

A - 26083

3321

Vol. <sup>M</sup>75 Page 8779

MORTGAGE

THIS MORTGAGE, Made and entered into this 30th day of July, 1975, between WASHBURN ENTERPRISES, INC., an Oregon corporation, herein called "mortgagor", and ORE-CAL GENERAL WHOLESALE, INC., an Oregon corporation, RAY BYRNES and IRENE BYRNES, husband and wife, HARRY R. WAGGONER and NORMA E. WAGGONER, husband and wife, ORRIN L. STUEMPGES and SHIRLEY A. STUEMPGES, husband and wife, and DORMAN A. TURNER and ARLENE I. TURNER, husband and wife, herein called "mortgagees";

W I T N E S S E T H:

Mortgagor, in consideration of the sum of NINE HUNDRED SEVEN THOUS- AND FOUR HUNDRED THREE AND 27/100 DOLLARS, to it paid by mortgagees, does hereby grant, bargain, sell and convey unto said mortgagees, their heirs, successors, representatives and assigns, in the interests set out below, that certain real property, situated in Klamath County, Oregon, described on Exhibit A attached hereto and by this reference made a part hereof, subject to that certain mortgage of First National Bank of Oregon, dated July 20, 1972, recorded July 20, 1972, in Volume M-72, Page 7964, Mortgage Records of Klamath County, Oregon.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and which may hereafter thereto belong or appertain, and the rents, issues and profits therefrom, and any and all fixtures upon said premises at the time of the execution of this mortgage or at any time during the term of this mortgage.

TO HAVE AND TO HOLD said premises with the appurtenances unto mortgagees, their heirs, successors, representatives and assigns forever, in undivided interests in the following proportions:

Ore-Cal General Wholesale, Inc.	12½%
Harry R. Waggoner and Norma E. Waggoner, husband and wife,	37½%
Orrin L. Stuempges and Shirley A. Stuempges, husband and wife,	20%
Irene Byrnes	10%
Ray Byrnes	10%
Dorman A. Turner and Arlene I. Turner, husband and wife,	10%

(Mortgage - 1)

JUL 31 1975

RECEIVED

10:50 am

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This mortgage is intended to secure the payment of a promissory note of which the following is a substantial copy:

\$907,403.27

Klamath Falls, Oregon

July 30, 1975

The undersigned corporation promises to pay to the order of ORE-CAL GENERAL WHOLESALE, INC., an Oregon corporation, RAY BYRNES and IRENE BYRNES, husband and wife, HARRY R. WAGGONER and NORMA E. WAGGONER, husband and wife, ORRIN L. STUEMPGES and SHIRLEY A. STUEMPGES, husband and wife, and DORMAN A. TURNER and ARLENE I. TURNER, husband and wife, at Klamath Falls, Oregon, NINE HUNDRED SEVEN THOUSAND FOUR HUNDRED THREE AND 27/100 DOLLARS, with interest thereon at the rate of 6% per annum from September 30, 1974, until paid, payable interest only on September 30, 1975, at which time the principal amount will be amortized at 6% over a 20-year period, payable in annual installments of not less than \$79,116.55, including the accrued interest, in any one payment; the first payment on principal to be made on September 30, 1976, and a like payment on the 30th day of each September thereafter, until the whole sum, principal and interest, has been paid; provided, however, that the full amount of principal and interest shall be payable on or before September 30, 1986.

The undivided interests of the several payees are in the following proportions: Ore-Cal General Wholesale, Inc. 12½%; Harry R. Waggoner and Norma E. Waggoner, husband and wife, 37½%; Orrin L. Stuempges and Shirley A. Stuempges, husband and wife, 20%; Irene Byrnes 10%; Ray Byrnes 10%; Dorman A. Turner and Arlene I. Turner, husband and wife, 10%.

If any of said installments is not so paid, the whole sum of both principal and interest to become immediately due and collectible at the option of the holders of this note. If this note is placed in the hands of an attorney for collection, the undersigned promises and agrees to pay the reasonable collection costs of the holders hereof; and if suit or action is filed hereon, the undersigned also promises to pay (1) holders' reasonable attorney fees to be fixed by the trial court and (2) if any appeal is taken from any decision of the trial court, such further sum as may be fixed by the appellate court, as the holders' reasonable attorney fees in the appellate court.

WASHBURN ENTERPRISES, INC.

