

ORDINANCE NO. F-1163

AN ORDINANCE AUTHORIZING THE PURCHASE OF CERTAIN PROPERTY  
FOR PUBLIC PURPOSES BY THE CITY OF WHEATON, ILLINOIS

WHEREAS, the City Council of the City of Wheaton, DuPage County, Illinois (the "City") has heretofore determined that it is necessary and advisable for the public health, safety, welfare and convenience of residents of the City that the City undertake a redevelopment project and has heretofore approved a redevelopment plan (the "Plan"), designated a redevelopment project area (the "Project Area") for that portion of the City known as the City of Wheaton Main Street Redevelopment Project Area, and adopted tax increment allocation financing for the Project Area, all as authorized by the Tax Increment Allocation Redevelopment Act, as amended; and,

WHEREAS, the City has the authority pursuant to the statutes of the State of Illinois, specifically pursuant to 65 ILCS 5/11-74.4-4(c), to acquire real estate, by purchase, donation, lease or eminent domain, located within the Project area in order to achieve the objectives of the Plan; and

WHEREAS, the City has found that it is necessary to acquire the parcel of real estate described on Exhibit "A" attached hereto and incorporated herein (the "Property"); and

WHEREAS, the City has determined that it is necessary that the Property should be acquired.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Wheaton, Illinois, as follows:

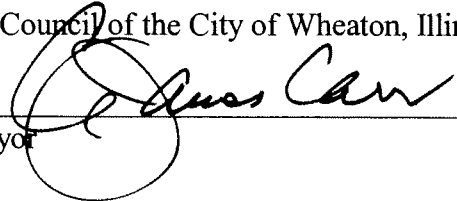
SECTION 1: That the Mayor and City Clerk be and the same are hereby authorized to execute the Agreement between the City and the owner of the Property, in substantially the form attached hereto as Exhibit "B", and, by this reference, incorporated herein, with such changes as may be approved by the City's attorney.

Section 2. That the Mayor and City Clerk of the City be and the same are hereby authorized to execute and attest all other documents necessary to effectuate the purpose of the Agreement and the purchase of the Property.

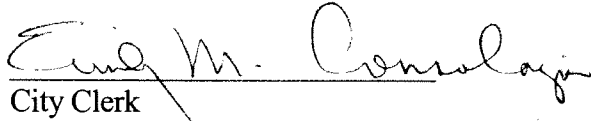
SECTION 3: This Ordinance shall be in full force and effect from and after its passage and approval as provided by law.

PASSED AND APPROVED by the City Council of the City of Wheaton, Illinois, this 17th day of April, 2006.

Mayor



ATTEST:

  
City Clerk

Ayes:

Roll Call Vote:

Councilman Mouhelis  
Councilman Sues  
Councilman Bolds  
Councilwoman Corry  
Councilman Johnson  
Mayor Carr  
Councilman Levine

Nays:

None

Absent:

None

Motion Carried Unanimously

Passed: April 17, 2006

Published: April 18, 2006

**PURCHASE AND SALE AGREEMENT**  
ABS #3214/#5564 - 114 & 124 Willow Avenue  
Wheaton, Illinois

THIS PURCHASE AND SALE AGREEMENT (“**Agreement**”), is made and entered into as of the 17<sup>th</sup> day of April 2006 by and between Jetco Properties, Inc., a Delaware corporation (“**Seller**”), and the City of Wheaton, an Illinois municipal corporation (“**Buyer**”); collectively, the “**Parties**”, and individually, a “**Party**.”

In consideration of the mutual covenants and promises of the Parties set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

**1. SUBJECT PROPERTY; AGREEMENT OF PURCHASE AND SALE.**

**1.1 Subject Property.** Seller is the owner of certain real property located on the north side of Willow Street, between Cross Street and Main Street, across from the Jewel/Osco store located at 114 & 124 Willow Avenue, in the City of Wheaton, County of Du Page, Township of Milton, State of Illinois: (i) consisting of approximately 26,136 square feet of vacant real property, which has been improved as a parking lot; (ii) depicted and labeled as “Sale Property” on Exhibit “A” attached hereto and incorporated herein by reference; and (iii) more particularly described on Exhibit “B” attached hereto and incorporated herein by reference (“**Land**”). The Land together with all fixtures, attachments and improvements permanently attached or affixed to the Land, if any, together with all rights, easements and appurtenances thereunto belonging, if any, are hereinafter collectively referred to as the “**Subject Property**.”

**1.2 Agreement of Purchase and Sale.** According and subject to all of the provisions of this Agreement, Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, the Subject Property.

