

FILED  
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Filed by: SKAMANIA COUNTY TITLE  
Filed & Recorded in Official Records  
of SKAMANIA COUNTY  
J. MICHAEL GARVISON  
AUDITOR  
Fee: \$28.00

REAL ESTATE EXCISE TAX

24840

APR 18 2005

PAID

*Exempt*  
*Vickie C. Holland, Deputy*

SKAMANIA COUNTY TREASURER  
REAL ESTATE CONTRACT

SCA 27555

THIS CONTRACT, made and entered into this 18 day of April, 2005 between **PORT OF SKAMANIA COUNTY**, a Washington Municipal Corporation, hereinafter called the "Seller" and **BRYAN S. MATHANY** and **KIMBERLEN S. MATHANY**, a Washington Marital Community, hereinafter called the "Purchaser".

WITNESSETH; That Seller agrees to sell to the Purchaser and the Purchaser agrees to purchase from the Seller the following described real estate, with the appurtenances, in Skamania County, State of Washington:

A tract of land in the NE ¼ of Section 1, Township 3 North, Range 7 ½ E. of the Willamette Meridian, in the County of Skamania, State of Washington, described as follows:

**Lot 1 of the PORT OF SKAMANIA SHORT PLAT, recorded in Book 3 of short plats, Page 130, Skamania County records.**

Gary H. Martin, Skamania County Assessor

Date 4-18-05 Parcel # 3-7 1/2-1-301

Tax Parcel No. 03-75-01-0-0-0301-00

The terms and conditions of this contract are as follows:

Price and Payment Terms

1. The purchase price is One Hundred Eighty Six Thousand Eight Hundred and 00/100 Dollars (\$186,800.00), of which One Thousand and 00/100 Dollars (\$1,000.00) earnest money deposit has been paid, the receipt whereof is hereby acknowledged, and the balance of said purchase price in the amount of One Hundred Eighty Five Thousand Eight Hundred and 00/100 Dollars (\$185,800.00) shall be paid as follows:

a. Purchaser shall pay an additional Seventeen Thousand Six Hundred Eighty Dollars (\$17,680.00) as a down payment at time of closing.

b. The remaining balance in the amount of One Hundred Sixty Eight Thousand Dollars One Hundred Twenty and 00/100 Dollars (\$168,120.00) shall be paid in monthly installments of One Thousand Eight Hundred Sixty Six and 78/100 Dollars (\$1,866.78) or more on

or before the fifteenth day of each succeeding calendar month for the duration of this contract beginning May 15, 2005 and continuing until April 15, 2006. In addition to the monthly principal and interest payment, Purchaser shall pay an additional Nine Thousand Three Hundred Forty and 00/100 (\$9,340.00) Dollars (the "lump sum" payment) on or before April 15, 2006. The monthly payment of \$1,866.78 shall thereafter be reduced to One Thousand Seven Hundred Sixty Seven and 35/100 (\$1,767.35) per month until the remaining loan balance shall be due and payable on April 15, 2010 (the "balloon payment" date). The amount due on the balloon payment date shall be the total of the principal and interest remaining unpaid plus any unpaid late charges, due at the time of the balloon payment.

c. Purchaser's monthly payment includes interest on the diminishing balance of the purchase price at the rate of six point zero (6.0%) per cent per annum from the 15th day of April, 2005 which interest shall be computed on the outstanding diminishing principal balance commencing on the first full month following closing of the Agreement, interim interest to be adjusted in escrow.

2. Purchaser agrees to pay five percent (5%) of any payment (for example, \$93.34) for the regular monthly payment due prior to payment of the lump sum) as reasonable liquidated damages, and not as a penalty, in the event that any regularly scheduled payment is made after the due date but prior to the expiration of 10 days from the due date, including, without limitation, the lump sum payment and the balloon payment. Such amounts shall be added to the principal balance remaining unpaid.

3. All payments to be made hereunder shall be made to: Port of Skamania County, PO Box 1099, Stevenson, WA 98648 or at such other place as the Seller may direct in writing.

4. As referred to in this contract, "Closing" shall be the date that the sale documents are recorded and escrow is prepared to disburse funds.

#### Closing Costs

6. Purchaser's Closing Costs. Purchaser shall pay the following closing costs:

- a. One-half closing escrow charges;
- b. One-half collection escrow charges;
- c. Recording fee for this contract;

7. Seller's Closing Costs. Seller shall pay the following closing costs:

- d. One-half closing escrow charges;
- e. One-half collection escrow charges;
- f. Charge for standard policy of Title Insurance;
- g. Excise taxes for this sale (if applicable).

### Pro-Rated Items

8. The following shall be pro-rated as of the date of closing:
- a. Real Property Taxes
  - b. Insurance, interest, mortgage insurance, water and other utilities constituting liens, if applicable.

