

CITY OF COLUMBIA, ILLINOIS

ORDINANCE NO. 2676

AN ORDINANCE TO AUTHORIZE A REAL ESTATE SALES CONTRACT FOR THE WINNIFRED B. D. FIEGE ESTATE, REAL ESTATE HAVING THE ASSIGNED ADDRESS OF 140 SOUTH MAIN STREET, COLUMBIA, ILLINOIS TO BE USED OWNED, MAINTAINED, OPERATED AND PRESERVED AS AN HISTORIC PUBLIC BUILDING IN THE CITY BY THE CITY

**Adopted by the
City Council
of the
City of Columbia, Illinois
this 18th day of August, 2008**

**Published in pamphlet form by
authority of the City Council
of the City of Columbia,
Illinois, this 19th day
of August, 2008.**

AUG 18 2008

ORDINANCE NO. 2676


City Clerk

AN ORDINANCE TO AUTHORIZE A REAL ESTATE SALES CONTRACT FOR THE CITY OF COLUMBIA, ILLINOIS TO PURCHASE FROM THE WINNIFRED B. D. FIEGE ESTATE REAL ESTATE HAVING THE ASSIGNED ADDRESS OF 140 SOUTH MAIN STREET, COLUMBIA, ILLINOIS TO BE USED OWNED, MAINTAINED, OPERATED, RESTORED AND PRESERVED AS AN HISTORIC PUBLIC BUILDING IN THE CITY BY THE CITY

WHEREAS, the Winnifred B. D. Fiege Estate is the owner of improved real estate at 140 South Main Street, Columbia, Illinois, which is improved by an old and historically significant brick dwelling house and wooden storage shed or garage (the "Fiege Property") which Winnifred B. D. Fiege owned at the time of her death on March 14, 2008, which property was heretofore the subject of a Real Estate Sales Contract dated March 17, 2008 between the City of Columbia, Illinois (the "City"), as Purchaser and Winnifred B. D. Fiege, by her agent and attorney in fact, Wilma Mehrtens, as Seller and which contract was not signed by the City until after the death of Winnifred B.D. Fiege and on which contract a claim was filed against the estate of Winnifred B. D. Fiege seeking enforcement of said Real Estate Sales Agreement which is now pending in the Monroe County, Illinois Circuit Court;

WHEREAS, the Legal Representative of the Winnifred B. D. Fiege Estate is the Monroe County Public Administrator, Jay M. Huetsch, who is the law partner of the City Attorney, Tom D. Adams, and pursuant to the request of attorney, Tom D. Adams, and the action of the City Council of the City attorney, Myron Hanna, has been substituted to represent the City on the pending estate claim and the purchase and sale of the real estate that is involved in this ordinance;

WHEREAS, the Winnifred B. D. Fiege Estate, by its Legal Representative aforesaid, is willing to sell to the City of Columbia, Illinois, (the "City"), for the purposes of the City owning, maintaining, operating, preserving and restoring the property in perpetuity as and for a City Historic Public Building, for a purchase price of One Hundred Sixty-Five Thousand Dollars (\$165,000.00) on a new sales contract between the Winnifred B. D. Fiege Estate and the City having the same basic terms as the earlier Sales Agreement aforesaid;

WHEREAS, with the City's purchase of the Winnifred B. D. Fiege Estate Property, the Estate is also willing to sell antique furnishings located in the dwelling house on the subject property to the City, to be preserved and used for historical preservation uses and purposes, which can be displayed with the dwelling house on the premises, for a price of

Twenty Three Thousand Seven Hundred Eighty Dollars (\$23,780.00) on a new sales contract between the Winnifred B. D. Fiege Estate and the City having the same basic terms as the earlier Sales Agreement aforesaid;

WHEREAS, the City Council of the City has found and determined and does hereby declare that it is necessary and appropriate that the City shall dismiss its pending claim against the Winnifred B. D. Fiege Estate with leave to refile it before the Claim Date expires on November 14, 2008 and purchase the subject Fiege Property and antiques from the Winnifred B. D. Fiege Estate for the total sum of One Hundred Eighty-Eight Thousand Seven Hundred Eighty Dollars (\$188,780.00), and for other good and valuable consideration set forth in the Real Estate Sales Contract which is approved by this Ordinance; for the City to own, operate, preserve, and restore in perpetuity as an historically significant property in the City; and,

WHEREAS, it is necessary and appropriate that the City make and enter into a Real Estate Sales Contract with Jay M. Huetsch as the Public Administrator of the Winnifred B. D. Fiege Estate, to purchase the Fiege Estate Property and antiques aforesaid for the price and on the terms set forth in the attached contract (which has the same price and the same basic terms as the March 17, 2008 contract aforesaid involving the purchase of the same property).

