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BOOK 188 PAGE 378

FILED IN RECORD  
SKAMANIA COUNTY  
BY *Kielpinski & Woodrich*

REAL ESTATE EXCISE TAX

APR 16 3 47 PM '99

20140

APR 15 1999

*P. Laury*  
GARY M. OLSON

AFTER RECORDING MAIL TO:

Kielpinski & Woodrich  
P.O. Box 510  
Stevenson WA 98648  
(509) 427-5665

PAID 1088.00 + 19.04 + 217.60

*JW*

SKAMANIA COUNTY TREASURER

Document Title(s) or transactions contained therein:

1. Real Estate Contract

Grantor(s): [Last name first, then first name and initials]

1. Kelly, Clyde  
2. Kelly, Marilyn

☐ Additional names on page \_\_\_\_\_ of document

Grantee(s): [Last name first, then first name and initials]

1. Gardee, Charles  
2. Gardee, Louetta

☐ Additional names on page \_\_\_\_\_ of document

Abbreviated Legal Description: (i.e., lot/block/plat or sec/twp/range/1/4)

N 1/2 N 1/2 NE 1/4 SW 1/4 Sec 20/Twp 3 N/ Range 8 E.W.M.  
N 1/2 SW 1/4 SW 1/4 NW 1/4 SW 1/4 Sec 4/Twp 3 N/Range 10 E.W.M.  
*Sec 20 1/4* *8*

☐ Complete legal description is on page \_\_\_\_\_ of document

Reference Number(s) of Documents Assigned or Released:

- [Bk/Pg/Aud#]  
1. Book 38/Page 161  
2. Book 81/Page 536  
3.  
4.

☐ Additional numbers on page \_\_\_\_\_ of document

Assessor's Property Tax Parcel/Account Number(s):

1. ~~3-8-20-2-4-100-K\*~~  
2. 3-8-20-3-1-200

☐ Property Tax Parcel ID is not yet assigned

*Aug 24 99*  
Indexed, 14  
Registered  
Filed  
Filed

**REAL ESTATE CONTRACT**

THIS CONTRACT, made and entered into this 4th day of December, 1998, between Clyde Kelly and Marilyn Kelly, husband and wife, hereinafter called "Seller", and Charles Gardee and Louetta Gardee, husband and wife, hereinafter called "Purchaser."

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

A parcel of land located in the East 1/2 of Section 20, Township 3 North, Range 8 East, Willamette Meridian in the County of Skamania, and State of Washington, being more particularly described as follows:

Commencing at the Southeast corner of the Southwest 1/4 of the Northeast 1/4 of said Section 20. Thence North 88° 56' 29" West along the center line of said Section 20 a distance of 30.00 feet to the point of beginning of the following described parcel.

Thence South 0° 52' 54" West along the West right of way line of the Wind River Highway a distance of 120.48 feet; thence North 89° 07' 06" West at right angles to the East line of the Northwest 1/4 of the Southeast 1/4 of said Section 20 a distance of 150.40 feet; thence North 0° 52' 54" East parallel to West right of way line of said Wind River Highway a distance of 290.00 feet; thence South 89° 07' 06" East at right angles to said East line of the Northwest 1/4 of the Southeast 1/4 a distance of 150.40 feet to the said West line of the Wind River Highway; thence South 0° 52' 54" West along said right of way a distance of 169.52 feet to the point of beginning. SUBJECT TO a 10.00 foot in even width easement for overhead utility purposes over the South 10.00 feet of the above described parcel.

Gary H. Martin, Skamania County Assessor  
Date 11/14/98 Parcel # 23082031700

The terms and conditions of this contract are as follows:

Price and Payment Terms

1. The purchase price is Eighty Five Thousand and No/100

Dollars (\$85,000.00), of which Twenty Thousand and No/100 Dollars (\$20,000.00) has been paid, the receipt of which is hereby acknowledged, and the balance of said purchase price shall be paid as follows:

a. \$500.00, or more at Purchasers' option, on or before the 5th day of January, 1999, and \$500.00, or more at Purchasers' option, on or before the 5th day of each succeeding calendar month thereafter until the balance of said purchase price shall have been fully paid.

b. The Purchaser further agrees to pay interest on the diminishing balance of said purchase price at the rate of seven per cent (7%) per annum from the 4th day of December, 1998, which interest shall be deducted from each installment payment and the balance of each payment applied in reduction of principal.

c. The entire purchase price, together with interest as specified herein, shall be paid in full by December 4, 2018, and the amount of the final payment shall be the total of the principal and interest remaining unpaid at the time of the final payment.

2. Purchaser agrees to pay \$25.00 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. Such amounts shall be added to the principal balance remaining unpaid. In the event payment is not made within 10 days of the due date it shall constitute a default hereunder.

