

Controller's Office

To the Honorable Mayor and City Council of the City of Houston:

I hereby certify, with respect to the money required for the contract, agreement, obligation, or expenditure contemplated by the ordinance set out below that:

- () Funds have been encumbered out of funds previously appropriated for such purpose.
- () Funds have been certified and designated to be appropriated by separate ordinance to be approved prior to the approval of the ordinance set out below.
- () Funds will be available out of current or general revenue prior to the maturity of any such obligation.
- (X) No pecuniary obligation is to be incurred as a result of approving the ordinance set out below.
- () The money required for the expenditure or expenditures specified below is in the treasury, in the fund or funds specified below, and is not appropriated for any other purposes.
- () A certificate with respect to the money required for the expenditure or expenditures specified below is attached hereto and incorporated herein by this reference.
- () Other.

Ronald C. Polk
Ronald C. Polk
City Controller of the City of Houston, Texas

Date: 12-15, 2015. City Controller of the City of Houston, Texas

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FUND REF: N/A AMOUNT: -0- ENCUMB. NO.: RF50063-16

City of Houston, Texas, Ordinance No. 2015-1276

AN ORDINANCE APPROVING AND AUTHORIZING A TAX ABATEMENT AGREEMENT BETWEEN THE CITY OF HOUSTON, TEXAS, AND CULLEN SH APARTMENTS, LP FOR PROPERTY LOCATED WITHIN THE CULLEN SH APARTMENTS, LP REINVESTMENT ZONE; CONTAINING FINDINGS AND OTHER PROVISIONS RELATED TO THE SUBJECT; AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. That the City Council hereby approves and authorizes the contract, agreement, or other undertaking (the "Agreement") described in the title of this Ordinance, in substantially the form of the document attached hereto and incorporated herein by this reference. The Mayor is hereby authorized to execute the Agreement described in the title of this Ordinance and all related documents on behalf of the City of Houston and to take all actions necessary to effectuate the City's intent and objectives in approving the Agreement in the event of changed circumstances. The City Secretary is hereby authorized to attest to all such signatures and to affix the seal of the City to all such documents.

Section 2. That the City Council hereby finds that the terms of the Agreement authorized by this Ordinance meet the guidelines and criteria of Chapter 44 of the Code of Ordinances, Houston, Texas (the "Code") relating to tax abatement; that the property subject to abatement under the Agreement authorized by this Ordinance lies within the Cullen SH Apartments, LP Reinvestment Zone, a designated reinvestment zone authorized by Chapter 312 of the Texas Tax Code and Section 44-122 of the Code; that this Agreement will result in no substantial potential adverse effect on the provision of City services or the tax base; and that the proposed use of the facility as a residential facility as defined in Section 44-121 of the Code will contribute to the economic development of the City.

Section 3. That the City Attorney is hereby authorized to take all actions necessary to enforce all legal obligations under such contracts, agreements, or other undertakings without further authorization from the City Council.

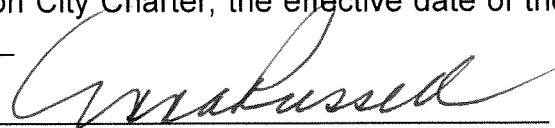
Section 4. That there exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor; however, in the event that the Mayor fails to sign this Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this 16th day of December, 2015.

APPROVED this ____ day of _____, 2015.

Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is DEC 22 2015


City Secretary

Prepared by Legal Department Donna Capps GMD
 DRC:drc December 9, 2015 Assistant City Attorney
 Requested by Andy Icken, Chief Development Officer, Office of the Mayor
 L.D. File No. 0421500029001

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AYE	NO	
✓		MAYOR PARKER
....	COUNCIL MEMBERS
✓		STARDIG
✓		DAVIS
✓		COHEN
✓		BOYKINS
ABSENT		MARTIN
✓		NGUYEN
✓		PENNINGTON
✓		GONZALEZ
✓		GALLEGOS
✓		LASTER
✓		GREEN
✓		COSTELLO
✓		ROBINSON
✓		KUBOSH
✓		BRADFORD
✓		CHRISTIE
CAPTION	ADOPTED	

CAPTION PUBLISHED IN DAILY COURT
 REVIEW DATE: DEC 22 2015

TAX ABATEMENT AGREEMENT

This **TAX ABATEMENT AGREEMENT** (the "Agreement") is made by and between the **CITY OF HOUSTON, TEXAS**, a municipal corporation and home-rule city (the "City"), and **CULLEN SH APARTMENTS, LP**, a Delaware limited partnership authorized to transact business in the State of Texas (the "Company"). The City and the Company may be referred to singularly as "Party" and collectively as the "Parties." Capitalized terms have the meanings defined in the first section of this Agreement.

RECITALS

WHEREAS, the encouragement of new and existing development and investment in the City is paramount to the City's continued economic development; and

WHEREAS, in accordance with the requirements of Section 44-127(a)-(c) of the City of Houston Code of Ordinances (the "Code"), the Company desires to construct and operate a "Residential facility" as defined in Section 44-121 of the Code (the "Facility") to be occupied and used as a new student housing facility with 531 bed capacity, 440 parking spaces for cars, 175 rack spaces for students' bicycles plus a site for a B-Cycle station accessible to both the public and students along with the construction of capital improvements to enhance safety and walkability in the pedestrian realm of Cullen Boulevard at I-45; and

WHEREAS, in accordance with Section 44-123 of the Code, the Company filed a written application for tax abatement dated November 14, 2014 and, as of that date, has not commenced construction, alteration, or installation of improvements at the Facility.