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

Section 1. The recitals contained above in the preamble of this Ordinance are hereby incorporated herein by reference, the same as if set forth in this Section of this Ordinance verbatim, as findings of the City Council of the City of Columbia, Illinois.

Section 2. The City Council of the City of Columbia, Illinois hereby authorizes the Mayor of said City to make and enter into a Real Estate Sales Contract to purchase the Winnifred B. D. Fiege Estate Property and antiques in the form attached hereto, which is hereby approved as to form; and, said City Council does hereby authorize and direct the Mayor to execute said Real Estate Sales Contract for and on behalf of the City in as many counterparts as the Mayor shall decide; and the said City Council does hereby authorize and direct the City Clerk to attest the same and affix thereto the corporate seal of the City.

Section 3. This Ordinance shall be in full force and effect from and after its passage and publication in pamphlet form, as provided by law.

Alderman Agne moved the adoption of the above and foregoing Ordinance; the motion was seconded by Alderman Unnerstall, and the roll call vote was as follows:

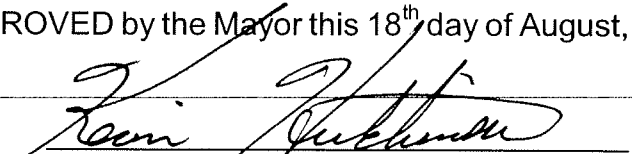
YEAS: Aldermen Ebersohl, Agne, Niemietz, Unnerstall, Row, Hejna, Oberkfell, Stumpf
and Mayor Hutchinson.

NAYS: None.

ABSENT: None.

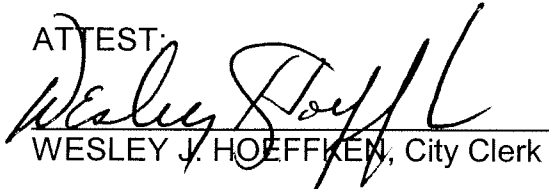
ABSTAIN: None.

PASSED by the City Council and APPROVED by the Mayor this 18th day of August,
2008.



KEVIN B. HUTCHINSON, Mayor

ATTEST:



WESLEY J. HOEFFKEN, City Clerk

(SEAL)

STATE OF ILLINOIS)
) SS
COUNTY OF MONROE)

CERTIFICATE OF PUBLICATION

I, Wesley J. Hoeffken, certify that I am the duly elected and acting Municipal Clerk of the City of Columbia, Illinois.

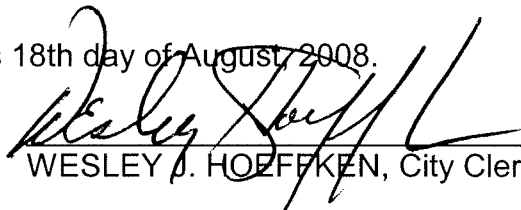
I further certify that on the 18th day of August, 2008, the Corporate Authorities of the City of Columbia, Illinois passed and approved Ordinance No. 2676, entitled:

“AN ORDINANCE TO AUTHORIZE A REAL ESTATE SALES CONTRACT FOR THE CITY OF COLUMBIA, ILLINOIS TO PURCHASE FROM THE WINNIFRED B. D. FIEGE ESTATE REAL ESTATE HAVING THE ASSIGNED ADDRESS OF 140 SOUTH MAIN STREET, COLUMBIA, ILLINOIS TO BE USED OWNED, MAINTAINED, OPERATED, RESTORED AND PRESERVED AS AN HISTORIC PUBLIC BUILDING IN THE CITY BY THE CITY”

which provided by its terms that it should be published in pamphlet form.

The pamphlet form of Ordinance No. 2676, including the ordinance and a cover sheet thereof, was prepared and a copy of such ordinance will be posted in the Columbia City Hall, commencing on the 19th day of August, 2008 and continuing for at least ten (10) days thereafter. Copies of such ordinance were also available for public inspection upon request at the office of the City Clerk.

DATED at Columbia, Illinois this 18th day of August, 2008.