3. All payments to be made hereunder shall be made to Sellers at PO Box 180, Carson, Washington, 98610, or at such other place as the Seller may direct in writing.

4. As referred to in this contract, "date of closing" shall be December 4, 1998.

5. Purchaser may at Purchaser's option pay the entire balance of the purchase price remaining due, or any part of such balance, at any time before maturity, without penalty and without notice to Seller.

Closing Costs

6. Purchaser shall pay one-half of the following closing costs:

- a. Excise Tax
- b. Attorney Fees
- c. Recording Fees
- d. Title Insurance

Pro-Rated Items

7. The following shall be pro-rated as of the date of closing:

a. Insurance, interest, mortgage insurance, water and other utilities constituting liens, if applicable.

Contract Prepared by Seller's Attorney

8. This Contract has been prepared by Seller's attorney, Jan C. Kielpinski of Kielpinski & Woodrich. The Parties acknowledge that said attorney represents only the Sellers in this transaction and that Purchaser has been advised to obtain his own counsel.

Payment of Taxes and Assessments

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

Inspection

10. Purchaser agrees that full inspection of said real estate has been made and that neither the Seller nor Seller's assigns shall be held to any covenant respecting the condition of any improvements thereon nor shall the Purchaser or Seller or the assigns of Seller 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.

a. 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 Purchaser 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 herein or in a subsequent document executed by Seller. All representations, warranties, understandings and agreements between the parties are merged herein and shall not survive closing.

Taking

11. The Purchaser assumes all risk hereafter placed on said real estate and of the taking of said real estate or any part thereof for public use 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, the portion of the condemnation award remaining after payment of reasonable expenses

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.

#### Insurance

12. The Purchaser agrees to keep any improvements or future improvements located 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 insurable value thereof, on the initial and renewal policy dates, with a company acceptable to the Seller and with loss payable first to Seller as his interest may appear, and to pay all premiums for such insurance and deliver 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.

In the event of loss or damage to the property which is required to be insured hereunder, and except as otherwise required by any prior encumbrance and the then holder thereof, the insurance proceeds shall, at the option of the Purchaser, be used to repair, rebuild, or replace all improvements and personal property which may have been destroyed or damaged to the extent necessary to restore and replace them to substantially the same condition which existed immediately prior to the casualty, subject to such modifications as may then be required by law or to which the Seller agrees in writing. Immediately upon receipt, all insurance proceeds, together with any other sums required to complete the repairs and restorations, shall be placed in a construction disbursement account with an escrow agent or other person jointly designated by the Seller and the Purchaser and shall be disbursed periodically in amounts corresponding to the percentage of completion of repairs; provided, however, that in the event this contract is forfeited, any portion of such replacement costs due as of the date of such forfeiture shall be immediately paid to the Seller. No construction may be commenced until all sums required to pay the costs thereof have been deposited in the disbursement account. The expenses of said disbursement account and the expenses of obtaining percentage completion certificates shall be paid by the Purchaser, and the Purchaser shall be responsible for depositing in the disbursement account the amounts necessary to pay all costs of repairs, reconstruction and replacements which are not covered by the insurance proceeds.

In the event the Purchaser desires to construct improvements which are materially different from those so damaged or destroyed, he shall first obtain the Seller's written consent. All repairs and replacements shall be commenced within sixty (60) days following the date the Purchaser elects to reconstruct and shall

be continuously pursued with due diligence. Subject to the terms of any prior encumbrances, any casualty insurance proceeds which are not used to pay for repairs or replacements permitted by the terms of this paragraph shall be paid to the Seller and applied against the principal balance last due hereunder.

If (a) the Purchaser does not elect to repair the damage, or (b) the Seller's consent to different improvements is not waived or given, or (c) the Purchaser does not deposit into the disbursement account all sums in excess of available insurance proceeds required for reconstruction by the date construction is required to commence, or (d) construction is not commenced when required or not continuously pursued (subject to delays beyond the reasonable control of the Purchaser, the Seller may require that all casualty insurance proceeds be immediately paid to the Seller or to the holder of a prior encumbrance having a valid claim thereto which is prior to the Seller's. The Purchaser shall make the elections provided for in this paragraph within sixty (60) days following the date of the casualty, and the Seller shall respond in writing to a written request to construct materially different improvements within twenty (20) days after said request. Any failure of the Purchaser to timely make any such election shall enable the Seller to apply the insurance proceeds against the principal last due under this contract, and any failure of the Seller to timely respond to any such request shall be deemed an approval thereof.