By DORMAN A. TURNER  
President

By JEWELL HUSTON  
Secretary



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Said mortgagor covenants to and with mortgagees, their heirs, successors, representatives and assigns, that it is lawfully seized in fee simple of said premises and has a valid, unencumbered title thereto except as stated above, and will warrant and forever defend the same against all persons; that it will pay said note, principal and interest, according to the terms thereof; that while any part of said note remains unpaid it will pay all taxes, assessments and other charges of every nature which may be levied or assessed against said property, or this mortgage or the note above described, when due and payable and before the same may become delinquent; that it will promptly pay and satisfy any and all liens or encumbrances that are or may become liens on said premises or any part thereof superior to the lien of this mortgage.

Mortgagees agree to release from the lien of this mortgage any parcel of land covered by this mortgage upon payment to mortgagees of the greater of one-third of the net sales price for said parcel or \$3,000.00 per acre of land covered by the release. The net sales price for each parcel shall be determined by deducting from the sales price the costs of all improvements made or placed on said parcel by mortgagor, including the proportionate costs of roads serving said parcel and ways of access to such parcel. All payments made under this provision for the release of property covered by the within mortgage shall be applied to and credited against any installment of principal or interest then due or installments to become due under the terms of this mortgage.

Mortgagor agrees to pay all costs, expenses, charges and fees incurred in connection with securing the release of any property from the lien of this mortgage as provided above.

It is further understood and agreed that the rights given to mortgagor in regard to releases of parcels of land shall be conditioned upon mortgagor's having fully performed at the time each release is requested all of the obligations on its part to be kept and performed as provided in the within mortgage and the note secured hereby.

Now, therefore, if said mortgagor shall keep and perform the covenants herein contained and shall pay said note according to its terms, this conveyance shall be void, but otherwise shall remain in full force as a mortgage to secure the performance of all of said covenants and the payment of said note; it being agreed that upon a failure to perform any covenant herein, or if proceedings of any kind be taken to foreclose any lien on said premises or any part thereof, mortgagees shall have the option to declare the whole amount unpaid on said note or on this mortgage at once due and payable, and this mortgage may be foreclosed at any time thereafter. If mortgagor shall fail to pay any taxes or charges or any lien as above provided for, mortgagees may at their option do so, and any payment so made shall be added to and become a part of the debt secured by this mortgage, and shall bear interest at the same rate as said note without waiver, however, of any right arising to mortgagees for breach of covenant. This mortgage may be foreclosed for principal, interest and all sums paid by mortgagees at any time while mortgagor neglects to repay any sums so paid by mortgagees. In the event of any suit or claim being instituted to foreclose this mortgage, mortgagor agrees to pay all reasonable costs incurred by mortgagees for title reports and title search, all statutory costs and disbursements and such further sum as the trial court may adjudge reasonable as plaintiff's attorney fees in such suit or action and if any appeal is taken from any judgment or decree entered therein, mortgagor further promises to pay such sum as the appellate court shall adjudge reasonable as plaintiff's attorney fees on such appeal, all such sums to be secured by the lien of this mortgage and included in the decree of foreclosure.

Each and all of the covenants and agreements herein contained shall apply to and bind the heirs, successors, representatives and assigns of said mortgagor and of said mortgagees respectively.

In case suit or action is commenced to foreclose this mortgage, the court may, upon motion of mortgagees, appoint a receiver to collect the rents and profits arising out of said premises during the pendency



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of such foreclosure, and apply the same to the payment of the amount due under this mortgage, first deducting all proper charges and expenses attending the execution of said trust.

IN WITNESS WHEREOF, WASHBURN ENTERPRISES, INC., pursuant to a resolution of its board of directors, has caused these presents to be signed by its President and Secretary the day and year first hereinabove written.

WASHBURN ENTERPRISES, INC.

By Dorman A. Turner  
President

By Jewell C. Huston  
Secretary

STATE OF OREGON

County of KLAMATH

ss. 7-30, 1975

Personally appeared DORMAN A. TURNER and JEWELL HUSTON, who, being duly sworn, did say that they are the President and Secretary, respectively, of WASHBURN ENTERPRISES, INC., and that the foregoing instrument was signed in behalf of said corporation by authority of its board of directors, and they acknowledged said instrument to be its voluntary act and deed.

Before me:

Herman F. Smith  
NOTARY PUBLIC FOR OREGON  
My commission expires 12-21-78