

108546

REAL ESTATE CONTRACT

BOOK 117 PAGE 372

FILED FOR RECORD
SKAMANIA COUNTY WASH
BY SKAMANIA CO. TITLE

JAN 11 10 55 AM '90

P. Lowry
GARY H. OLSON

1. **Effective Date:** January 4, 1990

2. **Seller:** **Barbara J. Hayden**, an unmarried woman, as her separate estate, of Rt 2 317 N.W. 189th Street, Ridgefield, WA 98642 (hereinafter referred to as "Seller")

3. **Purchaser:** **Topher Kurth**, a single man, and **Scot Kurth**, a single man, of 10352 North Lakeshore Drive, Mequon, Wisconsin 53092 (hereinafter referred to as "Purchaser")

4. **Property Sold.** The Seller agrees to sell to the Purchaser, and the Purchaser agrees to purchase from the Seller, the following described real estate, (hereinafter referred to as the "Property") with the appurtenances thereon, situated in Skamania County, Washington:

(See Exhibit "A" attached hereto.)

5. **Payment Terms.** The terms and conditions of this contract are: Purchase Price of the real estate is Fifty Thousand Dollars (\$50,000.00) of which Twenty Thousand Dollars (\$20,000.00) has been paid, the receipt of which is hereby acknowledged. The balance of Thirty Thousand Dollars (\$30,000.00) shall be paid in monthly installments of Three Hundred Eighty Dollars and Three Cents (\$380.03) or more beginning February 4, 1990, and continuing on the same day of each month thereafter until the balance of the Purchase Price, both principal and interest, is fully paid on or before ten (10) years from the Effective Date of this Contract. The unpaid balance of the Purchase Price shall at all times bear interest at nine (9%) percent per annum, commencing on the date of closing. From each payment shall first be deducted the interest to date of payment and

REAL ESTATE EXCISE TAX

13236

JAN 11 1990

PAID 650.00

SKAMANIA COUNTY TREASURER

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the balance shall be applied to the principal. Permission is granted to Purchaser to make larger payments at any time, or to pay this contract in full, in which case the interest shall immediately cease on all payments so made.

6. **Fulfillment Deed.** On full payment of the Purchase Price and interest in the manner hereinabove specified, the Seller agrees to execute and deliver to Purchaser a Statutory Warranty Deed to the Property free and clear of any encumbrances, except those encumbrances and obligations being assumed by the Purchaser, if any, and any that may accrue hereafter due to any person other than the Seller.

7. **Possession.** The Purchaser is in physical possession of the Property on closing.

8. **Taxes, Assessments, and Utility Liens.** Purchaser agrees to pay by the date due all taxes and assessments becoming a lien against the Property after the date of this Contract. Purchaser may in good faith contest any such taxes or assessments so long as no forfeiture or sale of the Property is threatened as the result of such contest. Purchaser agrees to pay when due any utility charges which may become liens superior to Seller's interest under this Contract.

9. **Insurance.** Purchaser agrees to keep all buildings now or hereafter erected on the Property described herein continuously insured under fire and extended coverage policies in an amount not less than the balances owed on obligations assumed by Purchaser plus the balance due Seller, or full insurable value, whichever is lower. All policies shall be held by the Seller and be in such companies as the Seller may approve and have loss payable first to any holders of underlying encumbrances, then to Seller as their interests may appear and then to Purchaser. Purchaser may within 30 days after loss negotiate a contract to substantially restore the Property to the condition before the loss. If the insurance proceeds are sufficient to pay the contract price for restoration, or if the Purchaser deposits in escrow any deficiency with instructions to apply the funds on the restoration contract, the Property shall be restored unless the underlying encumbrances provide otherwise. Otherwise, the amount collected under any insurance policy shall be applied upon any amounts due hereunder in such order as the Seller shall determine. In the event of forfeiture, all rights of Purchaser in insurance policies then in force shall pass to Seller.

10. **Risk of Loss.** Purchaser shall bear the risk of loss for destruction or condemnation of the Property. Any such loss shall not relieve Purchaser from any of Purchaser's obligations pursuant to this Contract.

