

Request for City Council Action

Date: August 11, 2015

Agenda Section: General Business No. 6	Originating Department: City Manager			
Item: Ordinance Authorizing the City Manager to Execute a Contract for the Sale/Donation of Land to Common Greens, Inc. for Property Located at 410 East Chestnut and 411 Birch Streets and to Authorize the Mayor to Execute a Quit Claim Deed for Conveyance of said Land No. 6.2	Approved:			
<p>Background:</p> <p>Sorrell Kunath, President of Common Greens, Inc., has requested the City donate the property located at 410 East Chestnut and 411 East Birch Streets to enable the creation of a large community garden complex.</p> <p>Common Greens recently purchased the two adjoining properties to the west on Birch Street from the Jackson County Tax Trustee for less than \$1,000 each. Staff has reviewed the surrounding parcels and determined the Fair Market Value of the City land to be approximately \$3,500.</p> <p>It is staff's opinion that given the proposed use of the property as a community garden, the price can be reduced. The Ordinance and the Contract for Sale of Land both contain two performance clauses which stipulate the property must be developed as a community garden within 6 months and should Common Greens dissolve or cease doing business within 10 years, the property reverts to the City of Carbondale.</p> <p>The Ordinance, Contract for Sale of Land and the Deed have been prepared conveying the land as a donation. If the Council desires to sell the property versus donating it, the Council should set that price during open discussion and the documents will be amended prior to signing.</p> <p>The Carbondale Revised Code allows the city to sell property for economic development purposes upon passage of an Ordinance by a 2/3 affirmative vote (five votes). A public hearing was held previously as part of this meeting's agenda and a notice was published in the <i>Southern Illinoisan</i> on August 4, 2015.</p> <p>Recommended Action:</p> <p>It is recommended that the City Council approve an ordinance authorizing the City Manager to execute a Contract for the sale/donation of land to Common Greens, Inc. for property located at 410 East Chestnut and 411 East Birch Streets and authorizing the Mayor to execute a Quit Claim Deed for the conveyance of said land.</p>				
Engineering Approval Obtained	Finance Approval Obtained	Legal Approval Obtained	Approval Obtained	Manager's Approval Obtained
Council Action: Motion by _____ 2nd by _____ to _____				

CITY OF CARBONDALE, ILLINOIS

ORDINANCE NO. 2015- ____

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT FOR THE SALE OF LAND AND THE MAYOR TO EXECUTE A DEED TO COMMON GREENS, INC., FOR PROPERTY LOCATED AT 410 EAST CHESTNUT STREET AND 411 EAST BIRCH STREET

ADOPTED BY THE CITY COUNCIL

OF THE CITY OF CARBONDALE, ILLINOIS

THE 11TH DAY OF AUGUST, 2015

Published in pamphlet form by authority of the City Council of the City of Carbondale, Jackson County, Illinois, this 11th day of August, 2015.

CERTIFICATE OF PUBLICATION

I, Jennifer R. Sorrell, the duly qualified City Clerk of the City of Carbondale, Illinois, and the official custodian of the records of said City, do hereby certify that this ordinance was published in pamphlet form by authority of the City Council on the 11th day of August, 2015.

Jennifer R. Sorrell, City Clerk

ORDINANCE NO. 2015-____

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT FOR THE SALE OF LAND AND THE MAYOR TO EXECUTE A DEED TO COMMON GREENS, INC., FOR PROPERTY LOCATED AT 410 EAST CHESTNUT STREET AND 411 EAST BIRCH STREET

WHEREAS, the City of Carbondale, Illinois, is a home rule unit of local government under the Illinois Constitution, 1970, Article VII, Section 6; and

WHEREAS, pursuant to Article VII, Section 6(a), of the Illinois Constitution, 1970, the City of Carbondale may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; and

WHEREAS, the City of Carbondale may sell or convey real estate when City-owned property is no longer necessary, appropriate, required for the use of, profitable to or for the best interests of the City, but instead would be of value to promote economic, industrial, commercial or residential development or redevelopment within the City, under Sections 1-13-8 C & E of the Carbondale Revised Code with a two-thirds (2/3) vote of the City Council members then holding office; and

