

200 FEB 16 AM 11: 29

RECORDING REQUESTED BY:

Jackson County Title
502 West Main Street
Medford, Oregon 97501

WHEN RECORDED MAIL TO:

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

MTC 44246

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

Tax Account No.: 3809-032AD-01600 Key No.: 476808

**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, a California corporation, dba UNOCAL ("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:

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.

51.00
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"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 remediated 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 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 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 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.

10. This instrument shall be construed pursuant to the laws of the State of California.

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
Robert D. Nelson

UNOCAL

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

By: Luis N. Weiss
Luis N. Weiss
General Manager
Its: Asset Management Division

Attest:

By: Jane A. Neal

Title: ASSISTANT SECRETARY

Attach Appropriate Notary Acknowledgments

ALL PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA)
)SS.
 COUNTY OF ORANGE)

On February 10, 2000, before me, Janice A. Audiss, a Notary Public, personally appeared Luis N. Weiss and Jane A. Neal personally known to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

Witness my hand and official seal

Janice A. Audiss
 Notary's Signature



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

THIS CERTIFICATE Title or Type of Document Agreement and Declaration of Covenants, Conditions, Restrictions, Waiver and Release Unocal Property 0230

MUST BE ATTACHED
 TO THE DOCUMENT
 DESCRIBED AT RIGHT

Number of Pages 5 Date of Document 2/10/00

Capacity of Signers: General Manager and Assistant Secretary

Signer Represents: Union Oil Company of California

Signer(s) Other Than Named Above: _____

STATE OF OREGON,

County of KLAMATH

SS.

4919

FORM No. 23—ACKNOWLEDGMENT.
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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

The westerly 1-1/2 feet of Lot Four (4) and all of Lot Five (5) in Block Seventy-seven (77), Klamath Addition to Linkville, according to the official plat thereof on file in the Office of the County Clerk of Klamath County, Oregon.

PARCEL 2

Beginning on the southerly line of Klamath Avenue, 53-1/2 feet northeasterly from the most westerly corner of Block 77; KLAMATH ADDITION TO THE CITY OF KLAMATH FALLS; thence southeasterly at right angles with Klamath Avenue, 100 feet to alley; thence northeasterly parallel to Klamath Avenue, 50 feet; thence northwesterly at right angles to said alley, 100 feet to Klamath Avenue; thence southwesterly along Klamath Avenue 50 feet to the point of beginning.

TOGETHER WITH that portion of Klamath Avenue described as a strip of land 0.25 feet in width, lying adjacent to and northwesterly (northeasterly by Deed) of Lots 4 and 5 in Block 77, KLAMATH ADDITION, be and hereby is vacated, by Ordinance 5430, recorded April 15, 1965, in Volume 360 at Page 600, Deed Records of Klamath County, Oregon.

ALSO that portion of an alley described as a strip of land 0.25 feet in width lying adjacent to and southeasterly of Lots 4 and 5 in Block 77, KLAMATH ADDITION, be and hereby is vacated by Ordinance 5430, recorded April 15, 1965, in Volume 360 at Page 600, Deed Records of Klamath County, Oregon.

Account No. 3809-032AD-02600 Key No.: 476808

State of Oregon, County of Klamath
Recorded 2/16/00, at 11:29 a.m.
In Vol. M00 Page 4914
Linda Smith,
County Clerk Fee\$ 51⁰⁰

Property No. 0230
201 S. Sixth Street
Klamath Falls, Oregon