

48304

MTC-14824
ASSIGNMENT AND MORTGAGE

Vol. 185 Page 6401

For value received, WASHBURN ENTERPRISES, INC. ("Assignor"), assigns and conveys the following-described property ("Collateral"), including all monies due or to become due thereunder, and grants a security interest therein to FIRST INTERSTATE BANK OF OREGON, N.A. ("Bank"), its successors and assigns, all of its right, title, and interest in and to:

That certain Agreement of Sale dated March 13, 1978 between Washburn Enterprises, Inc., an Oregon corporation, as Seller, and House of Rentals, a co-partnership consisting of Jesse H. House and Mary M. House, husband and wife, and Ronald D. House, as Buyer, for the sale of real property described in the Agreement of Sale attached hereto as Exhibit A, and by this reference made a part hereof, recorded on (Unrecorded) in Volume _____ on Page _____ in the Records of Klamath County, Oregon, together with the real property described therein.

This conveyance is intended as a mortgage to secure performance of the covenants and agreements herein contained and to be by the Assignor kept and performed. "Obligor" shall mean the account debtor, escrow agent, lessee, contract purchaser, or the other person(s) obligated for the payment of money, as the case may be. Where reference is made to "Assignment" it shall, where applicable, mean "Assignment and Mortgage." "Escrow Agent" shall mean First Interstate Bank of Oregon, N.A., Klamath Falls, Oregon.

Assignor warrants to Bank that:

- (1) Assignor is the absolute owner of Collateral;
- (2) Assignor has not heretofore assigned or granted a security interest in Collateral or any sums of money due or to become due thereunder, or any right or interest therein or thereto;
- (3) the full amount payable according to the terms of Collateral is justly owing and payable in accordance with the terms thereof;
- (4) there are no defaults existing under Collateral;
- (5) there are no offsets or counterclaims to Collateral;

85 MAY 1 PM 12 37

6402
(6) as of the date of this assignment there is now unpaid and owing thereon \$ 21,433.55.

Assignor shall not, without Bank's prior written consent, now or at any time, sell, pledge, transfer, assign, modify or terminate its interest in and to Collateral.

Assignor covenants to Bank that it will strictly and promptly perform each of the terms, conditions, covenants, and agreements contained in Collateral on his part to be performed.

This assignment is made as security for the payment of Assignor's promissory note to Bank dated August 20, 1979 in the principal sum of \$ 600,000.00, together with interest thereon in accordance with its terms and tenor, and together with any renewals or extensions thereof; and as security for the payment of any and all indebtedness now or at any time hereafter owing by Assignor to Bank, whether absolute, contingent, due or to become due, primary or secondary, and however evidenced. The maturity date of the note is May 1, 1990.

Assignor hereby authorizes and directs Obligor to pay and deliver to Bank, upon Bank's demand to Obligor, all sums of money payable by the terms of Collateral and to accept the receipt of Bank therefor. Until Bank makes demand on Obligor, Assignor shall continue to collect the proceeds of Collateral. Assignor shall, at the request of Bank, hold the proceeds received from collection in trust for Bank without commingling the same with other funds of Assignor and shall turn the same over to Bank immediately upon receipt in the identical form received. Assignor shall, at the request of Bank, notify Obligor of Bank's interest in Collateral and Bank may, itself, at any time so notify Obligor. Obligor shall be under no obligation to determine that any indebtedness hereby secured is owing or to see to the application of any sums of money paid to Bank and the receipt of Bank shall constitute a complete acquittance to the extent of any payment made to Bank by Obligor until Bank shall notify Obligor in writing that Assignor is no longer indebted to Bank.

It is expressly understood and agreed that Bank shall not be required or obligated in any manner to make any demand or to take any action to collect or enforce the payment of any amount which may have been assigned to it or to which it may have been entitled hereunder at any time or times.

This assignment is not a delegation or assignment to Bank of Assignor's duties or obligations under or

in connection with Collateral. Bank's acceptance of this assignment does not constitute a promise by it nor does it in any way obligate it to perform any of Assignor's duties or obligations under or in connection with Collateral. 6403

Assignor hereby appoints Bank, its successors and assigns, its attorney in fact, irrevocably, with full power of substitution, to demand, collect, receive, receipt for, sue and recover all sums of money which may now or hereafter become due, owing, or payable from Obligor in accordance with the terms of Collateral; to execute, sign and endorse any and all claims, instruments, receipts, checks, drafts, or warrants issued in payment thereof and to settle or compromise any and all claims arising under Collateral assigned to Bank and, in the place and stead of Assignor, execute and deliver its release and acquittance therefor; to file any claim or claims or to take any action or institute or take part in any proceedings, either in its own name or in the name of Assignor, or otherwise, which, in the discretion of Bank may seem to be necessary or advisable; to execute in Assignor's name and deliver to Obligor on Assignor's behalf, at the time and in the manner specified by Collateral, a deed or bill of sale to property being purchased by Obligor pursuant to Collateral and described therein. This power is given as security for an indebtedness and the authority hereby conferred is and shall be irrevocable and shall remain in full force and effect until renounced by Bank.

