

EVERETT SCHOOL DISTRICT NO. 2

RESOLUTION NO. 987

Whitehall Properties, LLC Limited Use Permit

A Resolution of the Board of Directors (the "Board") of the Everett School District No. 2 (the "District") to declare certain property rights with respect to a sloped portion of property located in the 3600 block of Norton Ave, adjacent to the Sequoia High School, as surplus real property, which rights are not presently required for school purposes, authorizing the Superintendent or his designee to enter a limited use permit applicable to that portion of the Sequoia High School site, which limited use permit contains an option to purchase that portion of the Sequoia High School site.

WHEREAS, the District owns that certain real property located at 3516 Rucker Avenue, Everett, Washington 98201 (the "High School Site"), which is legally described on Exhibit A attached to this resolution; and

WHEREAS, a survey dated January 19, 2007, and recorded under Snohomish County Auditor's File No. 200701225214, has disclosed that an adjacent homeowner ("Homeowner") has encroached upon an approximately 1800 square foot portion of the High School Site as depicted in Exhibit B attached hereto ("Encroachment Area"); and

WHEREAS, the Homeowner desires to continue to use the Encroachment Area; and

WHEREAS, the District desires (i) to permit the Homeowner to use the Encroachment Area temporarily, and (ii) to grant the Homeowner an option to purchase the Encroachment Area, subject to obtaining all necessary regulatory approvals and performance of the other terms of the option, all pursuant to a permit for limited use of Everett School District property in the form attached hereto as Exhibit C ("Limited Use Permit"); and

WHEREAS, the Encroachment Area is not required for school purposes; and

WHEREAS, the Board has found that granting of the rights described in the Limited Use Permit, including the option to purchase the Encroachment Area (subject

to obtaining all necessary regulatory approvals and performance of the other terms of the option) will not interfere with conduct of the District's educational program and related activities, and the Board has found that those rights with respect to the Encroachment Area described in the Limited Use Permit are surplus to the District's needs; and

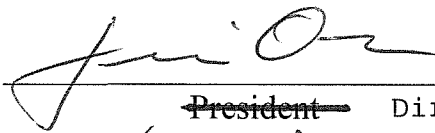
WHEREAS, the District published a notice in a newspaper of general circulation in the school district on July 6, 2009 declaring (i) the District's intent to permit the use of the Encroachment Area, (ii) that the Encroachment Area is not needed for school purposes, and (iii) that the Encroachment Area be transferred to the Homeowner, subject to and upon completion of appropriate regulatory processes, payment of the requisite purchase price, and compliance with the other terms of the purchase option set forth in the attached form of Limited Use Permit; and

WHEREAS, the Board has the authority pursuant to RCW 28A.335.040 and RCW 28A.335.050, to permit the Homeowner to use the Encroachment Area, subject to the Limited Use Permit, and upon performance of the terms of the purchase option set forth therein, to convey the Encroachment Area to the Homeowner;

NOW THEREFORE, BE IT RESOLVED as follows:


1. The Board finds and declares that the Encroachment Area and property rights described in the Limited Use Permit with respect to the Encroachment Area are surplus to the needs of the District; and
2. The Board hereby authorizes and directs the District's Superintendent or his authorized designee, on behalf of the District, to enter into and execute the Limited Use Permit and perform the District's obligations thereunder, including without limitations the District's obligations under the purchase option, subject to and upon completion of appropriate regulatory processes, payment of the requisite purchase price, and compliance with the other terms of the purchase option set forth therein; and
3. The Board hereby authorizes and directs the District's Superintendent or his authorized designee, on behalf of the District, to do such other and further things in furtherance of this Resolution as may be necessary or appropriate in furtherance of the foregoing resolution.

ADOPTED, this 23 day of March, 2010, and authenticated by the signatures affixed below.