Damage to or destruction of the property or any portion thereof shall not constitute a failure of consideration or provide a basis for the rescission of this contract, nor shall such circumstances relieve the Purchaser of his obligation to pay the remaining installment amounts when due. In the event of any failure of the Purchaser to obtain or timely pay any premiums for any insurance required by this paragraph, the Seller may require the Purchaser to deposit with each installment amount an amount reasonably estimated by the Seller to be necessary to discharge the next ensuing premiums for said policies; said estimates to be adjusted by the Seller upon receipt of the premium invoices to reflect the actual amount of such liabilities. The payments so made which have not been applied against such liabilities shall be returned to the Purchaser with the delivery of a statutory warranty fulfillment deed to the Purchaser at such time as the purchase price and interest requested hereunder has been paid in full. The Seller shall not be liable for interest on said deposits. If not retained in an escrow or collection account, said funds shall be maintained by the Seller in a segregated account and expended for no other purpose, with interest thereon, if any, being added to the sums so held.

#### Title Insurance

13. The Seller has delivered, or agrees to deliver within fifteen (15) days of the date of closing, a purchasers' policy of

fifteen (15) days of the date of closing, a purchasers' policy of title insurance in standard form, or a commitment therefor, issued by Skamania County Title Company, insuring the Purchaser to the full amount of said purchase price against loss or damage by reason of defect in Seller's 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 agrees to assume, or as to which the conveyance hereunder is to be made subject; and
- c. Any existing contract or contracts under which Seller is purchasing said real estate, and any mortgage or other obligation, including that certain mortgage, including the terms and provisions thereof, executed by Clyde Kelly and Marilyn Kelly, husband and wife, in favor of J.C. Price, dated June 14, 1954, recorded June 15, 1954 in Book 23, Page 166, in Auditor File No. 47104, Skamania County Mortgage Records, given to secure the payment of \$3,500.00 (affects additional property) which by this contract Purchaser agrees to pay, none of which for the purpose of this paragraph shall be deemed defective in title.

**Deed**

14. The Seller agrees, upon receiving full payment of the purchase price 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.

**Possession**

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

16. Purchaser covenants and agrees to make or permit no unlawful, offensive or improper use of the premises or any part thereof.

Assignment

17. The rights hereby granted are personal to the Purchaser and Seller's reliance upon Purchaser's ability and integrity is a substantial 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, without the prior written consent of Seller.

Default

18. 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 Seller's 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 cure 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. Forfeiture and Repossession. The Seller may cancel and render void all rights, title and interests of the Purchaser and Purchaser's 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 Purchaser 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 Purchaser and Seller, and the Purchaser shall thereafter remain in possession of the property beyond any period otherwise permitted by law, the Purchaser agrees that they will 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 two (2) 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.

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 agrees to pay Seller's costs and reasonable attorneys' fees incurred in such proceeding and any appeal thereof.

#### Purchaser's Remedies

19. 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

20. 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 Purchaser:	Charles Gardee & Louetta Gardee P.O. Box 914 Carson, WA 98610
To Seller:	Clyde Kelly and Marilyn Kelly PO Box 180 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 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.

**Costs and Attorneys' Fees**

21. 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**

22. 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**

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

**Use of Pronouns**

24. 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**

25. 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.

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

SELLER:

PURCHASER:

Clyde Kelly  
CLYDE KELLY

Charles Gardee  
CHARLES GARDEE

Marilyn Kelly  
MARILYN KELLY

Louetta Gardee  
LOUETTA GARDEE

STATE OF WASHINGTON )  
County of Skamania ) ss

I certify that I know or have satisfactory evidence that Clyde Kelly and Marilyn Kelly are the persons who appeared before me, and said persons acknowledged that they signed this instrument and acknowledged it to be their free and voluntary act for the uses and purposes mentioned in the instrument.

Dated this 4th day of December, 1998.

JAN C. KIELPINSKI  
STATE OF WASHINGTON  
NOTARY — PUBLIC  
My Commission Expires May 10, 2002

Jan C. Kielpinski  
JAN C. KIELPINSKI  
Notary Public in and for the  
State of Washington  
Commission expires 05/10/02

STATE OF WASHINGTON )  
County of Skamania ) ss

I certify that I know or have satisfactory evidence that Charles Gardee and Louetta Gardee, husband and wife, are the persons who appeared before me, and said persons acknowledged that they signed this instrument and acknowledged it to be their free and voluntary act for the uses and purposes mentioned in the instrument.

Dated this 4th day of December 1998.

JAN C. KIELPINSKI  
STATE OF WASHINGTON  
NOTARY — PUBLIC  
My Commission Expires May 10, 2002

Jan C. Kielpinski  
Notary Public in and for the  
State of Washington  
Commission expires 05/10/02