



151 Martin
Birmingham, MI 48009
248.530.1800

BIRMINGHAM BROWNFIELD REDEVELOPMENT AUTHORITY AGENDA

Friday, June 22, 2018 at 8:30 a.m.
Birmingham City Hall (151 Martin Street)
City Commission Room

1. Call to Order
2. Approval of minutes of July 12, 2017 meeting.
3. Discussion of Collateral Assignment for **856 N. Old Woodward**:

Request for consent of the City to an assignment of the developer's reimbursements from the tax increment financing for this parcel to Chemical Bank.
4. Project Updates
5. Request to meet **in closed session** under section 8(h) of the Open Meetings Act, MCL 15.268(h), to consider material exempt from disclosure under section 13(l)(g) of the Freedom of Information Act, MCL 15.243(l)(g), information subject to the attorney-client privilege.
6. Open to the public for items not on the Agenda
7. Adjournment

Approved minutes of the meeting are available in the Community Development Office or online at www.bhamgov.org.

Notice: Due to Building Security, public entrance during non-business hours is through the Police Department—Pierce St. Entrance only. Individuals with disabilities requiring assistance to enter the building should request aid via the intercom system at the parking lot entrance gate on Henrietta St.

Persons with disabilities that may require assistance for effective participation in this public meeting should contact the City Clerk's Office at the number (248) 530-1880, or (248) 644-5115 (for the hearing impaired) at least one day before the meeting to request help in mobility, visual, hearing, or other assistance.

Las personas con incapacidad que requieren algún tipo de ayuda para la participación en esta sesión pública deben ponerse en contacto con la oficina del escribano de la ciudad en el número (248) 530-1800 o al (248) 644-5115 (para las personas con incapacidad auditiva) por lo menos un día antes de la reunión para solicitar ayuda a la movilidad, visual, auditiva, o de otras asistencias. (Title VI of the Civil Rights Act of 1964).

**Brownfield Redevelopment Authority
MINUTES
City Commission Room of the Municipal Building
151 Martin Street, Birmingham, Michigan**

**Wednesday, July 12, 2017
8 a.m.**

1. Chairperson Beth Gotthelf welcomed everyone and convened the meeting at 8:18 a.m.

Members Present: Chairperson Beth Gotthelf
Robert Runco
Dani Torcolacci

Member Absent: Wendy Zabriskie

Also Present: Troy Helmick, SME
Brett Stuntz, AKT Peerless, City Brownfield Consultant
Jamie Ray Turnbull, Owner's Representative for August LLC

Administration: Jana Ecker, Planning Director
Mark Gerber, Finance Director
Jeffrey Haynes, Beier Howlett, City Attorney
Mario Mendoza, Recording Secretary

2. Approval of June 27, 2017 Minutes

**Motion by Mr. Runco
Seconded by Ms. Torcolacci to approve the June 27, 2017 minutes as presented.**

**Voice
Vote: Yeas, 3
Nays, 0
Absent, 1**

Motion carried, 3-0.

3. Brownfield Plan Application for **35975 Woodward Ave.:**

Resolution approving the Brownfield Plan and associated Reimbursement Agreement pertaining to the Brownfield Plan for 35975 Woodward Ave. (currently vacant land) and requesting the City Clerk to forward the Brownfield Plan and Reimbursement Agreement to the Birmingham City Commission for their review and consideration.

Chairperson Gotthelf recalled the Plan was discussed extensively at their last meeting. It was noted the property was a former gas station from 1961 or so until the '80s. From 1961 through

approximately 2000, BP owned the property while it was a gas station. The contamination is linked to the operations of the gas station. Under State law they are a liable party and therefore they can be responsible for some of the increased cost of the redevelopment because it is a result of contamination. So the Authority had given the owner time to talk to BP and to inform them that they are a liable party in the current situation.

Now a letter has been received from BP dated July 7, 2017 that indicates the site was sold to Armada Real Estate in 2005. As part of the sale, Armada assumed responsibility for all environmental liability on the site. Based on this information, the letter states that BP is not obligated and is not in a position to offer any contributions to the redevelopment of the property.

Mr. Troy Helmick indicated they spoke with BP who said they have a 2005 agreement with Armada Real Estate to transfer liability to them in exchange for a sum of money. That agreement is still in place. It is BP's opinion that Armada will not participate with a portion of the redevelopment. They tried to reach Armada Oil Co. but were not able to receive a contact person associated with the Armada Real Estate, LLC. portion of their company.

Responding to Ms. Torcolacci, Mr. Helmick said that BP has the original restrictive covenant on the property to protect against human contact ground water use. Deed restrictions were put on the property at a later time restricting building any sub-grade structures. That portion of the deed restriction was rescinded. None of those restrictions prohibit the City from trying to hold Armada as a liable party.