WESLEY J. HOEFFKEN, City Clerk

(SEAL)

REAL ESTATE SALES CONTRACT

THIS AGREEMENT is made this _____ day of August, 2008, between JAY M. HUETSCH, Public Administrator of the Estate of Winnifred B. D. Fiege, deceased, of the City of Waterloo, Monroe County, Illinois 62298, not individually but as the Public Administrator of the ESTATE OF WINNIFRED B. D. FIEGE, SELLER, (hereinafter referred to as "SELLER" or "Fiege") and the CITY OF COLUMBIA, ILLINOIS, a Municipal corporation and body both corporate and politic created and existing under the laws of the State of Illinois, with City Hall located at 208 South Rapp Avenue, Columbia, Illinois 62236, PURCHASER, (hereinafter referred to as "PURCHASER" or the "City"), WITNESSETH:

(1) **Sale.** SELLER agrees to sell and PURCHASER agrees to purchase the following described real estate, with its appurtenances, having the assigned address of 140 South Main Street, Columbia, Illinois 62236, more particularly described in Exhibit "A", which is attached hereto and by reference made part hereof (hereinafter referred to as the "Fiege Property") and agrees to purchase the antique personal property items more particularly described on Exhibit "B", which is attached hereto and by reference made part hereof (hereinafter referred to as the "Fiege Antiques").

The Fiege Property shall be subject to the "General Exceptions" in the title insurance commitment and the encumbrances referred to in the Title Insurance Exceptions and Encumbrances described in Schedule "B" of the title insurance commitment issued by Mon-Clair Title Company, which is attached hereto as Exhibit "C" and by reference made part hereof, which do not affect the merchantability of the title to the property and to which the SELLER (or the SELLER'S attorney) has not received written objection to from the PURCHASER (or the PURCHASER'S attorney) within fifteen (15) days of the date of this agreement. In the event there are merchantability of title objections made by the PURCHASER, within the time aforesaid, the same shall be cured prior to closing of the sale by SELLER (or the title insurance company that is serving as the escrow agent for the parties for the closing of the sale may use the sales proceeds deposited with said escrow agent by PURCHASER for the sale closing to eliminate the encumbrances or other exceptions required to be cure for the closing). If the objected to title encumbrances or defects cannot be cure before the scheduled sale closing date the PURCHASER shall have the right to rescind this sales agreement and thereby be under no further obligation to purchase the property. Alternatively, the sale may proceed with such adjustments in the purchase price or other terms of the sale as in mutually agreeable to the parties.

Notwithstanding anything herein contained to the contrary, the SELLER shall be under no obligation to sell to the City the Fiege Antiques unless the City purchases the Fiege Property.

(2) **Purchase Price and Method of Payment.** The purchase price of the Fiege Property is One Hundred Sixty Five Thousand Dollars (\$165,000.00) and the purchase price of the Fiege Antiques is Twenty Three Thousand Seven Hundred and Eighty Dollars (\$23,780.00) for a total purchase price for the property and antiques of One Hundred and Eighty Eight Thousand Seven Hundred and Eighty Dollars (\$188,780.00) all of which shall be due and payable at the time of the closing of the sale, less prorations and adjustments for closing costs payable by SELLER at the closing of the sale.

~~(3) **Title Insurance.** SELLER has furnished to PURCHASER the Exhibit "C" title insurance commitment and shall furnish to PURCHASER an owner policy of title insurance insuring PURCHASER to the full amount of the purchase price against loss or damage by reason of defect in SELLER'S title in the above-described premises, on date of closing of sale, subject to the above-described exceptions or exclusions that do not effect the merchantability of the SELLER'S title. The title insurance shall be issued by Mon-Clair Title Company and the SELLER shall pay for the title insurance commitment and owner policy and PURCHASER shall pay for the later date search.~~

(4) **Taxes and Assessments.** The SELLER has paid the calendar year 2007 General Real Estate Taxes. The estimated calendar year 2008 General Real Estate Taxes shall be pro-rated to date of closing of the sale and estimated based upon the last tax bill available or the estimate of the Taxing Authority and may be paid by SELLER deducting a sum equal to Fiege's share of said taxes from the balance of purchase money due and payable at closing. General Real Estate Taxes for calendar year 2008 and ensuing years are assumed and shall be paid by PURCHASER as same become due and payable in calendar year 2009 and thereafter.