WHEREAS, the Company will create at least 5 new, full time equivalent jobs by 2017; and

WHEREAS, the proposed Facility site is located at 1901 Cullen Boulevard within the City of Houston; and

WHEREAS, the project area has 21.2% poverty which qualifies it as a Texas Enterprise Zone and is eligible for up to a 90% abatement; and

WHEREAS, the project is adjacent to a City Housing revitalization zone; and

WHEREAS, the project site has been vacant for at least eight years and is considered blighted; and

WHEREAS, the project site is located within approximately ¼ mile of the University of Houston and Texas Southern University and ½ mile from the new Southeast Metro Rail Line ("Purple Line"); and

WHEREAS, the Company has demonstrated that the incentive abatement is critical to the development of this project and without such incentive, the project is not financially feasible; and

WHEREAS, the Company has provided documentation from a prospective financier of the minimum required yield return; and

WHEREAS, the City Council finds that it is reasonably likely that this Agreement will attract major investment in the Zone that would be a benefit to property within the Zone and that would contribute to the economic development of the City; and

WHEREAS, the City Council finds that the Improvements are practical and are of benefit to the area within the Zone and to the City; and

WHEREAS, the City Council finds that this Agreement will have no substantial potential adverse effect on the provision of City services or on the tax base; and

WHEREAS, the Company has represented that the Improvements will be designed, constructed, and installed in the Facility according to all applicable federal, state, and local environmental regulations; and

WHEREAS, the City Council finds that the terms of this Agreement meet the applicable requirements of Chapter 44, Article IV, of the Code;

NOW, THEREFORE, for and in consideration of the covenants and mutual promises stated herein, the Parties agree as follows:

1. Definitions

As used in this Agreement, the following capitalized terms have the meanings assigned to them below:

- (a) "Abated Property" means improvements made subsequent to this Agreement to the Real Property, including the following types of property: buildings, structures, site improvements, office space, and related fixed improvements necessary to the operation and administration of the Facility, as more fully described in **EXHIBIT 3**.
- (b) "Abatement Period" means the ten (10) year time period that begins on the Effective Date of Abatement.
- (c) "Agreement" means this Tax Abatement Agreement between the City and the Company.
- (d) "Agreement Effective Date" means the date upon which the City Controller countersigns this Agreement.

- (e) "Base Year Value" means the sum of the assessed value of all taxable property in the Zone as of January 1, 2015, plus the agreed upon value of all taxable property constructed or installed in the Zone after January 1, 2015, but before the Agreement Effective Date.
- (f) "Chapter 44" means Article IV, Tax Abatement, of the Code, as amended.
- (g) "City Council" means the City Council of the City of Houston, Texas.
- (h) "Code" means the Code of Ordinances of the City of Houston, Texas, as amended.
- (i) "Department" means the City's Office of the Mayor, Economic Development, or its successor.
- (j) "Director" means the Chief Development Officer of the Department, or his or her designee, or any person who may be designated in writing by the Mayor to perform the functions delegated to the Director in this Agreement, but only for so long as the designations remain in effect.
- (k) "Effective Date of Abatement" means the January 1st immediately following the date that the last certificate of occupancy for the Improvements is issued by the City.
- (l) "**EXHIBIT 1**" attached to this Agreement and made a part hereof is a boundary description of the Real Property site.
- (m) "**EXHIBIT 2**" attached to this Agreement and made a part hereof is a legal description of the Real Property site.
- (n) "**EXHIBIT 3**" attached to this Agreement and made a part hereof describes the Abated Property.
- (o) "**EXHIBIT 4**" attached to this Agreement and made a part hereof includes financial information related to the Abated Property.
- (p) "Facility" means a residential facility as defined in Section 44-121 of the Code.
- (q) "HCAD" means the Harris County Appraisal District.
- (r) "Improvements" means buildings, structures, site improvements, office space, and related fixed improvements necessary to the operation and administration of the Facility that are developed, constructed, or installed in the Zone by or on behalf of the Company and its affiliates subsequent to the Agreement Effective Date.

- (s) "Ordinance" means City Ordinance No. 2015-_____ adopted on _____, 2015¹ creating the Zone.
- (t) "Permanent Employee" means an individual who works for, and is an employee of, either the Company or an affiliate of the Company or any management company hired to operate the Facility, works a minimum of thirty-five (35) hours in a seven-day period, and reports to work in the Zone, excluding any contract employee, seasonal employee, or part-time employee.
- (u) "Public Improvements" will include off-site 12-inch sanitary sewer line, sidewalk improvements, streetscape features including landscaping, benches and lighting along Cullen adjacent to the project site and extending to and under the I-45 overpass, and providing a site for a public B-Cycle station.
 - a. Public Improvements must be in the public realm, accessible by the public, serve a public benefit or enhance utility capacity, drainage capacity or other systems.
 - b. The Company will commit to invest \$400,000.00 in these Public Improvements, including the cost of permitting and related requirements for such work and the value of the site for the public B-cycle station.
 - c. Public Improvements under the I-45 overpass or within I-45 right of way can only be constructed to the extent approved by the Texas Department of Transportation.
- (v) "Real Property" means the land in the Zone and all improvements existing prior to the Agreement Effective Date, which land is or will be owned by the Company. The Real Property is more specifically described on **EXHIBIT 1**.
- (w) "Zone" means the Cullen SH Apartments, LP Reinvestment Zone, which is more particularly described in the Ordinance.

