical data. Written approval from KDHE must be obtained for modification of frequency of inspection, reporting requirements or analytical methods throughout the duration of this Agreement.

OTHER TERMS AND CONDITIONS:

The Owner hereby agrees to provide KDHE written notification no less than fifteen (15) calendar days prior to any sale, lease, conveyance or other transfer of the Property. The notice shall include the name and business address (if applicable) of the transferee and the expected date of transfer.

The Owner shall cause any lease, grant, or other transfer of any interest in the Property to include a provision expressly requiring the lessee or transferee to comply with the terms of this Agreement.

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The failure to include such a provision shall not affect the validity or applicability to the Property of this Agreement.

Within fifteen (15) calendar days of real property conveyance, the Owner hereby agrees to provide KDHE a copy of the recorded deed with legal description and corresponding survey map for which this Agreement applies.

The Owner hereby agrees to provide KDHE written notification no less than fifteen (15) calendar days prior to any land use changes at the Property.

The Owner acknowledges that the requirements in this Agreement may not be extinguished, limited or impaired through adverse possession, abandonment, waiver, lack of enforcement, or other common law principles, pursuant to K.S.A. 2009 Supp. 65-1,227(e).

This Agreement may be modified by mutual written agreement by the Owner and KDHE. Within thirty (30) calendar days of executing an amendment, modification, or termination of this Agreement, the Owner shall record such amendment, modification, or termination with the Sedgwick County Register of Deeds, and within thirty (30) calendar days thereafter, the Owner shall provide a copy of the recorded amendment, modification, or termination to KDHE that bears the seal and/or notarized signature of the Register of Deeds.

ENFORCEABILITY:

If the terms of this Agreement are not being implemented by the Owner or contamination at the Property presents a hazard to public health or the environment, KDHE may take such action as authorized by K.S.A. 2009 Supp. 65-1,229, including:

- A. Issue an order directing the Owner to correct any deficiencies and fully implement the terms of this Agreement.
- B. Issue an order retracting this Agreement and any remedial action at the Property and requiring the Owner to implement a remedial action at the Property to attain a cleanup standard that will allow for unrestricted use of the Property.

EFFECTIVE DATE OF AGREEMENT:

The Owner shall provide to KDHE a copy of this Agreement bearing the seal or notarization of the Register of Deeds in **Sedgwick County** within ninety (90) days from **certified receipt** of this fully executed Agreement from KDHE.

The Owner shall provide KDHE with funding as determined by KDHE in accordance with K.S.A. 2009 Supp. 65-1,226 within ninety (90) days from **certified receipt** of this fully executed Agreement from KDHE.

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Proper recording of all necessary documents and submission of required funding shall be conditions precedent to the effectiveness of this Agreement.

IN WITNESS WHEREOF, KDHE and the Owner have entered into and executed this Environmental Use Control Agreement through their duly authorized representatives as of this 19 day of January, 2011.

Kansas Department of Health and Environment

By: Robert Moser
Robert Moser, MD, Acting Secretary

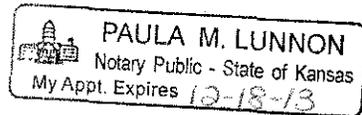
ACKNOWLEDGMENT:

STATE OF KANSAS)
)ss:
COUNTY OF SHAWNEE)

BE IT REMEMBERED, on this 19 day of January, 2011, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Robert Moser, MD, Acting Secretary and authorized representative of KDHE, who is personally known to be such person who executed the above document on behalf of KDHE, and such person duly acknowledged the execution of the same to be his/her act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at my office in Shawnee County, Kansas, the day and year last written above.

Paula M. Lunnon, Shawnee Kansas
Notary Public in and for said County and State



My Term Expires: 12-18-13

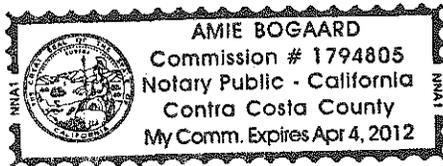
State of California)
County of Contra Costa)