9. The Purchaser assumes and agrees to pay before delinquency all taxes and assessments, including but not limited to any governmental improvement assessments or charges that may as between grantor and grantee hereafter become a lien on said real estate. Upon request by Seller, Purchaser will show proof of said payments.

### Inspection

10. The Purchaser agrees that full inspection of said real estate has been made and that neither the Seller nor their assigns shall be held to any covenant respecting the condition of any improvements thereon. Seller shall not be held to any covenant regarding the permitted and/or conditional uses that may exist in the future for this property. Purchaser understands and agrees that Seller's acceptance of Purchaser's offer to purchase is independent of any determinations that may be made pursuant to the process for adding conditional uses to the City's Code and that Purchaser is assuming any and all risks associated with Purchaser's intended uses for the property and conformance with all applicable zoning and planning regulations for the PORT OF SKAMANIA COUNTY. The Purchaser or Seller or the assigns of either shall not be held to any covenant or agreement for alterations, improvements or repairs unless the covenant or agreement relied on is contained herein or is in writing and attached to and made a part of this contract or contained in the Purchase and Sale Agreement dated February 4, 2005.

Purchaser is acquiring the property "as is" and Seller makes no representations or warranties except as to title as set forth herein. Without limiting the generality of the foregoing, Purchaser acknowledges that they have made their own independent investigation respecting the property and will be relying entirely thereon and on the advice of any consultant they may retain. Purchaser may not rely upon any representation of any party whether or not such party purports to act on behalf of Seller, unless the representation is expressly set forth therein or in a subsequent document executed by Seller. All representations, warranties, understandings and agreements between Purchaser and Seller are merged herein and shall not survive closing.

### Taking

11. The Purchaser assumes all risk hereafter placed on said real estate or of the taking of said real estate or any part thereof for public use by a third party and agrees that any such taking

shall not constitute a failure of consideration. In case any part of said real estate is taken for public use by a third party, the portion of the condemnation award remaining after payment of reasonable expenses of procuring the same shall be paid to the Seller and applied as payment on the purchase price herein unless the Seller agrees, in writing, to allow the Purchaser to apply all or a portion of such condemnation award to the rebuilding or restoration of any improvements damaged by such taking. Seller represents and warrants that Seller has no knowledge, and has not received any notice from any government agency, of a threat of condemnation of the real estate.

#### Insurance

12. The Purchaser agrees to keep any improvements and future improvements on the property insured against loss or damage by fire, windstorm, and all other casualties covered by "all risk" or extended coverage endorsements available in the State of Washington in an amount equal to the full replacement value of the improvements, on the initial and renewal policy dates, with a company reasonably acceptable to the Seller and with loss payable first to Seller as their interest may appear (with Seller named as additional insured), and to pay all premiums for such insurance with instructions to deliver copies of all policies and renewals thereof to the Seller. All such policies shall provide that they cannot be amended or canceled without ten (10) days written notice to Seller.

#### Title Insurance

13. The Seller has delivered, or agrees to deliver within fifteen (15) days of the date of closing a purchasers/owners policy of title insurance in standard form, or a commitment therefor, issued by Skamania Title Co., insuring the Purchaser to the full amount of said purchase price against loss or damage by reason of defect in Seller title to said real estate as of the date of closing and containing no exceptions other than the following:

- a. Printed general exceptions appearing in said policy form;
- b. Liens or encumbrances which by the terms of this contract the Purchaser is to assume, or as to which the conveyance hereunder is to be made subject.

#### Maintenance of Easements

14. Purchaser agrees to maintain the existing ingress/egress easement as it appears on the recorded Short Plat of property until the Purchase Price has been paid in full and all conditions of this Contract have been fulfilled.

15. Purchaser agrees to maintain the well easement as it appears on the recorded Short Plat of property including the terms and provisions of the Declaration of Covenant recorded December 21, 1984 in Book 84, Page 202, and Addendum recorded December 7, 1987 in Book 107, Page 824.

### Deed

16. The Seller agrees, upon receiving full payment of the purchase price and interest in the manner above specified, to execute and deliver to Purchaser a statutory warranty fulfillment deed to said real estate, excepting any part thereof hereafter taken for public use, free of encumbrances except any that may attach after date of closing through any person other than the Seller and subject to the exceptions noted in Paragraph 13 hereof.

### Seller Covenants

17. The Seller has deposited with Skamania County Title Co., Washington, a Warranty Deed in Fulfillment of this real estate contract and agrees that upon full payment of the purchase price and interest in the manner herein before specified that said deed can be delivered to the Purchaser; that said Warranty Deed excepts any part of the property which may hereafter be condemned and is free and clear of all encumbrances, except those the Purchaser has agreed to assume and any that may accrue hereafter through any person, or persons, other than the Seller.

