

EVERETT SCHOOL DISTRICT NO. 2

RESOLUTION NO. 599

A resolution of the Board of Directors (the "Board") of the Everett School District No. 2 (the "District") to purchase real property for an addition to Cascade High School campus.

WHEREAS, the District has identified a need for additional real property for school purposes; and

WHEREAS, Charles E. Scharlau and Karen M. Scharlau, husband and wife (the "Seller"), own property legally described on Exhibit A attached hereto and incorporated herein by this reference (the "Scharlau Property") which appears suitable for the District's use for such purposes; and

WHEREAS, the District's Superintendent and the Seller have executed an agreement attached hereto as Exhibit B (the "Agreement") for the Board's approval, for the District to purchase the Scharlau Property for One Hundred Two Thousand Three Hundred Dollars (\$102,300), subject to and in accordance with the terms of the Agreement (which terms include, without limitation, Seller (and no other persons) maintaining possession of the Scharlau Property rent free until March 31, 1998); and

WHEREAS, the Scharlau Property, while needed to accomplish the District's facilities expansion plans over the next several years, would be surplus to the District's needs until at least March 31, 1998, and thus the Seller's reserved rights to maintain possession of the Scharlau Property until March 31, 1998 do not conflict with the District's needs; and

WHEREAS, the Board desires to acquire the Scharlau Property, but only if it is free of hazardous and dangerous materials and wastes, the District will acquire adequate title, the property (after investigation) is otherwise suitable for the District's use, and the financial terms of the Agreement (upon review of an appraisal to be obtained by the District) are consistent with applicable law;

NOW, THEREFORE, BE IT RESOLVED that the actions of the District's Superintendent, Dr. Jane Hammond (and her authorized designees), in negotiating and executing the Agreement are hereby ratified, affirmed and approved;

AND FURTHER RESOLVED that the District should acquire the Scharlau Property for One Hundred Two Thousand Three Hundred Dollars (\$102,300), subject to and in accordance with the terms of the Agreement, provided that the following conditions, at a minimum, are satisfied:

(a) the Scharlau Property shall be professionally inspected for hazardous and dangerous materials and wastes within sixty days of the date of this Resolution, and the District shall not purchase the Scharlau Property unless the Scharlau Property is free of such materials and wastes; provided that the District, in the District's determination in its sole discretion, may, but shall not be obligated to, accept asbestos or lead typically found in older structures such as those on the Scharlau Property as long as such materials and wastes may be disposed of during building demolition completely, legally, safely, and for a cost which is not inconsistent with the District's experience with demolition projects generally;

(b) the District's title to the Scharlau Property shall be free and clear of all liens and encumbrances except those which are not, in the District's determination in its sole discretion, inconsistent with the District's intended use of the Scharlau Property, and shall be insurable to meet such standard;

(c) the District shall have obtained (at the District's expense) a market value appraisal of the Scharlau Property by Gary L. Meier, (a professionally-designated real estate appraiser as defined by RCW 74.46.020), and the District shall have determined, upon review of such appraisal, that the terms and conditions of the Agreement are consistent with applicable law; and

(d) the "Seller" as defined in the Agreement shall comply with the Agreement;

AND FURTHER RESOLVED that the District's Superintendent, Dr. Jane Hammond (or her authorized designees), be, and she hereby is, authorized and directed to purchase the Scharlau Property subject to and in accordance with the terms

of this resolution on behalf of the District and take such other and further actions as may be necessary or appropriate to accomplish the purchase.

ADOPTED this 14th day of October, 1996.

EVERETT SCHOOL DISTRICT NO. 2
a municipal corporation in the State of
Washington by

By Sue M. Cooper
Sue M. Cooper, President

By Paul Baldwin
Paul Baldwin, Vice-President

By Roy Yates
Roy Yates, Member

By Paula Kelly-Clarke
Paula Kelly-Clarke, Member

By Mark Nesse
Mark Nesse, Member

ATTEST:

By Jane Hammond
Dr. Jane Hammond
Secretary for the Board

EXHIBIT A

**Legal Description to Residential Real Estate
Purchase and Sale Agreement Between Everett
School District and Charles E. and Karen M. Scharlau
Dated _____, 1996**

A portion of the Southeast quarter of the Southwest quarter of Section 7, Township 28 North, Range 5 East, W.M., described as follows:

Commencing at the Southeast corner of said Southeast quarter of the Southwest quarter;

THENCE Northerly along the East line of said Southeast quarter of the Southwest quarter for 874.96 feet

THENCE North 88°14'40" West along a line parallel with the South line of said Section 7 for 209.76 feet to the Northwesterly margin of the Casino Road, the True Point of Beginning;

THENCE continue North 88°14'40" West for 186.85 feet;

THENCE South 32°11'40" East for 104.35 feet to the Northwesterly margin of Casino Road;

THENCE North 57°48'20" East along said Northwesterly margin for 155 feet to the True Point of Beginning.

