

119130

## REAL ESTATE CONTRACT

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THIS REAL ESTATE CONTRACT made this day by and between ROGER MALFAIT and LORETTA L. MALFAIT, husband and wife, hereinafter called "Sellers", and JAMES C. NEBEL and DIANA GAIL NEBEL, husband and wife, hereinafter called "Buyers",

## W I T N E S S E T H:

Section 1. DESCRIPTION OF PROPERTY CONTRACTED TO BE SOLD:

In consideration of the mutual covenants herein contained and the promises to be performed as set out hereinafter, the Sellers agree to sell to the Buyers and the Buyers agree to purchase from the Sellers the following described real estate in Skamania County, Washington, to-wit:

Lot 2 of the R. Malfait Short Plat, according to the duly recorded Short Plat thereof recorded in Book 3 of Short Plats, at Page 211, records of Skamania County, Washington.

Section 2. PURCHASE PRICE AND PAYMENTS:

2.1 The purchase price for said real estate is the sum of FORTY-TWO THOUSAND AND NO/100 DOLLARS (\$42,000.00), which Buyers covenant and agree to pay as follows:

- a. The sum of \$4,000.00 including earnest money shall be paid as down payment as of the date of this contract.
- b. The balance of \$38,000.00 shall be paid in monthly installments as follows: The sum of \$265.00 on or before the 5th day of May, 1994, and the sum of \$265.00 on or before the 5th day of each month thereafter until the entire unpaid balance of principal and interest has been paid in full.

2.2 This contract shall bear interest at the rate of eight (8%) percent per annum on the declining balance beginning the date hereof and continuing until such balance has been paid in full. All payments shall first be applied against accrued interest, and the balance of each such payment shall then be applied in reduction of principal.

2.3 Buyers shall be entitled to prepay any or all sums due under the terms hereof. In the event Buyers shall elect to prepay less than the entire contract balance together with accrued interest, such pre-payment shall not relieve Buyers from the obligation to make monthly payments as provided hereunder.

2.4 All payments to be made hereunder shall be made to Sellers at 39336 N.E. Washougal River Road, Washougal, Washington 98671, or at such place as Sellers may in writing direct.

2.5 In the event Buyers shall fail to make any payment on the purchase price within ten (10) days of its due date, then there shall be added to such payment a late charge equal to five (5%) percent of the delinquent payment.

Section 3. POSSESSION: Buyers shall be entitled to possession of the premises contracted to be sold on the date of this contract and during their full and proper performance of this contract.

Section 4. ADVANCES: It is understood and agreed that in the event the Buyers fail or neglect or refuse to pay any taxes, assessments, insurance premiums or any other lawful charge against

REAL ESTATE EXCISE TAX

C16510

APR 8 1994

PAID 537.60

SKAMANIA COUNTY TREASURER

Gladys J. Kimmel, Skamania County Assessor  
By: Parcel # 2-5-31-3-103

Registered  
Noted. On  
Filed  
Marked

said property, the Sellers may pay same and such sums as may be so paid shall be secured by this contract and the said sums shall be repaid by the Buyers to the Sellers upon demand with interest thereon from each respective date of advancement until repaid, at the rate of twelve (12%) percent per annum.

**Section 5. PREPAID TAXES:** The 1994 real estate taxes shall be pro-rated between the Buyers and the Sellers as of the date of closing.

**Section 6. BUYERS' COVENANTS:** Buyers covenant and agree as follows:

(a) To make the payments mentioned in the manner and on the dates named.

(b) To pay the consideration agreed upon and named herein regardless of any loss, destruction or damage to any of said property, or the improvements thereon by fire, or from any other cause.

(c) To make or permit no unlawful or offensive or improper use of said property or any part thereof, nor to permit any waste, destruction or damage thereto.

(d) To permit the Sellers or their agents to enter into or upon the said property at any reasonable time to inspect the same.

(e) To pay regularly and seasonably and before the same shall become delinquent, all taxes, assessments, liens and encumbrances of whatsoever nature and kind which may hereafter be lawfully imposed on said property or which may have been assumed by the Buyers in this contract; and to mail to Sellers all real property tax receipts, or legible copies thereof, showing real property taxes are kept current by Buyers.

