

ORDINANCE NO. F-0460

AN ORDINANCE AUTHORIZING THE PURCHASE OF CERTAIN
PROPERTY FOR PUBLIC PURPOSES BY THE CITY OF WHEATON, DUPAGE
COUNTY, ILLINOIS
(315 WEST WESLEY STREET)

WHEREAS, Paul Smedinghoff (the "Seller") is the owner of certain real property located at 315 West Wesley Street, DuPage County, Wheaton, Illinois, and legally described on Exhibit "A" attached hereto and incorporated herein, with approximate lot dimensions of 99 feet by 244 feet ("Lot"), together with the building located on the Lot and all improvements thereon and appurtenances thereto (collectively, the "Property"); and

WHEREAS, the Seller desires to sell to the City of Wheaton, DuPage County, Illinois, an Illinois municipal corporation (the "Purchaser"), and the Purchaser desires to buy from the Seller, the Property, subject to and in accordance with the terms and provisions set forth in the Real Estate Purchase Agreement (the "Agreement") attached hereto and incorporated herein as Exhibit "B".

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

SECTION 1: That the Mayor and City Clerk be and the same are hereby authorized to executed the Agreement between the City and the Seller, in substantially the form attached hereto as "Exhibit B" and, by this reference, incorporated herein.

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: That this Ordinance shall be in full force and effect from and after its passage, approval, and publication in pamphlet form in the manner prescribed by law.

PASSED and APPROVED by the Mayor and City Council of the City of Wheaton, DuPage County, Illinois, this 1st day of May, 2000.

ATTEST:

Evelyn M. Amelazir
City Clerk

Mayor

[Signature]

Ayes:

Roll Call Vote:

Councilwoman Davenport

Councilman Eckhoff

Councilman Gresk

Mayor Carr

Councilman Johnson

Councilwoman Johnson

Councilman Mork

Nays:

None

Absent:

None

Motion Carried Unanimously

Passed: May 1, 2000

Published: May 2, 2000

EXHIBIT A

Legal Description of the Property

Lot 7 (except the North 102 feet thereof) In "Moffatt's Block" in the County Clerk's Assessment Division of all unsubdivided lands in the South half and the South half of the North half of Section 16, Township 39 North, range 10, East of the Third Principal Meridian, according to the plat thereof recorded September 29, 1890 as document number 43590, in DuPage County, Illinois.

Permanent Index Number: 05-16-131-012-0000

Commonly known as: 315 Wesley
Wheaton, Illinois 60187

REAL ESTATE PURCHASE AGREEMENT

THIS REAL ESTATE PURCHASE AGREEMENT (this "**Agreement**") is made and entered into as of the ___ day of May, 2000, by and between PAUL SMEDINGHOFF (the "**Seller**"), and CITY OF WHEATON ILLINOIS, an Illinois municipal corporation (the "**Purchaser**").

RECITALS:

WHEREAS, Seller is the owner of certain real property located at 315 W. Wesley Street in the City of Wheaton, County of DuPage, State of Illinois and legally described on **Exhibit A** attached hereto and made a part hereof, with approximate lot dimensions of 99 feet by 244 feet ("Lot"), together with the building located on the Lot and all improvements thereon and appurtenances thereto (collectively, the "**Property**"); and

WHEREAS, Seller desires to sell to Purchaser, and Purchaser desires to buy from Seller, the Property, subject to and in accordance with the terms and provisions hereinafter set forth;

NOW, THEREFORE, in consideration of the foregoing Recitals (which are incorporated herein by this reference), the mutual covenants and conditions hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser hereby agree as follows:

ARTICLE IDefinitions

1.1 **Defined Terms.** Various terms are defined within the text of this Agreement. Wherever such terms are used in this Agreement, they shall have the meanings given at their respective places of definition. In addition, as used in this Agreement the following terms shall have the meanings indicated:

"**Applicable Law**" shall mean and include the following (including, without limitation, any Environmental Law), as the same may be in effect from time to time:

- (i) any and all judicial decisions, statutes, rulings, rules, regulations, permits, or ordinances of any governmental or quasi-governmental authority; and
- (ii) any and all covenants, conditions, and restrictions contained in any deed or other form of conveyance or in any other instrument of any nature that relate in any way or are applicable to the Property or the ownership, use, or occupancy thereof.

"**Business Day**" shall mean any day other than a Saturday, Sunday, or legal holiday on

304

which national banks are authorized by federal law to close.