Mr. Haynes stated BP cannot transfer their liability, even though they have a document that says they have done that. So, the letter that BP sent is misleading. If they are, in fact a liable party, they remain a liable party. The Brownfield Authority has statutory authority to pursue liable parties for the reimbursement of any costs paid.

The applicant is asking for reimbursement of \$580,000. Of that, \$151,000 is cost of the soil management. BP would hopefully cover a portion of it. Chairperson Gotthelf said that \$70,000 for vapor intrusion, and any additional groundwater management fees might be something to talk to BP about as well. Also she wanted SME to be aware in the future that the authority is looking at certain limits on fees for preparation of the Brownfield Plan and the Work Plan.

Chairperson Gotthelf noted the Brownfield was created in order not to make contamination an obstacle for redevelopment. This Authority looks at reduction of the purchase price because the property is contaminated. The Authority also looks to see if someone else can pay the difference instead of them. That is why they asked SME to consider why BP is having the discussion about Armada. However, If the developer, August, LLC, is going to make this work they need financial assistance in the form of this Brownfield TIF. Also they need to have that promptly because otherwise they might lose their window of opportunity. The Authority has the following options:

- Approve as-is;
- Approve with a different amount, but the applicant always has the opportunity to come back and ask for an amendment;

- Delay for further information.

It was discussed that the timeline for negotiations between Armada and BP regarding reimbursement would be long and too costly to the developer and the owner, based on historical experience with these agreements. Ms. Jamie Rae Turnbull added that further delay would be a significant issue for the owner who is in his eighties. They are hoping to get a building permit today. Their contractors are ready to break ground.

Mr. Haynes commented that at the last meeting he asked Dan Cassidy if any of the environmental costs would be attributed to the cost of closure and he said no. So the Authority might want to think about consistency with the DFCU site at Maple Rd. and Cranbrook where there was a cost of closure associated that was deducted from the Brownfield reimbursement. In this case BP could come back and say that none of the costs are associated with their closure of the site; therefore they are not liable for any of them. Armada could say the same with regard to cost of closure.

Motion by Ms. Torcolacci

Seconded by Mr. Runco to approve the Brownfield Plan and associated Reimbursement Agreement pertaining to the Brownfield Plan for 35975 Woodward Ave. (currently vacant land) and requesting the City Clerk to forward the Brownfield Plan and Reimbursement Agreement to the Birmingham City Commission for their review and consideration. Reimbursement Eligible Costs will not exceed \$580,570 limited to 10 years. Reimbursement from Local Taxes will not exceed \$333,327.

Voice

**Vote: Yeas, 3
 Nays, 0
 Absent, 1**

Motion carried, 3-0.

Ms. Ecker said she said she will set a public hearing at the July 24 City Commission meeting which will likely be for August 14. Mr. Haynes agreed to send the full Reimbursement Agreement to SME. Two executed copies have to be signed by the developer before they go to the City Commission. Mr. Stuntz said that in order to qualify for State reimbursement the City must approve the Agreement.

4. Guidelines for future Brownfield Plan applications

Mr. Stuntz summarized some of the Brownfield project policies of municipalities around the State.

Ms. Ecker noted several regulations that the Authority might want to discuss:

- Consider only participating with State capture;
- Limiting Brownfield Plan for costs, interest, term;
- Capping the amount;

- Set the minimum cost on a development that is not going to add a lot of value to the community.

Mr. Haynes recommended:

- Taking another look at the taxable value after construction when the developer receives a Certificate of Occupancy and adjusting the time period of payback.

The group suggested that staff work on drafting a policy with focus on:

- Zero interest unless it is a significant project when interest would go to 3%.;
- Maximum of 10 years payback unless it is a significant project;
- If the State denies paying its portion, then the applicant would have to come back to the Authority to request a Plan Amendment for the Authority to pay that portion;
- Shorten the reimbursement term depending on the taxable value. This limits the amount the developer is getting back because they didn't increase the value as much as they thought.
- Developer doesn't get their check until the assessed value is there, which means the project is built.

5. Project Updates (none)

6. Open to the public for items not on the Agenda (no public available)

7. Adjournment

No further business being evident, the board passed a motion to adjourn at 9:32 a.m.

Respectfully submitted,

Carole Salutes
Transcription Secretary



MEMORANDUM

Planning Division

DATE: June 18, 2018

TO: Brownfield Redevelopment Authority

FROM: Jana L. Ecker, Planning Director

SUBJECT: Assignment of Developer's Brownfield Reimbursements for 856 N. Old Woodward

Please see the attached agreement regarding the assignment of the developer's brownfield reimbursements for 856 N. Old Woodward to their funder, Chemical Bank. At this time, the developer of the above property is seeking the consent of City to the proposed assignment of reimbursements to Chemical Bank.

The City Attorney has reviewed the agreement, and a letter is attached recommending approval by the City of the requested assignment.

SUGGESTED ACTION:

To recommend that the City Commission approve the developer's request and consent to an assignment of the developer's reimbursements from the tax increment financing for 856 N. Old Woodward to Chemical Bank.

June 18, 2018

Birmingham Brownfield Redevelopment Authority
151 Martin Street, P.O. Box 3001
Birmingham, MI 48012-3001

Via electronic mail

**Re: 856 N. Old Woodward (The Pearl)
Consent for Collateral Assignment**

Dear Board Members:

The developer has requested the City consent to an assignment of the developer's reimbursements from the tax increment financing for this parcel. The developer wants to assign these funds to its bank.

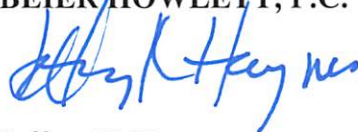
Although paragraph 12 of the Reimbursement Agreement says that the developer may assign its rights under the reimbursement agreement for purposes of financing improvements without the consent of the BBRA, the developer apparently believes that it must obtain the consent of the City.

Under the proposed consent, neither the City nor the BBRA give up any rights against the developer under the agreement (such as failure to pay property taxes). I recommend that the BBRA agree to the consent, authorize the chair of the BBRA to sign, and recommend to the city commission that the commission approve the consent.

If you have any questions, please contact me.

Very truly yours,

BEIER HOWLETT, P.C.



Jeffrey K. Haynes

JKH/jms

NOTE: CONSENT ATTACHED TO BE SIGNED BY THE CITY OF BIRMINGHAM AND CITY OF BIRMINGHAM BROWNFIELD REDEVELOPMENT AUTHORITY

COLLATERAL ASSIGNMENT OF BROWNFIELD REIMBURSEMENT AGREEMENT AND RELATED RIGHTS

THIS COLLATERAL ASSIGNMENT OF BROWNFIELD REIMBURSEMENT AGREEMENT AND RELATED RIGHTS ("Assignment"), dated as of June __, 2018, is made by **FLS PROPERTIES #5 LLC**, a Michigan limited liability company ("Assignor"), in favor of **CHEMICAL BANK** ("Assignee").

RECITALS

A. On or about the date hereof, Assignor and Assignee entered into that certain Construction Loan Agreement (as amended, restated or from time to time otherwise modified, the "Loan Agreement") whereby Assignee agreed to make certain loans (collectively, the "Loan") available to Assignor in the aggregate amount of \$16,435,039.00, to finance the development and construction of mixed-use residential/retail building with underground parking to be located at 856 N. Old Woodward Avenue, Birmingham, Michigan 48009 (the "Project"). Capitalized terms used and not otherwise defined herein shall have the meanings given to them in the Loan Agreement.

B. In connection with the Loan, Assignor has executed and delivered certain promissory notes (collectively, as amended, restated or from time to time otherwise modified, the "Note") in favor of Assignee on or about the date hereof, in the amount of the Loan, payment of which is partially secured by (i) a Mortgage made by Assignor in favor of Assignee on the Project, and (ii) the other Loan Documents.

C. The City of Birmingham ("City") and the City of Birmingham Redevelopment Authority ("BRA") have approved an Act 381 Brownfield Plan dated October 28, 2016 (as it may be amended from time to time subject to the terms and conditions hereof, the "Brownfield Plan").

D. Assignor, the City and BRA have entered into a Brownfield Reimbursement Agreement dated as of October 27, 2016 (as it may be amended from time to time subject to the terms and conditions hereof, the "Reimbursement Agreement"), related to the Project, pursuant to which Assignor is entitled to reimbursement for certain expenditures made, or to be made, in connection with the Project, now or hereafter payable to Assignor under the Reimbursement Agreement (collectively, the "Payments"), which the Payments are to reimburse Assignor for expenses incurred under the Brownfield Plan. Assignor has provided Assignee with a complete executed copy of the Reimbursement Agreement.

E. The execution and delivery of this Assignment is, among other conditions, a condition precedent to the performance by Assignee of its obligations under the Loan Agreement.

AGREEMENTS

NOW, THEREFORE, in consideration of the recitals set forth above and incorporated herein, and for other good and valuable consideration, Assignor agrees as follows:

1. Assignment, Security Interest:

a. Assignor hereby grants, transfers and assigns to Assignee and grants to Assignee a security interest in, all the right, title and interest of Assignor now or hereafter acquired in, and under the following (collectively the "Collateral"):

- i. the Brownfield Plan;
- ii. The Reimbursement Agreement;

iii. All Payments; and

iv. All proceeds of or pertaining to any of the foregoing including, without limit, cash or other property which were proceeds and are recovered by a bankruptcy trustee or otherwise as a preferential transfer by Assignor.

The Brownfield Plan and the Reimbursement Agreement are sometimes hereinafter collectively referred to as the "Brownfield Reimbursement Documents."

b. This Assignment is given for the purpose of granting a security interest and securing the payment of all present and future indebtedness and obligations of Assignor to Assignee under the Loan Documents ("Indebtedness"), including, without limitation, the payment of principal and interest due under the Note, any other sums now or at any time due Assignee under the Loan Documents, and any extensions, modifications, amendments and renewals thereof, and the performance and discharge of the obligations, covenants, conditions, and agreements of Assignor contained herein (with respect to Assignor) and in the Loan Documents, and Assignee shall be entitled to exercise Assignor's right, title and interest under the Brownfield Reimbursement Documents immediately upon the occurrence of an Event of Default under the Loan Documents.

c. Notwithstanding anything herein to the contrary, so long as no Event of Default is in existence under any of the Loan Documents, Assignor shall have the right to exercise Assignor's rights in the Collateral including, but not limited to, the right to receive Payments thereunder; provided, however, that Assignor acknowledges and agrees that Lender may, at any time, request in writing that the City and the BRA pay the Payments directly to Assignee and, in such event, no further consent of Assignor shall be required in connection with such request.

2. Covenants; Representations and Warranties: Assignor agrees:

a. To faithfully abide by, perform and discharge each and every obligation, covenant, condition and agreement of the Brownfield Reimbursement Documents to be performed by Assignor, and to enforce performance by the other party thereto of each and every obligation, covenant, condition and agreement to be performed by such other party;

b. Assignor shall complete all remediation work as set forth in the Brownfield Reimbursement Documents, and no later than the date set forth in the Brownfield Reimbursement Documents, and submit reimbursement statement(s) in conformance with and pursuant to the Reimbursement Agreement promptly upon completion of such work;

c. Assignor has not previously assigned, sold, pledged, transferred, mortgaged, hypothecated or otherwise encumbered the Brownfield Reimbursement Documents, or any of them, or its right, title and interest therein;

d. Assignor shall not assign, sell, pledge, transfer, mortgage, hypothecate or otherwise encumber its interests in the Brownfield Reimbursement Documents, or any of them;

e. Assignor has not performed any act which might prevent Assignor from performing its undertakings hereunder or which might prevent Assignee from operating under or enforcing any of the terms and conditions hereof or which would limit Assignee in such operation or enforcement;

f. Assignor is not in default under the Brownfield Reimbursement Documents, or any of them, and to the best knowledge of Assignor, no other party to the respective Brownfield Reimbursement Documents is in default thereunder except as disclosed in writing to Assignee;

g. Assignor shall not enter into any amendments, modifications or restatements to any of the Brownfield Reimbursement Documents without the prior written consent of Assignee;

h. Assignor shall not terminate any of the Brownfield Reimbursement Documents without the prior written consent of Assignee;

i. upon execution of any of the Brownfield Reimbursement Documents following the date hereof, Assignor will deliver a copy of such Brownfield Reimbursement Documents (or the original at Assignee's request) to Assignee and will require such of the parties thereto as Assignee may designate to execute and deliver to Assignee a consent to this Assignment, such consent to be identical to the applicable form of Consent attached hereto as Exhibit A; and

j. Assignor shall furnish to Assignee (i) each Petition (as defined in the Reimbursement Agreement) for a Payment submitted to City and/or BRA, within five (5) days after each such submission, (ii) all written responses of the City and/or BRA to each such Petition including, without limitation, the responses delivered pursuant to Section 6 (b) of the Reimbursement Agreement, within five (5) days after such written response is received by Assignor, and (iii) notice of its receipt of any Payment within three (3) days after receipt by Assignor.

3. Events of Default: The occurrence of any of the following shall constitute an event of default hereunder (each an "Event of Default"):

(1) Failure of Assignor to observe or perform any covenant or condition contained in this Assignment;

(2) Any representation or warranty made by Assignor herein which is not true and correct in any material respect as of the date hereof; and

(3) A Default or Event of Default by Assignor under the Loan Agreement or any of the other Loan Documents.

4. Remedies:

a. Upon the occurrence of any Event of Default hereunder, Assignee shall have all rights granted to Assignee under this Assignment and the Loan Documents, and Assignee shall have the right (but not the obligation) to correct any default in such manner and to such extent as Assignee may deem necessary to protect the security hereof, including specifically, without limitation, the right to appear in and defend any action or proceeding purporting to affect Brownfield Reimbursement Documents or the rights or powers of Assignee. Assignee shall also have the right to perform and discharge each and every obligation, covenant, condition and agreement of Assignor under the Brownfield Reimbursement Documents, and, in exercising any such powers, to pay necessary costs and expenses, employ counsel and incur and pay reasonable attorneys' fees and expenses. Assignee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any of the Brownfield Reimbursement Documents, or by reason of this Assignment, unless Assignee forecloses on all rights and obligations of Assignor (not just the right to receive Payments) under the Brownfield Reimbursement Documents and purchases the Collateral (not just the right to receive Payments) at a foreclosure sale, in which case Assignee as the purchaser of all such rights of Assignor under the Brownfield Reimbursement Documents shall assume the rights and obligations of Assignor under the Brownfield Reimbursement Documents arising on or after the date of such purchase and sale. Any such assignment shall not relieve Assignor of its obligations under the Brownfield Reimbursement Documents. Assignee shall provide written notice to the City and BRA of any such foreclosure sale of all rights and obligations of Assignor under the Brownfield Reimbursement Documents and the assumption by Assignee of such rights and obligations. If Assignee forecloses only on the rights of Assignor to receive Payments, Assignee shall not be obligated to perform or discharge any obligation, duty or liability under any of the Brownfield Reimbursement Documents.

b. At any time after the occurrence of an Event of Default, Assignee may, at its option, without notice, and without regard to the adequacy of security for the Indebtedness, either in person or by

agent, with or without bringing any action or proceeding, or by a receiver to be appointed by a court at any time hereafter, enforce for its own benefit the Brownfield Reimbursement Documents, or any of them. The exercise of any rights under this Assignment shall not be deemed to cure or waive any default under any of the Loan Documents, or waive, modify or affect any notice of default under any of the Loan Documents, or invalidate any act done pursuant to such notice.

c. Any party to the Brownfield Reimbursement Documents, upon written notice from Assignee of the occurrence of an Event of Default, shall be and are hereby authorized by Assignor to perform for the benefit of Assignee in accordance with the terms and conditions thereof without any obligation to determine whether or not such an Event of Default has in fact occurred.

d. After the occurrence of an Event of Default, the Assignee may, in its discretion, in its name or the Assignor's or otherwise, (i) notify the City and BRA to make payment to the Assignee of all Payments directly to Assignee, and (ii) demand, sue for, collect or receive any money or property at any time payable or receivable on account of the Brownfield Reimbursement Documents, or, with respect to Payments which have become due and payable under the Brownfield Reimbursement Documents and make any compromise or settlement deemed desirable by the Assignee. Upon the occurrence of an Event of Default, any Payments received by the Assignor under or in connection with the Brownfield Reimbursement Documents shall not be commingled with any other property of the Assignor, but shall be segregated, held by the Assignor in trust for, and immediately delivered to, the Assignee for application to the payment of the Indebtedness.

e. Upon the occurrence and at any time during the continuance or existence of any Event of Default, Assignee may at its discretion and without prior notice to Assignor, exercise any right or remedy available to it including, without limitation, any one or more of the following rights and remedies: (a) exercise all the rights and remedies upon default, in foreclosure and otherwise, available to secured parties under the provisions of the Uniform Commercial Code of Michigan as in effect from time to time (the "Uniform Commercial Code") and other applicable law; (b) institute legal proceedings to foreclose upon the lien and security interest granted by this Assignment, to recover judgment for all amounts then due and owing as Indebtedness, and to collect the same out of any Collateral or the proceeds of any sale of it; (c) institute legal proceedings for the sale, under the judgment or decree of any court of competent jurisdiction, of any or all Collateral; and/or (d) subject to the other terms of this Assignment and the Consent to Assignment attached hereto, sell or dispose of all or any Collateral at one or more public or private sales or other dispositions, at places and times and on terms and conditions as Assignee may deem fit, without any previous demand or advertisement; and except as provided in this Assignment, all notice of sale or other disposition, and advertisement, and other notice or demand, and any obligation of a prospective purchaser to inquire as to the power and authority of Assignee to sell or otherwise dispose of the Collateral or as to the application by Assignee of the proceeds of sale or otherwise, which would otherwise be required by, or available to Assignor under, applicable law are expressly waived by Assignor to the fullest extent permitted. Assignee may, in its discretion, bid and purchase any of the Collateral at any sale pursuant to this paragraph.