**2. EARNEST MONEY.** Within three (3) business days of the execution and delivery of this Agreement, Buyer shall deposit with “Escrow Holder” (defined later) Sixty-Eight Thousand Seven Hundred Fifty and 00/100 Dollars (\$68,750.00) (“**Earnest Money**”). If, prior to the expiration of the Contingency Period, Buyer notifies Seller that it is terminating this Agreement because the conditions precedent contained in Section 4.2.1(i), Section 4.2.1(ii) and/or Section 4.2.1(iii) of this Agreement have not been waived or satisfied as provided therein, then the Earnest Money (and any interest earned thereon) shall be returned to Buyer. Thereafter (except as expressly provided to the contrary in the immediately succeeding sentence) the Earnest Money (and any interest earned thereon) shall become non-refundable but applicable to the Purchase Price in the event the Parties proceed to “Closing” (defined later). In addition, if this Agreement is terminated because: (i) Seller is unable to convey fee simple title to the Subject Property to Buyer at Closing subject only to the “Deed Exceptions” (defined later) and the “Deed Restriction” (defined later); (ii) of a condemnation as provided in the Section of this Agreement entitled “Condemnation”; (iii) of a default by Seller which default is not cured within ten (10) days after receipt of written notice from Buyer specifying the particulars of such default; (iv) of a failure of the condition set forth in Section 7.2.1; or (v) Buyer notifies Seller that it is terminating

this Agreement because the condition precedent in Section 4.1.3 or Section 4.1.4 has not been waived or satisfied as provided therein, then the Earnest Money (and any interest earned thereon) shall also be returned to Buyer.

If this Agreement is terminated for any other reason, Seller shall be entitled, as its sole remedy, to retain the Earnest Money (and any interest earned thereon) as liquidated damages. IT IS AGREED THAT SELLER SHALL RETAIN THE EARNEST MONEY (AND ANY INTEREST EARNED THEREON) AS LIQUIDATED DAMAGES AND NOT AS A PENALTY, AND THAT THE EARNEST MONEY (AND ANY INTEREST EARNED THEREON) REPRESENTS A REASONABLE ENDEAVOR BY THE PARTIES TO ESTIMATE A FAIR COMPENSATION FOR THE FORESEEABLE LOSSES WHICH MIGHT RESULT FROM A TERMINATION OF THIS AGREEMENT, IT BEING UNDERSTOOD THAT THE AMOUNT OF ACTUAL DAMAGES WOULD BE EXTREMELY DIFFICULT, IMPRACTICABLE OR IMPOSSIBLE TO ASCERTAIN. If this Agreement is not terminated, then the Earnest Money (and any interest earned thereon) shall be credited against the "Purchase Price" (defined later).

3. **PURCHASE PRICE.** The "Purchase Price" for the Subject Property shall be the sum of One Million Three Hundred Seventy-Five Thousand and 00/100 Dollars (\$1,375,000.00). The Purchase Price, plus or minus prorations hereunder and with credit given against the Purchase Price to Buyer for the Earnest Money (together with any interest earned thereon) shall be paid into escrow in immediately available funds at Closing. Except for the prorations referred to in the preceding sentence, the Purchase Price shall be net to Seller, it being understood that, except as expressly provided herein, Buyer shall have no right or remedy of offset, abatement or deduction against the Purchase Price for any reason, including, but not limited to, any reason arising out of any facts or circumstances regarding the Subject Property, whether discovered in connection with Buyer's investigation of the Subject Property or otherwise.

4. **CONDITIONS PRECEDENT.** Buyer's obligation to purchase the Subject Property shall be conditioned upon satisfaction of the following conditions, which may be waived at any time by Buyer:

4.1 **Title Commitment.** Seller agrees that, with respect to monetary liens created by Seller, Seller shall, at or prior to Closing, cause such liens to be eliminated, cured or removed from title by bonding, or otherwise in a manner reasonably acceptable to Buyer.

4.1.1 Within fifteen (15) days after the date of this Agreement, Seller shall, at Seller's expense, cause a title commitment for an ALTA Form 1992 Owner's Title Insurance Policy ("Title Commitment"), covering the Subject Property to be issued and delivered to Buyer by Escrow Holder, together with copies of all exception documents noted thereon.

4.1.2 If the Title Commitment discloses any exception to title other than an exception described in the following paragraph (an "Unpermitted Exception"), Seller shall have five (5) business days from the date of delivery of written notice thereof from Buyer (which notice shall be given within ten (10) business days from Buyer's receipt of the Title Commitment and all exception documents noted thereon) to have such Unpermitted Exception removed from the Title Commitment or to cause Escrow Holder to commit to insure against such Unpermitted

Exception in a manner acceptable to Buyer; provided, Seller shall have no obligation to cause such Unpermitted Exception to be removed or insured against. If Seller fails to have the same removed or insured against within such five (5) day period, Buyer may elect, on or before Closing, to: (i) terminate this Agreement, in which case the Earnest Money, and any interest earned thereon, shall be immediately returned to Buyer; or (ii) accept the Subject Property subject to such Unpermitted Exceptions.

For purposes of this Section, the following title exceptions shall be "**Permitted Exceptions**": (i) private, public and utility easements and roads and highways, if any; (ii) general taxes for 2005 and subsequent years; and (iii) installments not due as of the Closing Date for any special tax or assessment. "**Permitted Exceptions**" shall also include the Deed Restriction.

**4.2 Inspection.** Subject to all of the terms and conditions of this Agreement, Buyer and its agents shall have the right to conduct, at Buyer's sole cost and expense and subject to the terms hereof, its "**Inspection**" (defined later) of the Subject Property.