WHEREAS, the City of Carbondale is an Illinois municipal corporation, hereinafter referred to as "Seller" and Common Greens, Inc., hereinafter referred to as "Buyer"; and

WHEREAS, the Buyer is interested in purchasing City-owned property; and

WHEREAS, the City of Carbondale has determined that said property is no longer necessary, appropriate or required for the use of City of Carbondale and therefore is in the City's best interest to convey such property to Common Greens, Inc.; and

WHEREAS, the City Council hereby believes that it is in the best interest of the City of Carbondale to convey the real estate described as parcel number 15-16-478-015

and more particularly described as the West 43 feet of Lot 3 of Frakes Subdivision, also known as Fakes Subdivision, in the City of Carbondale as shown by the recorded Plat thereof in Book 45 of Plats, at page 53, line 20, in the Recorder's Office of Jackson County, EXCEPT for the North 5 feet of that parcel of land, to be sold to Common Greens, Inc. for \$3,500.00, to Common Greens, Inc.; and

WHEREAS, the City Manager shall negotiate and enter into the Contract for Sale of Land and the City Clerk shall attest such Contract for the sale of the real estate for a purchase price of ONE AND 00/100 DOLLARS (\$1.00) and shall do all things necessary to effectuate said Contract; and

WHEREAS, the Mayor and City Clerk shall, upon completion of all terms of the said real estate sales contract, execute and attest a deed transferring the real estate to the Buyer.

WHEREAS, the City Manager has published in the Southern Illinoisan on August 4, 2015, the required notice for authorization of the execution of a deed of transfer for the said real estate, pursuant to Sections 1-13-8 C & E of the Carbondale Revised Code; and

WHEREAS, the City held a public hearing as required by City Ordinance, concerning the proposed sale of real estate.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CARBONDALE AS FOLLOWS:

SECTION 1. That the City Council deems it in the best interest of the citizens of Carbondale to sell the real property to Common Greens, Inc. for the purchase price of ONE AND 00/100 DOLLARS (\$1.00).

SECTION 2. That the City Manager shall negotiate and enter into a Contract for Sale of Land which will provide for the conveyance of the real estate to Common Greens, Inc. for a purchase price of ONE AND 00/100 DOLLARS (\$1.00).

SECTION 3. That the Mayor and the City Clerk of the City of Carbondale be and are hereby authorized to sign and attest a Quitclaim Deed to Common Greens, Inc. for the sale of the real property described as parcel number 15-16-478-015, and more particularly described as the West 43 feet of Lot 3 of Frakes Subdivision, also known as Fakes Subdivision, in the City of Carbondale as shown by the recorded Plat thereof in Book 45 of Plats, at page 53, line 20, in the Recorder's Office of Jackson County, EXCEPT for the North 5 feet of that parcel of land, to be sold to Common Greens, Inc. for \$3,500.00.

SECTION 4. That the Mayor and City Manager of the City of Carbondale are hereby authorized to and shall take any and all reasonable, necessary and proper action to carry out the intent and purposes of this Ordinance.

SECTION 5. That all ordinances and parts thereof in conflict herewith are expressly repealed and are of no other force and effect.

SECTION 6. That repeal of any ordinance by this Ordinance shall not affect any rights accrued or liability incurred under said repealed ordinance to the effective date hereof. The provisions of this Ordinance insofar as they are the same or substantially the same as those of any prior ordinance, shall be construed as a continuation of said prior ordinances.

SECTION 7. That it is the intention of the City Council of the City of Carbondale that this Ordinance and every provision thereof shall be considered separable, and the invalidity of any section, clause, or provision of this Ordinance shall not affect the validity of any other portion of this Ordinance.

SECTION 8. That the City Council of the City of Carbondale finds that the subject matter of this Ordinance pertains to the government and affairs of the City of Carbondale and is passed pursuant to authorities granted it by State statutes and the Home Rule powers of the City of Carbondale pursuant to the provisions of Article VII, Section 6(a) of the Illinois Constitution.

SECTION 9. That this Ordinance shall take effect upon its passage, approval, recording, and publication in pamphlet form in accordance with law.