2. Authorization

This Agreement is authorized by Texas Tax Code Chapter 312, as amended, and by Chapter 44, Article IV of the Code, which establishes the property tax abatement program for properties in designated reinvestment zones, and by the Ordinance.

¹ City Secretary to insert ordinance number and date adopted by City Council.

3. Property

The street addresses and HCAD tax account numbers of the Real Property and the Improvements are listed on **EXHIBIT 2**.

4. Termination of Abatement and Agreement

(a) The term of this Agreement shall be the Abatement Period. Upon expiration of the Abatement Period, this Agreement shall terminate automatically without further action by the Parties.

(b) Notwithstanding any other provision in this Agreement, in the event that the Company is unable to comply with any applicable provisions of this Agreement prior to commencement of construction of the Facility and Improvements, the Company will provide to the City a written notice of termination ("Termination Notice"). Upon the City's receipt of the Termination Notice, this Agreement and all rights and obligations of the Parties shall cease and terminate and the Company shall not be entitled to any tax abatement pursuant to this Agreement.

(c) Subject to the provisions of paragraphs 8(e) and 10 of this Agreement, the Company shall have the option and right at any time during the Abatement Period to give the City a Termination Notice that the Company has elected to terminate this Agreement and its right to tax abatement on the Real Property, the Facility, and the Improvements effective as of the year the Company gives the Termination Notice; provided, however, at the time the Company gives the Termination Notice, no event of default shall exist which has not been cured. Upon the City's receipt of a Termination Notice from the Company and subject to the proviso of the preceding sentence, this Agreement and all rights and obligations of the Parties shall cease and terminate and the Company shall not be entitled to any tax abatement pursuant to this Agreement for the year in which the Company gives the Termination Notice and for all years remaining in the Abatement Period.

(d) In the case of either (a) or (b) above, the Parties must sign an agreement in a form reasonably acceptable to both Parties acknowledging the termination of this Agreement; provided, however, that neither Party shall impose any conditions upon the other Party as a prerequisite to that Party's execution of the termination agreement. The Director is authorized to sign the termination agreement on behalf of the City. Pursuant to Texas Tax Code Sec. 312.208(b), the Agreement must be terminated in the same manner that it was approved and executed.

5. Representations and Warranties

(a) The Company represents that it owns or will own the Real Property.

(b) The Company represents that the execution and delivery of this Agreement has been duly authorized by all requisite actions of its corporate officers that are necessary for it to have force and effect and

that the person signing this Agreement on behalf of the Company is authorized to do so.

- (c) Unless terminated earlier pursuant to Section 4 of this Agreement, the Company represents and warrants that construction and installation of the Improvements and Public Improvements described in **EXHIBIT 3** will begin after the Agreement Effective Date. The Company represents that the Real Property is comprised of approximately 7.7 acres of land.
- (d) The Company represents that, to the best of the knowledge of Trevor Tollett and any other employee of the Company who has participated in the negotiation or internal analysis of this Agreement, no interest in the Real Property or the Improvements is held or leased by a member of the City Council or a member of the City's Planning Commission.
- (e) Unless terminated earlier pursuant to Section 4 of this Agreement, the Company represents and warrants that it will invest a minimum of \$22,000,000.00 in acquiring the Real Property and constructing and installing the Improvements in the Zone by the Effective Date of Abatement.
- (f) The Company represents and warrants that it has a financial need of the tax abatement incentive to meet the minimum return requirement of 8.14% imposed by the Company's prospective lender. The Company provided a pro forma of projected annual Net Operating Income (NOI) and Yield to Cost.
- (g) The Company has demonstrated that the tax abatement incentive is critical to the development of this project and that without the incentive, the project is not financially feasible.
- (h) Unless terminated earlier pursuant to Section 4 of this Agreement, the Company represents and warrants that it will construct and operate the Facility as described in **EXHIBIT 3**.
- (i) Unless terminated earlier pursuant to Section 4 of this Agreement, the Company represents and warrants that the Improvements will be constructed, installed, and operated in accordance with all applicable federal, state, and local environmental laws and regulations.

6. Terms of the Agreement

- (a) The Company shall cause the Improvements and Public Improvements to be developed, constructed, and installed substantially in conformity with the description, plans, and specifications described in **EXHIBIT 3** and applicable provisions of the City of Houston Building Code (the "Building Code"). In case of any conflict between **EXHIBIT 3** and the Building Code, the Building Code shall prevail. In addition, during the Abatement

Period, the Company shall comply with Chapter 42 of the Code, if applicable (platting regulations), and all other laws and regulations applicable to the construction and installation of the Improvements.