f. Assignor (a) irrevocably appoints Assignee or any agent of Assignee (which appointment is coupled with an interest) the true and lawful attorney-in-fact of Assignor (with full power of substitution) in the name, place and stead of, and at the expense of, Assignor and (b) authorizes Assignee or any agent of Assignee, in its own name, at Assignor's expense, exercisable after an Event of Default, to do any of the following, as Assignee, in its sole discretion, deems appropriate: (i) to demand, receive, sue for, and give receipts or acquittances for any moneys due or to become due on any Collateral and to endorse any item representing any payment on or proceeds of the Collateral; (ii) to execute and/or file in the name of and on behalf of Assignor all financing statements or other filings deemed necessary or desirable by Assignee to evidence, perfect, or continue the security interests granted in this Assignment; and (iii) to do and perform any act on behalf of Assignor permitted or required under this Assignment.

g. Assignee may take any and all actions that it deems necessary or appropriate to protect the Collateral and its security interest in the Collateral, and all costs and expenses for the same shall be added to the Indebtedness and shall be payable upon demand.

5. No Liability of Assignee; Indemnity: That in the exercise of the powers herein granted to Assignee, no liability shall be asserted or enforced against Assignee, all such liability being hereby expressly waived and released by Assignor. Assignor hereby agrees to indemnify and hold Assignee, and its officers, directors, employees and agents, free and harmless from and against any and all liability, expense, cost, loss or damage which Assignee may incur by reason of any act or omission of Assignor under any of the Brownfield Reimbursement Documents. Should Assignee incur any liability, expense, cost, loss or damage (i) under the Brownfield Reimbursement Documents for which it is to be indemnified by Assignor as aforesaid, or (ii) by reason of the exercise of Assignee's rights hereunder (including, but not limited to, the exercise of the rights granted to Assignee under Section 4.a hereof), the amount thereof, including costs, expenses and reasonable attorneys' fees and expenses, shall be secured hereby and by the Mortgage and all other Loan Documents (whether or not such amount, when aggregated with other sums secured by the Mortgage, exceeds the aggregate face amount of the Note) and shall (x) be due and payable immediately upon demand by Assignee and (y) bear interest at the Default Rate. Assignor further agrees to defend, indemnify, release and hold harmless the City and BRA from any third party claims arising from or related to any transfer or assignment of this Assignment or the Collateral.

6. Notices: Assignor shall send a copy to Assignee of any notice which Assignor receives with respect to the Brownfield Reimbursement Documents or is required to deliver to any party under the terms of the Brownfield Reimbursement Documents, at the time Assignor receives or delivers such notice, as applicable. All notices, demands or documents which are required or permitted to be given or served hereunder shall be in writing and shall be deemed sufficiently given when delivered or mailed in the manner set forth in the Loan Agreement.

7. Governing Law: This Assignment shall be governed by, and construed in accordance with, the laws of the State of Michigan.

8. Assignments: This Assignment shall be assignable by Assignee to any assignee of Assignee under the Loan Agreement and all representations, warranties, covenants, powers and rights herein contained shall be binding upon, and shall inure to the benefit of, Assignor and Assignee and their respective legal representatives, successors and assigns.

9. Estoppels: Within twenty (20) business days after a written request by Assignee, but not more than once per calendar year so long as no Event of Default exists, the Assignor agrees to execute and deliver a statement in a form reasonably satisfactory to Assignee, certifying to its actual knowledge (a) whether or not the Brownfield Reimbursement Documents are in full force and effect, (b) whether or not the Brownfield Reimbursement Documents have been modified and, if so, identifying the modifications, (c) that there are no uncured defaults by any party to the Brownfield Reimbursement Documents or describing the claimed defaults and (d) such other matters as Assignee shall reasonably request. Nothing in any such estoppel statement shall be deemed to modify or amend the Brownfield Reimbursement Documents.

10. Miscellaneous:

a. Any provision in the Loan Agreement that pertains to this Assignment shall be deemed to be incorporated herein as if such provision were fully set forth in this Assignment. In the event of any conflict between the terms of this Assignment and the terms of the Loan Agreement, the terms of the Loan Agreement shall prevail. A provision in this Assignment shall not be deemed to be inconsistent with the Loan Agreement by reason of the fact that no provision in the Loan Agreement covers such provision in this Assignment.

b. This Assignment is made for collateral purposes only and the duties and obligations of Assignor under this Assignment shall terminate when all sums due Assignee under the Loan Documents are paid in full and all obligations, covenants, conditions and agreements of Assignor contained in the Loan Documents are performed and discharged.