"**Code**" shall mean the Internal Revenue Code of 1986, as amended, and the regulations issued thereunder.

"**Environmental Law**" shall mean any federal, state, or local law, statute, ordinance, rule, or regulation pertaining to health, industrial hygiene, or the environmental conditions on or under the Property, or relating to releases, discharges, emissions, or disposals to air, water, soil, or groundwater, or relating to the withdrawal or use of groundwater, or relating to the use, handling, or disposal of polychlorinated biphenyls, asbestos, or urea formaldehyde, or relating to the treatment, disposal, storage, or management of Hazardous Materials or relating to the transportation, storage, disposal, or management, including, without limitation, the Comprehensive Environmental Response Compensation, and Liability Act of 1980, as amended, and the Resource Conservation and Recovery Act of 1976, as amended, and all rules, and regulations, published pursuant thereto or promulgated thereunder.

"**Escrow Agent**" shall mean Ticor Title Insurance Company.

"**Hazardous Material**" shall mean and include, without limitation:

- (i) those substances included within the definitions of "hazardous substances" and "hazardous waste" in any Environmental Law; and
- (ii) any material, waste, or substance which is or contains asbestos, polychlorinated biphenyls, petroleum and its derivative by-products, and other explosive or radioactive materials.

"**Permits**" shall mean all permits, licenses, and approvals necessary to construct, operate, and use the Property in accordance with Applicable Law, including zoning approvals and variances, building, curb, sewer, and other construction-related permits.

"**Title Insurer**" shall mean Ticor Title Insurance Company.

ARTICLE II

Agreement to Convey; Purchase Price; Earnest Money; Seller Financing

2.1 **Purchase and Sale.** Subject to the terms and conditions of this Agreement, Seller agrees to sell to Purchaser, and Purchaser agrees to buy from Seller, the Property.

2.2 **Purchase Price.** The purchase price for the Property (the "**Purchase Price**") shall be Eight Hundred Seventy Five Thousand Dollars (\$875,000.00) and payable by Purchaser to Seller as hereinafter provided.

2.3 **Earnest Money.** In order to secure the obligations of Purchaser hereunder, Purchaser shall deposit \$87,500.00 with Escrow Agent, within five (5) Business Days after the date hereof as earnest money (the "**Earnest Money**"). After the expiration of the Appraisal Contingency, as hereinafter defined, the Earnest Money shall be non-refundable (in the absence of a default by Seller hereunder), but the Earnest Money shall be credited against the Purchase Price at Closing.

2.4 **Payment.** At Closing, Purchaser shall pay to Seller the Purchase Price, plus or minus prorations and adjustments provided for herein, in immediately available funds, as follows:

ARTICLE III **Title and Survey**

3.1 **Title Commitment.** Seller shall cause to be delivered to Purchaser, within fifteen (15) days after the date hereof and at Seller's sole cost and expense, a commitment for an ALTA Owner's Policy of Title Insurance, issued by Title Insurer, covering the Property (the "**Commitment**"). Purchaser shall have ten (10) days after receipt of the Commitment to review all exceptions and matters shown therein. In the event that the Commitment shall show any exceptions to, or matters affecting, Seller's title to the Property, which are unacceptable to Purchaser, Purchaser may disapprove of any such exceptions (the "**Unpermitted Exceptions**"), by written notice to Seller given within such ten (10) day period. If Purchaser notifies Seller of any Unpermitted Exceptions which are not Monetary Liens (as hereinafter defined), or Seller is unable to otherwise cure the Unpermitted Exceptions to Purchaser's satisfaction within twenty (20) days after Purchaser's notice, then Purchaser, at its option, (i) may terminate this Agreement by written notice to Seller, in which event the Earnest Money shall be returned to Purchaser and neither party shall have any further rights, obligations or liabilities hereunder., or (ii) continue with this Agreement and accept title subject to the Unpermitted Exceptions. All the exceptions shown on the Commitment, to which Purchaser has not objected as provided herein (or if objected to, to which Purchaser thereafter waives its objection), shall be referred to collectively herein as the "**Permitted Exceptions.**"

3.2 **Survey.** Seller shall cause to be delivered to Purchaser, within fifteen (15) days after the date hereof and at Seller's sole cost and expense, a survey of the Property (the "**Survey**"), dated on or after the date hereof, certified to Purchaser, Title Insurer and any other party designated by Purchaser.

3.3 **Survey Defects.** If the Survey discloses any matters unacceptable to Purchaser, Purchaser shall so notify Seller within ten (10) days after Purchaser's receipt thereof. Within twenty (20) days after Purchaser's notice, Seller shall either have such matters corrected, and removed by the surveyor, or cause Title Insurer to commit to insure against loss or damage as a result of such matters. If Seller shall not so cure such matters within such twenty (20) day period, Purchaser, at its sole option, may (i) terminate this Agreement by written notice to Seller, in which event the Earnest Money shall be returned to Purchaser and neither party shall have any further rights, obligations, or liabilities hereunder, or (ii) continue with this Agreement and

240
306

accept title subject to such uncured matters.

3.4 **Owner's Policy.** Seller, at its sole cost and expense, shall cause Title Insurer to deliver to Purchaser at Closing an ALTA Owner's Policy of Title Insurance, in the amount of the Purchase Price, dated as of the Closing Date, insuring title to the Property in Purchaser subject only to the Permitted Exceptions, with full extended coverage over all general exceptions and containing (the "Owner's Policy").

ARTICLE IV

Representations, Warranties, and Covenants

4.1 **Seller's Representations, etc.** Seller hereby represents and warrants to, and covenants with, Purchaser (which representations, warranties and covenants are material and are being relied upon by Purchaser notwithstanding any independent inspection, investigation, or inquiry) as follows:

- (a) There are no leases in effect with respect to the Property.
- (b) Seller has received no written notice from any governmental authority, and has no knowledge, of any violation of Applicable Law which has not been heretofore corrected, or any special tax or assessment to be levied against the Property, or any change in the tax assessment of the Property.
- (c) Except as hereinafter set forth, there is no pending or, to Seller's best knowledge threatened, litigation, governmental investigation, or like proceeding before any court, tribunal, or other governmental or quasi-governmental agency respecting the Property or the operation thereof, or which will materially affect Seller's ability to perform its obligations hereunder or Purchaser's ability to use the Property for Purchaser's Intended Use (as hereinafter defined).
- (d) There are no pending or, to Seller's best knowledge threatened, condemnation or eminent domain proceedings against the Property or any part thereof.
- (e) To the best knowledge of Seller, the information to be furnished by Seller on which the compilation of prorations will be based shall be true, correct, and complete in all material respects.
- (f) No portion of the Property comprises part of a tax parcel which includes property other than the Property.
- (g) Seller's execution and delivery of, and performance under, this Agreement is pursuant to valid authority duly conferred upon Seller and the signatories hereto. To the best of Seller's knowledge, the consummation of the transactions contemplated hereby and the compliance by Seller with the terms of this Agreement do not and will not conflict with or result in a material breach of any of the terms or provisions of any agreement, arrangement, undertaking, accord, document, or instrument to which Seller is a party or by which Seller or the

Property is bound, or constitute a material violation of any Applicable Law to which Seller or the Property is bound or subject.

(h) To the best knowledge of Seller, there are no unrecorded easements or agreements which affect the Property.

(i) To the best knowledge of Seller, neither the Property nor the use, condition, maintenance, or operation thereof is in violation of any Permitted Exceptions.

(j) Seller is not a foreign person within the meaning of Sections 1445 and 7701 of the Code.

(k) Between the date hereof and the Closing Date:

(i) Seller will continue to maintain the Property in good and safe condition; and

(ii) Seller will not sell, transfer, convey, lease, or encumber, or cause or permit to be sold, transferred, conveyed, leased, or encumbered, the Property or any part thereof or interest therein, or alter or amend the zoning classification of the Property, or otherwise perform or permit any act or deed which shall diminish, encumber, or affect Seller's rights in and to the Property or prevent it from fully performing its obligations hereunder.

4.2 **Purchaser's Representations, etc.** Purchaser hereby represents and warrants to, and covenants with, Seller that Purchaser's execution and delivery of, and performance under, this Agreement is pursuant to valid authority duly conferred upon Purchaser and the signatory hereto. The consummation of the transactions contemplated hereby and the compliance by Purchaser with the terms of this Agreement do not and will not conflict with or result in a breach of any of the terms or provisions of any agreement, arrangement, understanding, accord, document, or instrument to which Purchaser is a party or by which Purchaser is bound, or constitute a violation of any Applicable Law to which Purchaser is bound or subject.

ARTICLE V

Closing; Contingencies

5.1 Appraisal Contingency.

(a) Purchaser shall have fifteen (15) days from the date hereof (the "**Appraisal Contingency**") to obtain an appraisal of the Property which is satisfactory to Purchaser ("**Appraisal**").