11. **Acceptance of Property.** The Purchaser agrees that a full inspection of the Property has been made. The Seller shall not be liable under any agreement with respect to (a) the condition of the Property, or (b) any service, installation, maintenance, or construction charges for septic, water, or electricity, or (c) for alterations, improvements, or repairs unless the agreement is in writing and attached to this Contract.

12. **Title Insurance.** The Seller agrees to procure within fifteen (15) days from date a Purchaser's Policy of Title Insurance in standard form, insuring the Purchaser to the full extent of the Purchase Price against loss or damage by reason of defect in the record title of the Seller to the Property herein described or by reason of prior liens or encumbrances not assumed by the Purchaser in this Contract.

13. **General Advancements by Seller.** In case the Purchaser fails to make any payment to others as herein provided or to maintain insurance, taxes, assessments, or utility charge premiums. If required herein, the Seller may make such payment or effect such insurance, any amounts so paid by the Seller, together with interest at the rate of eighteen (18%) percent per annum thereon from date of payment until repaid, shall be repayable by Purchaser on Seller's demand, all without prejudice to any other rights the Seller might have by reason of such default.

14. **Transfer of Purchaser's Interest.** If the Purchaser's title to the Property or any portion thereof is conveyed to any person, the Seller may, at its option: (a) following any required notice, declare the entire remaining balance of the Purchase Price and all accrued and unpaid interest thereon immediately due and payable, or (b) adjust the interest rate on this Contract, effective as of the date of the transfer. The Seller may elect one of the said options by written notice to the Purchaser within fifteen (15) days after being advised in writing of the sale and the transferee, and if such election is not made within that period the above rights for the transaction so described shall be deemed waived. If the Seller elects to adjust the interest rate, and subject to any restrictions and prepayment requirements contained in any prior encumbrance, the

entire outstanding balance of this Contract may be prepaid at the closing of such conveyance with the prepayment premium. For the purposes of this Contract, a "conveyance" of the "Purchaser's title" shall include a transfer by real estate contract, vendee's assignment, deed, forfeiture, foreclosure, sheriff's sale, trustee's sale, deed in lieu of any such involuntary sale, lease with purchase option or for a term in excess of three (3) years (including extension options) and, if the Purchaser is a corporation or partnership, a voluntary or involuntary transfer or series of transfers of any shares or partnership interests which results in a change of fifty percent (50%) or more of the voting control of such entity (from the composition thereof as of the date of this Contract). A "conveyance" of the "Purchaser's title" shall not include (a) a lease or other transfer of possession of the Property for three (3) years or less without options to purchase the Property or any interest therein, (b) a transfer to the Purchaser's spouse or children, (c) a transfer by devise, descent, or operation of law resulting from the death of any person comprising the Purchaser, (d) a transfer into an inter vivos trust in which the Purchaser is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the Property, or (e) a transfer resulting from a decree of dissolution of marriage, legal separation agreement, or property settlement agreement in which a spouse of any person comprising the Purchaser retains or acquires the Property. No transfer of the Property or any portion thereof shall release the transferring person from liability on this Contract unless such release is expressly acknowledge by the Seller in writing.

15. Purchaser's Default. The Purchaser shall be in default under this Contract if it (a) fails to observe or perform any term, covenant, or condition herein set forth or those of any prior encumbrances, or (b) fails or neglects to make any payment of principal or interest or any other amount required to be discharged by the Purchaser precisely when obligated to do so, or (c) becomes or is declared insolvent or makes an assignment for the benefit of creditors, or files any debtor's petition or any petition is filed against it under any bankruptcy, wage earner's reorganization, or similar act, or (d) permits the Property or any part thereof or its interest therein to be attached or in any manner restrained or impounded by process of any court, or (e) abandons the Property for more than thirty (30) consecutive days (Unless the Property is otherwise occupied), or (f) conveys the Property or a portion thereof without any prior written consent required herein of the Seller.