APPROVED: _____
John M. Henry, Mayor

ATTEST: _____
Jennifer R. Sorrell, City Clerk

APPROVED AS TO LEGALITY AND FORM:

P. Michael Kimmel, City Attorney

CONTRACT FOR SALE OF LAND

THIS CONTRACT is made on the ____ day of _____, 2015, by and between the City of Carbondale, Illinois, an Illinois Municipal Corporation, having its principal office at 200 South Illinois Avenue, Carbondale, Illinois 62901, herein referred to as "Seller" and Common Greens, Inc., having its principal residence at 302 East Oak Street, Carbondale, Illinois, 62901, herein referred to as "Purchaser."

WHEREAS, the Seller has offered to sell and the Purchaser is willing to purchase certain real property (hereinafter referred to as "Property"), particularly described as follows:

General Description

Parcel #15-16-478-015, The West 43 feet of Lot 3 of Frakes Subdivision, also known as Fakes Subdivision, in the City of Carbondale as shown by the recorded Plat thereof in Book 45 of Plats, at page 53, line 20, in the Recorder's Office of Jackson County, EXCEPT for the North 5 feet of that parcel of land, to be sold to Common Greens, Inc. for \$3,500.00.

Subject to easements, covenants, conditions, reservations, rights-of-way, encumbrances and restrictions of record, if any, easements or claims of easements, not shown of public record and all rights or claims of parties in possession not shown of public record. Subject to rights of the public, State of Illinois, the County, the Township and municipality in and to that part of the premises in question taken, used, or dedicated for roads and highways, rights-of-way for drainage ditched, drain tile, feeders, laterals, underground pipe, if any.

WHEREAS, said Property is conveyed by Seller and purchased by Purchaser for and in accordance with the provisions of this Contract.

NOW, THEREFORE, in consideration of the premises and mutual obligations of the parties, hereto each of them does hereby covenant and agree with the following terms:

ARTICLE I. PURCHASE AND SALE

SECTION A. Purchase Price of Property.

Subject to all the terms, covenants and conditions of this Contract, the Seller shall sell the

Property to the Purchaser and the Purchaser shall purchase the Property from the Seller for an amount of ONE AND NO/100 DOLLARS (\$1.00), hereinafter referred to as the "Purchase Price," which shall be due at full closing. The Purchaser shall deliver such Purchase Price in the form of cash or check simultaneously with the Seller's delivery of the Quitclaim Deed conveying the Property to the Purchaser.

SECTION B. "As Is" Sale.

The sale of the Property shall be "as is." The Purchaser has personally conducted a thorough inspection of the Property and accepts same "as is." The Seller makes no warranties of any type whatsoever regarding the Property or its boundaries.

SECTION C. Condemnation.

If, prior to closing, all or any portion of the Property is taken by exercise of the power of eminent domain or any proceedings are instituted to effect such a taking, Seller shall promptly notify the Purchaser thereof and Purchaser shall have the option, exercisable by the delivery of notice to Seller within 15 days after Purchaser received notice of such taking, to terminate this Agreement. If Purchaser does not elect to terminate this Agreement as aforesaid, Seller shall, at closing, assign or pay to Purchaser all condemnation awards collected or claimed relative to such taking up to the amount of the Purchase Price.

SECTION D. Prorations and Expenses.

1. Purchaser may order, at Purchaser's cost, a commitment for a title insurance policy in the full amount of the Purchase Price, covering title to the Property on or after the date hereof, showing title in Seller. Purchaser shall pay for the title policy and all costs for the final search charged shall be the sole cost of the Purchaser.
2. Seller shall bear all risk of loss or damage prior to closing.

ARTICLE II. CONVEYANCE OF PROPERTY

SECTION A. Form of Deed.

The Seller shall convey the Property by Quitclaim Deed to the Purchaser. The conveyance and title shall, in addition to the provisions, conditions and covenants of this Contract, and restrictions set forth or referred to elsewhere in this Contract be subject to:

1. Any and all easements currently located upon the Property, including public right-of-ways and utilities;
2. Any building or zoning restrictions, reservations, easements, roads, alleys,

sidewalks, and other right-of-way of record.