(b) Purchaser agrees to indemnify, defend, and hold harmless Seller from and against any and all losses, costs, claims, demands, suits, causes of actions, proceedings, and liabilities incurred by or asserted against Seller as a result of Purchaser's or Purchaser's agents entry on the Property pursuant to *Section 5.1(a)*.

200
308

5.2 **Closing Conditions.**

In the event Purchaser provides written notice to Seller prior to the expiration of the Appraisal Contingency that Purchaser is not satisfied with Appraisal, then this Agreement shall be terminated and in which event the Earnest Money shall be returned to Purchaser and neither party shall have any further rights, obligations, or liabilities hereunder. In the event the Purchaser fails to provide notice to Seller prior to the expiration of the Appraisal Contingency that Purchaser is not satisfied with Appraisal, then this Agreement shall remain in full force and effect and Purchaser will be deemed to have waived the Appraisal Contingency.

5.3 **Closing.** The closing of the transaction contemplated hereby (the "**Closing**") shall occur at the offices of the Escrow Agent at 10:00 a.m. on May ____, 2000 (the "**Closing Date**"). Upon the request of either party to the other, on or before the Closing Date Seller and Purchaser shall establish a "New York-style" deed and money escrow (the "**Escrow**") with the Escrow Agent pursuant to written escrow instructions prepared by or at the direction of Seller and Purchaser; provided, that Purchaser shall not be required to deposit any monies into the Escrow prior to Closing. Counsel for Seller and Purchaser are hereby authorized to execute the escrow instructions, as well as any amendments thereto, on behalf of their respective clients.

5.4 **Documents to be Delivered to Purchaser at Closing.** At Closing, Seller shall deliver or cause to be delivered to Purchaser, through the Escrow or otherwise, the following:

- (a) a warranty deed conveying good and marketable title to the Property to Purchaser, subject only to the Permitted Exceptions;
- (b) the Owner's Policy;
- (c) Bill of Sale;
- (d) an affidavit stating Seller's U.S. taxpayer identification number and that Seller is a "United States person", as defined by Sections 1445(f)(3) and 7701(b) of the Code;
- (e) ALTA statement;
- (f) such other seller's affidavits or undertakings acceptable to Title Insurer as it may require to issue the Owner's Policy;
- (g) fully executed counterparts of an agreed upon closing and proration statement (the "**Closing Statement**");
- (h) Gap Undertaking satisfactory to Title Insurer;
- (i) fully executed counterparts of the State of Illinois and the City of Wheaton real estate transfer tax declarations (the "**Tax Declarations**"); and

(j) such other documents and instruments as may be required by any other provision of this Agreement or as may be reasonably necessary to consummate the transactions contemplated hereby.

5.5 **Documents to be Delivered to Seller at Closing.** At Closing, Purchaser shall deliver or cause to be delivered to Seller, through the Escrow or otherwise, the following:

(a) the Purchase Price, plus or minus prorations and adjustments as provided in this Agreement;

(b) fully executed counterparts of the Closing Statement;

(c) fully executed counterparts of the Tax Declarations; and

(d) such other documents and instruments as may be required by any other provision of this Agreement or as may be reasonably necessary to consummate the transactions contemplated hereby.

5.6 **Prorations.** At Closing, Seller and Purchaser shall prorate general real estate taxes for the year of Closing and, if and as applicable, the prior year, to the extent not yet paid, or the subsequent year, to the extent paid, based on the most recently ascertainable taxes for the Property. Seller shall be responsible for all real estate taxes attributable to the Property up to the date of Closing, and all special assessments assessed against the Property prior to the date of Closing, whether payable in installments or otherwise, and Purchaser shall be responsible for all real estate taxes attributable to the Property from and after the date of Closing, and all special assessments assessed against the Property from and after the date of Closing. Purchaser hereby agrees to indemnify, defend, and hold harmless Seller from and against each obligation of Seller for which, but only to the extent that, credit therefor is given to Purchaser at Closing. In the event the Property is part of a larger parcel of land assessed for general real estate taxes and is not separately assessed, (i) the general real estate taxes will be equitably apportioned between Seller and Purchaser based on the relative square footage of the Property and the remainder of such larger parcel and the improved or unimproved condition of each, and (ii) Seller agrees to cooperate with Purchaser in arranging for the Property to be separately assessed.

