

FORM 132.M
(Approving/Authorizing)

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.

Date: _____, 2014. City Controller of the City of Houston, Texas

FUND REF: AMOUNT: ENCUMB. NO.: _____

City of Houston, Texas, Ordinance No. 2014-479

AN ORDINANCE APPROVING AND AUTHORIZING A TAX ABATEMENT AGREEMENT BETWEEN THE CITY OF HOUSTON, TEXAS, AND BRECKENRIDGE GROUP HOUSTON TEXAS, LP FOR CERTAIN PROPERTY LOCATED WITHIN THE ASPEN HEIGHTS, HOUSTON 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 ("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 relating to tax abatement; that the property subject to abatement under the Agreement authorized by this Ordinance lies within the Aspen Heights, Houston Reinvestment Zone, a designated reinvestment zone authorized by Chapter 312 of the Texas Tax Code and Section 44-122 of the Code of Ordinances, Houston, Texas; that this Agreement will result in no substantial potential adverse effect on the provision of City services or the tax base; and that the planned use of the property as a new student housing facility along with the construction of capital improvements to enhance safety and walkability in the pedestrian realm of Interstate 45 at Cullen Boulevard will not constitute a hazard to public safety, health or morals.

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 28th day of May, 2014.

APPROVED this ____ day of _____, 2014.

Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is JUN 03 2014


City Secretary

(Prepared by Legal Department Robert W. Collins, Sr. GWD)
(RWC: rwc May 22, 2014) Senior Assistant City Attorney
(Requested by Andy Icken, Chief Development Officer, Office of the Mayor)
(L.D. File No. 042-14-0057-001)

G:\REAL ESTATE\COLLINS\Economic Development\ORD Approving Tax Abatement Agmt - Aspen Heights 05-22-2014.docx

AYE	NO	
<input checked="" type="checkbox"/>		MAYOR PARKER
....	COUNCIL MEMBERS
<input checked="" type="checkbox"/>		STARDIG
<input checked="" type="checkbox"/>		DAVIS
<input checked="" type="checkbox"/>		COHEN
<input checked="" type="checkbox"/>		BOYKINS
<input checked="" type="checkbox"/>		MARTIN
<input checked="" type="checkbox"/>		NGUYEN
<input checked="" type="checkbox"/>		PENNINGTON
<input checked="" type="checkbox"/>		GONZALEZ
<input checked="" type="checkbox"/>		GALLEGOS
<input checked="" type="checkbox"/>		LASTER
<input checked="" type="checkbox"/>		GREEN
<input checked="" type="checkbox"/>		COSTELLO
<input checked="" type="checkbox"/>		ROBINSON
<input checked="" type="checkbox"/>		KUBOSH
<input checked="" type="checkbox"/>		BRADFORD
<input checked="" type="checkbox"/>		CHRISTIE
CAPTION	ADOPTED	

TAX ABATEMENT AGREEMENT
between the City of Houston and Breckenridge Group Houston Texas, LP

TAX ABATEMENT AGREEMENT

This **TAX ABATEMENT AGREEMENT** ("Agreement") is made by and between the **CITY OF HOUSTON, TEXAS**, a municipal corporation and home-rule city ("City"), and **BRECKENRIDGE GROUP HOUSTON TEXAS, LP**, a Texas 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 creation and retention of job opportunities 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"), Company desires to construct and operate a "residential facility" as defined in Section 44-121 of the Code to be occupied and used as a new student housing facility with 739 bed capacity, 760 parking spaces for cars, 175 rack spaces for students' bicycles plus a B-Cycle station accessible to both the public and students (the "Facility") along with the construction of capital improvements to enhance safety and walkability in the pedestrian realm of Interstate 45 at Cullen Boulevard; and

WHEREAS, the proposed Facility site is located at 1901/1905 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 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 7 years and is considered as blighted; and