  
~~President~~ Director

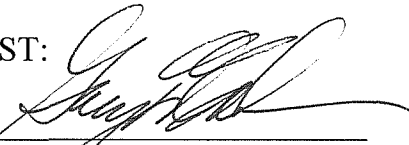
  
Director & President

  
Director

  
Director

  
Director

ATTEST:

By:   
Superintendent and  
Secretary of the Board

**EXHIBIT A:**

**LEGAL DESCRIPTION OF THE HIGH SCHOOL SITE**

(PER CHICAGO TITLE INSURANCE COMPANY ORDER NO. 5610045,  
DATED DECEMBER 12, 2006)

LOTS 3, 4, 7, 8, 9, 10, 11, AND 12, BLOCK 3, FRIDAY'S SECOND  
ADDITION TO EVERETT, ACCORDING TO THE PLAT THEREOF,  
RECORDED IN VOLUME 3 OF PLATS, PAGE 56, RECORDS OF  
SNOHOMISH COUNTY, WASHINGTON;

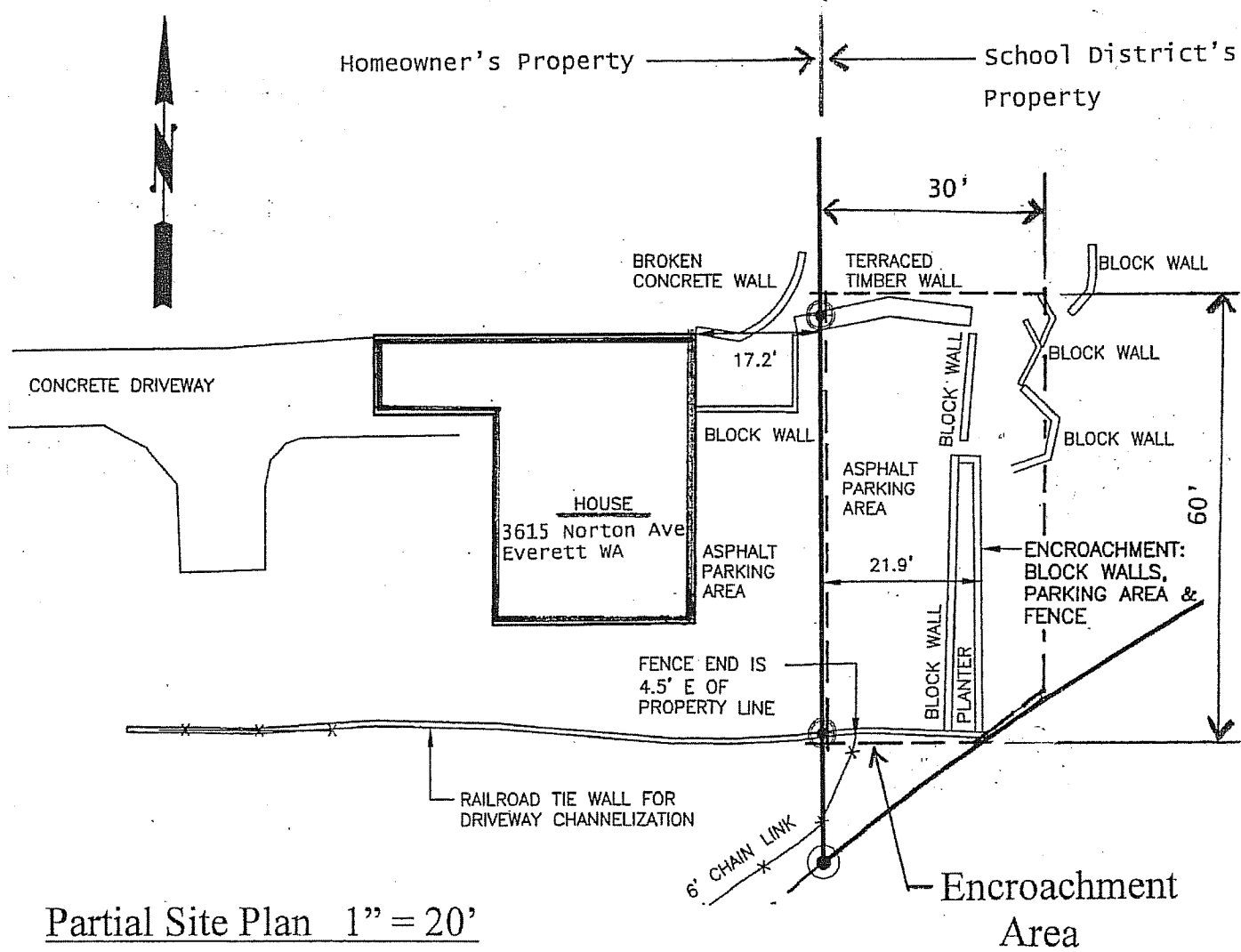
TOGETHER WITH THE SOUTH 62 1/2 FEET OF LOT 2, BLOCK 3, OF  
SAID FRIDAY'S SECOND ADDITION TO EVERETT AND TOGETHER WITH  
THAT PORTION OF SAID LOT 2 DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WEST LINE OF SAID LOT 2, 62  
1/2 FEET NORTH OF THE SOUTHWEST CORNER THEREOF;  
THENCE NORTH ALONG SAID WEST LINE TO A POINT WHICH IS 12  
1/2 FEET NORTH OF THE SOUTHEAST CORNER OF LOT 13 OF SAID  
BLOCK 3;  
THENCE EAST 15 FEET;  
THENCE SOUTH PARALLEL TO THE WEST LINE OF SAID LOT 2 TO A  
POINT WHICH IS DISTANT NORTH 62 1/2 FEET FROM THE SOUTH  
LINE OF SAID LOT 2;  
THENCE WEST 15 FEET TO THE POINT OF BEGINNING;  
AND TOGETHER WITH THE SOUTH 12 1/2 FEET OF LOT 13, BLOCK  
3 OF SAID FRIDAY'S SECOND ADDITION TO EVERETT;  
AND TOGETHER WITH VACATED PORTION OF GRAND AVENUE  
ADJACENT TO LOT 4, BLOCK 3 OF SAID PLAT.

SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON.

EXHIBIT B:

DEPICTION OF THE ENCROACHMENT AREA



## EXHIBIT C:

### FORM OF LIMITED USE PERMIT

#### PERMIT FOR LIMITED USE OF EVERETT SCHOOL DISTRICT PROPERTY

THIS LIMITED USE PERMIT (the "Permit") made this 26th day of August, 2009 ("Effective Date") by and between the EVERETT SCHOOL DISTRICT NO. 2, a Washington municipal corporation ("District") and Whitehall Properties, LLC, a Washington limited liability company ("Whitehall").

#### RECITALS

- A. Whitehall is the owner of certain real property, more particularly described on Exhibit A, attached hereto ("Whitehall Property"), which is adjacent to certain other real property owned by the District, more particularly described on Exhibit C, attached hereto ("District Property").
- B. A survey dated January 19, 2007, and recorded under Snohomish County Auditor's File No. 200701225214, discloses that certain site modifications, including removal of vegetation, construction of retaining walls and other structures, and placement of soil fill ("Site Modifications") made in connection with and for the benefit of the Whitehall Property encroach upon the District Property.
- C. Whitehall is currently using the portion of the District Property depicted in the attached Exhibit B ("Encroachment Area"), as an extension of the backyard of the Whitehall Property ("Current Use"). The Encroachment Area is approximately 30 feet X 60 feet. Whitehall's owners desire to continue use, and if possible to acquire, the Encroachment Area from the District.
- D. Whitehall acknowledged that it holds no property rights in or to the Encroachment Area.
- E. The parties desire to enter an agreement governing Whitehall's use of the Encroachment Area that includes, among other things, terms for the payment of rent to the District and an option to purchase the Encroachment Area in favor of Whitehall.

#### AGREEMENT

- 1. Grant of Permit.** Subject to the terms and conditions of this Permit, effective on the Effective Date, the District hereby grants permission to Whitehall to use the Encroachment Area for the Current Use. Whitehall's use of the Encroachment Area is strictly limited to the Current Use and is further subject to the following conditions: (a) Whitehall's use will not impair or interfere with the District's use of the District Property; (b) Whitehall shall not construct any additional structures of any kind, including without limitation, buildings, retaining walls, or fences on the Encroachment Area or cause, permit, or suffer the Encroachment Area to be further altered in any way; (c) Whitehall shall comply with all laws and ordinances applicable to the Encroachment Area and Whitehall's use thereof; and (d) the District may revoke Whitehall's right to use the Encroachment Area in the event the District, in its sole discretion, determines that the Encroachment Area is needed for school purposes. Notwithstanding the foregoing, the Encroachment Area is property of the District and the District reserves the right to nonexclusive use of the same for any purpose.
- 2. Term.** Unless otherwise terminated pursuant to the terms hereof, the term of this Permit shall be for Five (5) years beginning on the \_\_\_\_\_ day of \_\_\_\_\_, 2010 ("Term").
- 3. Rent; Leasehold Excise Tax; Additional Rent.** Whitehall shall pay to the District the sum of One Thousand Two Hundred Twenty Four and No/100 Dollars (\$1,224.00) annually payable in advance as rent ("Rent"). In addition to the annual rent payments, as required by statute, Whitehall shall pay, along with each annual Rent payment, leasehold excise tax to the District at the then current rate. The District shall remit Permittee's leasehold excise tax payments to the Washington State Department of Revenue. The

current leasehold excise tax rate is 12.84% of the annual rent payment, which equals a leasehold excise tax payment of \$157.16 due with the first annual rent payment. Leasehold excise tax payments and all other amounts, including without limitation late charges, interest, and any obligations arising under paragraphs 4 and 5 below, owed to the District by Whitehall pursuant to the terms of this Permit, shall be referred to herein as "Additional Rent."

**4. Liens.** If any lien is filed against the Encroachment Area or other District Property by any person claiming by, through or under Whitehall, Whitehall, at Whitehall's sole cost and expense, shall immediately discharge the same or furnish to the District a bond in form and amount and issued by a surety satisfactory to the District, indemnifying the District against all liability, costs and expenses, including but not limited to attorneys' fees, which the District may incur, directly or indirectly, as a result thereof and the District's reasonable administrative costs and expenses. If Whitehall shall fail to cause such lien to be immediately discharged of record or bonded, then, in addition to any other right or remedy of the District, the District may bond or discharge the same by paying the amount claimed to be due, and the amount so paid by the District, including reasonable attorneys fees incurred by the District in defending against such lien or in procuring its discharge of record, shall be immediately due and payable by Whitehall as additional rent.

**5. Indemnity.** Whitehall shall defend, indemnify, and hold the District, its directors, employees and agents harmless from any and all claims, losses, costs, liabilities, damages, and expenses ("Claims") arising from or related to the Site Modifications and use of the Encroachment Area, whether by Whitehall, Whitehall's licensees, invitees, or trespassers, unless such claims are adjudicated to have been due solely to the gross negligence or willful misconduct of the District, its directors, employees or agents. Without limiting the generality of the foregoing, Whitehall's obligations under this paragraph shall apply in cases of concurrent fault of any of Whitehall, the District or third parties. In the event the obligations of Whitehall under this Section 5 are limited by RCW 4.24.115, Whitehall shall defend, indemnify and hold harmless the District to the fullest extent permitted by RCW 4.24.115. In addition, Whitehall waives the protections of Title 51 RCW to the extent necessary to provide the District, its directors, employees and agents the protections otherwise afforded by this paragraph. Whitehall shall procure and maintain in force during the term of this Permit comprehensive general liability insurance policy with combined single limits of not less than \$1,000,000. Such policy shall name the District as an additional primary insured, and a copy of the policy (and any modifications thereto or renewals thereof) shall be delivered to the District. From time to time, upon request of the District, Whitehall shall increase the limits or other terms of such policy to account for changes to risk or insurance industry practices. The parties' rights and obligations under this paragraph shall survive termination of this Permit.

**6. Assignment.** This Permit is not assignable by Whitehall without the District's consent, which may be withheld in the District's sole discretion. Any attempt to assign this Permit without the District's consent shall be null and void and a material default hereunder.

**7. Default.** The occurrence of any one or more of the following shall constitute a default and breach of this Lease by Whitehall:

(a) Failure to Pay Rent. Whitehall's failure to make any payment of Rent or Additional Rent required to be paid by Whitehall hereunder, as and when due. Whitehall shall cure any such default under this subsection within three (3) days after written notice thereof by the District to Whitehall.

(b) Failure to Perform. Whitehall's failure to observe or perform any of its non-monetary obligations hereunder. Whitehall shall cure any such default within ten (10) days after written notice thereof by the District to Whitehall; provided, however, that if the nature of Whitehall's default is such that more than ten (10) days are reasonably required for its cure, then Whitehall shall commence such cure within said ten (10) day period, and thereafter Whitehall shall diligently prosecute such cure to completion, but in any event, within thirty (30) days.

(c) Repeated Defaults. Whitehall's failure to perform or observe any of Whitehall's obligations under this Permit after Whitehall has failed to perform or observe any of Whitehall's obligations under this

Permit at least twice previously (despite the fact Whitehall may have cured any such previous failures after notice from the District and within the notice period).

**8. Late Charges.** If Whitehall fails to pay, when the same is due and payable, any Rent or Additional Rent due pursuant to this Permit, such unpaid amounts shall bear interest at the rate of two percent (2%) per month from the date due to the date of payment unless such amount would violate any applicable usury or other law, in which event such unpaid amounts shall bear interest at the highest rate then allowed by law. In addition to such interest, Whitehall acknowledges that the late payment by Whitehall of any monthly installment of Rent or any Additional Rent will cause the District to incur certain costs and expenses not contemplated under this Permit, the exact amount of such costs being extremely difficult or impractical to fix. Such costs and expenses include, without limitation, administrative and collection costs, processing and accounting expenses. Therefore, if any Rent or Additional Rent payment is not received by the District from Whitehall by the fifth (5th) day after such payment is due, Whitehall shall immediately pay to the District a late charge equal to twelve percent (12%) of such payment. The District and Whitehall agree that this late charge represents a reasonable estimate of such costs and expenses and is fair compensation to the District for its loss and expenses suffered by such nonpayment by Whitehall. Acceptance of this late charge shall not constitute a waiver of Whitehall's breach or default with respect to such nonpayment by Whitehall nor prevent the District from exercising any or all other rights and remedies available to the District under this Permit.

**9. Remedies.** In the event of any default by Whitehall, the District may at any time after the applicable cure period, with or without notice or demand and without limiting the District in the exercise of a right or remedy which the District may have by reason of such default or breach:

(a) Terminate this Permit. Terminate Whitehall's right to possession of the Encroachment Area by any lawful means, in which case this Permit shall terminate and Whitehall shall immediately surrender possession of the Encroachment Area to the District. In such event, the District shall be entitled to recover from Whitehall all past due Rent and Additional Rent; reasonable attorneys' fees; and the worth at the time of award by the court having jurisdiction thereof of the amount by which the unpaid Rent for the balance of the Term following such award exceeds the amount that Whitehall proves could be reasonably avoided during that period. The "worth at the time of award" shall be determined by discounting such excess amount by the discount rate of the Federal Reserve Bank of San Francisco plus one percent (1%); and

(b) Other Remedies. Pursue any other remedy now or hereafter available to the District under the laws of the State of Washington.

**10. Deleted**

**11. No Property Interest.** Whitehall acknowledges that no real property interest is conveyed by this Permit. As further consideration for permission to use the Encroachment Area, Whitehall hereby irrevocably waives any right, claim or interest, in or to the Encroachment Area or any other District Property, whether now existing or arising in the future, regardless of whether the nature, scope, or burden of Whitehall's use of the Encroachment Area or any other District Property exceeds the use permitted hereunder, and this paragraph 11 may be pled by the District as a complete defense to any such claim or claims.

**12. Option to Purchase.** For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the District, the District grants to Whitehall an option ("Option") to purchase the Encroachment Area from the District pursuant to the terms and conditions set forth in this paragraph.

(a) Exercise of the Option. In order to exercise the Option, Whitehall must give the District written notice of exercise by no later than one (1) year prior to the expiration of the Term; provided that Whitehall may not exercise the Option so long as Whitehall is in default hereunder. If Whitehall fails to timely exercise the Option, the Option shall permanently expire.



(b) Purchase Price. The purchase price for the Encroachment Area shall be the fair market value as determined by an appraisal ("Appraisal") performed by an appraiser reasonably approved in advance by the District's Board, which Appraisal shall have been completed no more than six (6) months prior to Closing (defined below). The cost of the Appraisal shall be paid in advance by Whitehall.

(c) Closing. The closing hereunder ("Closing") shall occur on a date reasonably acceptable to the District and Whitehall on or before the final day of the Term. The parties may, by mutual agreement, extend the date of Closing. If the Term expires prior to Closing as a result of Whitehall's failure to satisfy the conditions set forth herein, then the Option shall permanently expire.

(d) Conditions to Closing. The following conditions shall be satisfied prior to Closing:

(i) Segregation of Land. Whitehall shall have obtained final approval of a boundary line adjustment ("BLA") from the City of Everett, and any other jurisdictions having authority, necessary to legally segregate the Encroachment Area from the District Property such that the Encroachment Area may be conveyed by the District in compliance with all applicable law. All costs and expenses, including without limitation, survey, engineering, environmental, permit, and title company, fees shall be paid in advance by Whitehall. The District shall exercise reasonable efforts, at no cost to the District, as necessary to facilitate completion of the BLA; provided that the District shall not be required to approve the transfer of the Encroachment Area pursuant to the BLA prior to Closing.

(ii) Payment of Amounts Owed. Whitehall shall have cured any and all defaults hereunder and paid all amounts due the District.

**13. Site Modifications.** In the event of (i) any default by Whitehall beyond the applicable notice and cure period or (ii) the termination or expiration of this Permit without Whitehall having exercised its Option and purchased the Encroachment Area, Whitehall shall immediately vacate and surrender the Encroachment Area and remove the Site Modifications at its sole cost and expense. If Whitehall does not remove the Site Modifications within ten (10) days following termination or expiration of this permit, the District may, in its sole and absolute discretion, remove all of the Site Modifications from the Encroachment Area and Whitehall shall immediately reimburse the District for the reasonable cost of such removal. Whitehall's obligations under this paragraph shall survive the termination or expiration of this Permit.

**14. Confidentiality.** Whitehall understands that, as a result of the BLA process, Whitehall may have access to certain confidential information of the District ("Confidential Information"), which may occur in a variety of forms, both written and oral. Whitehall shall not disclose, copy, or use any Confidential Information, except in the course of pursuing the BLA and shall comply with all reasonable procedures of, and requests by, the District to protect Confidential Information. Whitehall's obligations set forth in this paragraph shall survive this Permit and continue, without limitation, in perpetuity.

**15. Right to Counsel.** Whitehall understands the terms of this Permit and has been afforded the opportunity to discuss the Permit with Whitehall's own attorney.

**16. No Partnership.** Nothing contained in this Permit, whether regarding the BLA or any other matter, shall be deemed or construed by the parties hereto or by any third person to create the relationship of principal and agent, or of partnership, or of joint venture, or of any other association between the District and Whitehall.