(f) Not to permit or suffer any part of said property to become subject to any assessment, lien, charge or encumbrance whatsoever, having or taking precedence over the rights of the Sellers in and to said property.

**Section 7. DEED:** Sellers agree to execute and deliver to Buyers within thirty (30) days after final payment on this contract, a Warranty Deed conveying said property to the Buyers free and clear from all encumbrances except taxes, liens or other encumbrances placed or suffered by Buyers or their successors.

**Section 8. CHANGE IN TITLE OR OCCUPANCY:** The rights to purchase granted by this Real Estate Contract are personal to the Buyers, and Sellers' reliance upon Buyers' ability and integrity is a part of the consideration for this contract. Neither this contract, nor any interest herein, nor the possession of the property may be assigned or transferred by the Buyers, nor shall Buyers make or enter into any contract for the sale of the property or any interest therein, without the prior written consent of the Sellers, which consent shall not be unreasonably withheld. Any attempt at assignment, sale, or transfer of any interest, including possession, by Buyers in violation of the foregoing provisions may, at Sellers' option, be deemed a default by Buyers and Sellers may, at Sellers' option, declare the remaining contract balance, accrued interest and any other sums owing by Buyers to Sellers hereunder, immediately due and payable. As an alternative to declaring the remaining contract balance, accrued interest and other sums owing by the Buyers to Sellers immediately due and payable, Sellers

may, at Sellers' option, elect to raise the interest rate on this contract to twelve (12%) percent as a condition to Sellers' consent to any sale, assignment, or transfer of Buyers' interest or possession in the subject property or this contract. The provisions of this section shall not apply to any contract of sale, transfer, or assignment to any member of Buyers' immediate family, provided however, that in the event of any such contract of sale, transfer, or assignment, Buyers shall remain personally liable for performing all of Buyers' covenants and obligations hereunder.

**Section 9. FORFEITURE:** Time is of the essence of this contract and if the Buyers shall fail, refuse or neglect to pay either or any of the installments or interest or any other payment due, or shall fail to keep and/or perform any of the covenants and agreements herein contained on the part of the Buyers to be performed, then the Sellers may cancel and render void all rights, titles and interest of the Buyers and their successors in this contract and in the real estate which is the subject of this contract by giving a Notice of Intent to Forfeit pursuant to RCW 61.30, and said cancellation and forfeiture shall become effective if the default therein specified has not been fully cured within ninety (90) days thereafter and the Sellers record a Declaration of Forfeiture pursuant to RCW 61.30. Upon the forfeiture of this contract, the Sellers may retain all payments made hereunder by the Buyers and may take possession of the property ten (10) days following the date this contract is forfeited and summarily eject the Buyers and any person or persons having possession of the said property by, through or under the Buyers who were properly given the Notice of Intent to Forfeit and the Declaration of Forfeiture. In the event the Buyers or any person or persons claiming by, through or under the Buyers who were properly given the Notice of Intent to Forfeit and the Declaration of Forfeiture remain in possession of the property more than ten (10) days after such forfeiture, the Buyers, or such person or persons, shall be deemed tenants at will of the Sellers and the Sellers shall be entitled to institute an action for summary possession of the property, and may recover from the Buyers or such person or persons in any such proceedings the fair rental value of the property for the use thereof from and after the date of forfeiture, plus costs, including Sellers' reasonable attorney's fees.

**Section 10. OTHER REMEDIES:**

10.1 As an alternative to declaring a forfeiture for any such default, Sellers may, at their election, bring an action or actions, on any intermediate overdue installment, or on any payment or payments made by the Sellers and repayable by the Buyers, it being stipulated and agreed that the covenant to pay intermediate installments or to repay items repayable by the Buyers, are independent of the covenant to make a deed; or

10.2 Sellers may, in the event of such default, at their election, sue for specific performance of Buyers' obligations pursuant to this contract; or

10.3 Sellers, may in the event of such default, at their election, declare the entire unpaid balance of principal and interest immediately due and payable, and thereupon institute suit for payment of such balance and to have this Real Estate Contract foreclosed as a mortgage as is provided in Section 61.30.020, Revised Code of Washington.

10.4 It is agreed that any such action is an action arising on a contract or the recovery of money only, as if the promise to pay had been expressed in a different instrument, and that no such action shall constitute an election not to proceed otherwise as to any subsequent default.

