

REAL ESTATE CONTRACT

THIS CONTRACT, made and entered into this 10th day of September, 1984, between **ROGER MALFAIT** and **LORETTA L. MALFAIT**, husband and wife, hereinafter called the "seller", and **WILSON J. KENNEDY**, a single man, hereinafter called the "purchaser",

WITNESSETH: That the seller agrees to sell to the purchaser, and the purchaser agrees to purchase from the seller the following described real estate, located in Skamania County, State of Washington:

A tract of land in the S.M.. Hamilton D.L.C. in Section 20, Township 2 North, Range 7 E.W.M., described as follows:

Beginning at the intersection of the northerly shore of Greenleaf Slough with the easterly line of said Hamilton D.L.C., thence south 17° 30' east following the easterly line of said D.L.C. to intersection with the northerly right of way line of Primary State Highway No. 8; thence westerly along the northerly line of said highway 240 feet; thence north 17° 30' west parallel to the easterly line of said D.L.C. to a point south 17° 30' east 100 feet from the southerly shore of Greenleaf Slough, said point being the initial point of the tract hereby described; thence north 17° 30' west to intersection with the northerly shore of Greenleaf Slough; thence following the northerly shore of Greenleaf Slough in a westerly direction to a point 300 feet westerly, when measured at a right angle, from the line last described; thence south 17° 30' east to a point 225 feet distant from the southerly shore of Greenleaf Slough; thence in a northeasterly direction to the initial point;

TOGETHER WITH an easement and right of way for access over the existing road extending in a westerly direction from the southwesterly corner of said tract and connecting with Primary State Highway No. 8.

The terms and conditions of this contract are as follows:

1. The purchase price is FIFTEEN THOUSAND DOLLARS (\$15,000.00), of which FIVE THOUSAND DOLLARS (\$5,000.00) has been paid, the receipt whereof is hereby acknowledged, and the balance of said purchase price shall be paid as follows:

a. ONE HUNDRED FIFTY ONE & 75/100 DOLLARS (\$151.75), or more at purchaser's option, on or before the 1st day of October, 1984, and ONE HUNDRED FIFTY ONE & 75/100 DOLLARS (\$151.75), or more at purchaser's option, on or before the 1st day of each succeeding calendar month through and including September, 1992.

b. Purchaser further agrees to pay interest on the diminishing balance of the purchase price at the rate of ten per cent (10%) per annum from September 1, 1984, which interest shall be deducted from each installment payment and the balance of each payment applied in reduction of principal.



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c. Purchaser agrees that the entire purchase price together with interest as specified herein, shall be paid in full no later than September 1, 1992, and the amount of the final payment shall be the total of the principal and interest remaining unpaid.

2. All payments to be made hereunder shall be made at MPO 0.2L Malfait Road, Washougal, WA 98671 or at such other place as the seller may direct in writing.

3. As referred to in this contract, "date of closing" shall be October 1, 1984.

4. Purchaser may at his option pay the entire balance of the purchase price remaining due, or any part of such balance, at any time before maturity, without notice to seller and without penalty.

5. 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 arise between grantor and grantee hereafter become a lien on said real estate. Upon request by seller, purchaser will show proof of said payments.

6. 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 he has made his own independent investigation respecting the property and will be relying entirely thereon and on the advice of any consultant he 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.

7. 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.

8. Unless a different date is provided for herein, the purchaser shall be entitled to possession of said real estate on date of closing and to retain possession so long as purchaser is not in default hereunder.

9. 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 of 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, without the prior written consent of seller.

10. In case the purchaser fails to make any payment herein provided, the seller may make such payment, and any amounts so paid by the seller, together with interest at the rate of 12% per annum thereon from date of payment until repaid, shall be

repayable by purchaser on seller's demand, all without prejudice to any other right the seller might have by reason of such default.