16. Seller's Remedies. In the event the Purchaser defaults under this Contract, the Seller may, at its election, take the following courses of action:

(a) **Suit for Delinquencies.** The Seller may institute suit for any overdue installment amount or other sums due and payable under this Contract as of the date of the Judgment and any sums which have been advanced by Seller as of said date pursuant to the provisions of this Contract, together with interest on all of said amounts at the rate of eighteen (18%) percent per annum from the date each such amount was advanced or due, as the case may be, to and include the date of collection.

(b) **Acceleration.** Upon giving the Purchaser not less than fifteen (15) days' written notice of Seller's intent to do so (within which time any monetary default may be cured without regard to the acceleration), and if the default is in the nature of a failure to timely pay any principal, interest, insurance premium, tax, or other sum of money required to be paid herein or any failure to obtain any consent of the Seller herein required for a conveyance of the Purchaser's title to the Property, or if the Purchaser commits waste on the Property, the Seller may declare the entire unpaid balance of the Purchase Price and all interest then due thereon and the prepayment premium to be immediately due and payable and institute suit to collect such amounts, together with any sums advanced by the Seller pursuant to the Provisions of this Contract, and together with interest on all of said sums at the default rate from the due date or date of each such advance to and including the date of collection.

(c) **Forfeiture and Repossession.** The Seller may cancel and render void all rights, titles, and interests of the Purchaser and its successors in this Contract and in the Property (including all of Purchaser's then existing rights, interests, and estates therein and timber, crops, and improvements thereon), if any, 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 Property by, through, or under the Purchaser who were properly given the Notice of Intent to Forfeit and the

Declaration of Forfeiture. If the Purchaser or any person or persons claiming by, through, or under the Purchaser who were property 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 proceedings 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 attorney's fees.

(d) **Specific Performance.** The Seller may institute suit to specifically enforce any of the Purchaser's covenants hereunder, and the same may include redress by mandatory or prohibitive injunction.

17. Receiver. If Seller has instituted any proceedings specified in Paragraph 19 and Purchaser is receiving rental or other income from the Property, Purchaser agrees that the appointment of a receiver for the Property is necessary to protect Seller's interest.

18. Condemnation. Seller and Purchaser may each appear as owners of an interest in the Property in any action concerning condemnation of any part of the Property. Purchaser may within 30 days after condemnation and removal of improvements, negotiate a contract to substantially restore the Property to their condition before the removal. If the condemnation proceeds are sufficient to pay the contract price for restoration or if the Purchaser deposits in escrow any deficiency with instructions to apply the funds on the restoration contract, the Property shall be restored unless underlying encumbrances provide otherwise. Otherwise, proceeds of the award shall be applied in payment of the balance due on the Purchase Price as Seller may direct.

19. Insurance Proceeds Applied on Contract. In the event of the destruction of any of the improvements on the Property by fire or other casualty, all of the monies received by the Seller by reason thereof shall be applied as a payment on account of the purchase of the Property, less the sum which Seller may be required to expend in procuring such money, or, at the election of the Seller, to the rebuilding or restoration of the Property.

20. **Nuisance/Waste.** The Purchaser will not create a nuisance or commit waste on the Property.

21. **Late Charges.** In the event the Purchaser shall be delinquent more than fifteen (15) days in making any payment, a late charge of five (5%) percent of the delinquent payment or payments shall be made. The late charge will be computed monthly on all sums which are delinquent.

22. **Collection.** The Seller may place this Contract for collection with the agent of Seller's choice, may transfer the collection from one agent to another, and may terminate any collection, all at the Seller's election.

23. **Cumulative Remedies, Waivers.** The remedies stated herein are cumulative and not mutually exclusive and the Seller or the Purchaser may pursue any other or further remedies to enforce their respective rights under this contract; provided, however, except as provided in this Contract with respect to the Purchaser's transfer to the Property, the Seller shall not have the right to accelerate the remaining balance of the Purchase Price in the event the Seller elects to forfeit the Purchaser's interest in the Property and such forfeiture is being enforced or is completed. In any action or proceeding to recover any sum or to enforce any remedy provided for herein, no defense of adequacy of security or that resort must first be taken against any particular security or any other person shall be asserted, and the Purchaser hereby expressly waives any legal or equitable rights that the Purchaser may have with respect to marshaling of assets. The Seller shall not be required to tender its deed or bill of sale as a condition precedent to the enforcement of any remedy hereunder. In the event any check is tendered which is not honored upon first presentation because of any stop payment directive or insufficient funds, the payee's rights shall be reinstated as if such check had not been delivered. No waiver of any rights of either party under this Contract shall be effective unless specifically evidenced in a written agreement executed by the waiving party. Any forbearance, including, without limitation, a party's acceptance of any payment after the due date or any extension thereof, shall not be considered a waiver of such party's right to pursue any remedy hereunder for any other existing or subsequent defaults of the same or a different nature or for breach of any other term, covenant, or condition hereof.

24. Costs and Attorney's Fees. 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 or collection agency 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, arbitration and court costs, collection agency charges, notice expenses, title search expenses, and reasonable attorney's fees (with or without arbitration or litigation), and the failure of the defaulting party 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 losing party for its court costs and reasonable attorney's fees, including such costs and fees that 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.

25. Notices. Subject to the requirements of any applicable statute, any notices required or permitted by law or under this Contract shall be in writing and shall be personally delivered or sent by first class certified or registered mail, return receipt requested, with postage prepaid, to the parties' addresses set forth herein below. Either party may change such address for notice and, if payments are not made to an escrow or collection account, the Seller may change the address for payments by designating the same to the other party hereto in the manner hereinabove set forth and by causing a copy of such change to be properly recorded. All notices which are so addressed and paid for shall be deemed effective when personally delivered or, if mailed, on the date of the deposit thereof in the U.S. mail and irrespective of actual receipt of such notice by the addressee.

26. Time of Performance. Time is specifically declared to be of the essence of this Contract and of all acts required to be done and performed by the parties hereto, including, but not limited to, the proper tender of each of the sums required by the terms hereof to be paid.

27. Paragraph Headings. The boldface word or words appearing at the commencement of paragraphs and subparagraphs of this Contract are included only as a guide to the contents thereof and are not be considered as controlling, enlarging, or restricting the language or meaning of those paragraphs or subparagraphs.

28. Gender and Number. The use of any gender or neutral term shall include all genders, and the use of any number shall be construed as singular or plural, as the case may require. The terms "Purchaser" and "Seller" refer to either the singular or the plural, as the case may be.

29. Definitions. As used herein, the term "Property" means all of the estate, right, title, and interest currently held and hereafter acquired by the Seller in and to the Real Property and Personal Property described herein and the rights, easements, privileges, and appurtenances thereunto belonging or appertaining or held and enjoyed therewith, together with all timber and crops thereon and any repairs, improvements, replacements, and additions thereto whether made, erected, or constructed by the Seller or the Purchaser prior to or subsequent to the date hereof.

30. Invalidity. In the event any portion of this Contract should be held to be invalid by any court of competent jurisdiction. Such holding shall not affect the remaining provisions hereof unless the court's ruling includes a determination that the principal purpose and intent of this Contract are thereby defeated. The intention of the Seller is to charge the Purchase a lawful rate of interest, and in the event it is determined by any court of competent jurisdiction that any rate herein provided for exceeds the maximum permitted by law for a transaction of the character evidenced by these presents, the amounts so determined to be above the legal rate shall be applied against the last installments of principal due hereunder or, if such principal has been paid, or otherwise at the discretion of the ten holder of this Contract, said excess shall be refunded to the Purchaser on demand without interest, and the interest rates specified hereunder shall be reduced to the maximum rate then permitted by law for the type of transaction to which this Contract pertains.