**4.2.1 Buyer's "Inspection"** may include, but shall not be limited to: (i) a physical inspection of the Subject Property, including surveys, soils tests, site analyses, engineering studies, examinations of the building and improvements thereon (including structural and mechanical tests) and utility availability; (ii) an environmental investigation of the Subject Property (subject to the terms of Section 4.4 of this Agreement); and (iii) investigations regarding zoning and code requirements (i.e., Buyer shall be satisfied that all public and quasi-public authorities having jurisdiction over any aspect of Buyer's proposed development of the Subject Property and related off-site improvements, if any, shall have issued and approved, or shall be prepared to issue and approve, to the extent required, all site plan approvals and other approvals necessary for Buyer's proposed development of the Subject Property, excluding building and/or sign permits).

**4.2.2 Buyer shall have a period of ninety (90) days from the date of this Agreement to satisfy or waive the conditions set forth in Section 4.2.1 (the "Contingency Period").**

**4.2.3 During the Contingency Period, Seller hereby grants to Buyer a license, to enter upon the Subject Property at such reasonable times as Buyer deems necessary, in Buyer's sole discretion, but in any event upon no less than one (1) business day's prior written notice to Seller, for purposes of performing the Inspection, and Seller represents and warrants that it has the right and authority to grant Buyer the rights conferred by this Section.**

**4.2.4 Buyer agrees that it shall: (i) not endanger or do anything constituting a nuisance to, persons or property in the vicinity of the Subject Property, nor alter (other than for soil or groundwater testing in accordance with Section 4.4 of this Agreement), damage or destroy the Subject Property; and (ii) repair any loss or damage caused to the Subject Property by reason of its entry. Buyer shall indemnify, defend and hold harmless: (a) Seller and any affiliate or subsidiary of Seller; and (b) the principals, directors, officers, shareholders, partners, employees, representatives, successors, assigns, transferees, agents, contractors, sub-contractors and invitees**

of the persons or entities listed in clause “(a)” of this sentence (each of the foregoing persons and entities in clauses “(a)” and “(b)” of this sentence being referred to hereinafter as an “Indemnitee”), from and against any and all liability, loss, damage, cost or expense (including court costs and reasonable attorneys’ fees and excluding any liability solely based on Buyer’s test results, but not excluding any liability based on Buyer’s testing), of whatever nature and by whomever asserted, arising out of, resulting from or in any way connected with the acts or omissions of Buyer, its contractors, employees or agents in connection with Buyer’s access to, and Inspection of, the Subject Property.

**4.3 As-Is/Where-Is Sale.** Buyer hereby affirms that, except as otherwise expressly provided herein, Seller, its agents, employees and/or attorneys have not made, nor has Buyer relied upon, any representation, warranty or promise with respect to the Subject Property or any other subject matter of this Agreement, including, without limitation, any warranties or representations, expressed or implied, as to the general plan designation, zoning, value, use, rents, income, expenses, operation, tax status or physical condition of the Subject Property, or any part thereof, including, but not limited to, the flood elevations, drainage patterns and soil and subsoils composition and compaction level, and other conditions at the Subject Property, or the existence or non-existence of “Hazardous Materials” (defined later) on, under or in the area of the Subject Property, or as to the accuracy of any survey, soils report or other plan or report with respect to the Subject Property. Without limiting the generality of the foregoing, Buyer is purchasing the Subject Property from Seller in an “AS IS”, “WHERE IS” CONDITION, SUBJECT TO “ALL FAULTS”, INCLUDING, BUT NOT LIMITED TO, BOTH LATENT AND PATENT DEFECTS. BUYER HEREBY WAIVES ALL WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE TITLE (except as specifically set forth in the Deed) CONDITION AND USE OF THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Buyer agrees that, by the expiration of the Contingency Period, Buyer will have examined the Subject Property and be familiar with the value, character, quality and condition thereof, and with access thereto, and Buyer is relying solely upon its Inspection and knowledge in connection with the transactions contemplated by this Agreement, and except as expressly provided herein, not on any representations of Seller, its agents, employees and/or attorneys, and subject to the terms of this Agreement, Buyer shall purchase the Subject Property without adjustment to or offset against the Purchase Price.

**4.4 Buyer’s Environmental Inspection.**

**4.4.1** Buyer shall have the right, but not the obligation, to perform environmental due diligence with respect to the Subject Property during the Contingency Period. If Buyer so desires, or desires to conduct any tests or cause the surface of the ground to be penetrated in any manner for any purpose (such as soils tests, etc.), it shall first provide a work plan and obtain Seller’s written approval, such approval not to be unreasonably withheld, conditioned or delayed. Such environmental inspection(s) shall be performed by a qualified consultant or contractor (“Inspector”). The results of Buyer’s inspections relating to Hazardous Materials, shall be provided to Seller. No information or contents of any environmental reports nor the results of any inspection of the Subject Property for Hazardous Materials (collectively, “Information”), shall be disclosed by Buyer or its agents, consultants or employees to any third party without Seller’s prior written approval, unless and until Buyer is required by law to make

such disclosure under applicable law (in which event Buyer shall first provide Seller an opportunity to obtain a protective order), or until Buyer completes its purchase of the Subject Property. If Buyer's environmental reports or inspections reveal any contamination at the Subject Property, either Party may terminate this Agreement upon written notice to the other Party and the Parties shall have no further rights, obligations or liability hereunder, except as may be otherwise expressly provided herein. Seller acknowledges that Buyer intends to use Clayton Group Services, Inc. ("Clayton"), for purposes of conducting its environmental inspection.