(5) **Risk of Loss.** Risk of loss or damage to the premises by fire or other casualty between the date of this agreement and the date of closing shall be and is assumed by SELLER. SELLER shall maintain fire and extended casualty insurance on the dwelling and other improvements on the premises, and the antiques that are a subject of sale in this agreement, in a minimum sum equal to the purchase price involved herein, and shall pay the premiums thereon until closing hereunder. Such insurance shall be maintained with one or more qualified and rated insurance companies.

If after this contract is executed, the premises shall be destroyed or damaged by fire, windstorm, or other casualty, the PURCHASER shall have the option of canceling or enforcing the agreement on seven (7) days written notice to SELLER. If enforced, the PURCHASER shall have the obligation of restoration and shall be subrogated to all of the SELLER'S claims under SELLER'S insurance policy but SELLER shall thereby be entirely relieved from any cost or expense of restoration. If canceled, the contract shall be rendered null and void and of no further force and effect and each of the parties shall be relieved of any obligation for payment or performance to the other party.

(6) **Closing.** Closing shall take place at Mon-Clair Title Company, 101 East Mill Street, Waterloo, Illinois within sixty (60) days of the date hereof. At closing SELLER shall provide PURCHASER with a good and sufficient Personal Representative's Deed to the real estate premises

and PURCHASER shall pay the balance of purchase money due and owing to SELLER, less prorations and adjustments for closing costs payable by SELLER.

(7) **Possession.** PURCHASER shall be entitled to the keys to the dwelling house and detached garage on the premises and to the sole and exclusive possession of the Fiege Property and the Fiege Antiques that are a subject of sale in this agreement on date of closing following the closing of the sale.

(8) **Default by PURCHASER.** Time is of the essence of this contract. In the event PURCHASER fails to make the payment of the purchase money promptly when the same shall become due as herein specified, or promptly to perform any covenant or agreement herein contained, SELLER may elect to specifically enforce this agreement or to terminate this agreement and retain as ~~liquidated damages any payments theretofore made hereunder by PURCHASER;~~ provided that, if such payments are inadequate to compensate SELLER for damages sustained, SELLER may exercise his right to sue for damages for PURCHASER'S default. Service of all demands, notices or other papers with respect to such termination and retention of payments made may be made by registered mail at the address as set forth above, or such other address as PURCHASER may indicate in writing to SELLER. No waiver by SELLER of any default on the part of the PURCHASER shall be construed as a waiver of any subsequent default.

(9) **Default by SELLER.** If SELLER is unable to convey title in accordance with the terms of this contract, the amount paid on account of the purchase price and PURCHASER'S net costs, if any, of examining the title, shall be returned to PURCHASER on demand.

(10) **Assignment.** This agreement shall not be assignable by PURCHASER without the prior written consent of the SELLER.

(11) **Condition of Premises.** PURCHASER stipulates that a full inspection of the premises has been made and that SELLER and/or SELLER'S agents or authorized representatives, if any, shall not be held to any covenant respecting the condition of any improvements on the premises, or to any agreement for alterations, improvements, or repairs. THERE ARE NO WARRANTIES OF SELLER REGARDING THE FITNESS OR CONDITION OF SAID FIEGE PROPERTY OR THE IMPROVEMENTS THEREON OR THE FIEGE ANTIQUES, THERE IS NO OBLIGATION ON THE PART OF SELLER TO MAKE RENOVATIONS, REPAIRS OR IMPROVEMENTS THERETO; AND, IT IS UNDERSTOOD AND AGREED THAT THE PURCHASER IS BUYING THE PROPERTY THAT IS THE SUBJECT OF THIS SALE, "AS IS", IN THE CONDITION SAID PROPERTY IS IN ON THE DATE HEREOF, NORMAL WEAR AND TEAR BETWEEN THE DATE OF THIS AGREEMENT AND THE DATE OF CLOSING, EXCEPTED.

(12) **Waiver of Homestead.** SELLER expressly waives all rights under the Homestead Exemption Laws of the State of Illinois with respect to the real estate that is the subject of sale under this agreement.

(13) **Attorney's Fees and Costs.** In the event that there is a default under this agreement and it becomes necessary for any party hereto to employ the services of an attorney either to enforce or to terminate this agreement, with or without litigation, the losing party or parties to the controversy

shall pay to the successful party or parties a reasonable attorney's fee and, in addition thereto, such reasonable costs and expenses as are incurred in enforcing or terminating this agreement.

(14) **Closing Costs.** SELLER shall be solely responsible and liable for the payment and discharge of the following closing costs in connection herewith, to wit:

(a) The attorney's fees due Jay M. Huetsch, attorney at law, of Adams and Huetsch, Attorneys-at-Law, for services rendered in connection with the preparation of this Sales Agreement and the attorney fees due said attorney for preparation of PURCHASER'S Personal Representative's Deed and Revenue Tax Declaration;

~~(b) The cost of the title insurance commitment (estimated \$150.00) and owner policy of title insurance (estimated \$480.00) to be issued by Mon-Clair Title Company;~~

(c) Courthouse copy costs related to title search;

(d) Estimated General Real Estate Taxes for tax year 2008 pro-rated to the date of closing of the sale based upon the last real estate tax bill available or the estimate of the taxing authority; and,

(e) One-half (1/2) the escrow closing fee due Mon-Clair Title Company for closing of this sale (estimated \$150.00);

PURCHASER shall be solely responsible and liable for payment and discharge of the following closing costs in connection herewith, to wit:

(a) The attorney's fees due Myron Hanna, Attorney at Law, of Hanna and Volmert, Attorneys-at-Law, for services rendered in connection with the preparation of this Sales Agreement;

(b) The title insurance company later date search fee (estimated \$50.00);

(c) The Mapping and Platting fee to be paid to the Monroe County, Illinois General Fund (estimated \$10.00);

(d) Cost to record PURCHASER'S deed (estimated \$33.00); and,

(e) One-half (1/2) the escrow closing fee due Mon-Clair Title Company for closing of this sale (estimated \$150.00).

(15) **Wood Infestation Report.** If required by the PURCHASER, prior to closing of the sale, at PURCHASER'S expense, the PURCHASER may obtain a written report from a pest control firm or inspector certifying to PURCHASER that the premises have been inspected for termite and other wood destroying insect infestation. If active infestation is found, either party shall have the right to rescind this agreement or, alternatively, the parties shall proceed with the sale with such modifications of the agreement as are mutually agreeable to the parties with regard to payment of expenses of treatment and/or repair of structural damage to the improvements on the premises caused by the infestation. If an inspection and report is required by the PURCHASER the SELLER

will provide free access to the property for the pest control firm or inspector to perform the required inspection, on twenty-four (24) hours advanced notice to Estate Public Administrator, and Estate Public Administrator shall cooperate in every reasonable way to accomplish the inspection.

(16) **Binding Effect.** The covenants and agreements herein contained shall inure to the benefit of and be binding upon the heirs, executors, administrators, assigns, devisees, legatees and successors of the respective parties.

(17) **Residential Real Property Disclosure Report.** The PURCHASER acknowledges receipt of SELLER'S Residential Real Property Disclosure Report from SELLER, completed as required by law, prior to PURCHASER making and entering into this Real Estate Sales Contract.

~~(18) **Lead Based Paint and/or Lead Based Hazards Disclosure Report.** The PURCHASER acknowledges receipt of SELLER'S Lead Based Paint and/or Lead Based Hazards Disclosure Report from SELLER, completed as required by law, prior to PURCHASER making and entering into this Real Estate Sales Contract.~~

(19) **Radon Hazard Disclosure Report.** The PURCHASER acknowledges receipt of SELLER'S Disclosure of Information on Radon Hazards report from SELLER, completed as required by law, prior to PURCHASER making and entering into this Real Estate Sales Contract.

(20) **Compliance with Columbia Residential Property Maintenance Code.** The SELLER shall not be required to comply with Chapter 15.09 (RESIDENTIAL PROPERTY MAINTENANCE CODE) of the City of Columbia, Illinois Municipal Code or to pay any fees for property inspections or to make any repairs, replacements or improvements required by the City of Columbia, Illinois in order for the City to issue its Certificate of Dwelling, Maintenance and Occupancy Permit for the subject property. The PURCHASER agrees to purchase the Fiege Property without such permit or the entitlement to receive the same and assumes the risk of future compliance resulting in necessary repairs or replacements and renovations being required by the City Building Inspector.