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

WHEREAS, in accordance with Section 44-123 of the Code, Company filed a written application for tax abatement dated April 4, 2014; 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, 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.
- (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 Company .
- (d) "Agreement Effective Date" means the date upon which City Council approves this Agreement.
- (e) "Base Year Value" means the sum of the assessed value of all taxable property in the Zone as of January 1, 2014, plus the agreed upon value of all taxable property constructed or installed in the Zone after January 1, 2014, 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 map 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, e.g. a project summary and economic impact analysis, 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 Company and its affiliates subsequent to the Agreement Effective Date.
- (s) "Ordinance" means City Ordinance No. 2014-_____ adopted on _____, 2014¹ creating the Zone.
- (t) "Permanent Employee" means an individual who works for, and is an employee of, either Company or an affiliate of Company, 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 sidewalk improvements plus streetscape features including landscaping, enhanced lighting along Cullen Boulevard and extending to and under the I-45 overpass, and a public B-Cycle station within the public realm, accessible by the public, serve a public benefit or enhances utility capacity, drainage or other system.
- (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 Company. The Real Property is more specifically described on **EXHIBIT 1**.
- (w) "Zone" means the Company Reinvestment Zone, which is more particularly described in the Ordinance.

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

2. Authorization

This Agreement is authorized 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.

3. Property

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

4. Representations and Warranties

- (a) Company represents that it owns or will own the Real Property.
- (b) Company represents that the execution and delivery of this Agreement has been duly authorized by all requisite actions of its partners that are necessary for it to have force and effect and that the person signing this Agreement on behalf of Company is authorized to do so.
- (c) Company represents and warrants that construction or installation of the Improvements described in **EXHIBIT 3** will begin after the Agreement Effective Date. Company represents that the Real Property is comprised of approximately 7.7 acres of land.
- (d) Company represents that, to the best of the knowledge of Charlie Vatterott and any other employee of 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) Company represents and warrants that it will invest a minimum of \$50,000,000.00 in acquiring the Real Property, and constructing and installing the Improvements in the Zone by the Effective Date of Abatement.
- (f) Company represents and warrants that it has a financial need of the tax abatement incentive to meet the minimum return requirement of 8% imposed by Company's prospective lender and investors. Company provided a pro forma of projected annual Net Operating Income (NOI) and Yield to Cost.
- (g) Company represents and warrants that by January 1, 2015, Company and its affiliates, collectively, will employ, and will continue to employ throughout the Abatement Period, at least three (3) Permanent Employees in the Zone and by December 31, 2015, will employ, and will continue to employ throughout the Abatement Period, at least ten (10) Permanent Employees in the Zone whose employment position on the Effective Date of Agreement either does not exist or exists outside the State of Texas.
- (h) Company has demonstrated that the tax abatement incentive is critical to the development of this project and without such incentive, the project is not financially feasible.

- (i) Company represents and warrants that it will construct and operate the Facility as described in **EXHIBIT 3**.
- (j) 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.

5. Terms of the Agreement

- (a) Company shall cause the 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 ("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, 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, 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 739 bed capacity, 760 parking spaces for cars, 175 rack spaces for students' bicycles plus a B-Cycle station accessible to both the public and students, pursuant to and to the extent described in **EXHIBIT 3**.
- (c) Company shall allow City employees access to the Facility for the purpose of inspecting the Improvements to ensure that the Improvements are completed, installed, and maintained in accordance with the terms of this Agreement. All inspections will be made only after giving 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 Company and in accordance with 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. Company shall maintain the Improvements in good repair and condition during the Abatement Period.
- (d) Company shall provide and cause its affiliates to provide City employees reasonable access to any relevant records requested and necessary for the purpose of conducting an audit of the Facility to ensure compliance with this Agreement. Any such audit shall be made only after giving

Company at least seven (7) days' advance written notice, and will be conducted in such a manner as to not unreasonably interfere with the operation of the Facility. Documents and materials provided to the City by Company or its affiliates in connection with any audit or other inspections under this Agreement which contain information that is, or which themselves are, confidential or proprietary to 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 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 pursuant to the Texas Open Records Act or similar provision of federal law, the City agrees to promptly give Company written notice of that request. If Company, for itself or one or more of its affiliates, advises the City that it believes that the right of the City to withhold such information from disclosure is allowed by the Texas Open Records 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 said 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 said information unless authorized by 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 Company, it will not disclose the requested information unless ordered to do so by a court of competent jurisdiction.
- (f) Company shall not assign this Agreement without the written approval of the Director, which approval shall not be unreasonably withheld; provided that the Director may consent to the assignment of this Agreement if the assignment is to an affiliated entity of Company and Company is in compliance with all terms of this Agreement. In addition, any assignment must comply with the provisions of Section 44-134 of the Code.
- (g) Not later than February 1st of each year during the Abatement Period, Company shall submit to the Director and the Chief Appraiser of HCAD a statement of the number of Permanent Employees Company and its affiliates collectively employ in the Zone. The employee count submitted shall correspond to the employee count reported by Company in its "Employer's Quarterly Report" to the Texas Workforce Commission. The employee count submitted by 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 subsection (h) of Section 44-133 of the Code. 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 Company is in compliance with the employment requirements of this Agreement.

- (h) This Agreement may be amended at any time upon the mutual written consent of the Parties hereto, subject to approval by the Director.
- (i) Not later than April 30th, or May 15th if an extension is granted by HCAD, of each year during of the Abatement Period, Company shall file the appropriate form with HCAD to qualify for the tax abatement granted under this Agreement for that year. In addition, not later than April 15th, or May 15th if an extension is granted by HCAD, of each year during the Abatement Period, Company shall render to HCAD the value of all taxable personal property, including the tangible personal property included in the Improvements, located in the Zone on the preceding January 1st.
- (j) On or before January 1st of each year the Agreement is in effect, Company shall provide the Director a sworn statement/affidavit attesting to the number of permanent employees, contract employees and part-time employees of Company and its affiliates as of the immediately preceding December 1st, who report to work in the Zone.
- (k) Contract employees and part-time employees may be used to comply with 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 Company's contractual obligation if Company maintains a minimum of three (3) permanent employees who work within the Zone.
- (l) Commencing January 1, 2015, and on or before January 1st of each subsequent year during the Abatement Period, the chief financial officer, tax director, or other corporate officer, of Company shall provide the Director sworn statement/affidavit attesting that Company is and has been in compliance with all provisions of this Agreement during the prior year.
- (m) A chief financial officer, tax director, or other corporate officer, of Company who cannot attest to the sworn statement/affidavit required by paragraph (l) above on any January 1st shall provide the Director with a written statement identifying any provision of the Agreement with which Company is not or has not been in full compliance.
- (n) Failure by the chief financial officer, tax director, or any corporate officer of Company to timely provide the Director with either the sworn statement/affidavit required by paragraph (l) above or the statement required by paragraph (m) above will result in default under this Agreement for which Company shall have ten (10) days to cure after written notice from the City.
- (o) Company shall have the option and right at any time during the Abatement Period to give the City written notice ("Termination Notice") that Company has elected to terminate this Agreement and its right to tax abatement on the Improvements effective as of the year in which the Termination Notice

is given by Company; provided, however, at the time the Termination Notice is given by Company, no event of default shall exist which has not been cured. Upon the giving of a Termination Notice by 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 Company shall not be entitled to any tax abatement pursuant to this Agreement for the year in which the Termination Notice is given by Company and for all years remaining in the Abatement Period.

- (p) By May 1 annually beginning after the Effective Date of Abatement, the Company shall provide to the City, the Company's certified financial records prepared in accordance with GAAP for the fiscal year ending December 31 before such May 1 date, reflecting the Company's operating performance for such prior fiscal year, including Net Operating Income and the Yield to Cost values.

6. Tax Abatement

- (a) The Base Year Value is the sum of the assessed value of all taxable property in the Zone as of January 1, 2014, plus the agreed upon value of all taxable property constructed or installed in the Zone after January 1, 2014, but before the Agreement Effective Date.
- (b) In consideration of Company's commitment to invest at least \$50,000,000.00 in the Real Property and Improvements in the Zone, the City agrees to grant 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 effective date of this Agreement. The Abatement Period begins on the January 1st following the date on which the final certificate of occupancy for the Improvements is issued by the City ("Effective Date of Abatement"). In no case shall the Abatement Period, inclusive of the construction period, exceed ten (10) 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(e) 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(e) 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(d) 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. For clarification, if Company conveys the Facility during the Abatement Period, this Agreement is assignable to the transferee of the Facility, provided that (1) such assignment is evidenced by a written instrument signed by the transferee and pursuant to which the transferee assumes all obligations arising hereunder from and after the effective date of such assignment, and (2) a copy of such signed assignment instrument is provided to City within fifteen (15) days after the effective date of such assignment.