5.7 **Expenses.** All fees for obtaining and recording releases of liens and encumbrances, Commitment charges, Owner's Policy premiums, real estate transfer taxes and one-half (1/2) of any Escrow or similar closing fee shall be paid by Seller. All fees for recording the deeds, and one-half (1/2) of any Escrow or similar closing fee shall be paid by Purchaser. Each party shall pay its own legal fees. All other costs, charges, and expenses shall be paid as provided in this Agreement or, in the absence of such provision, in accordance with Applicable Laws or local customary practice, as the case may be.

294
340

5.8 **IRPTA.** Seller shall comply with the provisions of the Illinois Responsible Property Transfer Act of 1988, as amended ("IRPTA"). Seller agrees to indemnify, defend and hold harmless Purchaser from and against the civil penalties contained in Sections 7(a) through 7(d) of IRPTA, and Purchaser shall be entitled to any other relief under Section 7(e) of IRPTA which may accrue to Purchaser as a result of Seller's failure to deliver an Environmental Disclosure Statement for Transfer of Real Property as and to the extent required by IRPTA.

ARTICLE VI

Defaults

6.1 **Notice and Cure.** No party shall be deemed to be in "Default" (herein so defined) hereunder unless such party fails to cure an alleged default within ten (10) days after receipt from the other party of written notice thereof; provided, however, that:

(a) if such alleged default is not susceptible of being cured within said ten (10) day period, such party shall not be deemed in Default hereunder so long as such party commences to cure the alleged default within said ten (10) day period and diligently prosecutes the same to completion; and

(b) no notice shall be required or cure period permitted in the event the alleged default is a failure to close the transaction contemplated hereby on the Closing Date.

6.2 **Default by Seller.** In the event of a Default by Seller hereunder, Purchaser shall be entitled, in addition to any and all other remedies to which Purchaser may be entitled at law or in equity, (i) to terminate this Agreement by written notice to Seller, in which event the Earnest Money and all Extension Payments then paid shall be returned to Purchaser and neither party shall have any further rights, obligations, or liabilities hereunder, or (ii) to enforce Seller's obligations hereunder by a suit for specific performance, in which event Purchaser shall be entitled to such injunctive relief as may be necessary to prevent Seller's disposition of the Property pending final judgment in such suit.

6.3 **Default by Purchaser.** In the event of a Default by Purchaser hereunder, Seller shall be entitled, as Seller's sole and exclusive remedy, to terminate this Agreement by written notice to Purchaser, in which event (a) if prior to the end of the Inspection Period, copies of Purchaser's Materials shall be delivered to Seller, or (b) if after the end of the Inspection Period and Purchaser has given Seller the notice provided for in *Section 5.1*, the Earnest Money and all Extension Payments then paid shall be paid to Seller as liquidated damages; thereafter, neither party shall have any further rights, obligations, or liabilities hereunder. The parties acknowledge and agree that the actual damages in such event are uncertain in amount and difficult to ascertain, and that said amount of liquidated damages was reasonably determined.

ARTICLE VII

Condemnation

7.1 **Condemnation.** If, prior to Closing, any condemnation proceedings are threatened or commenced against all or any part of the Property (a "**Condemnation**"), Seller shall so notify Purchaser in writing and Purchaser shall elect, by written notice to Seller within thirty (30) days after receipt of Seller's notice, to either:

(a) terminate this Agreement, in which event the Earnest Money and all Extension Payments then paid shall be returned to Purchaser and neither party shall have any further rights, obligations, or liabilities hereunder; or

(b) continue with this Agreement, in which case Purchaser shall be entitled to control all aspects of the Condemnation proceedings on behalf of Seller, and upon Closing Seller shall credit to Purchaser any Condemnation award paid to Seller in connection with such Condemnation, and/or assign to Purchaser all of Seller's right, title, and interest in, to, and under any Condemnation award to be paid to Seller in connection with such Condemnation;

provided, however, that if Purchaser fails to make an election within the aforesaid thirty (30) day period, Purchaser shall be deemed to have elected in accordance with the provisions of subsection (a) above.

ARTICLE VIII

General Provisions

8.1 **Intermediaries.** Seller represents and warrants to Purchaser, and Purchaser represents and warrants to Seller, that there is no broker, finder, or other intermediary of any kind with whom such party has dealt in connection with the transaction contemplated hereby, and each party agrees to indemnify, defend, and hold harmless the other with respect to such representation and warranty.