(21) **Use Restriction.** After the title to the Fiege Property is conveyed to the City the City shall own, maintain, operate, preserve and restore the Fiege Property in perpetuity as and for a City Historic Public Building and its contribution to the heritage of the City of Columbia, Illinois. The Personal Representative's Deed from the SELLER to the City, if required by SELLER, may contain a restrictive covenant dedicating the future ownership and use of the Property to that use and purpose in perpetuity.

In the event the City in the future shall fail or refuse to comply with the use restriction aforesaid, then and in that event an action may be instituted in the Monroe County, Illinois Circuit Court, by any citizen or civic or charitable organization of the City of Columbia, Illinois at the time of reference, to enforce the use restriction. The prevailing party in that action shall be entitled to recover their reasonable attorney fees and all costs incurred in filing and maintaining the action and the same may be made part of any judgment entered by the Court in the action. In the event the court would find in the action that the City willfully violated the use restriction the court shall be authorized and empowered, (but shall not be required to), transfer the ownership of the Fiege Property to Monroe County, Illinois or to another public agency or nonprofit tax-exempt organization that will be required in perpetuity to own, maintain, preserve and restore the Property for its intended use and purpose as

required by the use restriction.

Notwithstanding anything herein to the contrary, the City shall have the right to transfer the ownership of the Fiege Property to another public agency or nonprofit tax-exempt organization that will be required to own, maintain, preserve and restore the Property for the use and purpose aforesaid should the City find hereafter that the historical preservation of the Fiege Property can be better accomplished by that public agency or non-profit organization. In such event the agency or organization to which the Fiege Property ownership is transferred shall be subject to, bound by and obligated to comply with and perform the obligations created by the use restriction contained herein to the same extent and with the same force and effect as the City was required to do.

(22) **Court Approval/Prior Contract.** This agreement is contingent upon Seller obtaining ~~leave of Court to enter into and close the transaction contemplated herein within 45 days of the date~~ hereof. The parties hereto agree that by entering into this agreement the Purchaser is not waiving any rights it may have under a prior sales agreement executed on behalf of Winnifred B. D. Fiege dated March 17, 2008, and if Court approval is not obtained, the Purchaser may exercise whatever rights it has thereunder.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the date set forth above.

SELLER, Estate of Winnifred B. D. Fiege, deceased

By: _____
JAY M. HUETSCH, Public Administrator

STATE OF ILLINOIS)
) SS
COUNTY OF MONROE)

The undersigned, a Notary Public in and for the County and State aforesaid, hereby certifies that JAY M. HUETSCH, personally known to me and known to me to be the same person whose name is subscribed to the above and foregoing document, not individually but as Public Administrator for the Estate of Winnifred B. D. Fiege, deceased, the SELLER, appeared before me, in person, this date, and acknowledged that he executed and delivered the above and foregoing document as his free and voluntary act and deed and as the free and voluntary act and deed of the Estate of Winnifred B. D. Fiege, deceased, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and Notary Seal this _____ day of _____, 2008.

Notary Public

PURCHASER, The City of Columbia, Illinois, a Municipal corporation and body both corporate and politic of the State of Illinois:

By: _____
KEVIN B. HUTCHINSON, Mayor

ATTEST:

WESLEY J. HOEFFKEN, City Clerk

(SEAL)

STATE OF ILLINOIS)
) SS
COUNTY OF MONROE)

The undersigned, a Notary Public in and for the County and State aforesaid, hereby certifies that KEVIN B. HUTCHINSON and WESLEY J. HOEFFKEN, personally known to me and known to me to be the Mayor and the City Clerk, respectively, of the City of Columbia, Illinois and known to me to be the same persons whose names are subscribed to the above and foregoing document for and on behalf of the PURCHASER, appeared before me, in person, this date, and acknowledged that they executed the above and foregoing document as their free and voluntary act and deed and as the free and voluntary act and deed of the City of Columbia, Illinois, a municipal corporation of the State of Illinois, for the uses and purposes therein set forth, pursuant to authority granted by the enactment of an enabling ordinance by the city council of said city.

Given under my hand and Notary Seal this _____ day of _____, 2008.

Notary Public

ADDRESS OF PROPERTY:
140 South Main Street
Columbia, Illinois 62236

THIS DOCUMENT PREPARED BY:

JAY M. HUETSCH
ADAMS AND HUETSCH
Attorneys-at-Law
101 East Mill Street
P.O. Box 132
Waterloo, IL 62298
Telephone: 618-939-6126
reagr\fiége, winnifred est-columbia, city of