Situate in the County of Snohomish, State of Washington.

EXHIBIT B

The Agreement

**EARNEST MONEY RECEIPT AND AGREEMENT
FOR REAL PROPERTY**

Everett, Washington

9-27-96, 1996

EVERETT SCHOOL DISTRICT NO. 2, a municipal corporation of the State of Washington ("Purchaser"), hereby agrees to purchase and Charles E. Scharlau and Karen M. Scharlau, husband and wife ("Seller"), hereby agree to sell, the real estate located in Snohomish County, Washington and more particularly described on EXHIBIT A attached hereto and incorporated herein by this reference ("Premises").

AGREEMENT

In consideration of the foregoing and the performance of the mutual covenants herein contained, Seller and Purchaser agree as follows:

1. Earnest Money

Purchaser will deposit a refundable earnest money note in the form of EXHIBIT B attached hereto with Bay Town Escrow in the amount of Five Thousand One Hundred Fifteen Dollars (\$5,115) promptly upon Purchaser's approval of the condition of title pursuant to Section 2 below. Within five (5) days of Purchaser's satisfaction with or waiver of the contingencies set forth in this Agreement, the earnest money note shall be paid and the earnest money shall become nonrefundable absent a default by Seller. Any interest earned on the earnest money shall be credited against the Purchase Price or returned to Purchaser, as the case may be.

2. Title

Title of Seller at closing is to be free of encumbrances or defects, except encumbrances and defects approved in writing by Purchaser within ten (10) business days after examination of the preliminary title commitment and legible copies of all exceptions to title that are listed in said commitment. Encumbrances to be discharged by Seller may be paid out of the purchase price at closing.

3. Personal Property

There is no personal property included with the sale of the Premises. Seller may, at Seller's option, remove the garage door opener, force-air gas furnace, water heater, plants, trees and shrubs (including, without limitation, the blueberry plants).

4. Purchase Price

The total purchase price for the Premises is One Hundred Two Thousand Three Hundred Dollars (\$102,300), of which the earnest money is part thereof. The purchase price, including earnest money, shall be paid to Seller in cash through escrow.

5. Title Insurance

Purchaser's title shall be insured by Stewart Title Insurance Company. Seller shall make available to Purchaser a preliminary commitment for title insurance issued by Stewart Title Insurance Company showing the condition of Seller's title to the Premises. Seller shall deliver to Purchaser at closing an owner's ALTA standard coverage policy of title insurance in the face amount of the purchase price insuring Purchaser's title subject to no exceptions other than the exceptions set forth in Section 2 above. If title is not insurable as provided above and cannot be made so insurable by the intended closing date of this Agreement, the earnest money shall be refunded and all rights of Purchaser terminated; provided, however, Purchaser may waive defects and elect to purchase.

6. Conveyance of Title

Seller shall convey good and merchantable title to Purchaser at closing by statutory warranty deed, subject only to matters specified in Section 2 hereof.

7. Risk of Loss

Seller shall deliver the Premises to Purchaser at closing in the same condition existing as of the date hereof. Risk of loss of or damage to the Premises shall be borne by Seller until the date of closing. Thereafter, Purchaser shall bear the risk of loss. In the event of loss of or damage to the Premises, or a portion thereof, prior to the date upon which Purchaser assumes the risk, Purchaser may terminate this Agreement and the earnest money shall be refunded; provided, however, that Purchaser shall not terminate this Agreement if Seller agrees in writing to restore the Premises substantially to the present condition by the date of closing. Notwithstanding Purchaser's right to terminate this Agreement in the event of loss of or damage to all or a portion of the Premises, Purchaser may elect to purchase the Premises in the condition existing on the date of closing, 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.

8. Condemnation

In the event that the Premises are or become the subject of a condemnation proceeding, Purchaser shall have the right, at Purchaser's option, to terminate this Agreement by giving written notice thereof to Seller on or before the date fixed for closing, in which event Purchaser's obligations hereunder shall be null and void and of no further effect and Purchaser's earnest money deposit shall be returned to Purchaser. If Purchaser 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 Purchaser all rights of Seller in and to any awards or other proceeds payable by reason of any taking. Seller agrees to notify Purchaser of eminent domain proceedings within five (5) days after Seller learns thereof.

9. Possession

Subject to the provisions of Section 22 below, Purchaser shall be entitled to possession on closing.