c. It is expressly intended, understood and agreed that this Assignment and the other Loan Documents are made and entered into for the sole protection and benefit of Assignor, and Assignee, and their respective successors and assigns (but in the case of assigns of Assignor, only to the extent permitted hereunder); that no other person or persons shall have any right at any time to action hereon or rights to the

proceeds of the loan evidenced and secured by the Loan Documents; that such loan proceeds do not constitute a trust fund for the benefit of any third party; that no third party shall under any circumstances be entitled to any equitable lien on any such undisbursed loan proceeds at any time; and that Assignee shall have a lien upon and right to direct application of any such undisbursed loan proceeds as provided in the Loan Documents.

d. Assignor and Assignee intend and believe that each provision in this Assignment comports with all applicable local, state or federal laws and judicial decisions. However, if any provision or provisions, or if any portion of any provision or provisions, in this Assignment is found by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision or public policy, and if such court should declare such portion, provision or provisions of this Assignment to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent both of Assignor and Assignee that such portion, provision or provisions shall be given force to the fullest possible extent that they are legal, valid and enforceable, that the remainder of this Assignment shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained therein and that the rights, obligations and interests of Assignor and Assignee under the remainder of this Assignment shall continue in full force and effect.

e. No single or partial exercise, or delay in the exercise, of any right or power under this Assignment, shall preclude other or further exercise of the rights and powers under this Assignment. The unenforceability of any provision of this Assignment shall not affect the enforceability of the remainder of this Assignment. This Agreement constitutes the entire agreement of Assignor and Assignee with respect to the subject matter of this Assignment. No amendment or modification of this Assignment shall be effective unless the same shall be in writing and signed by Assignor and an authorized officer of Assignee.

f. Assignor agrees to reimburse the Assignee upon demand for reasonable costs and expenses (including, without limit, court costs, legal expenses and reasonable attorneys' fees, whether inside or outside counsel is used, whether or not suit is instituted and, if suit is instituted, whether at the trial court level, appellate level, in a bankruptcy, probate or administrative proceeding or otherwise) incurred in enforcing or attempting to enforce this Assignment or any of the duties or obligations of Assignor under this Assignment or in establishing, determining, continuing or defending the validity or priority of Assignee's security interest under this Assignment or in exercising or attempting to exercise any right or remedy under this Assignment or incurred in any other matter or proceeding relating to this Assignment.

g. No right or remedy under this Assignment is intended to be exclusive of any other remedy, but each and every right and remedy shall be cumulative and in addition to any and every other right or remedy given under this Assignment, under any other agreement(s) and those provided by law or in equity. No exercise by Assignee of one right or remedy shall be deemed to be an election. No delay or omission by Assignee to exercise any right under this Assignment shall impair any such right nor be construed to be a waiver thereof. No failure on the part of Assignee to exercise, and no delay in exercising, any right hereunder, shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right.

h. ASSIGNOR AND ASSIGNEE ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED UNDER CERTAIN CIRCUMSTANCES. TO THE EXTENT PERMITTED BY LAW, EACH PARTY, AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR CHOICE, KNOWINGLY AND VOLUNTARILY, AND FOR THEIR MUTUAL BENEFIT WAIVES ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS AGREEMENT OR THE COLLATERAL.

11. Consent of the City and BRA. Assignor acknowledges that the City and BRA are executing the Consent to Assignment of Brownfield Development and Reimbursement Agreement and

Related Rights attached to, and made a part of, this Assignment (the "Consent"). Assignor hereby agrees to the waivers and other provisions set forth in Section 3 of the Consent as if contained in this Assignment.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, Assignor has delivered this Assignment as of the date first written above.

ASSIGNOR:

FLS PROPERTIES #5 LLC, a Michigan limited liability company

By: Frank R. Simon

Its: Frank R. Simon
President

ACKNOWLEDGED AND AGREED:

CHEMICAL BANK

By: Pamela J. Foster

Its: Pamela J. Foster
Vice President

[Signature Page to Collateral Assignment of Brownfield Development and Reimbursement Agreement and Related Rights (FLS #5)]

IN WITNESS WHEREOF, Assignor has delivered this Assignment as of the date first written above.

ASSIGNOR:

FLS PROPERTIES #5 LLC, a Michigan limited liability company

By: Frank R. Simon

Its: Frank R. Simon
President

ACKNOWLEDGED AND AGREED:

CHEMICAL BANK

By: Pamela J. Foster

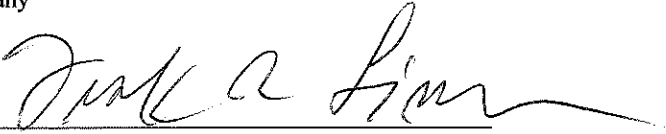
Its: Pamela J. Foster
Vice President

[Signature Page to Collateral Assignment of Brownfield Development and Reimbursement Agreement and Related Rights (FLS #5)]

IN WITNESS WHEREOF, Assignor has delivered this Assignment as of the date first written above.