- (b) Upon completion of the construction and installation of the Improvements, the Company shall use the Facility or cause the Facility to be used for the proposed uses specified in this paragraph during the Abatement Period; provided, however, the Director may approve a change from those proposed uses, if the Director determines that the change is consistent with Chapter 44 and with the City's general purpose of encouraging development or redevelopment of the Zone during the Abatement Period. The proposed use of the Facility (unless the Director approves a change in use) is to construct and operate a new student housing facility with 531 bed capacity, 440 parking spaces for cars, 175 rack spaces for students' bicycles plus a site for a B-Cycle station accessible to both the public and students, pursuant to and to the extent described in **EXHIBIT 3**.
- (c) The Company shall allow City employees, and/or designated representatives, full access to the Facility, both during and after the expiration or termination of the term of this Agreement, for the purpose of inspecting the Improvements to ensure that the Improvements are completed, installed, operated, and maintained in accordance with the terms of this Agreement. All inspections will be made only after giving the Company at least twenty-four (24) hours' advance notice, and will be conducted in such manner as to not unreasonably interfere with the construction and/or operation of the Facility. All inspections will be made with one or more representatives of the Company and in accordance with the Company's safety and security procedures. The above shall not act as a limitation on the City's ability to perform any other inspections or to enter the Facility pursuant to the Code, the Building Code, or other applicable laws, rules, or regulations. The Company shall maintain the Improvements in good repair and condition during the Abatement Period.
- (d) The Company shall provide and cause its affiliates, as well as any management company hired to operate the Facility, to provide City employees and/or designated representatives full access to all records related to the Agreement and necessary for the purpose of determining, by audit or otherwise, that the Company is and has been in full compliance with this Agreement. Any such inspection and audit shall be made only after giving the Company at least seven (7) days' advance written notice, and will be conducted in such a manner as to not unreasonably interfere with the construction and/or operation of the Facility. Documents and materials provided to the City by the Company or its affiliates, as well as any management company hired to operate the Facility, in connection with any audit or other inspections under this Agreement which contain information that is, or which themselves are,

confidential or proprietary to the Company shall not be removed from the Facility nor shall the information contained in them be used or disclosed by the City other than for the sole purpose of determining the Company's compliance with the terms and conditions of this Agreement, unless disclosure is otherwise required by state or federal law.

- (e) In the event that the City receives any request for information relating to this Agreement pursuant to the Texas Public Information Act or similar provision of federal law, the City agrees to promptly give the Company written notice of that request. If the Company, for itself or one or more of its affiliates, advises the City that it believes that the right of the City to withhold information from disclosure is allowed by the Texas Public Information Act or other applicable state or federal statute, rule or regulation, the City agrees to withhold the information or to immediately request an opinion from the Texas Attorney General or other appropriate public official with authority under law to render such decision on the right of the City to withhold the information. If the decision rendered is to the effect that disclosure is not required to be made, then the City agrees to withhold disclosure of the information unless authorized by the Company to be disclosed. The City agrees that during any period after request but before the rendering of a decision by the Texas Attorney General or other appropriate public official regarding the obligation of the City to make disclosure of information deemed confidential, proprietary, or both by the Company, it will not disclose the requested information unless ordered to do so by a court of competent jurisdiction.

- (f) Not later than January 1st of each year during the Abatement Period, or February 1st in the event the information is not reasonably available, a corporate officer of the Company, or his or her designee, shall submit to the Director an affidavit of the number of Permanent Employees, Contract employees, and Part-time employees the Company and its affiliates, as well as including any management company hired to operate the Facility, collectively employ in the Zone as of the immediately preceding December 1st who report to work in the Zone. The employee count submitted shall correspond to the employee count reported by the Company in its "Employer's Quarterly Report" to the Texas Workforce Commission. The employee count submitted by the Company shall be used to determine abatement eligibility for that year and be subject to audit, if requested by the Director, pursuant to the provisions of Section 44-135 of the Code. The Company, if requested by the Director, shall have an independent audit prepared of the employment/employee count documentation and shall submit the audit to the Director for use in complying with the requirements of this subsection. Not later than March 31st of each year during the Abatement Period, the Director shall certify to the Chief Appraiser of HCAD whether the Company is in compliance with the employment requirements of this Agreement.

- (g) Contract employees and part-time employees may be used to comply with the Company's contractual obligation to create/retain jobs on a full-time equivalency basis for any number of jobs; provided that full-time equivalent jobs shall only be used to satisfy the Company's contractual obligation if the Company maintains a minimum of five (5) permanent employees who work within the Zone.
- (h) Not later than April 15th, or such other date as required by HCAD, of each year during of the Abatement Period, the Company shall file the appropriate form with HCAD to qualify for the tax abatement granted under this Agreement for that year.
- (i) Commencing on the Effective Date of Abatement, and on or before January 1st, or February 1st in the event the information is not reasonably available, of each subsequent year during the Abatement Period, the chief financial officer, tax director, or other corporate officer of the Company, or his or her designee, shall provide the Director an affidavit attesting that the Company is and has been in compliance with all provisions of this Agreement during the prior year.
- (j) A chief financial officer, tax director, or other corporate officer or designee of the Company who cannot provide the affidavit required by paragraph (i) above on any January 1st, or February 1st in the event the information is not reasonably available, shall provide the Director with a written statement identifying any provision of the Agreement with which the Company is not or has not been in full compliance.
- (k) Failure by the chief financial officer, tax director, or any corporate officer or designee of the Company to timely provide the Director with either the affidavit required by paragraph (i) above or the statement required by paragraph (j) above will result in automatic default under this Agreement for which no notice of default or opportunity to cure shall be required.
- (l) The Company will cause its general contractor for the Improvements and Public Improvements to use commercially reasonable efforts to (i) solicit proposals for work related to the Improvements and Public Improvements from business enterprises in the greater Houston area, including minority, women-owned, and disadvantaged business enterprises and (ii) employ such enterprises whose qualifications satisfy the requirements for the applicable work and whose proposals are economically competitive.
- (m) The Company or its affiliates, as well as any management company hired to operate the Facility, will use commercially reasonable efforts to advertise for employment opportunities at the Facility in the greater Houston area, including the community immediately surrounding the Facility, and to employ qualified applicants from those areas.