8.2 **Notices.** All notices or other communications required or permitted hereunder shall be in writing and shall be deemed received (a) upon receipt, however sent (which may include facsimile transmission), or (b) upon refusal, if sent by prepaid nationally recognized overnight courier service or locally recognized messenger service, or by postage paid U.S. Mail, registered or certified, return receipt requested, addressed as follows:

If to Seller:

Paul Smedinghoff
315 W. Wesley Street
Wheaton, Illinois 60187

290
302

with a copy to:

McBride Baker & Coles
500 W. Madison Street
Suite 4000
Chicago, Illinois 60661
Attn: Francis L. Keldermans
Facsimile: (312) 715-0839

If to Purchaser:

City of Wheaton Illinois
303 W. Wesley Street
Wheaton, Illinois 60189-0727
Attn: Donald B. Rose
City Manager
Facsimile: (630) 260-2017

with a copy to:

James Knippen
Walsh, Knippen, Knight & Diamond, Chartered
601 West Liberty Drive
Wheaton, Illinois 60187
Facsimile: (630) 462-1984

Either party may change its addresses for purposes of notice hereunder by giving written notice thereof as aforesaid.

8.3 **Entire Agreement.** This Agreement, including all exhibits attached hereto, constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof, and there are no other prior or contemporaneous written or oral agreements, undertakings, promises, warranties, or covenants with respect thereto not contained herein.

8.4 **Amendment.** This Agreement may be amended only by a written instrument executed by all of the parties hereto.

8.5 **Waivers.** No waiver of any condition or provision of this Agreement by any party shall be valid unless in writing signed by such party. No such waiver shall be deemed or construed as a waiver of any other or similar provision or of any future event, act, or default.

8.6 **Time Periods.** In the computation of any period of time provided for in this Agreement or by law, the day of the act or event from which such period of time runs shall be excluded, and the last day of such period shall be included, unless it is a Saturday, Sunday, or

legal holiday, in which case the period shall be deemed to run until the end of the next Business Day.

8.7 **Severability.** If any provision of this Agreement is deemed unenforceable in whole or part, such provision shall be limited to the extent necessary to render the same valid or shall be deemed excised from this Agreement and replaced by a valid provision as close in meaning and intent as the excised provision, as circumstances require; and this Agreement shall be construed as if said provision had been incorporated herein as so limited or as so replaced, as the case may be.

8.8 **Headings.** Headings of articles and sections herein are for convenience of reference only and shall not be construed as part of this Agreement.

8.9 **Assignment; Binding Effect.** Purchaser may assign this Agreement without the consent of Seller, provided that any such assignee shall assume in writing the obligations of Purchaser hereunder. Upon the written assignment by Purchaser and assumption by the assignee, Purchaser shall be relieved of all further obligations under this Agreement. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, and permitted assigns.

8.10 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

8.11 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original but all of which, taken together, shall constitute a single instrument.

8.12 **Litigation.** In the event any dispute arises hereunder, including but not limited to, with respect to the disposition of the Earnest Money, and litigation or arbitration proceedings are commenced, the prevailing party shall be entitled to recover from the other party all costs and expenses incurred in connection with such proceedings, including but not limited to attorneys' fees and costs.

8.13 **Construction of Agreement.** In no event shall this Agreement be construed more strongly against any one person solely because such person or its representative acted as draftsman hereof, it being acknowledged by the parties hereto that both have been represented by competent legal counsel, that this Agreement has been subject to substantial negotiation, and that all parties have contributed substantially to the preparation of this Agreement.

8.14 **Acceptance by Seller.** A counterpart of this Agreement, duly executed by Seller, shall be delivered to Purchaser on or before May __, 2000, or, at the option of Purchaser, this Agreement shall be null and void and the parties shall have no further rights or obligations hereunder.

[Signature Page Follows]

298
304

IN WITNESS WHEREOF, Seller and Purchaser have caused this Real Estate Purchase Agreement to be executed as of the date first written above.

SELLER:

Paul Smedinghoff

PURCHASER:

CITY OF WHEATON ILLINOIS, an Illinois
municipal corporation

By: _____

Name: _____

Title: _____

EXHIBIT A

Legal Description of the Property

Lot 7 (except the North 102 feet thereof) In "Moffatt's Block" in the County Clerk's Assessment Division of all unsubdivided lands in the South half and the South half of the North half of Section 16, Township 39 North, range 10, East of the Third Principal Meridian, according to the plat thereof recorded September 29, 1890 as document number 43590, in DuPage County, Illinois.

Permanent Index Number: 05-16-131-012-0000

Commonly known as: 315 Wesley
Wheaton, Illinois 60187