**4.4.2** Notwithstanding the foregoing prohibition on disclosure of the Information, Buyer may disclose the Information on a need to know basis to officers, lenders, directors, prospective tenants, employees, agents and affiliates of Buyer for the purpose of evaluating the transaction described in this Agreement; provided Buyer shall inform such parties of the confidential nature of the Information.

**4.4.3** If this Agreement is terminated for any reason, Buyer shall immediately deliver to Seller any and all documents, plans and other items furnished to Buyer or any reports or analyses created or obtained by Buyer or the Inspector, except for such information that Buyer deems is uniquely sensitive or proprietary, such as internal analyses, internal studies, budgets, pro formas and marketing information Buyer has ordered from its marketing consultant. All studies, data, reports, analyses, writings and communications, including any environmental studies or reports, shall be generated by the Inspector for the use of Buyer's and Seller's attorneys, and, to the fullest extent permitted by law, shall be the work product of both Buyer's and Seller's respective attorneys and shall constitute confidential, attorney-client communications and each Party shall use its best efforts to ensure that such confidence and privilege is maintained.

**4.4.4** For purposes of this Agreement, "**Hazardous Materials**" means any substance or material which is defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", "extremely hazardous waste", "acutely hazardous wastes", "restricted hazardous waste", "toxic substances", or "known to cause cancer or reproductive toxicity" (or words of similar import), petroleum products (including crude oil or any fraction thereof) or any other chemical, substance or material which is prohibited, limited or regulated under any federal, state or local law, ordinance, regulation, order, permit, license, decree, common law or treaty now or hereafter in force regulating, relating to or imposing liability or standards concerning materials or substances known or suspected to be toxic or hazardous to health or safety, the environment or natural resources.

**4.4.5** To the extent permitted by law, from and after the Closing, Buyer expressly assumes the risk that any Hazardous Materials are or hereafter may be located on, under or in the area of the Subject Property, including, but not limited to, any Hazardous Materials that may be discovered in connection with Buyer's inspection of the Subject Property, and Buyer hereby releases and discharges the Indemnitees from and against any and all judgments, claims, expenses (including attorneys' and other consultants' reasonable fees and costs) causes of action, damages, liabilities, including, without limitation: (i) all foreseeable and all unforeseeable consequential damages directly or indirectly arising out of the presence, use, generation, storage, disposal, release or threatened release of Hazardous Materials on, under or in the area of the Subject Property; and (ii) the cost of any reasonably necessary investigation, repair, cleanup, remediation or detoxification of the Subject Property and other affected property

and the preparation of any corrective action, closure or other required plans or reports, to the full extent that such actions are alleged to be attributable, directly or indirectly, to the presence or use, generation, storage, release, threatened release or disposal of Hazardous Materials by any person related to or involving the Subject Property.

**4.5 Satisfaction of Conditions.** On or before the last day of the Contingency Period (“**Approval Deadline**”), Buyer shall be satisfied, in Buyer’s sole discretion, with the condition of the Subject Property and the results of its physical inspection and environmental investigation, and shall have satisfied (or waived) the conditions set forth in Section 4.2.1(i), Section 4.2.1(ii) and/or Section 4.2.1(iii). If Buyer determines, in its sole discretion, that the conditions set forth in such Sections are not (or can not be) satisfied, or that as a result of its Inspection, the Subject Property is not satisfactory for any reason, then Buyer shall so notify Seller in writing on or before the Approval Deadline. Failure to deliver such notice by the Approval Deadline shall be deemed Buyer’s approval of its physical inspection and environmental investigation and the satisfaction (and/or waiver) of the conditions set forth herein, and Buyer shall be conclusively deemed to have waived this condition and its right to terminate this Agreement pursuant to this Section. If Buyer has given such notice to Seller on or before the Approval Deadline, then Buyer shall be entitled to a return of the Earnest Money (and any interest earned thereon) and this Agreement shall thereupon terminate and the Parties shall have no further rights, obligations or liability hereunder, except as may be otherwise expressly provided herein.

**4.6 Seller’s Deliveries.** Within fifteen (15) days of the full execution and delivery of this Agreement, Seller shall deliver to Buyer copies of all title reports and policies, surveys, environmental reports, soils tests, maps and plats (if any) located in Seller’s files for this location (which are kept at Seller’s corporate headquarters in Boise, Idaho). Buyer acknowledges that Seller will deliver such materials to Buyer as a courtesy only, without representation or warranty of any kind, and Buyer also acknowledges that Buyer shall not be entitled to rely on any such materials, and that if Buyer does so, it is at Buyer’s own risk. Any new survey shall be at Buyer’s sole option and expense.

