

RECORDING REQUESTED BY:

Jackson County Title
502 West Main Street
Medford, Oregon 97501

200 FEB 16 AM 11:28

WHEN RECORDED MAIL TO:

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

MTC 49485

The space above is reserved for the Recorder's use only.

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

This Agreement and Declaration of Covenants, Conditions, Restrictions, Waiver and Release (this "Agreement") is made this 10TH day of FEBRUARY, 2000, by UNION OIL COMPANY OF CALIFORNIA dba UNOCAL, a California corporation ("Unocal") and ROBERT D. NELSON, LLC, an Oregon 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:

Unocal Property No. 2963
4078 S. 6th Street
Klamath Falls, Oregon

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(«PropNo»:rev:8/26/98)

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

"Agency" shall mean the Oregon Department of Environmental Quality or 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, 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 facility for the sale or resale of gasoline or other petroleum products and/or the performance of automotive service activities, and that underground tanks were located thereon;

(b) Unocal has performed certain remediation and monitoring activities to address any Applicable Contamination found in, on, or about the Property in compliance with Agency requirements applied to the Property by said Agency, and Unocal has not obtained a no further action letter ('NFA') from the Agency. Unocal shall continue to take such action as is necessary, until the earlier of the issuance of a NFA or Close of Escrow,

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as defined in the Sale Agreement; in the event a NFA is issued after Close of Escrow, Unocal shall cause to be recorded a written amendment to this Agreement, which shall serve as notice of receipt of the NFA;

(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, from and after the receipt of the NFA from the Agency and Unocal's recording of the amendment to this Agreement, if applicable, as described above in Section 2(b), (i) the risk of any Applicable Contamination on, within or emanating from the Property shall shift to Owner, and (ii) Unocal shall have no obligation for any Applicable Contamination on, within, or emanating from the Property, including, but not limited to, any remediation thereof. Except as otherwise provided for herein and as specifically set forth within the Sale Agreement, (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. 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 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

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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 California Civil Code §1542 which 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.

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.

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10. This instrument shall be construed pursuant to the laws of the State of Oregon, except that in the event this Agreement or a provision thereof would be found to be unenforceable or otherwise invalid under Oregon 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 bind on the parties hereto.

OWNER

ROBERT D. NELSON, LLC,
an Oregon Limited Liability Company

By: Robert D. Nelson, LLC

Its: _____

UNOCAL

UNION OIL COMPANY OF CALIFORNIA,
a California corporation,
dba Unocal

By: Chris M. Ulin

Attest: Jane A. Neal

Leto N. Weiss
General Manager
Its: **Asset Management Group**

Its: **ASSISTANT SECRETARY**

Attach Appropriate Notary Acknowledgments

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STATE OF OREGON,

County of KLAMATH

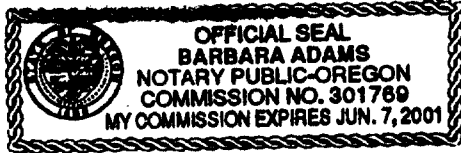
SS.

4909

FORM No. 23—ACKNOWLEDGMENT.
Stevens-Ness Law Publishing Co., NL
Portland, OR 97204 © 1992

BE IT REMEMBERED, That on this 14th day of FEBRUARY, 2000,
before me, the undersigned, a Notary Public in and for the State of Oregon, personally appeared the within
named ROBERT NELSON

known to me to be the identical individual described in and who executed the within instrument and
acknowledged to me that HE executed the same freely and voluntarily.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed
my official seal the day and year last above written.

Barbara Adams

Notary Public for Oregon

My commission expires 6-7-01

EXHIBIT "A"

LEGAL DESCRIPTION

PARCEL 1

Beginning at an iron axle with lies on the southerly right of way line of the Dalles-California Highway, 40.0 feet southerly at right angles from the center line thereof and on the westerly right of way line of Summers Lane 30.0 feet westerly at right angles from the section line, and which lies South 89° 51' West a distance of 30.0 feet along the East-West Quarter line and South 1° 14' East a distance of 42.03 feet from the brass plug in the pavement which marks the quarter corner common to Sections 2 and 3 Township 39 South, Range 9 East of the Willamette Meridian in Klamath County, Oregon, and running thence: Continuing South 1° 14' East parallel to the center line of Summers Lane, which is the section line and 30.0 feet westerly at right angles therefrom a distance of 150.0 feet to an iron pin; thence South 89° 14' West parallel to the southerly right of way line of the Dalles-California Highway, a distance of 100.0 feet, more or less, to the southeast corner of that certain parcel of land described in deed from W.W. Southwell et us, to Arthur L. Brooks, et al, recorded May 5, 1951, in Volume 247, Page 84 of the Deed Records of Klamath County, Oregon; thence North 1° 14' West parallel to the section line and along the easterly line of said parcel described in Volume 247, Page 84, said Deed Records, a distance of 150.0 feet to an iron pin which lies on the southerly right of way line of the Dalles-California Highway, 40.0 feet southerly at right angles from the center line thereof; thence North 89° 14' East along the southerly right of way line of the Dalles-California Highway a distance 100.0 feet, more or less, to the point of beginning, said tract being a portion of the northeast quarter of the southeast quarter of Section 3, Township 39 South, Range 9 East of the Willamette Meridian in Klamath County, Oregon; saving and excepting therefrom that portion thereof conveyed to the State of Oregon, by and through its State Highway Commission by deed recorded June 28, 1946, in Volume 191, Page 2295, said Deed Records.

PARCEL 2:

Beginning at a point which lies South 1° 14' East along the east section line of Section 3, a distance of 191.71 feet and South 89° 14' West a distance of 130.0 feet from the quarter section common to Sections 2 and 3, Township 39 South, Range 9 East of the Willamette Meridian in Klamath County, Oregon; thence North 1° 14' West parallel to the East line of Section 3 a distance of 137.0 feet to a point on the southerly right of way line of the Klamath Falls-Merrill Highway; thence South 89° 14' West along the southerly right of way line of said Klamath Falls- Merrill Highway a distance of 50.0 feet to an iron pin; thence South 1° 14' East parallel to the east line of Section 3 a distance of 137.0 feet to an iron pin; thence North 89° 14' East a distance of 50.0 feet, more or less, to the point of beginning, being a portion of the northeast quarter of the southeast quarter of Section, Township 39 South, Range 9 East of the Willamette in Klamath County, Oregon .

State of Oregon, County of Klamath
 Recorded 2/16/00, at 11:28 a. m.
 In Vol. M00 Page 4903
Linda Smith,
 County Clerk Fee\$ 56⁰⁰

Unocal Property No. 2963
 4078 S. 6th Street
 Klamath Falls, Oregon