



DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

Economic Development Division

m e m o r a n d u m

TO: Laurel Lunt Prussing, Mayor

FROM: Elizabeth H. Tyler, FAICP, Director, Community Development Services

DATE: August 10th, 2015

SUBJECT: **Corrected Memo - AN ORDINANCE APPROVING AN ASSIGNMENT AND ASSUMPTION OF A DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF URBANA, ILLINOIS AND INTERCHANGE PROPERTIES, LLC, IN CONNECTION WITH THE CUNNINGHAM AVENUE CORRIDOR REDEVELOPMENT PROJECT AREA (Sale of O'Brien Auto Park)**

Introduction and Background

The City of Urbana has been approached by representatives of the O'Brien Auto Park and the related company Interchange Properties, LLC whose manager is Joe O'Brien regarding the purchase of their business and properties by the Ed Napleton Automotive Group and the related company EFN Urbana Properties, LLC whose manager is Ed Napleton. In accordance with the terms of the proposed sale, the purchaser and purchasee are mutually seeking an assignment of the development agreement entered into between the City of Urbana and Interchange Properties LLC dated January 29, 2001 and as subsequently amended. The City Council is requested to authorize this assignment as agreed to by both private parties by approving the assignment ordinance (**Attachment A: Draft Ordinance with Assignment and Assumption Agreement**).

The O'Brien Auto Park is located at 1111 Obrien Drive just northwest of the intersection of I-74 and US 45 (**Attachment B: Location Map**). The development agreement and amendments with Interchange Properties enabled the assembly, subdivision and development of 42 acres and including the relocation of the O'Brien Auto Park from University Avenue to this location. The auto park today includes seven car franchises and two automotive service departments. The purchaser, Ed Napleton Group, is a well-established company based in Westmont, IL and operates dealerships in Oak Lawn, Downers Grove, Aurora, Elmhurst, Arlington Heights, Lansing, Calumet City, Westmont and Chicago as well as additional dealerships in Florida, Missouri and Pennsylvania.

Discussion

The attached assignment ordinance provides consent from the City for the current owner of the property and beneficiary of the original development agreement to transfer certain rights under the agreement to the buyer of the subject business and properties. Under the mutually agreed to terms of the buyer and seller, the assignment will provide that Interchange Properties continues to receive the property tax rebate payments under the agreement.

The development agreement as amended offers ongoing annual property tax rebate payments from Tax Increment Finance District #4. The rebates are based on 36% of the amount of incremental property tax received each year. Per the agreement, the payment made in FY14-15 from TIF 4 was \$93,645. The budgeted amount for the payment in FY15-16 from TIF 4 is \$98,329. Property tax rebates will continue to be paid under the agreement through FY 21-22.

All construction, relocation and related obligations of the developer in the agreement as amended have been satisfied and certified by the City (**Attachment C: Certificate of Completion**).

Fiscal Impact

This approval of assignment does not commit the City to any additional funds. Therefore, there is no fiscal impact as a result of approving this ordinance. The assignment would allow the purchase by the Ed Napleton Group to proceed as planned. TIF 4 payments will continue to be paid to Interchange Properties LLC as budgeted.

Options

1. Approve the assignment ordinance as presented.
2. Approve the assignment ordinance with changes. It should be noted that any changes will need to be agreed upon by the parties involved.
3. Deny the assignment ordinance.

Recommendation

Staff recommends that the City Council approve the attached assignment ordinance.

Prepared by:

Brandon S. Boys, Economic Development Manager , AICP

Attachments:

- A: Draft Ordinance with Assignment and Assumption Agreement
- B: Location Map
- C: Certificate of Completion

ORDINANCE NO. 2015-08-086

AN ORDINANCE APPROVING AN ASSIGNMENT AND ASSUMPTION OF A DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF URBANA, ILLINOIS AND INTERCHANGE PROPERTIES, LLC, IN CONNECTION WITH THE CUNNINGHAM AVENUE CORRIDOR REDEVELOPMENT PROJECT AREA

(Sale of O'Brien Auto Park)

WHEREAS, the City of Urbana, Champaign County, Illinois (the "**Municipality**") and Interchange Properties, LLC (the "**Developer**"), have previously entered into a Development Agreement dated as of January 29, 2001, as amended by an Amendment to Agreement, dated September 15, 2003, and as further amended by an Addendum to Amendment to Agreement, dated July 20, 2004 (collectively, the "**Development Agreement**") for the development and construction of several retail automobile stores (the "**Project**") within the Municipality's Cunningham Avenue Corridor Redevelopment Project Area along with certain redevelopment incentives and assistance related to such Project; and

WHEREAS, all capitalized words and terms contained herein shall have the same meanings as ascribed to them in the Development Agreement; and

WHEREAS, under Section 8.2 of the Development Agreement, the Developer may transfer the Project and the Project Site and its rights under the Development Agreement after completion of the construction of the Project without the consent of the City Council, provided that any proposed transferee, by an instrument in writing satisfactory to the City Council and in a form recordable with the land records, shall expressly assume all of the obligations of the Developer under the Development Agreement and agree to be subject to all the conditions and restrictions to which the Developer is subject; and

WHEREAS, the Developer has agreed to sell and EFN Urbana Properties, LLC (as assignee of Napleton Acquisitions, LLC, the "**Purchaser**") has agreed to purchase the Project Site; and

WHEREAS, the City Council of the Municipality is willing to approve the terms and conditions of the Assignment and Assumption of Development Agreement (the "**Assignment and Assumption Agreement**") by and between the Developer and the Purchaser.

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

Section 1. Approval. The Assignment and Assumption Agreement, in substantially the form thereof presented before the meeting of the City Council at which this ordinance is adopted, shall be and is hereby approved, and the Mayor is authorized to execute and deliver the Assignment and Assumption Agreement for and on behalf of the Municipality with such changes

therein as the Mayor shall approve. Upon full execution thereof, the Assignment and Assumption Agreement shall be attached as an exhibit to this ordinance, but any failure to so attach shall not abrogate, diminish or impair the effect of the Assignment and Assumption Agreement as fully executed.

Section 2. Effective. This ordinance shall be in full force and effect in the manner provided by law.

Upon motion by City Council member _____, seconded by City Council member _____, adopted this ____ day of _____, 2015, by roll call vote, as follows:

AYES (Names): _____

NAYS (Names): _____

ABSENT (Names): _____

Approved this ____ day of _____, 2015.

(SEAL)

Mayor

Attest:

City Clerk

STATE OF ILLINOIS)
THE COUNTY OF CHAMPAIGN) SS.
CITY OF URBANA)

CERTIFICATION OF ORDINANCE

I, Phyllis D. Clark, do hereby certify that I am the duly qualified and acting City Clerk of the City of Urbana, Champaign County, Illinois (the “**Issuer**”), and as such official I am the keeper of the records and files of the Issuer and of the City Council of the Issuer (the “**Corporate Authorities**”).

I do further certify that the attached ordinance constitutes a full, true and correct excerpt from the proceedings of the regular meeting of the Issuer’s Corporate Authorities held on _____, 2015, insofar as same relates to the adoption of an ordinance numbered and entitled:

AN ORDINANCE APPROVING AN ASSIGNMENT AND ASSUMPTION OF A DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF URBANA, ILLINOIS AND INTERCHANGE PROPERTIES, LLC, IN CONNECTION WITH THE CUNNINGHAM AVENUE CORRIDOR REDEVELOPMENT PROJECT AREA,

a true, correct and complete copy of which ordinance as adopted at such meeting appears in the minutes of such meeting and is hereto attached. Such ordinance was adopted and approved on the date thereon set forth by not less than an affirmative vote of a majority of the Corporate Authorities and approved by the Mayor on the date indicated thereon.

I do further certify that the deliberations of the Corporate Authorities on the adoption of such ordinance were taken openly, that the vote on the adoption of such ordinance was taken openly and was preceded by a public recital of the nature of the matter being considered and such other information as would inform the public of the business being conducted, that such meeting was called at a specified time and place convenient to the public, that the agenda for the meeting was duly posted on the Issuer’s website and at the Municipal Building at least 48 hours prior to the meeting, that notice of such meeting was duly given to all of the news media requesting such notice, that such meeting was called and held in strict compliance with the provisions of the open meetings laws of the State of Illinois, as amended, and the Illinois Municipal Code, as amended, and that the Corporate Authorities have complied with all of the provisions of such open meeting laws and Illinois Municipal Code and with their procedural rules in the adoption of such ordinance.

IN WITNESS WHEREOF, I hereunto affix my official signature and seal of the City of Urbana, Champaign County, Illinois, this _____ day of _____, 2015.

(SEAL)

City Clerk

Prepared By:

**John S. Elias
Elias, Meginnes
& Seghetti, P.C.
416 Main Street, Suite 1400
Peoria, Illinois 61602**

After Recording Return To:

**John S. Elias
Elias, Meginnes
& Seghetti, P.C.
416 Main Street, Suite 1400
Peoria, Illinois 61602**

ASSIGNMENT AND ASSUMPTION OF DEVELOPMENT AGREEMENT

This Assignment and Assumption of Development Agreement (“Assignment”) is made as of _____, 2015, by and between Interchange Properties, LLC, an Illinois limited liability company (“Interchange”), and EFN URBANA PROPERTIES, LLC, an Illinois limited liability company (“Purchaser”).

RECITALS

A. Pursuant to that certain Dealership Facility Purchase Contract, dated March 30, 2015, (the “Dealership Facility Purchase Contract”), Interchange has agreed to sell and Purchaser (as assignee of Napleton Acquisitions, LLC) has agreed to purchase the real estate described on Exhibit A attached hereto and incorporated herein; and pursuant to that certain Urbana Outlots Purchase Contract dated March 30, 2015 (“Urbana Outlots Purchase Contract”), Urbana Properties, LLC has agreed to sell and Purchaser (as assignee of Napleton Acquisitions, LLC) has agreed to purchase certain related outlots described on Exhibit B attached hereto and incorporated herein. The real estate on Exhibit A and Exhibit B hereto is collectively referred to herein as the “Real Property”;

B. The Real Property is subject to an Agreement between the City of Urbana, Illinois and Interchange Properties, LLC, dated January 29, 2001, as amended by an Amendment to Agreement, dated September 15, 2003, and as further amended by an Addendum to Amendment to Agreement, dated July 20, 2004 (collectively, the “Development Agreement”), which Development Agreement applies to the Real Property; and,

C. Pursuant to such Dealership Facility Purchase Contract and in accordance with Section 8.2 of the Development Agreement, Interchange has agreed to assign to Purchaser certain rights under the Development Agreement, and Purchaser has agreed from and after the date of this Assignment, to assume Interchange’s obligations under the Development Agreement and to be subject to all of the conditions and restrictions to which Interchange is subject thereunder;

NOW, THEREFORE, for good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, Purchaser and Seller covenant and agree as follows:

1. Assignment. Except for all rights to the TIF Reimbursement Payments (as defined in the Development Agreement, which rights are being retained by Interchange as further set forth in Section 3 below), Interchange hereby assigns, transfers and sets over unto Purchaser all other rights of Interchange under the Development Agreement.

2. Assumption. Purchaser hereby assumes all of the obligations of Interchange under the Development Agreement arising or accruing on or after the date of this Assignment and agrees to be subject to all of the conditions and restrictions to which Interchange is subject thereunder.

3. No Assignment of Rights to TIF Reimbursement Payments. It is agreed and understood that Interchange has not hereby assigned to Purchaser the rights of Interchange as “Developer” under the Development Agreement to the TIF Reimbursement Payments as defined in and payable under ARTICLE XI and other sections of the Development Agreement. All rights to such TIF Reimbursement Payments have been retained by Interchange as Interchange’s sole and exclusive property.

4. Direction to City. The parties hereby jointly direct and instruct the City of Urbana to continue to make all TIF Reimbursement Payments owed to the Developer under the Development Agreement to Interchange.

5. Binding Effect. This Assignment shall be binding upon and inure to the benefit of Interchange and Purchaser and their respective heirs, personal representatives, successors and assigns.

6. Counterparts. This instrument may be executed in counterparts, each of which shall be deemed an original and all of which shall be considered one document.

[Signature Page to Follow]

815-0202.d5

IN WITNESS WHEREOF, the parties have caused this Assignment and Assumption of Development Agreement to be executed as of the day and year first above written.

INTERCHANGE:

PURCHASER:

Interchange Properties, LLC

EFN URBANA PROPERTIES, LLC

By: _____

By: _____

Print Name: Joseph D. O'Brien

Print Name: _____

Title: Manager

Title: _____

STATE OF _____)
) SS
 COUNTY OF _____)

I, the undersigned, a Notary Public in and for said County and State aforesaid, DO HEREBY CERTIFY that Joseph D. O'Brien, Jr., personally known to me to be the Manager of Interchange Properties, LLC, an Illinois limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act.

GIVEN under my hand and notarial seal _____, 2015.

 NOTARY PUBLIC

STATE OF ILLINOIS_)
) SS
 COUNTY OF _____)

I, the undersigned, a Notary Public in and for said County and State aforesaid, DO HEREBY CERTIFY that _____, personally known to me to be the _____ of EFN URBANA PROPERTIES, LLC, an Illinois limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing instrument as such _____, appeared before me this day in person and acknowledged that he/she signed, sealed and delivered the said instrument as his/her free and voluntary act.

GIVEN under my hand and notarial seal _____, 2015.

 NOTARY PUBLIC

APPROVAL BY CITY

The undersigned confirms that the City Council of the City of Urbana has approved the terms and conditions of the Assignment and Assumption of Development Agreement to which this Approval is attached ("Assignment"); and in accordance with Sections 3 and 4 of the Assignment, the City of Urbana hereby agrees to continue to make the TIF Reimbursement Payments owed to the Developer pursuant to the Development Agreement exclusively to Interchange Properties, LLC.

The City of Urbana hereby releases Interchange Properties, LLC and Urbana Properties, LLC from all obligations of the Developer under the Developer Agreement arising or occurring on or after the date of the Assignment.

City of Urbana, Champaign County, Illinois

By: _____

Printed Name: _____

Title: _____

Date: _____, 2015

EXHIBIT A

LEGAL DESCRIPTION OF DEALERSHIP FACILITY

LOT 101A, OUTLOT A AND OUTLOT B OF O'BRIEN SUBDIVISION NO. 1, A SUBDIVISION OF PART OF THE NORTHEAST HALF OF SECTION 4, TOWNSHIP 19 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN AS SHOWN ON A PLAT RECORDED AS DOCUMENT NO. 2004R36644 ON NOVEMBER 19, 2004 WITH THE CHAMPAIGN COUNTY RECORDER OF DEEDS, SITUATED IN THE COUNTY OF CHAMPAIGN AND STATE OF ILLINOIS.

PIN: 91-21-04-151-003, -006, and -007

EXHIBIT B

LEGAL DESCRIPTION OF URBANA OUTLOTS

LOT 101B AND LOT 102 OF O'BRIEN SUBDIVISION NO. 1, A SUBDIVISION OF PART OF THE NORTHEAST HALF OF SECTION 4, TOWNSHIP 19 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN AS SHOWN ON A PLAT RECORDED AS DOCUMENT NO. 2004R36644 ON NOVEMBER 19, 2004 WITH THE CHAMPAIGN COUNTY RECORDER OF DEEDS, SITUATED IN THE COUNTY OF CHAMPAIGN AND STATE OF ILLINOIS.

PIN: 91-21-04-151-004, and -005

Attachment B: O'Brien Auto Park (primary parcel)



This map application was prepared with geographic information system (GIS) data created by the Champaign County GIS Consortium (CGISC), or other CGISC member agency. These entities do not warrant or guarantee the accuracy or suitability of GIS data for any purpose. The GIS data within this application is intended to be used as a general index to spatial information and not intended for detailed, site-specific analysis or resolution of legal matters. Users assume all risk arising from the use or misuse of this application and information contained herein. The use of this application constitutes acknowledgement of this disclaimer.

Date: Thursday, August 06, 2015

Prepared By:

John S. Elias
Elias, Meginnnes & Seghetti, P.C.
416 Main Street, Suite 1400
Peoria, Illinois 61602

After Recording Return To:

John S. Elias
Elias, Meginnnes & Seghetti, P.C.
416 Main Street, Suite 1400
Peoria, Illinois 61602

CERTIFICATE OF COMPLETION

Pursuant to Sections 1.4 and 1.5 of the Agreement between the City of Urbana, Illinois, and Interchange Properties, LLC, dated January 29, 2001, as amended by an Amendment to Agreement, dated September 15, 2003, and an Addendum to Amendment to Agreement, dated July 20, 2004, (collectively, "the Development Agreement"), the City hereby certifies that all construction, relocation and related obligations of the Developer with respect to the Project (as defined in the Development Agreement) on the Project Site described on Exhibit A hereto have been completed and satisfied.

IN WITNES WHEREOF, the City has caused this Certificate to be executed by its duly authorized officers as of the date(s) set forth below.

City of Urbana, Champaign County, Illinois,

By: Laurel Hunt Prussing
Print Name: Laurel Hunt Prussing

Title: Mayor

Date: 3/10/15

ATTEST:

By: Phyllis D. Clark

Printed Name: Phyllis D. Clark

Title: City Clerk

STATE OF ILLINOIS)
) SS
COUNTY OF CHAMPAIGN)

I, the undersigned, a Notary Public in and for said County and State aforesaid, DO HEREBY CERTIFY that Lavelle Louise, personally known to me to be the Mayor, of the City of Urbana, Illinois, an Illinois municipal corporation, and personally known to me to be the same person whose name is subscribed to the foregoing instrument as such She, appeared before me this day in person and acknowledged that he/she signed, sealed and delivered the said instrument as his/her free and voluntary act.

GIVEN under my hand and notarial seal March 10, 2015

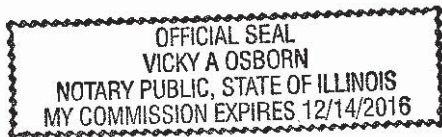


Vicky A. Osborn

STATE OF ILLINOIS)
) SS
COUNTY OF CHAMPAIGN)

I, the undersigned, a Notary Public in and for said County and State aforesaid, DO HEREBY CERTIFY that Phyllis Clark, personally known to me to be the Clerk of the City of Urbana, Illinois, an Illinois municipal corporation, and personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Clerk, appeared before me this day in person and acknowledged that he/she signed, sealed and delivered the said instrument as his/her free and voluntary act.

GIVEN under my hand and notarial seal March 16, 2015



Vicky A. Osborn
NOTARY PUBLIC

Exhibit A

LOT 101A, LOT 101B, LOT 2, OUTLOT A AND OUTLOT B OF O'BRIEN SUBDIVISION NO. 1, A SUBDIVISION OF PART OF THE NORTHEAST HALF OF SECTION 4, TOWNSHIP 19 NORTH, RANGE 9 EAST, OF THE THIRD PRINCIPAL MERIDIAN AS SHOWN ON A PLAT RECORDED AS DOCUMENT NO. 2004R36644 ON NOVEMBER 19, 2004 WITH THE CHAMPAIGN COUNTY RECORDER OF DEEDS, SITUATED IN THE COUNTY OF CHAMPAIGN AND STATE OF ILLINOIS.

PINS: 91-21-04-151-003, -004, -005, -006 and -007