**4.7 No Warranty by Seller; Buyer’s Expenditures.** Seller does not guaranty, represent or warrant that any of the conditions set forth in this Section 4 can be or shall be satisfied. Seller shall incur no liability or expense in connection with Buyer’s ability or inability to satisfy any of such conditions, nor shall Seller be obligated to take any action, including, but not limited to, the elimination of any defect of title or the remedying of any condition of the Subject Property. Buyer agrees that any expenditure, commitment or other action taken by Buyer pursuant to this Agreement, or otherwise in contemplation of Closing, is taken by Buyer at its own risk, and that no such expenditure, commitment or action shall obligate Seller to incur any liability to Buyer or to any third party, and Buyer hereby indemnifies Seller against any such liability.

## **5. TITLE.**

**5.1 Deed; Deed Restriction.** At Closing, Seller shall convey fee simple title to the Subject Property to Buyer, or Buyer’s nominee, by special warranty deed (“**Deed**”), subject to the Deed Exceptions and the following deed restriction (“**Deed Restriction**”):



“The Property (or any part thereof) hereby conveyed shall not be used or occupied: (i) as a supermarket, which shall be defined as any store or department containing more than one thousand (1,000) square feet of floor area, including aisle space and storage primarily devoted to the retail sale of food for off-premises consumption or as a retail drug store or for the sale or offer for sale of any pharmaceutical products requiring dispensation through a pharmacy or the services of a registered or licensed pharmacist, or any combination thereof; or (ii) for the sale of alcoholic beverages for off-premises consumption. In addition, the Property (or any part thereof) hereby conveyed shall not be used or occupied for the sale of any combination of food items sufficient to be commonly known as a convenience food store or department. A “convenience store” means as a self-contained area or building primarily devoted to the sale of any or all of the following items: food, beverages, grocery items, gasoline, motor fuel and/or other non-packaged petroleum products, tobacco and/or car-washes, as they may be operated from time to time. By way of example only, stores such as “7-Eleven” and “Circle K” are considered to be “convenience stores” under the foregoing definition.

The restriction set forth above commences on the date of this conveyance and shall remain in effect for a period of ten (10) years from and after the date of this conveyance. Notwithstanding the foregoing, the restriction set forth above shall expire if, prior to the expiration of such ten (10) year period: (i) the benefitted property described below is not owned or leased by Grantor or any of its affiliates, successors and assigns; and (ii) said benefitted property is not used for any use described in the immediately preceding paragraph for a period of twelve (12) consecutive months after the date Grantor or any of its affiliates, successors or assigns, no longer owns or leases said benefitted property.

This deed restriction shall be a burden on the Property hereby conveyed as the servient estate, shall run with the land, and shall be for the benefit of:

- (A) Grantor and its successors, assigns and affiliates;
- (B) the property located at 114 & 124 Willow Avenue, Wheaton, Illinois (ABS #3214/#5564) and legally described as follows:

Block 5 (except the North 157 feet and except the West 204 feet thereof) of Warren L. Wheaton’s Addition to the Town of Wheaton, a Subdivision in the East half of the Southwest Quarter of Section 16, Township 39 North, Range 10, East of the Third Principal Meridian, according to the Plat thereof recorded on December 3, 1857, as Document 11976;

ALSO:

That part of the North 157 feet of Block 5 lying East of the East line of Lot 4 and said East line extended South of Warren L. Wheaton’s Addition to Wheaton, in the East half of the Southwest Quarter of Section 16, Township 39 North, Range 10, East of the Third Principal Meridian;

ALSO:

The East 50 feet of the West 204 feet (except the North 157 feet thereof) of Block 5 of the Plat of Warren L. Wheaton's Addition to the Town of Wheaton, Du Page County, Illinois; according to the recorded plat thereof, in Du Page County, Illinois.

For purposes hereof, "**affiliates**" means: (a) a branch, division, parent or subsidiary of Grantor, its or their successors or assigns; or (b) any company in which Grantor, a branch, division, parent or subsidiary of Grantor, its or their successors or assigns, own (directly or indirectly) five percent (5%) or more of the voting stock or interest or which is a company that owns (directly or indirectly) five percent (5%) or more of the voting stock or interest of Grantor, a branch, division, parent or subsidiary of Grantor, its or their successors or assigns. If, in any judicial proceeding, a court shall hold that the duration or scope of the restrictions stated above are unreasonable under the circumstances then existing, the parties, and their respective successors, assigns and affiliates, agree that the maximum allowable duration or scope reasonable under the circumstances shall be substituted for the duration or scope stated in this restriction."

**5.2 Deed Exceptions.** "**Deed Exceptions**" means: (i) all matters of record; (ii) private, public and utility easements; (iii) roads and highways, if any; (iv) real estate taxes and special taxes or assessments, or any installments of any special taxes or assessments, not due and payable on or before Closing; (v) rights-of-way; (vi) drainage ditches, feeders, laterals, drain tile, pipes or other conduit; (vii) zoning laws and ordinances; (viii) all matters (including, but not limited to, encroachments) which would be disclosed by an accurate survey and/or physical inspection of the Subject Property; and (ix) all acts and/or omissions of Buyer and those acting by, through or under Buyer.

**6. ESCROW HOLDER.** Promptly following the execution of this Agreement, the Parties shall open an escrow with First American Title Insurance Company (or its agent), or such other title company as Seller may designate ("**Escrow Holder**"). Escrow Holder shall conduct the Closing pursuant to this Agreement and the escrow instructions of the Parties.

