

THIS ANNEXATION AGREEMENT, made and entered into this 22<sup>nd</sup> day of January, 1985, by and between the CITY OF KLAMATH FALLS, a municipal corporation of the State of Oregon, hereinafter known as "City", and WASHBURN ENTERPRISES, INC., an Oregon corporation hereinafter known as "Owner".

## WITNESSETH:

WHEREAS, Owner owns certain real property described in Exhibit "A" hereto, which Exhibit is hereby incorporated herein and which real property is known for the purposes of this Agreement as the "Property"; and

WHEREAS, Owner is willing to annex the Property to City at some future time and Owner desires to obtain the following utility service or services from City for the Property:

Water service for industrial and commercial uses

and

WHEREAS, the parties have agreed upon the terms and conditions pursuant to which said utility service should be provided and maintained and desire to reduce such agreement to writing; and

WHEREAS, it is to the best interest of both parties that the property be provided with said utility service in conformity with the ordinances, codes, rules and regulations of City; and

WHEREAS, City has the power and authority to supply the said utility service to the Property and the Council of City has determined that Owner should be granted the use of said utility service on the terms set forth below and Owner agrees to said terms,

NOW, THEREFORE, IN CONSIDERATION of the foregoing and the mutual promises and agreements herein stated, the parties mutually contract and agree with each other as follows:

1. OWNERSHIP. Owner will supply written evidence to the satisfaction of City that Owner is, in fact, the owner of record of the Property, which Property is that real property described in Exhibit "A" attached hereto and which exhibit is hereby incorporated herein.

2. ANNEXATION. Owner is willing to have the Property annexed to City as soon as the provisions of this Agreement are met and the property is developed and improvements installed thereupon, and, thereafter, Owner hereby gives Owner's express, continuing, written consent to annexation of the Property, and the whole thereof, to the City of Klamath Falls and does hereby make application and constitute this Agreement to be Owner's continuing petition to City for said annexation and agrees to execute such separate, further or additional application, petition and consent as may be hereinafter required by City or the laws of the state, as now or hereafter enacted, for such annexation.

Owner and City mutually agree that City cannot bind itself by an enforceable contract to pass future legislation annexing the Property, but City agrees it will process and consider, in a manner usual in such a request, the application and consent of Owner for the annexation.

3. PUBLIC SERVICE DISTRICT. If the Property, prior to its annexation, is in a public service district, including but not limited to those defined in ORS 222.510 as now written or hereafter amended, and has incurred liens, assessments or other obligations of said district, then Owner shall discharge the same in full prior to annexation of the Property to the City. If legally allowable, Owner shall withdraw the Property from such district prior to annexation. Owner also agrees to protect and save City harmless from any and all costs, expenses or obligations on or against the Property or against Owner imposed by an such district prior to, concurrently with or after withdrawal of the property from any such district, and whether withdrawal is accomplished by Owner, City or other entity, with such costs and the like to include but not be limited to those of any litigation whether or not involved in the withdrawal of the Property from any such litigation, including but not limited to costs and attorneys' fees, and payment of any judgment against the Property, City and Owner, and any thereof, which judgment might be entered as a consequence of such litigation. Owner agrees to in the same fashion protect and save City harmless from any special assessments or other obligations or charges of any said district imposed against the Property, City or Owner, or any thereof, due to the Property having been incorporated into or being withdrawn from such district prior to annexation of the Property into the City.

4. KLAMATH COUNTY PERMITS. Owner shall obtain necessary written authority from Klamath County to install improvements upon the Property and a copy of said written authority, including but not limited to any building permit, shall be furnished City.

5. UTILITY PERMITS. Owner shall obtain all necessary permits for utility service installation for the Property.

6. EXAMINATIONS AND INSPECTIONS. Owner grants City and any of its authorized representatives the right to go upon the Property at all reasonable times to make such examinations and inspections as reasonably necessary in City's opinion to determine that all terms and conditions of this Agreement are being strictly followed and performed by Owner. This right shall continue during the entire term of this Agreement and until the Property is annexed to City.

7. SUPPLY OF UTILITY SERVICE. City shall supply Owner the utility service or services as described above. Any water to be supplied shall come from the same supply as serves inhabitants of the City for domestic and fire service systems within structures. Pursuant to Section 5 of Ordinance No. 6164, in case of shortage of supply of water, City reserves the right to give preference in the matter of furnishing service to customers and interests of City from the standpoint of public convenience or necessity and water service to users, including Owner, outside the City limits shall, at all times, be subject to the prior and superior rights of the customers within the City. After annexation of the Property, said Property shall have the same rights to water service as any other property within City.

