

ORDINANCE NO. 2005-04-062

AN ORDINANCE APPROVING AND AUTHORIZING THE EXECUTION OF CONSENT TO ASSIGNMENT AND ASSUMPTION OF REDEVELOPMENT AGREEMENT AND OTHER TAX INCREMENT FINANCING DOCUMENTS

(Fox Development Corporation)

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF URBANA, ILLINOIS, as follows:

Section 1. That a Consent to Assignment and Assumption of Redevelopment Agreement and Other Tax Increment Financing Documents between Fox Development Corporation and Fox Medical Office Buildings LLC, collectively as assignor, and Urbana MOB, LLC, JES Urbana, LLC, RES Urbana, LLC and MSP Urbana, LLC, collectively as assignee, in substantially the form of the copy of said Assignment and the Estoppel Certificate be and the same are hereby approved.

Section 2. That the Mayor of the City of Urbana, Illinois, be and the same is hereby authorized to execute and deliver and the City Clerk of the City of Urbana, Illinois, be and the same is authorized to attest to said execution of said Assignment and Estoppel Certificate as so authorized and approved for and on behalf of the City of Urbana, Illinois.

PASSED by the City Council this _____ day of _____, 2005.

AYES:
NAYS:
ABSTAINS:

Phyllis D. Clark, City Clerk

APPROVED by the Mayor this _____ day of _____, 2005.

Tod Satterthwaite, Mayor

EXHIBIT H

ASSIGNMENT AND ASSUMPTION OF REDEVELOPMENT AGREEMENT
AND OTHER TAX INCREMENT FINANCING DOCUMENTS

THIS ASSIGNMENT AND ASSUMPTION OF REDEVELOPMENT AGREEMENT AND OTHER TAX INCREMENT FINANCING DOCUMENTS (this "Assignment"), is made as of the ____ day of _____, 2004, by and between FOX DEVELOPMENT CORPORATION, an Illinois corporation ("FDC") and FOX MEDICAL OFFICE BUILDINGS LLC, an Illinois limited liability company ("Fox MOB") and FDC and Fox MOB are individually referred to herein as an "Assignor" and collectively as "Assignors" on the one hand, and _____, a _____ ("Assignee"), on the other hand.

WITNESSETH

WHEREAS, pursuant to that certain Purchase and Sale Agreement dated as of October ____, 2004 by and between Fox MOB and Assignee (and joined in by FDC for the limited purposes described therein) (as the same may have been amended and/or assigned, the "Agreement"), Fox MOB has agreed to sell, assign, transfer and convey to Assignee, and Assignee has agreed to purchase from Fox MOB: (i) all of Fox MOB's right, title and interest in, to and under a certain Ground Lease dated as of April 1, 2002 (the "Ground Lease") between Provena Hospitals, as lessor, and Fox MOB, as lessee, and Fox MOB's leasehold estate and interest in and to the land legally described on Exhibit A attached hereto and made a part hereof (the "Land") under and pursuant to the Ground Lease (collectively, the "Leasehold Estate"); and (ii) fee simple title to the three-story medical office building and all parking areas and other structures and improvements located on the Land (the "Improvements") and the Land and Improvements are collectively referred to herein as the "Property"), and the Property is commonly known as 1405 West Park Street, Urbana, Illinois;

WHEREAS, FDC, an affiliate of Fox MOB, and the City of Urbana, Illinois (the "City") entered into a certain Redevelopment Agreement dated as of November 1, 2001 (as the same may have been amended, the "Redevelopment Agreement"), pursuant to which the City grants and agrees to provide tax increment financing for, and certain other rights, benefits and privileges in favor of, the Property;

WHEREAS, pursuant to the Agreement: (i) Assignors are required to assign, transfer and convey to Assignee all of Assignors' right, title and interest in, to and under the Redevelopment Agreement and any and all other ordinances, documents and instruments relating to the Redevelopment Agreement or the tax increment financing described therein or contemplated thereby (collectively, the "TIF Documents"), which TIF Documents (if any) are described on Exhibit B attached hereto and made a part hereof; and (ii) Assignee is required to accept such assignment and to assume Assignors' obligations under the Redevelopment Agreement and the TIF Documents relating exclusively to Office Building One (as defined in the Redevelopment Agreement) after the date hereof.

NOW, THEREFORE, in consideration of the sum of Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration, the mutual receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Unless otherwise stated herein, all capitalized terms used in this Assignment shall have the respective meanings specified in the Agreement.
2. Assignors hereby assign, transfer, convey and set over unto Assignee all of Assignors' right, title and interest in, to and under the Redevelopment Agreement and the TIF Documents, including, without limitation, Assignors' right to receive

Reimbursement Amounts (as defined in the Redevelopment Agreement) under the Redevelopment Agreement, and FDC's right to be the authorized representative of the Developer (as defined in the Redevelopment Agreement) in connection with all matters arising under the Redevelopment Agreement pertaining to Office Building One, as described in Section 2.4 of the Redevelopment Agreement. Without limiting the foregoing terms of this Paragraph 2, FDC hereby agrees that after the date hereof, Assignee shall be the authorized representative of the Developer in connection with all matters arising under the Redevelopment Agreement pertaining to Office Building One.