**17. Venue.** This Permit shall be governed by the laws of the State of Washington. The venue for any action to enforce the terms of this Permit or collect any amounts owing hereunder shall be in the Superior Court for Snohomish County, Washington.

EXECUTED as of the date first above written.

ACCEPTED:

Whitehall Properties, LLC

EVERETT SCHOOL DISTRICT NO. 2

By: \_\_\_\_\_

By: \_\_\_\_\_

Address \_\_\_\_\_

Address \_\_\_\_\_

Telephone No. \_\_\_\_\_

Telephone No. \_\_\_\_\_

STATE OF WASHINGTON )

) ss.

COUNTY OF SNOHOMISH )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2010, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_ to me known to be the person named in and who executed the foregoing instrument; and he acknowledged to me that he signed the same as his free and voluntary act and deed for the uses and purposes therein mentioned being authorized so to do.

WITNESS my hand and official seal the day and year in this certificate above written.

\_\_\_\_\_  
Notary Public in and for the State of Washington

\_\_\_\_\_  
Printed Notary Name

My commission expires: \_\_\_\_\_

(SEAL)

STATE OF WASHINGTON )

) ss.

COUNTY OF SNOHOMISH )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2010, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_ to me known to be the person named in and who executed the foregoing instrument; and he acknowledged to me that he signed the same as his free and voluntary act and deed for the uses and purposes therein mentioned being authorized so to do.

WITNESS my hand and official seal the day and year in this certificate above written.

\_\_\_\_\_  
Notary Public in and for the State of Washington

\_\_\_\_\_  
Printed Notary Name

My commission expires: \_\_\_\_\_

(SEAL)