ASSIGNOR:

FLS PROPERTIES # 5 LLC, a Michigan limited liability company

By: 
Frank R. Simon
Its: Manager

ACKNOWLEDGED AND AGREED:

CHEMICAL BANK

By: _____
Pamela J. Foster
Its: Vice President

[Signature Page to Collateral Assignment of Brownfield Development and Reimbursement Agreement and Related Rights (FLS Properties # 5 LLC)]

With a required copy to: Jeffrey K. Haynes
Beier Howlett, P.C.
3001 West Big Beaver Road, Suite 200
Troy, Michigan 48084

If to Assignee: Chemical Bank
Pamela J. Foster
1000 East Sturgis Street
Suite 1
Saint Johns, MI 48879

With a copy to: Bodman PLC
Nicole C. Murphy
201 W. Big Beaver Road, Suite 500
Troy, Michigan 48084

or such other address as the party to be served with notice may have furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice.

3. Upon written notice from Assignee to City and BRA of an Event of Default, City and BRA thereafter agree to remit all payments or reimbursements of Tax Incentive Revenues or other Payments otherwise owed or due to be paid currently and in the future to Assignor pursuant to the Reimbursement Agreement or other Brownfield Reimbursement Documents directly to and made payable to Assignee and delivered to Chemical Bank, 1000 East Sturgis Street, Suite 1, Saint Johns, MI 48879, Attention: Pamela J. Foster, or as Assignee shall otherwise direct in writing. Assignee has received and reviewed with its legal counsel a complete copy of the Reimbursement Agreement prior to executing the Assignment. Specifically and without limitation, Assignor and Assignee agree that the City and BRA shall incur no liability in allowing or making Payments pursuant to the Collateral Assignment and this Consent to Assignment, and Assignor waives all claims against the City and the BRA related to the same. Any Payment made by the City and/or the BRA to Assignee, or to an assignee of Assignee, shall satisfy and shall be treated as a Payment to Assignor. Any Payments made by the City and/or BRA pursuant to the Collateral Assignment or this Consent to Assignment or a subsequent assignment by Assignee or its assignees, shall continue until otherwise altered or terminated by a subsequent notice from Assignee or any successor to or assignee of Assignee.

4. The City and BRA each acknowledge and agree that, neither of them shall have, now or in the future, (i) any security interest in or lien on, or assignment of, any of the tangible or intangible personal property or assets of Assignor, including without limitation any of the Collateral, or (ii) any setoff and recoupment rights (except as described in the Reimbursement Agreement), against any present or future Payments owing by the City or BRA to Assignor or any other Collateral.

5. The City and BRA agree that they shall not amend, modify, cancel or voluntarily terminate any of the Brownfield Reimbursement Documents without the prior written consent of Assignee, which consent will not be unreasonably withheld.

6. Capitalized terms used and not defined herein shall have the meanings given them in the Collateral Assignment.

IN WITNESS WHEREOF, the City and BRA have delivered this Consent as of the date first above written.

CITY OF BIRMINGHAM

By: _____
Name: _____
Title: _____

**CITY OF BIRMINGHAM BROWNFIELD
REDEVELOPMENT AUTHORITY**

By: _____
Name: _____
Title: _____

[Signature Page to Consent to Assignment of Brownfield Development
and Reimbursement Agreement and Related Rights (FLS #5)]

Attorney-client privileged communication

June 14, 2018

Mr. Joseph A. Valentine, City Manager
City of Birmingham
151 Martin Street, P.O. Box 3001
Birmingham, MI 48012-3001

Via electronic mail

Re: *Brownfield Redevelopment Authority*
2400 E. Lincoln

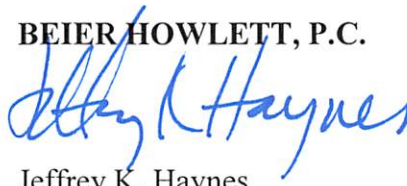
Dear Mr. Valentine:

For the next meeting of the Birmingham Brownfield Redevelopment Authority, please add to the agenda a closed session under section 8(h) of the Open Meetings Act, MCL 15.268(h), to consider material exempt from disclosure under section 13(1)(g) of the Freedom of Information Act, MCL 15.243(1)(g), information subject to the attorney-client privilege.

If you have any questions, please contact me.

Very truly yours,

BEIER HOWLETT, P.C.



Jeffrey K. Haynes

JKH/jms

cc: Jana Ecker