**7. CLOSING; RELATED DOCUMENTS.** The Closing of the transaction contemplated by this Agreement ("**Closing**"), shall take place at the office of the Escrow Holder within thirty (30) days after the expiration of the Contingency Period, on such date as the Parties mutually agree upon ("**Closing Date**").

**7.1 Deposits in Escrow.**

**7.1.1** Seller shall deposit, or cause to be deposited, in escrow with Escrow Holder, on or prior to the Closing Date: (i) a duly executed and acknowledged Deed; (ii) Seller's closing statement; (iii) a certificate of non-foreign status in accordance with Section 1445 of the Internal Revenue Code ("**Code**"); and (iv) any other documents reasonably required by Escrow Holder (subject to the review and approval of Seller's management) to: (1) close the transactions contemplated by this Agreement; and (2) deliver the "Title Policy" (defined later) to Buyer in the form required hereunder.

**7.1.2** Buyer shall deposit, or cause to be deposited, in escrow on or prior to the Closing Date: (i) immediately available funds equal to the Purchase Price plus or minus any costs, prorations or other amounts that Buyer shall be responsible to pay pursuant to the terms hereof; and (ii) any other documents reasonably required by Escrow Holder (subject to the review and approval of Buyer) to: (1) close the transactions contemplated by this Agreement; and (2) deliver the Title Policy to Buyer in the form required hereunder.

**7.2** **Conditions.** The following are conditions to the Parties' respective obligations to close:

**7.2.1** Buyer shall be satisfied of the following: (i) Seller shall have performed and complied with all agreements, covenants and conditions required by this Agreement to be performed or complied with by Seller prior to or at the time of Closing; and (ii) Escrow Holder shall be unconditionally committed to issue the ALTA Form 1992 Owner's Title Insurance Policy ("**Title Policy**"), in the amount of the Purchase Price, insuring fee title to the Subject Property vested in Buyer or Buyer's nominee, subject only to the Permitted Exceptions, and any endorsements or additional coverages (e.g., extended coverage) requested by Buyer and which Escrow Holder is willing to issue.

**7.2.2** Seller shall be satisfied of the following: (i) Buyer shall have performed and complied with all agreements, covenants and conditions required by this Agreement to be performed or complied with by Buyer prior to or at the Closing Date; and (ii) Buyer shall have delivered into escrow with Escrow Holder, the Purchase Price as required by Section 7.1.2.

**7.3** **Closing.** On the Closing Date, Escrow Holder shall:

**7.3.1** Record the Deed.

**7.3.2** Deliver to Seller: (i) the Purchase Price, less any prorations or other amounts that Seller may be responsible to pay pursuant to the terms hereof; (ii) the appropriate escrow closing statement; and (iii) copies of any other documents delivered to Escrow Holder in connection with the transaction contemplated by this Agreement.

**7.3.3** Deliver to Buyer: (i) the Title Policy in the amount of the Purchase Price, insuring fee simple title to the Subject Property to be vested in Buyer or Buyer's nominee, subject only to the Permitted Exceptions; (ii) the original recorded Deed; and (iii) fully executed originals of any other documents delivered to Escrow Holder in connection with the transaction contemplated by this Agreement.

**7.4** **Apportionment of Taxes, Closing Costs, Etc..**

**7.4.1** Real estate taxes shall be prorated at Closing based on one hundred percent (100%) of the latest real estate tax bill. All prorations shall be final at closing (i.e., no future adjustments shall be made with respect to real estate taxes when the actual tax bills are available). From and after the Closing, Buyer agrees, and Seller agrees to cooperate with Buyer, to take all actions reasonably necessary to notify all applicable federal, state and local

governmental authorities of the change of ownership and address to which all real estate tax statements and related information with respect to the Subject Property should be mailed to insure Buyer's receipt thereof.

**7.4.2** Seller shall pay the following Closing expenses: (i) the cost of the standard coverage portion of the Title Policy premium (excluding the cost of extended coverage or any endorsements or additional coverages); (ii) one-half (½) of Escrow Holder's closing service fees; and (iii) all State and County transfer taxes or fees, stamp taxes, excise taxes or sales taxes in connection with the transaction contemplated by this Agreement. The fees and expenses of Seller's attorneys, accountants, engineers, consultants and designated representatives shall be borne by Seller.

**7.4.3** Buyer shall pay the following Closing expenses: (i) the cost of recording the Deed and any other conveyance documents; (ii) the cost of all title insurance premiums for any endorsements or additional coverages requested by Buyer and which Escrow Holder is willing to issue, including the extended coverage portion of the Title Policy premium, if any; (iii) one-half (½) of Escrow Holder's closing service fees; and (iv) all City/Village/municipal transfer taxes or fees, stamp taxes, excise taxes or sales taxes in connection with the transaction contemplated by this Agreement. The fees and expenses of Buyer's attorneys, accountants, engineers, consultants and designated representatives shall be borne by Buyer.