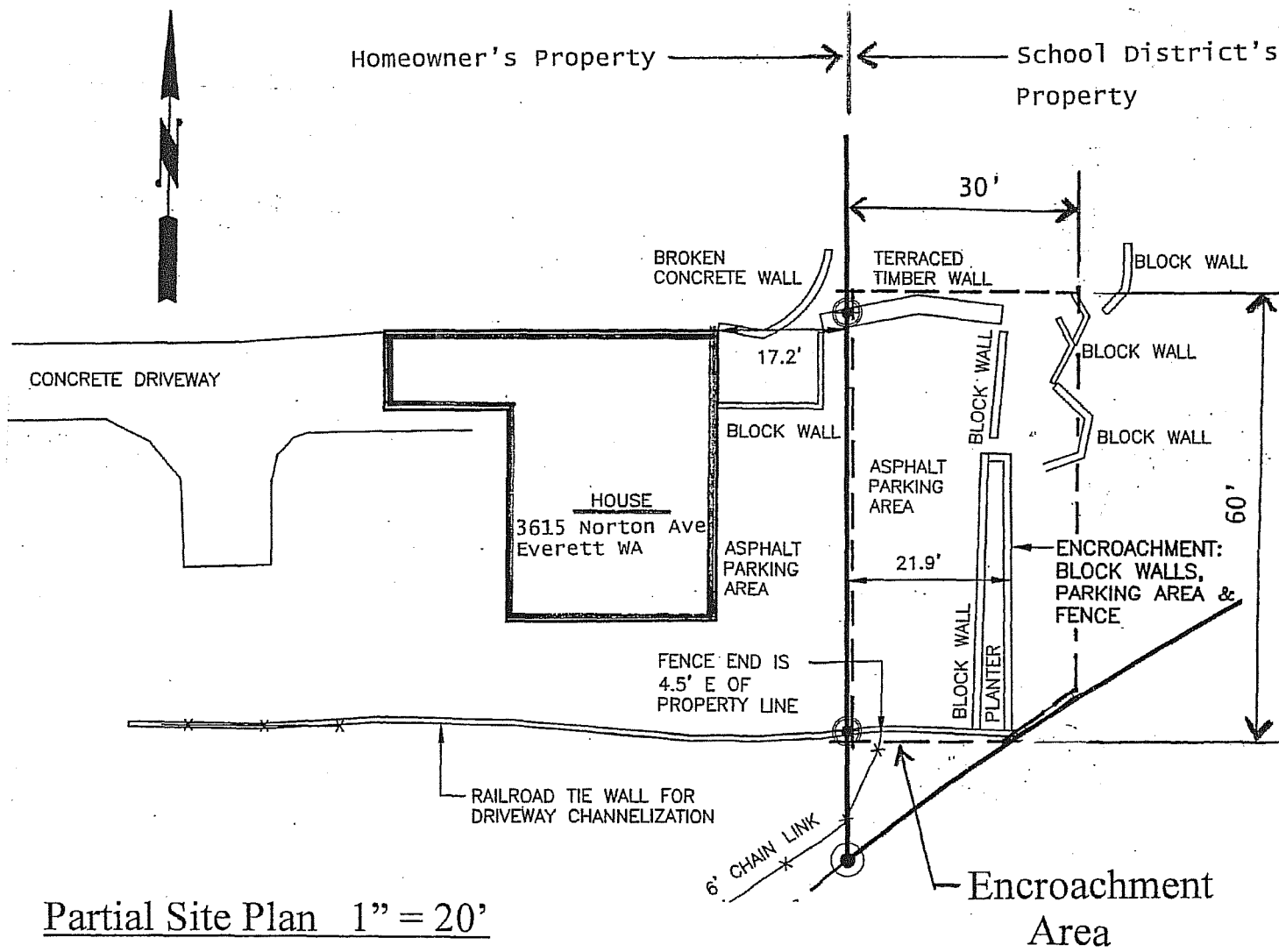
## **Exhibit A**

### **Legal Description of Whitehall Property**

**FRIDAYS 2ND ADD TO EVERETT BLK 003 D-01 - TH N 52FT LOT 5 BLK 3**

# Exhibit B

## Depiction of the Encroachment Area



## **Exhibit C**

### **Legal Description of District Property**

(PER CHICAGO TITLE INSURANCE COMPANY ORDER NO. 5610045,  
DATED DECEMBER 12, 2006)

**LOTS 3, 4, 7, 8, 9, 10, 11, AND 12, BLOCK 3, FRIDAY'S SECOND  
ADDITION TO EVERETT, ACCORDING TO THE PLAT THEREOF,  
RECORDED IN VOLUME 3 OF PLATS, PAGE 56, RECORDS OF  
SNOHOMISH COUNTY, WASHINGTON;**

**TOGETHER WITH THE SOUTH 62 1/2 FEET OF LOT 2, BLOCK 3, OF  
SAID FRIDAY'S SECOND ADDITION TO EVERETT AND TOGETHER WITH  
THAT PORTION OF SAID LOT 2 DESCRIBED AS FOLLOWS:**

**BEGINNING AT A POINT ON THE WEST LINE OF SAID LOT 2, 62  
1/2 FEET NORTH OF THE SOUTHWEST CORNER THEREOF;  
THENCE NORTH ALONG SAID WEST LINE TO A POINT WHICH IS 12  
1/2 FEET NORTH OF THE SOUTHEAST CORNER OF LOT 13 OF SAID  
BLOCK 3;  
THENCE EAST 15 FEET;  
THENCE SOUTH PARALLEL TO THE WEST LINE OF SAID LOT 2 TO A  
POINT WHICH IS DISTANT NORTH 62 1/2 FEET FROM THE SOUTH  
LINE OF SAID LOT 2;  
THENCE WEST 15 FEET TO THE POINT OF BEGINNING;  
AND TOGETHER WITH THE SOUTH 12 1/2 FEET OF LOT 13, BLOCK  
3 OF SAID FRIDAY'S SECOND ADDITION TO EVERETT;  
AND TOGETHER WITH VACATED PORTION OF GRAND AVENUE  
ADJACENT TO LOT 4, BLOCK 3 OF SAID PLAT.**

**SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON.**

## Additional Information