SECTION B. Delivery of Deed.

1. The Seller shall prepare, execute, convey and deliver a recordable, stamped Quitclaim Deed, in addition to delivering possession of the Property to the Purchaser at a mutually agreed-upon date. The Purchaser shall accept the conveyance and pay the Purchase Price to the Seller at the mutually agreed-upon date, time and place, to be determined. At closing, Seller and Purchaser shall execute a closing statement reflecting any adjustments to the Purchase Price.

2. The delivery of the Deed by Seller, and the acceptance thereof by Purchaser, shall be deemed the full performance and discharge of every obligation on the part of the Seller to be performed hereunder, except those obligations of Seller which are expressly stated in this Contract to survive the Closing.

SECTION C. Closing and Possession.

1. The transaction contemplated hereby shall close within 30 days from the date of this agreement at a time and place mutually agreed upon by both parties.

2. At closing, Purchaser shall pay to Seller the Purchase Price and execute a closing statement reflecting any adjustments thereto and execute on or prior to closing such affidavits as may be reasonably required and designated by the title insurer to fully effect and consummate the transactions contemplated hereby.

3. At closing, Seller shall execute and deliver a corporate quitclaim deed to the Property, execute a closing statement reflecting any adjustments to the Purchase Price, execute on or prior to closing such affidavits as may be reasonably required and designated by the title insurer to fully effect and consummate the transactions contemplated hereby, and deliver possession of the Property to Purchaser.

SECTION D. Performance Clause

The Purchaser hereby agrees to initiate the development and construction of community gardens within six (6) months from the date the deed is recorded. In the event that the Purchaser fails to, or refuses to, initiate development and construction of said Property within such time frame then the Property shall automatically revert back to the Seller upon Seller's demand. In the event the Purchaser dissolves or ceases doing business within ten (10) years of the transfer of this deed, then the Property shall automatically revert back to the Seller upon Seller's demand. Upon Purchaser's receipt of written notice by Seller of Purchaser's failure to perform their obligations under this Section and demand for the Property, the City of Carbondale, as Seller, shall have the right to re-enter and take possession in fee simple title to the Property. The Seller shall reimburse

the Purchaser the purchase price paid by Purchaser for the Property under this contract, minus any and all costs incurred by the Seller to enforce the provisions of this Contract. This provision shall survive the closing of the Property transaction.

SECTION E. Runs with the Land

All the agreements, terms and conditions contained herein shall extend to and run with the land, and shall bind the heirs, executors, administrators, successors and assigns of the respective parties.

SECTION F. Default

1. In the event the Purchaser defaults in the performance of its obligations hereunder, and provided Seller is not then in default in the performance of its obligations hereunder, Seller shall have the right to bring an action at law for any and all damages suffered by Seller as a result of Purchaser's default or bring an action in equity to specifically enforce Purchaser's obligations under this agreement.
2. In the event the Seller defaults in the performance of its obligations hereunder, and provided Purchaser is not then in default in the performance of its obligations hereunder, Purchaser shall have the right to bring an action at law for any and all damages suffered by Purchaser as a result of Seller's default or bring an action in equity to specifically enforce Seller's obligations under this agreement.

SECTION G. Recordation of Deed

The Seller shall promptly file the Deed for recordation among the land records of the place in which the Property is located. The Purchaser shall pay all costs for recording the Deed.

SECTION H. Modification of Contract.

Any modification of this Contract must be in writing and signed by the parties. The parties hereby authorize release of information pertaining to this Property necessary to allow for the performance of this Contract.

SECTION I. Representations and Warranties of Seller.

To induce Purchaser to execute, deliver, perform, and close on this Agreement, Seller hereby represents and warrants to Purchaser on and as of the date hereof and on and as of the date of closing as follows:

1. Seller has the power and authority to enter into this Agreement and to consummate transactions contemplated herein.

2. Seller has not received any notices from any federal, state, county, or municipal governmental authority alleging any health, safety, or other violation of law in respect to the Property or any part thereof which has not been disclosed to Purchaser.

SECTION J. Purchaser's Risk Act.