10. Broker/Commissions

Each party represents to the other that it has engaged no broker or agent in connection with the negotiations leading to this Agreement. If any claims for brokerage commissions or finder's fees or like payments arise out of or in connection with this transaction, all such claims and costs including reasonable attorney fees shall be defended by, and if sustained, paid by, the party whose alleged actions or commitment form the basis of such claims.

11. Closing Agent

The sale shall be closed in escrow in the office of Bay Town Escrow, within thirty (30) days after a preliminary commitment for title insurance is delivered to Purchaser's attorneys showing title insurable as provided above, but in no event later than November 29, 1996, which shall be the termination date of this Agreement. If closing does not occur by October 31, 1996, Purchaser will reimburse Seller for mortgage carry costs for the November 1 payment and payments thereafter. Purchaser and Seller shall, on demand, deposit in escrow with the closing agent all instruments and monies necessary to complete the sale in accordance with this Agreement.

12. Proration of Taxes, etc.

Taxes for the current year, interest and rents shall be prorated as of closing.

13. Closing Costs

Purchaser shall pay all closing costs, including:

- (a) premium for a standard form owner's policy of title insurance in the face amount of the purchase price;
- (b) State of Washington real estate excise taxes;
- (c) cost of recording the deed, and
- (d) Closing Agent's escrow fee.

14. Seller's Representations and Warranties

Seller represents and warrants to Purchaser 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 ("LID 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 thereon, 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) Except for asbestos siding, 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, attorneys' 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.

15. Assignment of Warranties

Seller hereby assigns to Purchaser, without recourse to Seller, all builders' and manufacturers' warranties with respect to the Premises and the improvements thereon.

16. Contingencies

This sale is conditioned upon the following:

(a) That at the time of the making and delivery of the deed conveying the Premises to Purchaser, the grantor in said deed shall be lawfully seized of an indefeasible estate in fee simple in and to the Premises therein described, and shall have good right and full power to convey the same; that the Premises shall then be free from all encumbrances; that Purchaser, its successors and assigns, shall have and enjoy the quiet and peaceable possession of the Premises; and that Seller will defend the title thereto against all persons who may lawfully claim the same;

(b) A professional inspection of the Premises for hazardous and dangerous materials and wastes in form and content satisfactory to Purchaser in its sole discretion; and

(c) Purchaser's: (i) receipt (at Purchaser's expense) of a market value appraisal of the Premises by a professionally designated real estate appraiser (as defined in RCW 74.46.020), to be selected by Purchaser's board of directors; and (ii) determination, upon review of such appraisal, that the terms and conditions of this Agreement are consistent with applicable law.

17. Nonmerger

The provisions of this Agreement shall not be deemed merged into the deed but shall survive the closing and continue in full force and effect.

18. Notices

All notices required or permitted to be given hereunder shall be in writing and shall be personally delivered or sent by U.S. certified mail, return receipt requested, addressed as set forth below:

(a) All notices to be given to Seller shall be addressed as follows:

(b) All notices to be given to Purchaser shall be addressed as follows:

Everett School District No. 2
P.O. Box 2098
4730 Colby Avenue
Everett, WA 98203
Attn: Dr. Jane Hammond
Superintendent

Either party hereto may by proper notice to the other designate such other address for the giving of notices as deemed necessary. All notices shall be deemed given on the day such notice is personally served or on the third day following the day such notice is mailed in accordance with this section.

19. Governing Law

This Agreement shall be construed according to the laws of the State of Washington.

20. 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 Purchaser through escrow nonforeign certificates, properly executed and in form and content as attached hereto, marked EXHIBIT C-1 and EXHIBIT C-2 and incorporated herein by reference. If Seller is a "foreign person" or fails or refuses to deliver the nonforeign certificates as indicated above; or Purchaser 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.

21. Negotiation and Construction

This Agreement and each of the terms and provisions hereof are deemed to have been explicitly negotiated between the parties, and the language in all parts of this Agreement shall, in all cases, be construed according to its fair meaning and not strictly for or against either party.

22. Possession of the Premises

Purchaser agrees that Seller may maintain possession of the Premises rent free until March 31, 1998; provided, however, that:

(a) Seller does not assign such right to possession, sublet the Premises or permit any other party to occupy the Premises or any part thereof;

~~(b) Seller provides insurance coverage insuring Seller and Purchaser against such risks, in such form and in such amounts as Purchaser shall request; and~~

(c) Seller keeps the Premises in good condition and repair and pays any and all costs and expenses associated with the Premises including, without limitation, any maintenance, repairs, insurance and utilities.