7. Tax Abatement

- (a) The Base Year Value as of January 1, 2015 and improvement value in subsequent years will be established and certified by HCAD.
- (b) In consideration of the Company's commitment to invest at least \$22,000,000.00 in the Real Property and Improvements in the Zone, the City agrees to grant the Company a ninety percent (90%) abatement of the ad valorem taxes on the Improvements in the Zone during the Abatement Period. In addition, the abatement of the ad valorem taxes granted by this Agreement is specifically subject to the rights of the holders of outstanding bonds of the City as of the Agreement Effective Date. The Abatement Period begins on the Effective Date of Abatement. In no case shall the Abatement Period, inclusive of the construction period, exceed ten years from the Effective Date of Abatement.
- (c) From the Agreement Effective Date to the Effective Date of Abatement, ad valorem taxes levied on ineligible property, as that term is defined in Section 44-127 of the Code, including the Real Property, shall be fully payable to the City.
- (d) From the Effective Date of Abatement to the end of the Abatement Period:
 - (1) Ad valorem taxes levied on "ineligible property," as that term is defined in Section 44-127 of the Code, including the Real Property, shall be fully payable to the City.
 - (2) Ad valorem taxes levied on the Base Year Value of "eligible property," as that term is defined in Section 44-127 of the Code, shall be fully payable to the City.
 - (3) Ten percent (10%) of the ad valorem taxes levied on the Improvements, as determined each year, shall be fully payable to the City.
- (e) The City shall enter into only one tax abatement agreement for the Facility described in this Agreement during the existence of the Zone.

8. Default and Recapture

(a) Events of Default

The Company shall be in default under this Agreement if any of the following occur at any time from the Agreement Effective Date until the expiration of the Abatement Period or such earlier date on which this Agreement may otherwise expire or otherwise be terminated:

- (1) The Facility is completed and is occupied, but subsequently is wholly vacated or abandoned for any reason other than the occurrence of a fire, explosion, or other casualty or accident or natural disaster;
- (2) The Company fails to comply timely with job creation, investment or payment requirements stated in this Agreement;
- (3) The Company fails to comply timely with any material term of this Agreement;
- (4) The Company fails to timely file or submit any required report, statement or affidavit or to timely give any required notice pursuant to this Agreement; or
- (5) Employees or designated representatives of the City determine pursuant to an inspection under Section 44-135 of the Code that the Company has not complied with this Agreement.

(b) Incurable Default

The Company's failure to comply with job creation or investment requirements is an "incurable default." Within the 30-day notice period described in Section 8(c)(1) of this Agreement, the Company shall be entitled to question the accuracy of the City's determination of the incurable default, but shall not be entitled to cure the default. After the 30-day notice period, if the City concludes that its determination of the incurable default is correct ("noticed incurable default"), then the City shall be entitled to pursue any one or more of the remedies set forth in Section 8(e) of this Agreement.

(c) Notice of Default

- (1) If the Director determines that an event of default has occurred, the Director shall notify the Company in writing at the address stated in the Agreement, and if the condition of default is not cured within 30 days from the date of the notice, the City may take any one or more of the following actions set forth in Section 8(e) of this Agreement; provided, however, that the City shall only be

required to give a 30-day notice of default for the Company's failure to comply with job creation or investment requirements.

- (2) If the Company is in default under Section 8(a) of this Agreement, the Company shall notify the City within 30 days of the default and if the default is one that can be cured (and is not an incurable default), the default shall be cured within 30 days following the date of the notice of default. If the Company fails to cure the curable default within such 30-day period, then the City may pursue any one or more of the remedies listed in Section 8(e) of this Agreement.

(d) Cure

In curing an event of default based on any of the items set forth in Section 8(a) of this Agreement, and assuming the event of default is curable and is not an incurable default, the Company shall provide sufficient evidence to the Director that the default has been cured within 60 days following the date of the notice of default. Sufficient evidence shall include providing information not timely provided and/or providing evidence of the completion of the act(s) not timely performed. The City shall have the right to ask for additional reasonable information to confirm the adequate cure of any default.

(e) City Remedies for Default

- (1) In the event of a noticed incurable default or a curable default which has not been cured after notice and an opportunity to cure was given, no tax abatement shall be allowed for the calendar year in which the default occurs (and thereafter) and the City shall have the right to pursue any one or more of the following remedies: terminate the Agreement; terminate the Company's right to any future abatement under the Agreement without terminating the Agreement; pursue any and all remedies allowed under the Agreement and under Texas law.
- (2) In addition to the foregoing, in the event of a noticed incurable default or a curable default which has not been cured after notice and an opportunity to cure has been given, the City, in its sole discretion, may recover all or any part of the taxes abated at any time under the Agreement. The Company shall pay to the City all such previously abated taxes within 30 days of the City's written demand therefor. Any taxes or economic incentive not paid timely shall bear interest at the rate of twelve percent (12%) annually.
- (3) Notwithstanding the foregoing, the Director and the City Attorney are hereby authorized to negotiate and enter into amendments and

revisions to the Agreement under which there are noticed incurable defaults or curable defaults which have not been cured after notice and opportunity to cure has been given. In the foregoing circumstances, the Parties are also authorized to negotiate and enter into any other and further agreements they determine best protect the City's interests.

- (4) The City's right and authority to pursue any default and to recover abated taxes granted under this Section 8 shall survive the amendment, revision, expiration, or termination of this Agreement other than a termination of the Agreement pursuant to Section 4.

(f) Recapture

- (1) City will impose a recapture of the tax abatement if the Company performs at a Yield to Cost in excess of 8.14% (the "Allowable Yield to Cost").
- (2) The Company shall repay the City for each dollar by which the actual Yield to Cost exceeds the Allowable Yield to Cost, not to exceed 100% of the abatement the Company received for that current year.
- (3) Annually, the Company will provide the City for review the Net Operating Income calculation for the prior year upon receipt of the Company's audited financial records for such year; payment of any applicable recapture amount will be due within 30 days after receipt of the City's invoice. The Company cannot recover any recapture monies paid to the City.

- (g)** The City's right and authority to pursue any default and to recover abated taxes granted under this Section 8 shall survive the amendment, revision, expiration, or termination of this Agreement other than a termination of the Agreement pursuant to Section 4.

9. Administration

- (a) The Chief Appraiser of HCAD shall annually determine the taxable value of the Improvements listed in **EXHIBIT 3**. Each year, the Company shall furnish the City with any additional information applicable to the tax abatement that may be necessary for the administration of the tax abatement granted under this Agreement. Once the taxable values of the Improvements have been established, the Chief Appraiser of HCAD shall notify the eligible jurisdictions of the amount of the assessment.
- (b) Upon completion of construction or installation of the Improvements, the

Director shall annually evaluate the Facility to ensure compliance with this Agreement and prepare a report of any violations of this Agreement.

10. **Assignment.** This Agreement may be assigned to a new owner or lessee of the Facility with the written consent of the Director, which consent shall not be unreasonably withheld. If the proposed assignee is an affiliated entity under the common control of the assignor, the Director shall consent to an assignment if the assignor is in compliance with all terms of this Agreement. Any assignment of this Agreement shall not relieve the assignor of continuing liability under this Agreement unless specifically agreed to in a writing signed by both the Director and the City Attorney. Any assignment shall provide that the assignee shall irrevocably and unconditionally assume all the duties and obligations of the assignor upon the same terms and conditions as set out in this Agreement. Any assignment of the Agreement shall be to an entity that contemplates the same improvements to the Real Property, except to the extent such improvements have been completed. No assignment shall be approved if either the assignor or the assignee is indebted to the City for ad valorem taxes or other obligations. Notwithstanding the foregoing, if any such assignment is not to an affiliated entity of UPS and if the Director shall reasonably object to any such assignment, the City shall have the option to terminate this Agreement as of the date of such assignment and the Company shall reimburse the City for any taxes abated during and after the date of such assignment.
11. **Amendment.** This Agreement may be amended at any time upon the mutual written consent of the Parties hereto, subject to approval by the City Council.
12. **Compliance with Applicable Government Regulations.** Except as specifically provided herein, nothing in this Agreement shall be construed to alter or affect the obligation of the Company to comply with any ordinance, rule or regulation of the City, or laws and regulations of the State of Texas and the United States.
13. **Merger.** The Parties agree that this Agreement contains all of the terms and conditions of the understanding of the Parties relating to the subject matter hereof. All prior negotiations, discussions, correspondence, and preliminary understandings between the Parties and others relating hereto are superseded by this Agreement.
14. **Notices.** All notices shall be in writing and unless hand-delivered, shall be sent by U.S. Mail certified, return receipt requested. Unless otherwise provided in this Agreement, all notices shall be delivered to the following addresses:

To Company: Cullen SH Apartments, LP
c/o Fountain Residential Partners
Attn: Trevor Tollett 2626 Cole Avenue, Suite
620
Dallas, TX 75204

To the City:

Mailing Address:

Chief Development Officer
Office of the Mayor, Economic Development
P. O. Box 1562
Houston, Texas 77251

Physical Address:

Chief Development Officer
Office of the Mayor, Economic Development
901 Bagby, 4th Floor
Houston, Texas 77002

Each Party may designate a different address by giving the other Party written notice ten days in advance of such designation.

This Agreement has been executed by the Parties in multiple originals, each having full force and effect.