11. Time and the covenants of purchaser are of the essence of this contract, and it is agreed that in case the purchaser shall fail to comply with or perform any condition or agreement hereof or to make any payment required hereunder promptly at the time and in the manner herein required, the seller may at their option exercise any of the following alternative remedies upon giving purchaser thirty (30) days' written notice specifying the default and the remedy to be exercised should purchaser fail to secure all defaults at the expiration of the 30-day period:

(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) Acceleration. Seller may declare the entire unpaid balance of the purchase price to be immediately due and payable and institute suit to collect such amounts, together with any sums advanced by the seller for and the amount of any delinquencies for items such as water assessments, taxes, insurance, payments on underlying obligations, lienable items and other expenses incurred to protect seller's interest in the property, together with interest thereon at the rate of 12% per annum from the date of each such advance. Payment by purchaser of any judgment obtained by seller pursuant to the paragraph shall be a condition precedent to the delivery of a deed to said property by seller or by the escrow agent, if any.

(c) Forfeiture. Seller may elect to declare a forfeiture of and cancellation of this contract, and upon such election being made all rights of purchaser hereunder shall cease and terminate and seller shall be entitled to take possession of the property, and all payments made by purchaser hereunder shall be retained by seller in liquidation of all damages sustained by said default. In addition, should seller commence a quiet title action in connection with such forfeiture or defend any claim in opposition to such forfeiture, seller shall be entitled to recover from purchaser all further costs and attorneys fees incurred therein and in any appeal. At the end of said 30-day period, seller may enter onto the property and take possession thereof and purchaser shall immediately surrender possession. If a forfeiture is declared, all payments which, but for the forfeiture, would have become due during the specified 30-day period and all costs and expenses, including but not limited to costs of title search and a reasonable attorney's fee incurred by seller in connection with the default, must be paid in addition to the sums set forth in the notice of forfeiture as a condition to reinstatement of the contract. Should purchaser pay seller an amount less than all sums required to reinstate the contract, seller's acceptance of such sums shall not be deemed a waiver of any defaults or a reinstatement of the contract, and any such sums shall be retained by seller as liquidated damages should purchaser remain in default in any respect on the expiration of the 30-day period.

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

The failure 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 matter 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. 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 agrees to pay seller's costs and reasonable attorneys fees incurred in such proceeding and any appeal thereof.

12. Any notice, declaration, demand 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 Purchaser:

Wilson J. Kennedy

23517 S.E. 35th
Camas, WA 98607

To Seller:

Roger and Loretta L. Malfait

MPO 0.2L Malfait Road,
Washougal, WA 98671

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 provided shall be sufficient service thereof. Service shall be complete when 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.

13. Upon seller's election to bring suit to enforce any covenant of this contract, including suit to collect any payment required hereunder, the purchaser agrees to pay a reasonable sum as attorneys fees and all costs and expenses in connection with such suit, which sums shall be included in any judgment or decree entered in such suit.

If the seller shall bring suit to procure an adjudication of the termination of the purchaser's rights hereunder, and judgment is so entered, the purchaser's agree to pay a reasonable sum as attorney's fees and all costs and expenses in connection with such suit, and also the reasonable cost of searching records to determine the condition of title at the date such suit is commenced, which sums shall be included in any judgment or decree entered in such suit.

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

SELLER:

PURCHASER:

Roger Malfait
ROGER MALFAIT

Wilson J. Kennedy
WILSON J. KENNEDY

Loretta L. Malfait
LORETTA L. MALFAIT

STATE OF WASHINGTON)
) ss.
County of Skamania)

On this day personally appeared before me ROGER MALFAIT, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 7th day of September, 1984.

Sharon J. Stevenson
Notary Public in and for the
State of Washington, residing
at Stevenson

STATE OF WASHINGTON)
) ss.
County of Skamania)

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

GIVEN under my hand and official seal this 7th day of September, 1984.

Sharon J. Stevenson
Notary Public in and for the
State of Washington, residing
at Stevenson

STATE OF WASHINGTON)
) ss.
County of Skamania)

On this day personally appeared before me WILSON J. KENNEDY, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 10th day of September, 1984.

Gaule K. Thompson
Notary Public in and for the
State of Washington, residing
at Stevenson

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