9/25/96
CES 9/27/96
KMS 9/27/96

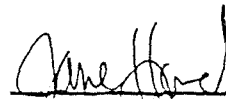
If Seller at any time breaches its agreements in this Section 22 or does not personally occupy the Premises for a continuous period of thirty (30) days or more, Purchaser shall have the right at its sole option and discretion to terminate Seller's right to possession.

IN WITNESS WHEREOF the parties have executed this Agreement as of the date above set forth.

Purchaser:

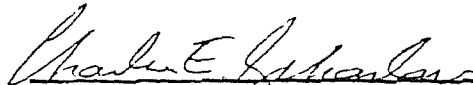
EVERETT SCHOOL DISTRICT NO. 2,
a municipal corporation of the State
of Washington


By


Dr. Jane Hammond, Superintendent

The undersigned Seller on this 27th day of September, 1996, hereby approves and accepts the offer set forth and agrees to carry out all terms thereof on the part of the Seller.

Seller:


Charles E. Scharlau


Karen M. Scharlau

STATE OF WASHINGTON)
) ss.
COUNTY OF SNOHOMISH)

On this 25th day of September, 1996, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Jane Hammond, to me known to be the person who signed as Superintendent of EVERETT SCHOOL DISTRICT NO. 2, the municipal corporation that executed the within and foregoing instrument, and acknowledged said instrument

to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned, and on oath stated that she was duly elected, qualified and acting as said officer of the municipal corporation, that she was authorized to execute said instrument and that the seal affixed, if any, is the corporate seal of said municipal corporation.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year first above written.

Monna Kuper
(Signature of Notary)

(Print or stamp name of Notary)

NOTARY PUBLIC in and for the State,
of Washington, residing at Everett
My appointment expires: 8-2-97

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

On this _____ day of _____, 1996, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared CHARLES E. SCHARLAU, to me known to be the individual who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

(Signature of Notary)

NOTARY PUBLIC in and for the State
of Washington, residing at _____.
My appointment expires: _____.

On this _____ day of _____, 1996, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared KAREN M. SCHARLAU, to me known to be the individual who executed the within and foregoing instrument, and acknowledged that she signed the same as her free and voluntary act and deed, for the uses and purposes therein mentioned.

(Signature of Notary)

NOTARY PUBLIC in and for the State
of Washington, residing at _____
My appointment expires: _____

EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

A portion of the Southeast quarter of the Southwest quarter of Section 7, Township 28 North, Range 5 East, W.M., described as follows:

Commencing at the Southeast corner of said Southeast quarter of the Southwest quarter;

THENCE Northerly along the East line of said Southeast quarter of the Southwest quarter for 874.96 feet

THENCE North $88^{\circ}14'40''$ West along a line parallel with the South line of said Section 7 for 209.76 feet to the Northwestern margin of the Casino Road, the True Point of Beginning;

THENCE continue North $88^{\circ}14'40''$ West for 186.85 feet;

THENCE South $32^{\circ}11'40''$ East for 104.35 feet to the Northwestern margin of Casino Road;

THENCE North $57^{\circ}48'20''$ East along said Northwestern margin for 155 feet to the True Point of Beginning.

Situate in the County of Snohomish, State of Washington.

EXHIBIT B

EARNEST MONEY NOTE

\$5,115

Everett, Washington
_____, 1996

FOR VALUE RECEIVED, the undersigned promises to pay to Bay Town Escrow for the account of Charles E. Scharlau and Karen M. Scharlau the sum of Five Thousand One Hundred Fifteen Dollars (\$5,115) 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 Earnest Money Receipt and Agreement for Real Property dated _____, 1996 between Charles E. Scharlau and Karen M. Scharlau, husband and wife, as Seller and the undersigned as Purchaser.

This Note shall bear interest at the rate of ten percent (10%) per annum, if not paid five 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 _____ [Exhibit Only--Do Not Sign]
Jane Hammond, Superintendent

EXHIBIT C-1

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 my disposition of a U.S. real property interest, I, Charles E. Scharlau, hereby certify the following:

1. I am not a nonresident alien for purposes of U.S. income taxation;
2. My U.S. taxpayer identifying number (Social Security number) is _____; and
3. My home address is:

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

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

[Exhibit Only--Do Not Sign]

Date _____

EXHIBIT C-2

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 my disposition of a U.S. real property interest, I, Karen M. Scharlau, hereby certify the following:

1. I am not a nonresident alien for purposes of U.S. income taxation;
2. My U.S. taxpayer identifying number (Social Security number) is _____; and
3. My home address is:

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

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

[Exhibit Only--Do Not Sign]

Date _____