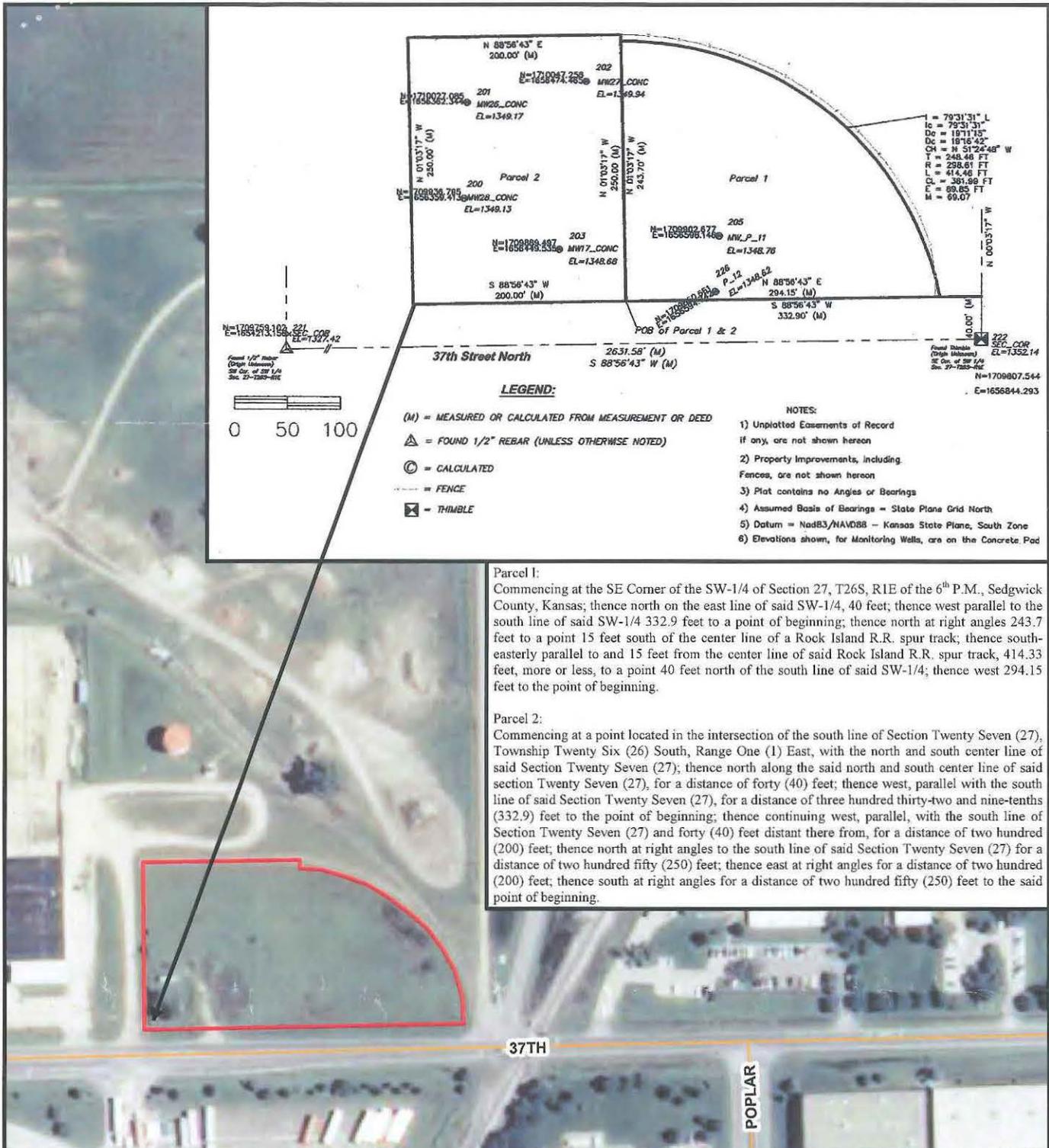
On March 23rd, 2011 before me, Amie Bogaard Notary Public, personally appeared Grace N. Chan, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Amie Bogaard (Seal)





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 Commencing at the SE Corner of the SW-1/4 of Section 27, T26S, R1E of the 6th P.M., Sedgwick County, Kansas; thence north on the east line of said SW-1/4, 40 feet; thence west parallel to the south line of said SW-1/4 332.9 feet to a point of beginning; thence north at right angles 243.7 feet to a point 15 feet south of the center line of a Rock Island R.R. spur track; thence south-easterly parallel to and 15 feet from the center line of said Rock Island R.R. spur track, 414.33 feet, more or less, to a point 40 feet north of the south line of said SW-1/4; thence west 294.15 feet to the point of beginning.

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LEGEND

- Local Roads
- EUCA Area Boundary (approximate)

Exhibit A

Unocal Former Chemical Distribution Facility
 Wichita, Kansas
 09-EUC-0011