3. Assignee hereby accepts the foregoing assignment and assumes all of the obligations of Assignors under the Redevelopment Agreement and the TIF Documents relating exclusively to Office Building One accruing after the date hereof; provided, however, that Assignee is not assuming any obligation to the extent the performance of such obligation is the responsibility of Assignor pursuant to the terms of the Agreement.
4. Assignors hereby agree to and shall indemnify, protect, defend and hold Assignee harmless from and against any and all claims, losses, liabilities, damages, expenses and costs (including, without limitation, reasonable attorneys' fees) brought against, or suffered, sustained, paid or incurred by Assignee arising out of obligations accruing or events occurring on or before the date hereof under or with respect to the Redevelopment Agreement and/or the TIF Documents, including, without limitation, either Assignor's failure to perform or observe its covenants and obligations under the Redevelopment Agreement and/or the TIF Documents on or before the date hereof, and any claims, causes of action, suits or actions brought against Assignee under Section 4.4 of the Redevelopment Agreement and relating to events that occurred on or before the date hereof. The foregoing indemnification obligation shall survive delivery of this instrument.
5. Assignee hereby agrees to and shall indemnify, protect, defend and hold Assignors harmless from and against any and all claims, losses, liabilities, damages, expenses and costs (including, without limitation, reasonable attorneys' fees) brought against, or suffered, sustained, paid or incurred by Assignors arising out of Assignee's failure to perform or observe any obligation assumed by Assignee under Paragraph 3 above. The foregoing indemnification obligation shall survive delivery of this instrument.
6. This Assignment shall not be amended, modified or terminated except by an instrument in writing executed by the parties hereto.
7. This Assignment shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.
8. This Assignment may be executed in counterparts, each of which shall constitute an original, and all of which taken together shall constitute one and the same instrument.
9. FDC and Fox MOB are and shall be jointly and severally liable for the payment and performance of Assignors' covenants, duties, obligations and liabilities under this Assignment.

[no further text on this page—signature page to follow]

IN WITNESS WHEREOF, intending to be legally bound the parties hereto have executed this Assignment as of the day and year first above written.

ASSIGNORS:

FOX DEVELOPMENT CORPORATION, an Illinois corporation

By: _____
Name: _____
Title: _____

FOX MEDICAL OFFICE BUILDINGS LLC, an Illinois limited liability company

By: _____
Name: _____
Title: _____

ASSIGNEE:

_____, a _____

By: _____
Name: _____
Title: _____

Exhibit A

Legal Description of the Land

ESTOPPEL CERTIFICATE

Provena Hospitals, Fox Development Corporation (“FDC”), and the undersigned, the City of Urbana, Champaign County, Illinois (the “City”), have entered into a Redevelopment Agreement dated as of November 1, 2001 (the “Redevelopment Agreement”). The Redevelopment Agreement sets forth certain rights and obligations among the parties thereto relating to the redevelopment of certain property located in Urbana, Illinois, and the availability of tax increment financing in connection therewith. All capitalized terms that are used but are not defined in this Estoppel Certificate shall have the respective meanings given to those terms in the Redevelopment Agreement.

Fox Medical Office Buildings LLC, as seller, and Urbana MOB, LLC, JES Urbana, LLC, RES Urbana, LLC and MSP Urbana, LLC, collectively as purchaser (“Purchaser”) have entered into a Purchase and Sale Agreement dated as of January 25, 2005, as amended, pursuant to which Purchaser has agreed to purchase Office Building One on the terms and subject to the conditions set forth in said Purchase and Sale Agreement. In connection with Purchaser’s acquisition of Office Building One, FDC shall assign to Purchaser all of FDC’s right, title and interest in, to and under the Redevelopment Agreement with respect to Office Building One.

With the understanding that Purchaser will rely upon the representations made herein in purchasing Office Building One, the City hereby represents and certifies to Purchaser as follows:

1. Attached hereto as Exhibit A is a true, correct and complete copy of the Redevelopment Agreement, including all amendments and supplements thereto. The Redevelopment Agreement is in full force and effect and has not been modified, supplemented, canceled or amended in any respect, orally or in writing, except for any such modifications, supplements or amendments that are attached hereto as part of said Exhibit A. The Redevelopment Agreement is the legal, valid and binding obligation of the City, enforceable against the City according to its terms.
2. FDC is not in default under the Redevelopment Agreement, and to the best of the City’s knowledge, no event has occurred that with the giving of notice or passage of time, or both, would constitute such a default by FDC under the Redevelopment Agreement. The City has no claims, counterclaims, defenses or rights of offset against any amounts due to FDC under the Redevelopment Agreement.
3. To the best of the City’s knowledge, the City is not in default under the Redevelopment Agreement and no event has occurred that with the giving of notice or passage of time, or both, would constitute such a default by the City under the Redevelopment Agreement.

4. The amount of the Incremental Property Taxes received by the City during calendar year 2004 was \$_____.
5. Following Purchaser's acquisition of Office Building One, the City agrees to pay all Reimbursement Amounts due in connection with Office Building One to or as directed by Purchaser.
6. The City has vacated the parts of the streets and alleys shown on Exhibit C attached to the Redevelopment Agreement.
7. The conditions precedent described in Section 3.5 of the Redevelopment Agreement have been satisfied.
8. Following Purchaser's acquisition of Office Building One, Purchaser, as the successor Developer of Office Building One, shall not be liable for the payment or performance of any of the liabilities or obligations of the Developer of Office Building Two or the Developer of the Retail Facility. The liabilities and obligations under the Redevelopment Agreement of the Developer of Office Building One, the Developer of Office Building Two and the Developer of the Retail Facility shall be several and not joint.
9. This certificate and the representations made herein shall be governed by the laws of the State of Illinois and are binding upon the City and its successors and assigns and inure to the benefit of Purchaser and Lender and their respective successors and assigns.

IN WITNESS WHEREOF, this certificate has been duly executed and delivered by the authorized officers or signatories of the City as of _____, 2005.

CITY OF URBANA, CHAMPAIGN
COUNTY, ILLINOIS

By _____
Title: