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11/27/01

**EVERETT SCHOOL DISTRICT NO. 2  
RESOLUTION OF THE BOARD OF DIRECTORS  
RESOLUTION NO. 737**

**A Resolution authorizing exercise of the power of eminent domain by Everett School District No. 2 ("District") pursuant to RCW 28A.335.200 to condemn certain property for public use by the District and authorizing the Superintendent and/or her designee(s), in the alternative, to negotiate for the acquisition of said property under threat of condemnation without the necessity of suit.**

**WHEREAS**, the District owns the East ½ of lot 3, Lots 4 through 9 and 12 through 32, Block 631, Plat of Everett, Division "I" as per Plat thereof, recorded in Volume 5 of Plats, Page 11, Records of Snohomish County; and

**WHEREAS**, the District has approved plans for the development of its said property into facilities to support the District's school operations; and

**WHEREAS**, the District has determined that it has need to acquire Lots 10 and 11 to facilitate the development and improvement of its property into facilities to support the School District's operations and that there exists a public use and necessity to acquire said Lots 10 and 11; and

**WHEREAS**, the District has received an appraisal of the fair market value of said Lots 10 and 11, and is desirous of acquiring said Lots 10 and 11 by negotiated agreement, under threat of condemnation without the necessity of actually commencing suit if possible;

**Now, therefore, be it resolved by the Board as follows:**

1. Pursuant to RCW 28A.335.220, the District is hereby authorized and directed, if necessary, to exercise its power of eminent domain to condemn the aforementioned Lots 10 and 11 of said Block 631 and to commence condemnation proceedings in the Superior Court of Washington in and for Snohomish County for said purpose; and

2. The District is hereby authorized to engage the services of its attorneys to commence and prosecute said condemnation proceedings, as necessary; and

3. The District Superintendent and/or his designee(s) are authorized to negotiate the acquisition of said Lots 10 and 11 under threat of condemnation pursuant to this Resolution, without the necessity of actually commencing suit and to acquire same by negotiation, if possible, based upon the District's appraisal, but in no event shall the price exceed one hundred ten percent (110%) of such appraised value, which will allow up to ten percent (10%) of the appraised value in the event the owner is an unwilling seller, to avoid the additional costs of


litigation and liability under the condemnation laws for the owner's attorneys fees and expenses;  
and


4. The District is authorized to enter into a Purchase and Sale Agreement in the form attached hereto or a form which does not substantially differ in material terms therefrom, as determined by the Superintendent and/or her designee(s) with said owners; and

5. The District's Superintendent and/or her designee(s) are hereby authorized and empowered to take all such actions, to engage such attorneys, appraisers and consultants as may be necessary, to execute and deliver such documents and instruments and do such things as are deemed reasonable or necessary to carry out the authority provided by this Resolution for the acquisition of said property.

DATED: 11/27, 2001.


\_\_\_\_\_  
Director

  
Director

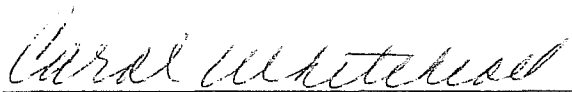
  
Director



\_\_\_\_\_  
Director

  
Director

ATTEST:



Carol A. Whitehead, Secretary  
Board of Directors

## PURCHASE AND SALE AGREEMENT

**Seller:** ALLEN R. HEMMAT and SHARON M. HEMMAT,  
husband and wife (herein referred to as "Seller")

**Buyer:** EVERETT SCHOOL DISTRICT NO. 2,  
a Washington Municipal Corporation (herein collectively referred to as "Buyer")

**Date:** November 27, 2001

### RECITALS

**A.** Seller owns the following described real property (herein referred to as the "Property"):

Lots 10 and 11, Block 631, Plat of Everett Division "I", according to the Plat thereof recorded in Volume 5 of Plats, Page 11, Records of Snohomish County, State of Washington; all situate in the County of Snohomish, State of Washington.

**B.** Buyer has been authorized by its Board of Directors to exercise its power of eminent domain pursuant to RCW 28A.335.220 for the condemnation of the subject property for Buyer's use in connection with the Buyer's development of its adjacent properties for public use by the Buyer and Seller is only willing to sell and convey said Property under said threat of condemnation pursuant to this negotiated agreement.

**NOW, THEREFORE**, pursuant to the covenants and agreements of the parties contained herein, the parties agree as follows:

### AGREEMENT

Seller agrees to sell the Property and Buyer agrees to buy the Property on the following terms and conditions:

**1. PURCHASE PRICE.** The total purchase price for the Property is Three Hundred Nineteen Thousand Dollars (\$319,000.00), including the earnest money deposit described below, payable in full by cash at closing.

**2. EARNEST MONEY DEPOSIT.** Buyer herewith deposits an earnest money note in the sum of Three Thousand Dollars (\$3,000.00), in the form of Exhibit "A" attached hereto and by this reference incorporated herein, with Bay Town Escrow ("Escrow Agent") to serve as earnest money in this transaction. When an escrow account is opened for this transaction, said deposit shall be deposited to the Escrow Agent.

### 3. CONTINGENCIES.

a. **Buyer's Inspection and Environmental Assessment.** This sale is contingent upon Buyer's satisfaction and approval of the Property, following a complete inspection and environmental assessment by Buyer, through Buyer's designated agents and/or consultants. Buyer shall have 30 business days within which to satisfy or waive this contingency. If Buyer has not waived this contingency within said time, then Seller may any time thereafter elect to terminate this Agreement by five (5) days written notice to Buyer. If within five (5) days of Seller's notice to Buyer, Buyer does not waive this contingency by notice to Seller, this Agreement shall terminate. Buyer shall have access to the Property for purposes of satisfying this contingency and to make such inspections, conduct such tests, take such samples and such other actions as are reasonable in connection therewith; provided Buyer shall not unreasonably interfere with Seller's business and use of the Property prior to closing, and provided, further, that in the event the sale does not close, Buyer shall restore the premises to their present condition and repair any damage thereto as may be occasioned by such inspections and/or assessment, all at Buyer's expense.

b. **Condition of Title.** That, at the time of making and delivery of the Deed conveying the Property to Buyer, Seller in said Deed shall be lawfully seized of an indefeasible estate in fee simply in and to the Property, and shall have good right and full power to convey the same; that the Property shall then be free from all encumbrances; that the Buyer, its successors and assigns, shall have and enjoy the quiet and peaceable possession of the Property; and that Seller will defend the title thereto against all persons who may lawfully claim the same.

4. **CONDITION OF TITLE - TITLE INSURANCE.** Seller shall provide marketable title to the Property at the time of closing.

Seller hereby authorizes Escrow Agent to order a Preliminary Commitment for an ALTA Extended Coverage Policy of Title Insurance in the amount of the purchase price from Pacific Northwest Title Insurance Company. Buyer shall have five (5) business days after receipt of the Preliminary Commitment within which to notify Seller in writing of Buyer's disapproval of any Exceptions shown in said Preliminary Commitment. In the event of disapproval of any Exceptions as set forth in the Preliminary Commitment, Seller shall have until the date for closing of escrow within which to attempt to eliminate any disapproved Exception(s) from the Policy of Title Insurance to be issued in favor of Buyer and, if not eliminated, the escrow shall be canceled unless Buyer then elects to waive its prior disapproval. Failure of Buyer to disapprove any Exceptions within the aforementioned time limit shall be deemed an approval of said Preliminary Commitment.

5. **CLOSING OF SALE.** Buyer and Sellers shall use their best good faith efforts to close on March 1, 2002 or as soon thereafter as possible; provided, it shall be closed no later than March 8, 2002. Closing shall be conducted by the Escrow Agent, or such other Escrow Agent as may be designated by Buyer. Buyer and Seller shall deposit with the Escrow Agent all instruments and funds required to complete the purchase in accordance with this Agreement. At

Closing, Seller shall convey good and merchantable title to Buyer by Statutory Warranty Deed, subject only to such exceptions as are approved in writing by Buyer. "Closing" means the date on which all documents are recorded and the sales proceeds are available to Seller.

**6. CLOSING COSTS AND PRORATIONS.** Buyer shall pay the escrow fees, recording fees and the premium for an ALTA Extended Coverage Policy of Title Insurance. Seller shall pay the prorated real estate taxes to the Closing date. The parties acknowledge that pursuant to WAC 458-61-420(1)(c), conveyances under threat of eminent domain are not treated as "sales" for purposes of imposing the real estate excise date and the parties agree to execute a Real Estate Excise Tax Affidavit specifying that exemption.

**7. POSSESSION.** Buyer shall be entitled to possession on closing.

**8. SELLER'S WARRANTIES AND DISCLOSURES.** Except as expressly disclosed in writing to Buyer by Seller, Seller represents and warrants to Buyer that:

(a) The execution and delivery of this Agreement by Seller, and the consummation of the transaction contemplated hereby, has been duly authorized by all necessary action on the part of Seller, and such documents constitute valid and enforceable obligations of Seller legally enforceable in accordance with their terms;

(b) Seller has received no notice from any governmental authority that the Premises, or any part thereof, is in violation of any law or regulation applicable to the Premises, and Seller has no knowledge of any facts which might be a basis for any such notice;

(c) Seller has no knowledge of any obvious or unobvious defects in the Premises or any portion thereof;

(d) All persons and corporations supplying labor, materials, equipment, services or other items to the Premises have been paid, and there are no claims or liens therefor;

(e) No local improvement district assessments, payable in annual installments or otherwise, have been made against the Premises which are unpaid;

(f) There are no actions, suits, claims or legal proceedings or any other proceedings affecting the Premises, at law or equity, before any court or governmental agency;

(g) Seller has no knowledge of any pending changes in real estate taxation with respect to the Premises, including any planned assessments affecting the Premises or changes to the assessed value of the Premises or any pending or threatened condemnation actions with respect to the Premises;

(h) Seller has good, indefeasible, insurable and marketable title to the Premises in fee simple;

(i) Seller has not failed to disclose to Purchaser any material adverse fact or condition affecting Seller or the Premises which would affect the transaction contemplated by this Agreement;

(j) Seller is not in default or breach under any agreement, contract, or other document or matter which affects the Premises;

(k) The Premises and any improvements thereof, to the best of Seller's knowledge, do not materially violate any applicable building or zoning ordinances, and Seller is unaware of any material defect in the Premises or improvements thereon;

(l) Seller has no knowledge of any release(s) of "Hazardous Substances," as defined below, on the Premises during the prior twenty (20) years;

(m) The Premises are free of the presence of Hazardous Substances; the Premises have not at any time been used for the generation, transportation, management, handling, treatment, storage, manufacture, emission, disposal or deposit of any Hazardous Substances or material containing Hazardous Substances; and the Premises are in compliance with all environmental laws, however and wherever promulgated;

(n) No Hazardous Substances have been deposited, stored or treated on the Premises by Seller or any of Seller's agents during Seller's ownership, and Seller is not and has not been a transporter, operator or generator of Hazardous Substances; and

(o) Seller has no knowledge of any underground storage tanks on the Premises, including, without limitation, abandoned or empty tanks or tanks filled with inert substances such as sand.

"Hazardous Substances" means any industrial waste, toxic waste, chemical contaminant or other substance considered hazardous to life, health or property, including, without limitation, any substance designated as hazardous or toxic under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.*, the Safe Water Drinking Act, 42 U.S.C. § 300F, the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136 *et seq.*, the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*, the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.*, the Hazardous Waste Management Statute, Chapter 70.95 RCW, the Hazardous Waste Fee Statute, Chapter 70.105A RCW, any "mini-superfund" or other statutes enacted by the Washington Legislature, including, without limitation, Chapter 70.105B RCW and any substance defined as hazardous, dangerous or toxic by any governmental authority with jurisdiction over the Premises.

Should any of the foregoing representations or warranties prove to be untrue or inaccurate, Seller hereby agrees, to the fullest extent permitted by applicable law, to release, defend, indemnify and hold harmless Purchaser (and Purchaser's officers, directors, shareholders, agents, employees, and representatives) and their successors and assigns from and against any and all claims, demands, costs, penalties, fees, expenses, harm, injury, damages or liability (including, but not limited to, attorney's fees) arising directly or indirectly on account of or in connection with the facts and circumstances giving rise to the untruth or inaccuracy of such representations and warranties.

**9. NO AGENTS OR BROKERS.** The parties represent and warrant that no real estate agents or brokers have been involved with this transaction, and no commission shall be due on closing.

**10. DEFAULT AND ATTORNEY'S FEES.** In the event Buyer fails, without legal excuse to complete the purchase of the Property, the earnest money deposit made by Buyer shall be forfeited to the Seller as the sole and exclusive remedy available to Seller for such failure.

Initials: Buyer CW

Initials: Seller SAH  
SAH

In the event of litigation between the parties arising out of or relating to this Agreement, or the transaction contemplated hereby, the prevailing party, in addition to all other rights and remedies, shall be entitled to recover reasonable attorneys' fees, costs and litigation-related expenses from the non-prevailing party.

**11. NON-MERGER.** The covenants and agreements contained in this agreement are intended to survive closing, and are not intended to "merge" with the closing documents.

**12. NOTICE.** All notices required or allowed herein shall be personally delivered or mailed (certified, return receipt requested) to the recipient at the address stated below:

**BUYER:** Everett School District NO. 2  
P.O. Box 2098  
4730 Colby Avenue  
Everett, WA 98203  
Attn: Dr. Carol A. Whitehead, Superintendent

**SELLER:** Allen R. and Sharon M. Hemmat  
2222 Everett Avenue  
Everett, WA 98201

Notice shall be deemed given when personally delivered, or two (2) business days after mailing, certified, return receipt requested, postage prepaid, from within the State of Washington.

**13. FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT.** The parties agree to comply in all respects with Internal Revenue Code Section 1445 and the regulations issued thereunder, hereinafter referred to as the "Regulations." If Seller is not a "foreign person" (as defined in the Regulations), Seller shall deliver to Buyer through an escrow nonforeign certificate, properly executed and in form and content as attached hereto, marked EXHIBIT B and incorporated herein by reference. If Seller is a "foreign person" or fails or refuses to deliver the nonforeign certificates as indicated above, or Buyer receives notice, or has actual knowledge that any such nonforeign certificate is false, a tax equal to ten percent (10%) of the purchase price shall be withheld through escrow and paid by escrow agent to the Internal Revenue Service in the manner prescribed by the Regulations, unless such withholding is reduced or excused in the manner prescribed by the Regulations.

In the event of any such withholding, Seller's obligations to deliver title hereunder shall not be excused or otherwise affected. The provisions of this section shall survive the closing hereunder.

**14. CONDEMNATION.** In the event the Property becomes subject to a condemnation proceeding by a superior public authority, prior to Closing, Buyer shall have the right, at Buyer's option, to terminate this Agreement by giving written notice thereof to Seller on or before the date fixed for Closing, in which event Buyer's obligations hereunder shall be null and void and of no further effect and Buyer's earnest money deposit shall be returned to Buyer. If Buyer does not so terminate this Agreement, the purchase price for the premises shall be reduced by the total of any awards or other proceeds received by Seller at or prior to Closing with respect to any taking and at Closing Seller shall assign to Buyer all rights of Seller in and to any awards or other proceeds payable by reason of any taking. Seller agrees to notify Buyer of any such eminent domain proceedings within five (5) days after Seller learns thereof.

**15. RISK OF LOSS.** Seller shall deliver the Property to Buyer at Closing in the same condition existing as of the date hereof. Risk of loss or damage to the Premises shall be born by Seller until the date of Closing. In the event of loss or damage to the Property, or a portion thereof, prior to the date of Closing Date, Buyer may, at its option, terminate this Agreement and the earnest money shall be refunded; or Buyer may elect to continue this Agreement and acquire the Property in its damaged condition and the purchase price shall be reduced by an amount equal to the proceeds paid or payable under any policies of insurance carried by Seller. Seller agrees to carry fire and extended casualty insurance in an amount equal to the replacement cost of the improvements currently existing on the Property, until Closing Date.

**16. MODIFICATION.** This Agreement may not be modified or terminated orally and no modification, termination or attempted waiver shall be valid unless it is in writing and signed by all of the parties.

**17. HEIRS, SUCCESSORS AND ASSIGNS.** This agreement shall enure to the benefit of and be binding upon the heirs, executors, administrators and successors of the parties, but no right, liability or obligation arising hereunder may be assigned by any Party without the advance written approval of all parties.



18. **INTERPRETATION, CONSTRUCTION OF AGREEMENT.** Both parties acknowledge and agree that they have had the opportunity to have this Agreement reviewed by independent counsel of their choice. Therefore, both parties agree that no interpretation or construction shall be made to this Agreement based on which party drafted the Agreement; the non-drafting party hereby waives any right he or she might otherwise have had to have any ambiguity interpreted or construed in his or her favor.

19. **ENTIRE AGREEMENT.** This agreement, with attachments, constitutes the entire agreement and understanding of the parties with respect to the transaction contemplated hereby and shall serve as an exclusive statement of the parties' intent, and incorporates and supersedes all prior and/or contemporaneous negotiations, agreements, arrangements and understandings related to the subject matter hereof.

DATED: 11-27, 2001

**BUYER:**

**EVERETT SCHOOL DISTRICT NO. 2**

By: Carol Whittehead  
Its: Supt. of Schools

Address: P.O. Box 2098  
4730 Colby Avenue  
Everett, WA 98203

**SELLER:**

Allen R. Hemmat  
**ALLEN R. HEMMAT**

Sharon M. Hemmat  
**SHARON M. HEMMAT**

Address: 2222 Everett Avenue  
Everett, WA 98201

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF SNOHOMISH )

I certify that I know or have satisfactory evidence that Allen R. Hemmat and Sharon M. Hemmat, 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: November 24, 2001

SIGNATURE: [Signature]

PRINTED NAME: Kimberly L. Fleming

NOTARY PUBLIC

in and for the State of Washington.

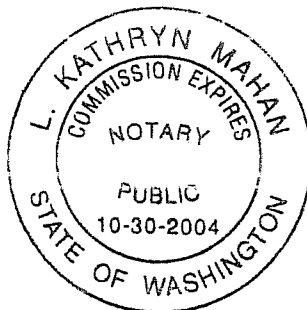
My commission expires: 5/9/02

7

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF SNOHOMISH )

I certify that I have evidence that Carol Whitehead is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the Supt. of Everett School District No. 2, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 11/27/01



SIGNATURE: [Signature]

PRINTED NAME: L. Kathryn Mahan

NOTARY PUBLIC

in and for the State of Washington.

My commission expires: 10-30-04

**EXHIBIT "A"**

**EARNEST MONEY NOTE**

\$ 3,000.00

Everett, Washington  
\_\_\_\_\_, 200\_

FOR VALUE RECEIVED, he undersigned promises to pay to Baytown Escrow for the account of Allen R./Sharon M. Hemmat the sum of \$3,000.00 with no interest thereon, payable as follows:

Upon demand, five (5) days after the undersigned's satisfaction with or waiver of the contingencies set forth in that certain Purchase and Sale Agreement dated November 27, 2001, between Allen R. Hemmat and Sharon M. Hemmat, husband and wife, as Seller, and the undersigned as Buyer.

This Note shall bear interest at the rate of ten percent (10%) per annum, if not paid five (5) days after demand as above provided. If this Note shall be placed in the hands of an attorney for collection, or if suit shall be brought to collect any of the principal or interest of this Note, the undersigned promises to pay reasonable attorneys' fees incurred thereby.

**EVERETT SCHOOL DISTRICT NO. 2,  
A municipal corporation of the State of  
Washington**

By: Carol Whitehead  
Carol A. Whitehead, Superintendent

## EXHIBIT "B"

### NONFOREIGN CERTIFICATE

Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform the transferee that withholding of tax is not required upon our disposition of a U.S. real property interest, we Allen R. Hemmat and Sharon M. Hemmat hereby certify the following:

1. We are not nonresident aliens for purposes of U.S. income taxation;
2. Our U.S. taxpayer identifying numbers (Social Security numbers) are \_\_\_\_\_ and \_\_\_\_\_; and
3. Our home address is:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

We understand that this certification may be disclosed to the Internal Revenue Service by the transferee and that any false statement we have made here could be punished by fine, imprisonment or both.

Under penalties of perjury we declare that we have examined this certification, and to the best of our knowledge and belief it is true, correct and complete.

DATED: \_\_\_\_\_, 200\_.

  
\_\_\_\_\_  
ALLEN R. HEMMAT

  
\_\_\_\_\_  
SHARON M. HEMMAT