The provisions of the Uniform Vendor and Purchaser's Risk Act, if effective in the state in which the Property is located, shall apply to the sale and purchase provided for in this Contract.

ARTICLE III. MISCELLANEOUS PROVISIONS

SECTION A. Entire Agreement.

This Contract embodies and constitutes the entire understanding between the parties with respect to the transaction contemplated herein, and all prior agreements, understandings, representations and statements, oral or written, are merged into this Contract. Neither this Contract nor any provision hereof may be waived, modified, amended, discharged or terminated except by an instrument signed by the party against whom the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument.

SECTION B. Assignment.

Neither Seller nor Purchaser shall have the right to assign this Agreement without prior written consent of the other.

SECTION C. Governing Law.

This Contract shall be governed by and construed in accordance with the laws of the state of Illinois.

SECTION D. Captions.

The captions in this Contract are inserted for convenience or reference only and in no way define, describe or limit the scope or intent of this Contract or any provisions hereof.

SECTION E. Binding on Parties.

This Contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs or successors and permitted assigns.

SECTION F. Execution and Delivery.

This Contract shall not be binding or effective until properly executed and delivered by Seller and Purchaser.

SECTION G. Authority to Execute Contract.

The parties acknowledge and warrant that the respective governing bodies of each have authorized the undersigned signatories to execute on behalf of each party to this Contract.

SECTION H. Notices.

Any notice, request, demand, instruction, or other document to be given hereunder shall be in writing and shall be delivered personally or sent by United States registered or certified mail, return receipt requested, postage prepaid and addressed to the parties at the respective addresses set forth below, and the same shall be effective upon receipt if delivered personally or one business day after deposit in the mail if mailed. A party may change its address for receipt of notices by service of a notice such change in accordance herewith.

If to Seller:

City Manager
City of Carbondale, Illinois
200 South Illinois Avenue
Carbondale, IL 62901

If to Purchaser

Sorrel Kunath, President
Common Greens, Inc.
302 East Oak Street
Carbondale, IL 62901

IN WITNESS HEREOF, and upon execution below, the parties do hereby agree to abide by the terms and conditions provided within this Contract and have executed this Contract in duplicate on the date stated above.

SELLER:
City of Carbondale, Illinois
A Municipal Corporation

BY: _____
Kevin Baity, City Manager

ATTEST:

Jennifer Sorrell, City Clerk

PURCHASER:
Common Greens, Inc.

BY: _____
Sorrel Kunath, Presient

BY: _____
Attest

EXHIBIT A



QUITCLAIM DEED

THIS INDENTURE WITNESSETH, that the Grantor, the City of Carbondale, Illinois, an Illinois Municipal Corporation with its principal office at 200 South Illinois Avenue, Carbondale, Illinois 62902, for and in consideration of ONE AND 00/100 DOLLAR (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, CONVEYS and QUIT-CLAIMS to Grantee, Common Greens, Inc., the following described real estate:

General Description

The West 43 feet of Lot 3 of Frakes Subdivision, also known as Fakes Subdivision, in the City of Carbondale as shown by the recorded Plat thereof in Book 45 of Plats, at page 53, line 20, in the Recorder's Office of Jackson County, EXCEPT for the North 5 feet of that parcel of land, to be sold to Common Greens, Inc. for \$3,500.00.

Parcel ID No.: 15-16-478-015

Property Address: 410 East Chestnut Street, Carbondale, Illinois 62901 and
411 East Birch Street

Subject to easements, covenants, conditions, reservations, rights-of-way, encumbrances and restrictions of record, if any, easements or claims of easements, not shown of public record and all rights or claims of parties in possession not shown of public record. Subject to rights of the public, State of Illinois, the County, the Township and municipality in and to that part of the premises in question taken, used, or dedicated for roads and highways, rights of way for drainage ditched, drain tile, feeders, laterals, underground pipe, if any.

Also subject to a right of reverter to return ownership to the Grantor if Grantee fails to initiate the development and construction of community gardens within six (6) months from the date the deed is recorded.

Also subject to a right of reverter to return ownership to the Grantor if Grantee dissolves or ceases doing business within ten (10) years of transfer of this deed.