**8. COMMISSIONS.** Each Party represents that it has not entered into any contracts with any brokers or finders nor has either Party obligated itself to pay any real estate commissions or finders' fees on account of the execution of this Agreement or the close of the transaction contemplated hereby. Based on such representations: (i) Seller hereby indemnifies, defends and holds Buyer harmless from any claims, damages, expenses, liabilities, liens or judgments (including costs, expenses and attorneys' fees in defending the same) which arise on account of any claim made for commissions or finders' fees with respect to the transaction contemplated hereby due to the breach of any of the representations and warranties made by Seller; and (ii) Buyer hereby indemnifies, defends and holds the Indemnitees harmless from any claims, damages, expenses, liabilities, liens or judgments (including costs, expenses and attorneys' fees in defending the same) which arise on account of any claim made for commissions or finders' fees with respect to the transaction contemplated hereby due to the breach of any of the representations and warranties made by Buyer.

**9. CONDEMNATION.** If, during the term of this Agreement and prior to Closing, any entity having the power of condemnation initiates proceedings to acquire by condemnation any portion of or interest in the Subject Property (a "**Taking**"), which Taking materially and adversely affects Buyer's proposed use of the Subject Property, then Buyer shall have the right to terminate this Agreement by notice ("**Taking Notice**"), to Seller given prior to the earlier of: (a) thirty (30) days following the date notice of such proceeding is given to Seller by the entity initiating such proceeding; or (b) the Closing Date; and, in the event of a termination of this Agreement pursuant to this Section, Buyer shall be entitled to the return of the Earnest Money (and any interest earned thereon), less all title and escrow cancellation fees, if any. If either: (i) a Taking occurs and no Taking Notice is given prior to the applicable date; or (ii) the Taking is not of a nature as to create a right in Buyer to terminate this Agreement, this Agreement shall not terminate nor shall the Purchase Price be reduced, but such proceeding and any condemnation

relating thereto shall constitute a Permitted Exception and Seller shall assign to Buyer at Closing any and all rights Seller may have in such proceeding with respect to the Subject Property and any condemnation award relating thereto.

**10. NOTICES.** All notices, requests, demands, and other communications hereunder shall be in writing and shall be given by: (i) established express delivery service which maintains delivery records; (ii) hand delivery; or (iii) first-class mail, postage prepaid, to the Parties at the following addresses, or at such other address as the Parties may designate by written notice in the above manner:

To Seller: Jetco Properties, Inc.  
c/o Albertson's, Inc.  
P.O. Box 20, Boise, Idaho, 83726 (*mailing address*)  
250 Parkcenter Blvd., Boise, Idaho 83706 (*street address*)  
Attn: Legal Dept. (#3214/#5564)  
Fax No.: (208) 395-6575

With copies to: Jetco Properties, Inc.  
c/o Albertson's, Inc.  
1955 West North Avenue  
Melrose Park, Illinois 60160-1181  
Attn: Ms. Susan Mertz (#3214/#5564)  
Fax No.: (708) 492-3039

And to: Ward Miller & Geyer, LLC  
165 South Main Street, Second Floor  
Salt Lake City, Utah 84111  
Attn: Nicholas W. Cutler, Esq.  
Fax No.: (801) 521-3051

To Buyer: City of Wheaton  
303 West Wesley Street  
Wheaton, Illinois 60189-0727  
Attn: Donald B. Rose, City Manager  
Phone No.: (630) 260-2000  
Fax No.: (630) 260-2017

With a copy to: Gorski & Good  
211 South Wheaton, Suite 305  
Wheaton, Illinois 60187  
Attn: Robin Jones, Esq.  
Phone No.: (630) 665-7500  
Fax No.: (630) 665-8670

Communications may also be given by fax, provided the communication is concurrently given by one of the above methods. Notices are effective upon receipt, or upon attempted delivery if delivery is refused or if delivery is impossible because of the recipient's failure to provide a reasonable means for accomplishing delivery.

11. **ATTORNEYS' FEES.** If either Party brings or commences a legal proceeding to enforce any of the terms of this Agreement, the prevailing Party in such action shall have the right to recover reasonable attorneys' fees and costs from the other Party, to be fixed by the court in such action. The term "legal proceedings" as used above shall include appeals from a lower court judgment as well as proceedings in the Federal Bankruptcy Court, whether or not they are adversary proceedings or contested matters. The term "prevailing Party" as used in the context of proceedings in any court other than the Federal Bankruptcy Court shall mean the Party that prevails in obtaining a final, non-appealable remedy or relief which most nearly reflects the remedy or relief which such Party sought.

12. **TAX-FREE EXCHANGE.** Seller or Buyer may each elect to have the sale of the Subject Property be effected as a part of a tax-free exchange under Section 1031 of the Code; provided, the exchange does not result in a delay or postponement of the Closing. If the Subject Property is to be a part of a tax-free exchange, the party requesting the tax-free exchange ("**Requesting Party**"), shall notify the other party ("**Nonrequesting Party**"), of such fact at least fifteen (15) days prior to Closing. In the event any such exchange should fail to occur for whatever reason, the sale of the Subject Property shall nonetheless be consummated. In connection therewith, the Nonrequesting Party agrees to execute such documents as are reasonably necessary or appropriate and to otherwise cooperate with the Requesting Party to effectuate such exchange; provided, the Nonrequesting Party and its representatives shall have a reasonable opportunity to review such documents prior to Closing. The Requesting Party hereby indemnifies and holds the Nonrequesting Party free and harmless from any liability (including, but not limited to, the tax ramification to the Requesting Party of such tax-free exchange) arising by reason of performing the acts required hereby to effectuate such exchange, except insofar as any such liability is attributable to the failure of the Nonrequesting Party to perform as required hereunder. The Nonrequesting Party shall not take title to or otherwise assume any liability with respect to the property to be exchanged with the Subject Property.