Assignor hereby appoints Bank, its successors and assigns, its attorney in fact, irrevocably, with full power of substitution, to enforce the obligations of Vendor to Assignor, demand and receive a deed to the property described in said agreement for the sale of real property in accordance with the terms and conditions of Collateral and take possession thereof. In the place and stead of Assignor, and in furtherance thereof Bank may take any action or institute or take part in any proceedings, either in its own name or in the name of Assignor, or otherwise, which, Bank, in its sole discretion, may deem to be necessary, convenient, or proper to protect or enforce its or Assignor's rights in Collateral. These powers are given as security for an indebtedness and the authority hereby conferred is and shall be irrevocable and shall remain in full force and effect until renounced by Bank.

In the event suit or action is instituted in connection with any controversy between Assignor and Bank arising out of this assignment, the prevailing party shall be entitled to recover, at trial or on appeal, such sums as the court may adjudge reasonable as attorney fees, in

6404

addition to costs and necessary disbursements. Assignor shall pay to Bank upon demand, any and all expenses including reasonable attorney fees, incurred or paid by Bank with or without any suit or action in protecting its rights as against any third party upon or under this assignment.

Assignor agrees that at any time or from time to time, upon written request of Bank, it will execute and deliver such further documents and do such further acts and things as Bank may request in order to further effect the purposes of this Assignment and Mortgage.

In the construction of this agreement, the singular includes the plural and the masculine pronoun includes the feminine and neuter.

IN WITNESS WHEREOF, Assignor has caused this assignment and mortgage to be executed by its duly authorized officer(s). this 30th day of April, 1988. *5. Dat*

WASHBURN ENTERPRISES, INC.

By *Dorman A. Turner*
Title: *Pres*

By *Irene Byrnes*
Title: *V. Pres*

STATE OF OREGON)
County of Klamath):ss
)

The foregoing instrument was acknowledged before me the
30th day of April, 1988 by Dorman A. Turner
the President of Washburn Enterprises, Inc.
on behalf of the corporation, and by Irene Byrnes, the Vice President
of Washburn Enterprises, Inc. on behalf of the corporation.
(NOTARIAL SEAL)

Clara C. [Signature]
Notary Public for Oregon
My Commission expires:
April 8, 1988

TO: FIRST INTERSTATE BANK OF OREGON, N.A.

6405

The undersigned acknowledges receipt of a copy
of the foregoing assignment and mortgage on April 30, 1984. *52*
The undersigned has not received notice of any prior
assignment of sums owing Assignor under or in connection
with Collateral.

FIRST INTERSTATE BANK OF OREGON, N.A.

By

Title:

[Signature]
Assistant Manager

AGREEMENT OF SALE

6406

THIS AGREEMENT, Made and entered into this 13th day of ~~February~~ ^{March}, 1978, by and between WASHBURN ENTERPRISES, INC., an Oregon corporation, herein called "seller", and HOUSE OF RENTALS, a co-partnership consisting of JESSE H. HOUSE and MARY M. HOUSE, husband and wife, and RONALD D. HOUSE, herein called "buyer";

W I T N E S S E T H:

Seller agrees to sell to buyer and buyer agrees to buy from seller all of the following-described property, situated in Klamath County, State of Oregon, to-wit:

A tract of land situated in Lots 4 and 5, Block 6, TRACT 1080-WASHBURN PARK, a duly recorded subdivision, more particularly described as follows: Beginning at the East corner common to said Lots 4 and 5; thence S. 00°04'50" W., along the westerly line of Washburn Way, 123.71 feet; thence West 249.61 feet; thence N. 00°09'45" E. 175.00 feet; thence East 249.36 feet to the westerly line of Washburn Way; thence S. 00°04'50" W. 51.29 feet to the point of beginning, containing 1.00 acres (43,600 square feet) with bearings based on the subdivision plat of said Tract 1080-Washburn Park.

SUBJECT TO: (1) Rules, regulations and assessments of South Suburban Sanitary District. (2) Easement for transmission line, including the terms and provisions thereof, given by Samuel S. Johnson, et ux, to Pacific Power & Light Company, a corporation, dated August 22, 1966, recorded August 22, 1966, in Volume M-66, Page 3563, Deed Records of Klamath County, Oregon. (3) Right of way easement, including the terms and provisions thereof, given by Harry E. Waggoner, et ux, to California Pacific Utilities Company, dated November 10, 1970, recorded November 30, 1970, in Volume M-70, Page 10618, Deed Records of Klamath County, Oregon. (4) Reservations and restrictions contained in the dedication of Washburn Park.