Situated in the County of Jackson and State of Illinois.

IN WITNESS WHEREOF, said Grantor has caused its corporate seal to be hereto affixed and has caused its name to be signed to its presence by its Mayor, and attested to by its City Clerk, this the ____ day of _____, 2015.

City of Carbondale
A municipal corporation

John M. Henry, Mayor

Attest:

Jennifer R. Sorrell, City Clerk

Exempt pursuant to Section 4(b) of
the Real Estate Transfer Tax Act for
the City of Carbondale as Seller

STATE OF ILLINOIS)
) ss.
COUNTY OF JACKSON)

I, the undersigned notary public, certify that John M. Henry, personally known to me to be the Mayor of the City of Carbondale, and Jennifer R. Sorrell, personally known to me to be the City Clerk of the City of Carbondale, whose names are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged his/her signature and delivered this instrument as his/her free and voluntary act for the purposes and uses therein set forth.

Given under my hand and seal this ____ day of _____, 2015.

Notary Public

Mail all subsequent tax bills to:

Mr. Sorrel Kunath
Common Greens
302 E. Oak Street
Carbondale, Illinois 62901

AFFIDAVIT OF COMPLIANCE WITH ILLINOIS PLAT ACT REQUIREMENTS

THIS IS A LEGAL DOCUMENT AND MUST BE FILED WITH EVERY RECORDED DEED.

Consult an attorney if you do not understand what you are signing.

PARCEL NUMBER: 15-16-478-015 (Required information)

The Grantor(s), or the Grantor(s)' authorized representative, transferring an interest in real property described in the accompanying deed, state the following:

A. NOT A DIVISION OF LAND (requiring no change of parcel boundary lines)

If A is marked above, the Recorder will proceed with recording the deed and no further questions apply. Please sign below.

B. A DIVISION OF LAND (requiring a change of parcel boundary lines) meeting one of these exceptions:

If B is marked above, approval by the Chief County Assessment Office is required.

- a. A division or subdivision of land into tracts of five (5) acres or more not involving new streets or easements of access with a minimum of five (5) acres residue.
- b. A division of lots or blocks of less than one (1) acre in a recorded subdivision not involving new streets or easements of access.
- c. A sale or exchange of land between owners of adjoining and contiguous land.
- d. A conveyance of land for use as a right-of-way for public utilities and other pipelines not involving new streets or easements of access.
- e. A conveyance of land for highway or other public purpose, or relating to a dedication of land, or for vacation of land subject to a public use.
- f. A conveyance made to correct a description in a prior conveyance.
- g. The sale of a tract of land following the division into no more than two (2) parts of a particular parcel of land existing on July 17, 1959, and not involving any new streets or easements of access. (Does not apply within City of Carbondale subdivision jurisdiction.)
- h. A conveyance of land owned by a railroad or public utility not involving new streets or easements of access.
- i. The division and distribution of land pursuant to law or court order.
- j. The sale of a single lot of less than (5) acres from a larger tract when a survey is made by a registered land surveyor. This exemption shall not apply to the sale of any subsequent lots from the same larger tract as it existed on October 1, 1973. (Does not apply within City of Carbondale subdivision jurisdiction.)

C. A DIVISION OF LAND (a change of parcel boundary lines) not meeting one of the above exceptions.

If C is marked above, approval by Jackson County Land Use Committee and Jackson County Board is required.

In accordance with Section 1a of the Illinois Plat Act, all divisions under five (5) acres must be surveyed and a subdivision plat prepared by a licensed professional land surveyor. Who prepared this legal description? _____

Phone _____

Does this division of land fall within the jurisdiction of another city or municipality? No Yes. If yes, which jurisdiction? _____

Under the penalties of perjury I swear that the statements contained here are true and correct.

Seller Name City of Carbondale DATE _____

Seller Signature _____ PHONE _____



East Birch Street

East Chestnut Street

Eurma C. Hays Community Center

15-16-478-006

15-16-478-007

15-16-478-015

North Robert A. Stalls Avenue

Recently Acquired
 By Common Greens, Inc.
 City Owned Property