13. **SURVIVAL.** The indemnity agreements contained in Sections 4, 8 and 12 shall survive any expiration or termination of this Agreement and shall not merge into the Deed.

14. **MISCELLANEOUS.**

14.1 **Binding Terms.** The terms, covenants and conditions herein contained shall be binding upon and inure to the benefit of the heirs, successors, transferees and assigns of the Parties.

14.2 **No Assignment.** Neither Party shall assign this Agreement or any rights hereunder to anyone except with the prior written consent of the other Party, such consent not to be unreasonably withheld; provided: (i) Seller may assign this Agreement or its rights hereunder to any entity which is wholly-owned or ultimately owned (i.e., through various subsidiaries) by Albertson's, Inc., so long as such assignee is also the owner of the Subject

Property; and (ii) either Party may assign this Agreement or its rights hereunder to any third party for the purpose of effectuating a tax-free exchange; provided, in no event shall any assignment relieve the assignor from any obligation or liability hereunder.

**14.3 Entire Agreement.** This Agreement constitutes the entire Agreement between the Parties with respect to the subject matter hereof, incorporates all prior agreements, and may only be modified by a subsequent writing duly executed by the Parties.

**14.4 Time of the Essence.** Time is expressly made of the essence of each and every provision of this Agreement.

**14.5 Interpretation.** This Agreement shall be interpreted and construed only by the contents hereof, and there shall be no presumption or standard of construction in favor of or against either Party.

**14.6 Governing Law.** This Agreement shall be construed and enforced in accordance with, and governed by, the laws of the State in which the Subject Property is located.

**14.7 Captions.** The captions in this Agreement are for convenience only and do not constitute a part of the provisions hereof.

**14.8 Applicability.** If any term or provision of this Agreement or the application of it to any person, entity or circumstance shall to any extent be invalid and unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.

**14.9 Authority.** The individuals executing this Agreement represent and warrant that they have the power and authority to do so, and to bind the entities for which they are executing.

**14.10 Numbering of Days.** If the last day of any time period stated herein shall fall on a Saturday, Sunday or federal legal holiday, then such time period shall be extended to the next succeeding day which is not a Saturday, Sunday or a federal legal holiday.

**14.11 Seller's Default.** If Seller defaults in the performance of its obligations under this Agreement, then Buyer shall be entitled to either: (i) terminate this Agreement, and immediately receive the Earnest Money (and any interest earned thereon); or (ii) sue for: (a) actual, direct damages, not to exceed the amount of the Earnest Money (to the extent deposited with Escrow Holder); or (b) specific performance. In no event shall Seller be liable to Buyer for consequential damages and/or lost profits.

**14.12 Buyer's Default.** If Buyer defaults in the performance of its obligations under this Agreement, then Seller's sole remedy shall be its right to terminate this Agreement and immediately receive the Earnest Money (and any interest earned thereon).

This Agreement has been executed as of the date first written above.

CITY OF WHEATON,  
an Illinois municipal corporation

By: 

Name: JAMES CARL

Title: MAYOR

**“Buyer”**

JETCO PROPERTIES, INC.,  
a Delaware corporation

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

Name: William H. Arnold

Title: Vice President

**“Seller”**



**EXHIBIT "A"**

**Depiction of Subject Property**

(to be attached)

## **EXHIBIT "B"**

### Legal Description of Subject Property

Lots 6, 7, 8 and 9 in Block 4 in Warren L. Wheaton's Addition to Wheaton in the East half of the Southwest 1/4 of Section 16, Township 39 North, Range 10, East of the Third Principal Meridian, EXCEPTING THAT PART THEREOF described as follows: Beginning at the Southwest corner of Lot 6 in Block 4 and running thence East along the North line of Willow Avenue 88.0 feet; thence North parallel to the East line of Main Street 139.03 feet to an iron pipe in the North line of Lot 7 in said Block 4; thence Westerly along the North line of said Lots 6 and 7 and the South line of alley 88.3 feet to the Northwest corner of said Lot 6; thence South along the East line of Main Street 132.65 feet to the Place of Beginning, in the City of Wheaton, Du Page County, Illinois.

PIN        05-16-316-011

**PURCHASE AND SALE AGREEMENT**

**between**

**Jetco Properties, Inc.,  
a Delaware corporation**

**as Seller**

**and**

**City of Wheaton,  
an Illinois municipal corporation**

**as Buyer**

**ABS #3214/#5564 - 114 & 124 Willow Avenue  
Wheaton, Illinois**

**Date: \_\_\_\_\_, 2006**

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