8. PAYMENT OF UTILITY SERVICE RATES. Owner shall pay the monthly or other utility service rates including demand charges for the services described hereinabove as established by city ordinance for utility service supplied outside the City limits and until such time as the Property is annexed to City.

9. BINDING EFFECT OF AGREEMENT AND ASSIGNABILITY RESTRICTION. This Agreement is binding upon and shall inure to the benefit of the heirs, executors, administrators, personal representatives, successors and assigns of the parties. If there is more than one owner, each owner is jointly and severally bound hereby. This Agreement is not personal but is for the benefit of the property described in Exhibit "A" hereto and shall run with all said real property and be binding upon Owner and all successive owners of all or part of said Property.

10. RECORDING AGREEMENT. City shall cause an executed copy of this Agreement to be recorded in the deed or other real property records of the Klamath County Clerk.

11. UTILITY SERVICE AND OTHER SPECIAL PROVISIONS. Special provisions regarding installation and extension of utility service, and regarding other matters, are as set forth in any Exhibit "B" hereto, which exhibit is hereby incorporated herein, and Owner shall comply therewith and pay all costs thereof unless otherwise set forth therein.

12. OTHER MUNICIPAL SERVICES. Except for those utility services described herein in the body of this Agreement, and except as to those utility services or other municipal services of the City which City agrees to provide as set forth in any Exhibit "C" hereto, which exhibit is hereby incorporated herein the City shall not extend or supply municipal services to the Property, with such other services including but not limited to those of police and fire protection. Upon annexation to the City, such police and fire protection and other municipal services will be provided the Property in the same fashion as the same are provided other properties within the City.

IN WITNESS WHEREOF, City has caused this instrument to be executed by its duly authorized officers after approval of this Agreement by City's Council, and Owner has hereunto set Owner's hand and seal as of the day and year first above written.

CITY OF KLAMATH FALLS,

By Georgia C. Elitroff  
Mayor

ATTEST: Garrett Foulke  
City Recorder

OWNER: WASHBURN ENTERPRISES, INC.

By Dorman A. Turner  
President

By Jewell Huston  
Secretary

STATE OF OREGON )  
 ) ss.  
County of Klamath )

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_, before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named \_\_\_\_\_

known to me to be the Owner described in and who executed the within instrument and acknowledged to me that \_\_\_\_\_ 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.

NOTARY PUBLIC FOR OREGON  
My commission expires: \_\_\_\_\_

STATE OF OREGON )  
County of KLAMATH ) ss. 1-22, 1988

Personally appeared DORMAN A. TURNER and JEWELL HUSTON, who, being duly sworn, each for himself or herself, did say that the former is the president and the latter is the secretary of WASHBURN ENTERPRISES, INC., an Oregon corporation, and that the foregoing instrument was signed in behalf of said corporation by authority of its board of directors; and each of them acknowledged said instrument to be its voluntary act and deed.

Before me:

Harman F. Smith  
NOTARY PUBLIC FOR OREGON  
My commission expires Dec 13 1986

EXHIBIT "A" TO ANNEXATION AGREEMENT  
OF CITY OF KLAMATH FALLS AND

5732

DATED January 22, 1985,

PROPERTY DESCRIPTION  
(See Paragraph 1 of Annexation Agreement)

~~Parcel 1: Tract 1192, WASHBURN PARK, according to the duly recorded plat thereof on file in the office of the County Clerk of Klamath County, Oregon.~~ *del*

Parcel 2: Tract 1239, WASHBURN PARK, according to the duly recorded plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

EXHIBIT "B" TO ANNEXATION AGREEMENT  
OF CITY OF KLAMATH FALL AND

DATED January 22, 1985,

SPECIAL PROVISIONS REGARDING  
UTILITY SERVICES AND OTHER MATTERS

(See Paragraph 11 of Annexation Agreement)

- 1) Owner to pay usual connection charges.
- 2) The property to pay out-of-city utility rates until annexation.



EXHIBIT "C" TO ANNEXATION AGREEMENT  
OF CITY OF KLAMATH FALLS AND

5733

DATED January 22, 1985

OTHER MUNICIPAL SERVICES

(See Paragraph 12 of Annexation Agreement)

*Property to be extended no other City services until annexation,  
unless an addendum to this agreement is made.*

*Ret: City of Klamath Falls  
Box 237  
KFO*

STATE OF OREGON, )  
County of Klamath )

Filed for record at request of

on this 19th day of April A.D. 19 85  
at 4:14 o'clock P M, and duly  
recorded in Vol. M85 of Deeds  
Page 5729

**EVELYN BEHN**, County Clerk

By *Ram Smith* Deputy

Fee 21.00