Buyer and any person claiming by, through or under buyer shall not cause or permit any permanent structure, building or other obstruction, other than signs, gasoline pumps or similar service facilities, to be placed or located on the easterly 70 feet of said parcel parallel with Washburn Way. Said 70-foot strip shall be maintained in such manner as to permit vehicular traffic to pass on either side of such permitted service facilities in the most direct northerly and southerly direction, and said 70-foot strip shall be reserved for the use of the owners and occupants of the above-described property and the owners and occupants of adjoining properties bordering on Washburn Way upon which similar conditions and restrictions are imposed for the use and enjoyment of the owners and occupants, their customers, employees and invitees, for parking of automobiles and access to and egress from said parcels. Buyer, in consideration of the reservation or granting of similar conditions and restrictions upon adjoining properties, agrees to maintain said 70-foot strip in a safe and suitable condition for the uses and purposes recited herein. The foregoing reservation and conditions are deemed to be appurtenant to

6407

the above-described parcel for the use and benefit of the owners and occupants, their employees, customers and invitees, of the subject property and the owners and occupants, their customers, employees and invitees, of the adjoining properties similarly restricted.

The total purchase price for said property shall be THIRTY-SEVEN THOUSAND AND NO/100 DOLLARS, payable as follows: \$5,000.00 at the time of the execution of this agreement, the receipt of which is hereby acknowledged by seller, and the balance of said purchase price in the sum of \$31,400.00 shall bear interest from the date hereof at the rate of 9% per annum, and said balance shall be payable in monthly installments of not less than \$318.49 each, including the accrued interest on the unpaid balance; the first such installment to be due and payable on the 1st day of April, 1972, and a like installment to be due and payable on the 1st day of each month thereafter until the balance and interest are paid in full.

Buyer agrees to make the payments specified above promptly on the dates set out above to the order of seller at First National Bank of Oregon, Klamath Falls Branch; to keep said premises at all times in as good condition as the same now are; to maintain all improvements now on or which may hereafter be placed on said premises until the entire purchase price has been paid, and buyer further agrees that it shall pay regularly and seasonably, and before the same shall become delinquent, all taxes, assessments, liens, encumbrances and charges of whatsoever kind and nature, and buyer agrees not to suffer or permit any part of said premises to become subject to any tax liens, assessments, liens, charges or encumbrances whatsoever having precedence over the rights of seller in and to said property.

Buyer shall be entitled to possession of said premises upon the execution of this agreement.

Seller will contemporaneously herewith make and execute in favor of buyer good and sufficient warranty deed conveying a fee simple title to said premises free and clear, as of the date hereof, of all encumbrances whatsoever, except as stated above.

An executed copy of this agreement, together with a certified warranty deed of seller, shall be placed in escrow at First National Bank of Oregon, Klamath Falls Branch. Said escrow holder is instructed that when and if buyer shall have paid the balance of the purchase price and shall have in all other respects fully complied with all of the terms and conditions of this agreement, said escrow holder shall deliver said instruments to buyer.

It is understood and agreed that time is of the essence of this agreement; and if buyer shall fail or refuse for a period of 10 days to pay any of said installments, or interest, promptly as the same become due, or shall fail to keep and perform any other agreement herein contained, upon 10 days' written notice of any default from seller to buyer, seller may, at its option, foreclose this contract by strict foreclosure in equity or declare the full unpaid balance immediately due and payable and specifically enforce the terms of this agreement by suit in equity. In the event of a suit for strict foreclosure, all right and interest hereby created or then existing in favor of buyer under this agreement shall utterly cease and determine, and the premises aforesaid shall revert to and re-vest in seller without any declaration of forfeiture or act of re-entry, and without any other act by seller to be performed and without any right of buyer of reclamation or compensation for money paid or for improvements made, as absolutely, fully and perfectly as if this agreement had never been made, and all money theretofore paid to seller under this agreement shall thereupon be forfeited without process of law and shall be retained by and belong to seller as the agreed and reasonable rent of said premises from the date hereof to the time of such forfeiture and shall be accounted charged to seller for buyer's failure to complete this agreement; and in such case said escrow holder is hereby instructed to deliver said documents to seller upon demand for the same, upon being supplied with a written copy of seller's notice of termination.

In any suit or action, or appeal therefrom, to enforce any provision of this agreement, the prevailing party in such suit.

action or appeal shall be entitled to recover from the other party, in addition to the costs and disbursements allowed by law, such sum as the court may adjudge reasonable for attorney fees therein.

Heirs, successors, representatives and assigns of the parties hereto are hereby declared to be bound and benefited by the terms hereof.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed the day and year first hereinabove written.

WASHBURN ENTERPRISES, INC.

By DORMAN A. TURNER
President

By JEWELL HUSTON
Secretary

HOUSE OF RENTALS

By JESS H. HOUSE

By MARY M. HOUSE

By RONALD D. HOUSE
Partners

STATE OF OREGON,)
County of Klamath)
Filed for record at request of

on this 1st day of May A.D. 19 85
at 12:37 o'clock PM, and duly
recorded in Vol. M85 of Mortgages
Page 6401

EVELYN BIEHN, County Clerk
By *Sam Smith* Deputy
Fee 37.00

Return:
NTC