**Section 11. ASSUMPTION OF RISK:** The Buyers hereby assume all hazards of damage to or destruction of any improvements now on said real estate or hereafter placed thereon, and of the taking



of said real estate or any part thereof for public use. Buyers further agree that no such damage, destruction or taking shall constitute a failure of consideration.

**Section 12. CONDEMNATION:** In case any part of said real estate is taken for public use, the portion of the condemnation award remaining after payment of reasonable expenses of procuring the same shall be paid to Sellers and applied as payment on the purchase price hereunder.

**Section 13. REPRESENTATIONS:**

13.1 Buyers have inspected the property sold herein and have found the same to be to their satisfaction and they agree that no promises, representations, statements, or warranties, expressed or implied, shall be binding on the Sellers unless expressly contained herein. Buyers expressly acknowledge that they have placed no reliance whatsoever upon any representations not set forth in this contract, and accept the property in "as is" condition.


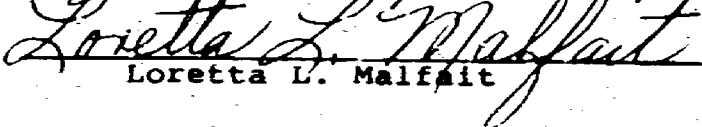
13.2 Buyers agree that they have had an opportunity to review all federal, state and local regulations, including but not limited to environmental hazards or waste, zoning regulations and standards affecting various permit applications, and the effect such regulations and requirements may have upon the above-described property, including the effect of the same on any prospective and intended use or uses. Buyers further acknowledge that Sellers have made no representations concerning any such regulations and standards, and Buyers agree to hold Sellers harmless from any and all damages relating to such regulations and standards.

**Section 14. COURT COSTS AND ATTORNEY'S FEES:** If Buyers shall be in default under this contract, the Sellers shall have the right, at Buyers' expense, to retain an attorney or collection agency to make any demand, enforce any remedy, or otherwise protect or enforce their rights under this contract. Buyers hereby promise to pay all expenses and costs so incurred by Sellers, with or without arbitration or litigation, which expenses and costs shall include, but not be limited to notice expenses, title search expenses, and reasonable attorney's fees. The failure of Buyers to promptly pay the same shall in itself constitute a further and additional default.

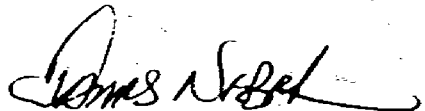
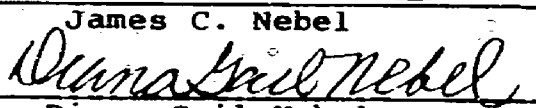
In the event either party hereto institutes any action, including arbitration, to enforce the provisions of this contract, the prevailing party in such action shall be entitled to reimbursement by the other party for their court costs and reasonable attorney's fees, including the cost of searching the title for the purpose of such action, and any costs and fees that are incurred on appeal.

**Section 15. WAIVER:** No assent, expressed or implied, by Sellers, to any breach of Buyers' covenants or agreements shall be deemed or taken to be a waiver of any succeeding breach of the same or other covenants.

DATED this 31<sup>st</sup> day of March, 1994.

  
Roger Malfait  
  
Loretta L. Malfait

SELLERS

  
James C. Nebel  
  
Diana Gail Nebel

BUYERS

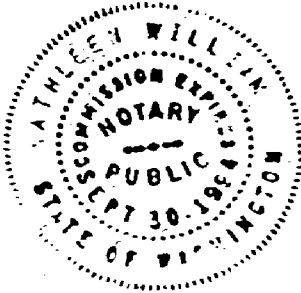
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STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF CLARK )

On this day personally appeared before me ROGER MALFAIT and LORETTA L. MALFAIT, husband and wife, to me known to be the individuals described in and who executed the within and foregoing instrument, and acknowledged that they signed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 6<sup>th</sup> day of April, 1994.

Kathleen Williams  
Notary Public in and for the State of  
Washington, Residing at Camas.  
My appointment expires: 9-30-94.



FILED FOR RECORD  
SKAMANIA CO. WASH.  
BY Knapp, O'Reilly & Lewis

APR 8 1 34 PM '94  
P. Lowry  
AUDITOR  
GARY M. OLSON