31. Successors. Subject to the restrictions contained herein, the rights and obligations of the Seller and the Purchaser shall inure to the benefit of and be binding upon their respective estates, heirs, executors, administrators, successors, successors in trust and assigns; provided, however, no person to whom this Contract is pledged or

assigned for security purposes by either party hereto shall, in the absence of an express, written assumption by such party, be liable for the performance of any covenant herein. Any assignee of any interest in this Contract, or any holder of any interest in the Property, shall have the right to cure any default in the manner permitted and between the time periods required of the defaulting party, but except as otherwise required by law, no notices in addition to those provided for in this Contract need be given.

32. Applicable Law. This Contract shall be governed and interpreted in accordance with the laws of the State of Washington and the venue of any action brought to interpret or enforce any provision of this Contract shall be laid in the county in which the real property is situated. All sums herein referred to shall be calculated by and payable in the lawful currency of the United States.

33. Entire Agreement. This Contract contains the entire agreement of the parties hereto and, except for any agreements or warranties otherwise stated in writing to survive the execution and delivery of this Contract, supersedes all of their previous understandings and agreements, written and oral, with respect to this transaction. Neither the Seller nor the Purchaser shall be liable to the other for any representations made by any person concerning the Property or regarding the terms of this Contract, except to the extent that the same are expressed in this instrument. This Contract may be amended only by written instrument executed by the Seller and the Purchaser subsequent to the date hereof.

IN WITNESS WHEREOF, the parties have signed this Contract this 4th day of January, 1990.

SELLER:

Barbara J. Hayden

Barbara J. Hayden
Rt 2 317 N.W. 189th Street
Ridgefield, WA 98642

PURCHASERS:

Topher Kurth

Topher Kurth
10352 North Lakeshore Drive
Mequon, Wisconsin 53092

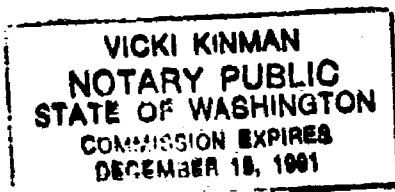
Scot Kurth

Scot Kurth
10352 North Lakeshore Drive
Mequon, Wisconsin 53092

STATE OF WASHINGTON)
COUNTY OF CLARK) ss.

On this day personally appeared before me **Barbara J. Hayden**, in her separate estate, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged to me 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 4th day of January, 1990.

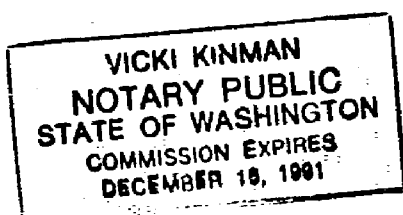


Vicki Kinman
NOTARY PUBLIC in and for the State
of Washington, residing at Vancouver
My commission expires: 12-18-91

STATE OF WASHINGTON)
COUNTY OF CLARK) ss.

On this day personally appeared **Topher Kurth**, a single man, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged to me 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 4th day of January, 1990.

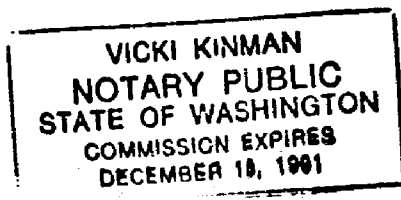


Vicki Kinman
NOTARY PUBLIC in and for the State
of Washington, residing at Vancouver
My commission expires: 12-15-91

STATE OF WASHINGTON)
COUNTY OF CLARK) ss.

On this day personally appeared **Scot Kurth**, a single man, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged to me 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 4th day of January, 1990.



Vicki Kinman
Notary Public in and for the State of
Washington, residing at Vancouver
My commission expires: 12-15-91

EXHIBIT "A"

The Northeast quarter of the Southeast quarter of the Southeast quarter of Section 29, Township 2 North, Range 6 East of the Willamette Meridian; ALSO that portion of the Northwest quarter of the Southwest quarter of the Southwest quarter of Section 28, Township 2 North, Range 6 East of the Willamette Meridian lying Southwesterly of the centerline of an existing private roadway, all in Skamania County, Washington.

SUBJECT TO easement for installation of waterlines under recording no. 77112 in Book 66 at Page 300 and the rights of the public to that portion of subject property lying in unnamed private road.