[Execution page follows]

CULLEN SH APARTMENTS, LP,
a Delaware limited partnership

By: Cullen SH Apartments GP, LLC,
a Delaware limited liability company,
its general partner

By: _____
Name: K. Brent Little
Title: Manager

ATTEST:

By: _____
Name: _____
Title: _____

CITY OF HOUSTON, TEXAS

Annise Parker
Mayor

ATTEST/SEAL:

Anna Russell
City Secretary

COUNTERSIGNED:

Ronald Green

City Controller

DATE COUNTERSIGNED:

APPROVED:

Chief Development Officer,
Office of the Mayor, Economic
Development

APPROVED AS TO FORM:

Assistant City Attorney
L.D. File No.0421500029001

EXHIBIT 1

BOUNDARY DESCRIPTION OF REAL PROPERTY SITE



3000 Wilcrest Drive, Suite 210 - Houston, Texas 77042 - (713) 993-0327 - FAX (713) 993-9231

METES AND BOUNDS DESCRIPTION
7.701 ACRES (335,456 SQUARE FEET)
ALL OF UNRESTRICTED RESERVE "A",
BLOCK 1, DAKOTA AT CULLEN
LUKE MOORE LEAGUE, ABSTRACT NUMBER 51
CITY OF HOUSTON, HARRIS COUNTY, TEXAS

Page 1 of 2

Being a tract or parcel, containing 7.701 acres (335,456 square feet) of land, situated in the Luke Moore League, Abstract Number 51, City of Houston, Harris County, Texas, and being all of Unrestricted Reserve "A", Block 1, DAKOTA AT CULLEN, a plat of subdivision recorded under Film Code Number 659019, Map Records of Harris County, Texas; also being all that certain called 5.2659 acres and called 2.2963 acres, referred to as Tracts 1 and 2, respectively, described in deed to Guardian Cullen Partners, Ltd., as recorded under County Clerk's File (C.C.F.) Number 20060285576, Official Public Records of Real Property of Harris County, Texas (O.P.R.R.P.H.C.); and being a reversionary tract described in termination of track agreement by Houston Belt & Terminal Railway Company in favor of Guardian Cullen Partners, Ltd., as recorded under C.C.F. Number 20070080084, O.P.R.R.P.H.C.; the herein described 7.701 acre tract being more particularly described by metes and bounds as follows (bearings herein are grid bearings based on the Texas State Plane Coordinate System, South Central Zone, NAD 83, as evidenced by said plat of DAKOTA AT CULLEN; distances are surface distances based on the U.S. Survey Foot and may be converted to grid by multiplying by a combined scale factor of 0.999894178):

BEGINNING at a 5/8-inch iron rod with cap found marking the intersection of the east right-of-way (R.O.W.) line of Cullen Boulevard, based on a 70-foot width as described in Volume 285, Page 531, Volume 699, Page 159, and Volume 701, Page 175, Deed Records of Harris County, Texas (D.R.H.C.), with the southwesterly line of a 100-foot Union Pacific Railroad R.O.W. described in Volume 26, Page 295, and Volume 27, Page 403, D.R.H.C.; said iron rod also marking the most northerly corner of said Unrestricted Reserve "A", said Tract 1, and the herein described tract;

THENCE, South 17°55'45" East, with the southwesterly line of said railroad R.O.W., a distance of 1,198.00 feet to a 5/8-inch iron rod with cap found marking the northeast corner of that certain called 11.1022 acres described in deed to Catholic Charismatic Center of the Diocese of Galveston-Houston, Texas, as recorded under C.C.F. Number S045472, O.P.R.R.P.H.C.; said iron rod also marking the most easterly corner of said Unrestricted Reserve "A", the aforesaid Tract 2, and the herein described tract;

METES AND BOUNDS DESCRIPTION
7.701 ACRES (335,456 SQUARE FEET)
ALL OF UNRESTRICTED RESERVE "A",
BLOCK 1, DAKOTA AT CULLEN
LUKE MOORE LEAGUE, ABSTRACT NUMBER 51
CITY OF HOUSTON, HARRIS COUNTY, TEXAS

Page 2 of 2

THENCE, North $72^{\circ}05'31''$ West, with the north line of said 11.1022 acre tract, and the south line of said Unrestricted Reserve "A" and said Tract 2, a distance of 690.81 feet to an "X" in concrete found in the east R.O.W. line of the aforesaid Cullen Boulevard, and marking the northwest corner of said 11.1022 acre tract; said "X" also marking the southwest corner of said Unrestricted Reserve "A", said Tract 2, and the herein described tract, from which a nail found for reference bears North $24^{\circ}37'$ East, 0.35 feet;

THENCE, North $17^{\circ}16'57''$ East, with the east R.O.W. line of said Cullen Boulevard, a distance of 971.26 feet to the **POINT OF BEGINNING** and containing 7.701 acres (335,456 square feet) of land.

There also exists a separate ALTA/ACSM Land Title Survey and plat prepared by Terra Surveying Company, Inc., under Project Number 1617-1440-S, of even date.