### Possession

18. Purchaser shall be entitled to possession of said real estate upon closing. The Purchaser agrees to keep any improvements on said real estate in good repair, not to permit waste and not to use, or permit the use of, the real estate for any illegal purpose. The Purchaser agrees to pay all service, installation or construction charges for water, sewer, electricity, garbage or other utility services furnished to said real estate after the date Purchaser is entitled to possession.

### Use of Premises

19. Purchaser agrees not to permit any unlawful, offensive or improper use of the premises or any part thereof.

### Assignment

20. The rights hereby granted are personal to the Purchaser and Seller's reliance upon Purchaser's ability and integrity is a part of the consideration for this contract. Neither this contract nor any interest therein, nor the possession of the property, may be assigned or transferred by Purchaser, nor shall Purchaser make or enter into any contract for the sale of the property or any interest therein, nor shall Purchaser in any way encumber the property or allow any liens to attach to the property without the prior written consent of Seller.

### Default

21. In case the Purchaser fails to make any payment herein provided (for example,



property taxes, and/or insurance, and/or property liens, etc.), the Seller may make such payment (but shall have no obligation to do so), and any amounts so paid by Seller, together with interest at the rate of 12% per annum thereon from date of payment until repaid, shall be repayable by Purchaser on demand, all without prejudice to any other right the Seller might have by reason of such default.

22. Time and the covenants of purchaser are of the essence of this contract. In the event payment is not made within ten (10) days of the due date it shall constitute a default hereunder. It is agreed that in case the purchaser shall fail make payment after the ten-day grace period or to comply with or perform any condition or agreement hereof (other than payment) required hereunder within twenty days of Seller's written notice to Purchaser setting forth the nature of the default in the manner herein required, the seller may at his option exercise any of the following alternative remedies:

a. Suit for Delinquencies. Seller may institute suit for any installments or other sums then due and payable under this agreement together with any sums advanced by seller for and the amount of any delinquencies for items such as water assessments, taxes, insurance, payments and underlying obligations and lienable items, together with interest thereon at the rate of 12% per annum from the date each such payment was advanced or due, as the case may be.

b. Forfeiture and Repossession. The seller may cancel and render void all rights, title and interests of the purchaser and their successors in this contract and in the property (including all of purchaser's then existing rights, interests and estates therein and improvements thereon) by giving a Notice of Intent to Forfeit pursuant to RCW 61.30.040-070, 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 seller records a Declaration of Forfeiture pursuant to RCW 61.30.040-070. Upon the forfeiture of this contract, the seller may retain all payments made hereunder by the purchaser and may take possession of the property ten (10) days following the date this contract is forfeited and summarily eject the purchaser and any person or persons having possession of the said property by, through or under the purchaser who were properly given the Notice of Intent to Forfeit and the Declaration of Forfeiture. In the event the purchaser or any person or persons claiming by, through or under the seller 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 purchaser, or such person or persons, shall be deemed tenants at will of the seller and the seller shall be entitled to institute an action for summary possession of the property, and may recover from the purchaser or such person or persons in any such proceeding the fair rental value of the property for the use thereof from and after the date of forfeiture, plus costs, including the seller's reasonable attorneys' fees.

c. Specific Performance. Seller may institute suit to specifically enforce any of the purchaser's covenants hereunder.

d. Property Rental. In the event this contract is forfeited as herein provided, or in

any other manner permitted by law, or by mutual agreement of the seller and purchaser, and the purchaser shall thereafter remain in possession of the property beyond any period otherwise permitted by law, the purchaser agrees to occupy the property as a tenant at will, and the purchaser shall be obligated to pay, and hereby promise to pay, during the period of such tenancy at will, a fair market rental in the amount then agreed to by the parties or, in the absence of such agreement or until such agreement is reached, an amount equal to one and one-half (1½) times the installment amount as and when provided for in the specific terms hereof, and the seller shall have, in addition to all other remedies for the collection of rentals and the recovery of possession that are available to landlords under the laws of the State of Washington, the right to institute an action for summary possession of the property as provided by law.

e. Non-Waiver. The waiver of seller to elect to pursue any of the above remedies at any time upon a breach of any of the terms of this contract by the purchaser shall be deemed only an indulgence by the seller with regard to that particular breach and shall not be construed, in any manner whatsoever, to be a waiver of any right of seller to pursue any of the above remedies for the same or a different breach at a subsequent time; election of the seller to utilize any particular remedy to enforce a breach of this contract shall not preclude seller from electing to use an alternate remedy to enforce a subsequent breach. The remedies stated herein are cumulative and not mutually exclusive. Any delay or failure of seller to take action upon default shall not be construed as a waiver of said default. If seller is required to institute legal action to enforce any of the remedies indicated, purchaser shall be liable to pay seller's costs and reasonable attorneys' fees incurred in such proceeding and any appeal thereof.

#### Purchaser's Remedies

23. In the event Seller should default in any of Seller's obligations under this contract and such default continues for fifteen (15) days after the Purchaser gives the Seller written notice specifying the nature thereof and the acts required to cure the same, the Purchaser shall have the right to specifically enforce this contract, institute suit for Purchaser's damages caused by such default, or pursue any other remedy which may be available to Purchaser at law or in equity.

#### Notice

24. No notice shall be required for default of any payment required under this Contract, but as to any other default Seller shall provide Purchaser thirty (30) days written notice and opportunity to cure specifying the nature of the default. Any notice, declaration, demand, consent or communication to be given by any party to this contract to any other party shall be in writing and transmitted to the other party by either personally delivering the notice or by certified or registered mail, return receipt requested, addressed as follows:

To: Seller  
PORT OF SKAMANIA COUNTY

To: Purchaser  
Bryan S. and Kimberlen S. Mathany

P.O. Box 1099  
Stevenson, WA. 98648

P.O. Box 585  
Carson, WA 98610

Either party may change its address by giving written notice to the other party in the manner provided above, provided that in no event shall Seller be required to send any notice to more than two (2) addresses. The mailing and registering or certifying of any such notice as herein provided shall be sufficient service thereof. Service shall be complete two (2) days after such notice is registered or certified and placed in the United States mail as shown by the cancellation stamp or postage meter stamp, as the case may be.

#### Costs and Attorneys' Fees

25. If either party shall be in default under this contract, the nondefaulting party shall have the right, at the defaulting party's expense, to retain an attorney to make any demand, enforce any remedy, or otherwise protect or enforce its rights under this contract. The defaulting party hereby promises to pay all costs and expenses so incurred by the nondefaulting party, including, without limitation, court costs, notice expenses, title search expenses, and reasonable attorneys' fees (with or without arbitration or litigation). In the event either party hereto institutes any action to enforce the provisions of this contract, the prevailing party in such action shall be entitled to reimbursement by the losing party for its court costs and reasonable attorneys' fees, including such costs and fees as are incurred on appeal. All reimbursements required by this paragraph shall be due and payable on demand, may be offset against any sum owed to the party so liable in order of maturity, and shall bear interest at the default rate from the date of demand to and including the date of collection or the due date of any sum against which the same is offset.

#### Succession

26. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

#### Governing Law

27. This Agreement shall be construed and enforced in accordance with the laws of the State of Washington.



### Use of Pronouns

28. Unless the context requires otherwise, references to the singular shall include the plural and references to the plural shall include the singular. Unless some other meaning or intent is apparent from the context, masculine, feminine and neuter pronouns are used interchangeably herein.

## Entire Agreement

29. This Agreement supersedes any prior agreement and contains the entire agreement of the parties as to the matter covered. No other agreement, statement or promise made by any party or to any employee or agent of any party shall be binding unless made in writing and signed by both parties to this Agreement.

### Seller's Consent


30. Whenever in this Contract Seller's consent is required, unless otherwise specifically stated herein, such consent shall not be unreasonable withheld or delayed, subject to the limitations set forth in Section 10 of this Agreement.


**IN WITNESS WHEREOF**, the parties hereto have executed this instrument as of the date first written above.

**SELLER:****PURCHASER:**

**PORT OF SKAMANIA COUNTY**  
a Washington Municipal Corporation

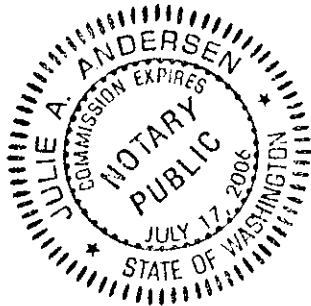
*Judy K. Teitzel*  
JUDY TEITZEL, President

  
Bryan S. Mathany


  
Kimberlen S. Mathany

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF SKAMANIA )

Dated this 15<sup>th</sup> day of April, 2005.

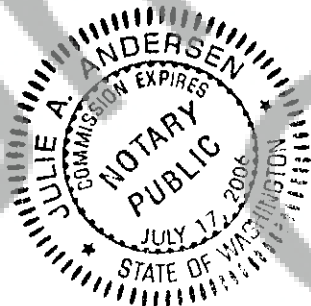


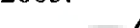
\_\_\_\_\_, 2005.

  
Print: Julie A Andersen  
NOTARY PUBLIC in and for  
The State of Washington  
My commission expires 7-17-2006

I certify that I know or have satisfactory evidence that Bryan S. Mathany and Kimberlen S. Mathany are the persons who appeared before me, and said persons acknowledged that they signed this instrument, as the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this 14<sup>th</sup> day of April, 2005.



\_\_\_\_\_, 2005.  
  
 Print Julie A. Andersen  
 NOTARY PUBLIC in and for  
 The State of Washington  
 My commission expires 7-17-2006