Compiled by:
Scott D. Mandeville, RPLS
Terra Surveying Company, Inc.
3000 Wilcrest Drive, Suite 210
Houston, Texas 77042
713-993-0327

EXHIBIT 2

**LEGAL DESCRIPTION OF REAL PROPERTY
AND
TAX ACCOUNT NUMBERS**

Tracts 13A, 20A-1 and 21, Abstract Luke Moore Survey, Abstract No. 51, City of Houston, Harris County, Texas at 1901 and 1905 Cullen Boulevard, Houston Texas

Harris County Appraisal District Tax Account No.: 0410070020021 and 0410070020044

EXHIBIT 3

ABATED PROPERTY

A "Residential facility" described as a new student housing facility with 531 bed capacity, 440 parking spaces for cars, 175 rack spaces for students' bicycles plus a site for a B-Cycle station accessible to both the public and students along with the construction of capital improvements to enhance safety and walkability in the pedestrian realm of Cullen Boulevard at I-45.

EXHIBIT 4

FINANCIAL INFORMATION RELATED TO THE ABATED PROPERTY

Fountain Residential Partners Proposed Tax Abatement Revenue Analysis

Tax Year	Calendar Year	COH Tax Rate	Taxable Value (Land) 2014 HCAD	Ad Valorem Revenue (Land)	Taxable Value (Building)	Taxable Value (Real Property) at 80% cost	Ad Valorem Revenue (Real Property)	Fountain Residential Abatement at 90%	Ad Valorem Revenue after Abatement (Real Property)	Total Ad Valorem Tax Revenue after Abatement	Taxable Value Growth Scenario
2016	2017	0.6011200	1,341,824	8,066							
2017	2018	0.6011200	3,500,000	21,039	22,000,000	17,600,000	105,797	95,217	10,580	31,618.91	3.00%
2018	2019	0.6011200	3,500,000	21,039	22,560,000	18,128,000	108,971	98,074	10,897	31,936.30	3.00%
2019	2020	0.6011200	3,500,000	21,039	23,339,800	18,671,840	112,240	101,016	11,224	32,263.22	3.00%
2020	2021	0.6011200	3,500,000	21,039	24,039,994	19,231,995	115,607	104,047	11,561	32,599.94	3.00%
2021	2022	0.6011200	3,500,000	21,039	24,761,194	19,808,955	119,076	107,168	11,908	32,946.76	3.00%
2022	2023	0.6011200	3,500,000	21,039	25,504,030	20,403,224	122,648	110,383	12,265	33,303.99	3.00%
2023	2024	0.6011200	3,500,000	21,039	26,269,151	21,015,320	126,327	113,695	12,633	33,671.93	3.00%
2024	2025	0.6011200	3,500,000	21,039	27,057,225	21,645,780	130,117	117,105	13,012	34,050.91	3.00%
2025	2026	0.6011200	3,500,000	21,039	27,868,942	22,295,153	134,021	120,619	13,402	34,441.26	3.00%
2026	2027	0.6011200	3,500,000	21,039	28,705,010	22,964,008	138,041	124,237	13,804	34,843.32	3.00%
2027	2028	0.6011200	3,500,000	21,039	29,279,110	23,423,288	140,802		140,802	161,841.27	2.00%
2028	2029	0.6011200	3,500,000	21,039	29,864,692	23,891,754	143,618		143,618	164,657.31	2.00%
2029	2030	0.6011200	3,500,000	21,039	30,461,986	24,369,589	146,490		146,490	167,529.67	2.00%
2030	2031	0.6011200	3,500,000	21,039	31,071,226	24,856,981	149,420		149,420	170,459.48	2.00%
2031	2032	0.6011200	3,500,000	21,039	31,692,651	25,354,120	152,409		152,409	173,447.89	2.00%
2032	2033	0.6011200	3,500,000	21,039	32,326,504	25,861,203	155,457		155,457	176,496.06	2.00%
2033	2034	0.6011200	3,500,000	21,039	32,973,034	26,378,427	158,566		158,566	179,605.20	2.00%
2034	2035	0.6011200	3,500,000	21,039	33,632,494	26,905,995	161,737		161,737	182,776.52	2.00%
2035	2036	0.6011200	3,500,000	21,039	34,305,144	27,444,115	164,972		164,972	186,011.27	2.00%
2036	2037	0.6011200	3,500,000	21,039	34,991,247	27,992,998	168,272		168,272	189,310.71	2.00%
2037	2038	0.6011200	3,500,000	21,039	35,691,072	28,552,858	171,637		171,637	192,676.14	2.00%
2038	2039	0.6011200	3,500,000	21,039	36,404,893	29,123,915	175,070		175,070	196,108.88	2.00%
2039	2040	0.6011200	3,500,000	21,039	37,132,991	29,706,393	178,571		178,571	199,610.27	2.00%
2040	2041	0.6011200	3,500,000	21,039	37,875,651	30,300,521	182,142		182,142	203,181.69	2.00%
NPV											
			3,462,009	1,091,561	2,875,389			2,370,448	2,875,389		
			\$2,296,160	\$912,219	\$1,730,842			\$1,383,941	\$1,730,842		

Assumptions:

Annual Growth at 3% for the first ten years.

Fountain Residential Partners assumes that land will be appraised by HCAD at \$3.5M once transaction is done.

Hard construction cost is \$21,560,700 (provided by Fountain Residential Partners).

No Abatement on the Personal Property

NPV = 3.25%

Land value based on 2014 HCAD value