7. Default and Recapture

(a) Events of Default

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) Company fails to comply timely with job creation, investment or payment requirements stated in this Agreement;
- (3) Company fails to comply timely with any material term of this Agreement;
- (4) Company fails to file or submit any required report, statement or affidavit or to give any required notice pursuant to this Agreement; or
- (5) Employees or designated representatives of the City determine pursuant to an inspection under Section 44-132 of the Code that Company has not complied with this Agreement.

(b) Notice

- (1) If the Director determines that an event of default has occurred, the Director shall notify Company in writing at the address stated in the Agreement, and if the condition of default is not cured within sixty (60) days from the date of the notice, the City may take any one or more of the following actions set forth in Section 7(d) of this Agreement; provided, however, that the City shall only be required to give a sixty (60) day notice of default for failure to comply with job creation or investment requirements. Company's failure to comply with job creation or investment requirements is an

"incurable default." Within such sixty (60) day notice period, 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 sixty (60) 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 7(d) of this Agreement.

- (2) If Company is in default under Section 7(a) of this Agreement, Company shall notify the City within ninety (90) days of the default and if the default is one that can be cured hereunder, the default shall be cured within sixty (60) days following the date of the notice of default. If Company fails to cure the curable default within such sixty (60) day period, then the City may pursue any one or more of the remedies listed in Section 7(d) of this Agreement.

- (c) **Cure.** In curing an event of default based on any of the items set forth in Section 7(a) of this Agreement, and assuming the event of default is curable and is not an incurable default, Company shall provide sufficient evidence to the Director that the default has been cured within sixty (60) days following the date of the notice of default. Sufficient evidence shall include the providing of the 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.

(d) **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 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. Company shall pay to the City all such previously abated taxes within thirty (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.

(e) **Recapture**

- (1) City will impose a recapture of the tax abatement if the Company performs at a Yield to Cost in excess of 8.10% (the "Allowable Yield to Cost").
 - (2) 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, Company will provide the City for review the NOI 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 City's invoice. Company cannot recover any recapture monies paid to the City.
- (f) The City's right and authority to pursue any default and to recover abated taxes granted under this Section 7 shall survive the amendment, revision, expiration, or termination of this Agreement.

8. **Administration**

- (a) The Chief Appraiser of HCAD shall annually determine the taxable value of the Improvements listed in **EXHIBIT 3**. By January 1st of each year, Company shall furnish the City with such information as may be necessary for calculating the amount of tax abatement granted under this Agreement. Once the taxable values of the Improvements have been established and the amount of the tax abatement calculated, the Chief Appraiser of HCAD shall notify the affected jurisdictions that levy taxes on the Improvements of the amounts of the taxable values of the Improvements.
- (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.

9. **Compliance with Applicable Government Regulations**

Except as specifically provided herein, nothing in this Agreement shall be construed to alter or affect the obligation of 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.

10. 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.

11. 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: Company
Attn: Charlie Vatterott, EVP Development
1301 S. Capital of Texas Hwy Suite B-201
Austin, TX 78746

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 (10) 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]

**BRECKENRIDGE GROUP
HOUSTON TEXAS, LP,
(a Texas limited partnership)**

CITY OF HOUSTON, TEXAS

By: _____
Name: _____
Title: _____

ATTEST:

By: _____
Name: _____
Title: _____

Mayor

ATTEST/SEAL:

City Secretary

COUNTERSIGNED:


City Controller

DATE COUNTERSIGNED:

APPROVED:

Chief Development Officer,
Office of the Mayor, Economic
Development

APPROVED AS TO FORM:



Senior Assistant City Attorney
L.D. File No.042-14-00057-001

EXHIBIT 1

BOUNDARY MAP OF REAL PROPERTY SITE

EXHIBIT 2

LEGAL DESCRIPTION OF REAL PROPERTY SITES 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

HARRIS COUNTY APPRAISAL DISTRICT
REAL PROPERTY ACCOUNT INFORMATION
0410070020021

Tax Year: 2014

Owner and Property Information			
Owner Name & Mailing Address:	GUARDIAN CULLEN PARTNERS LTD 2700 POST OAK BLVD STE 2450 HOUSTON TX 77056-5713		Legal Description: TR 21 ABST 51 L MOORE
			Property Address: 1901 CULLEN BLVD HOUSTON TX 77023

State Class Code		Land Use Code		Building Class		Total Units
C2 -- Real, Vacant Commercial		4300 -- General Commercial Vacant		--		0
Land Area	Building Area	Net Rentable Area	Neighborhood	Market Area	Map Facet	Key Map®
229,691 SF	0	0	5915.29	4026 -- Gulf Freeway Loop 610	5456B	494W

Value Status Information		
Capped Account	Value Status	Shared CAD
Pending	All Values Pending	No

Exemptions and Jurisdictions					
Exemption Type	Districts	Jurisdictions	ARB Status	2013 Rate	2014 Rate
None	001	HOUSTON ISD	Pending	1.186700	
	040	HARRIS COUNTY	Pending	0.414550	
	041	HARRIS CO FLOOD CNTRL	Pending	0.028270	
	042	PORT OF HOUSTON AUTHY	Pending	0.017160	
	043	HARRIS CO HOSP DIST	Pending	0.170000	
	044	HARRIS CO EDUC DEPT	Pending	0.006358	
	048	HOU COMMUNITY COLLEGE	Pending	0.097173	
	061	CITY OF HOUSTON	Pending	0.638750	
	995	EAST DOWNTOWN MNG DST	Pending	0.125000	

Valuations					
Value as of January 1, 2013			Value as of January 1, 2014		
	Market	Appraised		Market	Appraised
Land	918,764		Land		
Improvement	0		Improvement		
Total	918,764	918,764	Total	Pending	Pending

Land												
Market Value Land												
Line	Description	Site Code	Unit Type	Units	Size Factor	Site Factor	Appr O/R Factor	Appr O/R Reason	Total Adj	Unit Price	Adj Unit Price	Value
1	4300 -- General Commercial Vacant	SF1	SF	229,691	1.00	1.00	0.80	Shape or Size	0.80	Pending	Pending	Pending

Building												
Vacant (No Building Data)												

HARRIS COUNTY APPRAISAL DISTRICT
REAL PROPERTY ACCOUNT INFORMATION
0410070020044

Tax Year: 2014

Owner and Property Information			
Owner Name & Mailing Address:		Legal Description:	Property Address:
GUARDIAN CULLEN PARTNERS LTD % TAX DEPARTMENT 2700 POST OAK BLVD STE 2450 HOUSTON TX 77056-5713		TRS 13A & 20A-1 ABST 51 L MOORE	0 CULLEN BV HOUSTON TX 77023

State Class Code		Land Use Code		Building Class		Total Units
C2 -- Real, Vacant Commercial		4400 -- Vacant Industrial Land		--		0
Land Area	Building Area	Net Rentable Area	Neighborhood	Market Area	Map Facet	Key Map®
100,027 SF	0	0	5915.29	4026 -- Gulf Freeway Loop 610	5456B	494W

Value Status Information		
Capped Account	Value Status	Shared CAD
Pending	All Values Pending	No

Exemptions and Jurisdictions					
Exemption Type	Districts	Jurisdictions	ARB Status	2013 Rate	2014 Rate
None	001	HOUSTON ISD	Pending	1.186700	
	040	HARRIS COUNTY	Pending	0.414550	
	041	HARRIS CO FLOOD CNTRL	Pending	0.028270	
	042	PORT OF HOUSTON AUTHY	Pending	0.017160	
	043	HARRIS CO HOSP DIST	Pending	0.170000	
	044	HARRIS CO EDUC DEPT	Pending	0.006358	
	048	HOU COMMUNITY COLLEGE	Pending	0.097173	
	061	CITY OF HOUSTON	Pending	0.638750	
	995	EAST DOWNTOWN MNG DST	Pending	0.125000	

Valuations			
Value as of January 1, 2013		Value as of January 1, 2014	
	Market	Appraised	
Land	400,108		Land
Improvement	0		Improvement
Total	400,108	400,108	Total
			Pending

Land												
Market Value Land												
Line	Description	Site Code	Unit Type	Units	Size Factor	Site Factor	Appr O/R Factor	Appr O/R Reason	Total Adj	Unit Price	Adj Unit Price	Value
1	4400 -- Vacant Industrial Land	SF1	SF	100,027	1.00	1.00	0.80	--	0.80	Pending	Pending	Pending

Building												
Vacant (No Building Data)												

EXHIBIT 3
ABATED PROPERTY

EXHIBIT 3

DESCRIPTION OF IMPROVEMENTS

A "residential facility" described as a new student housing facility comprising 305,076 square feet with 739 bed capacity, 760 parking spaces for cars, 175 rack spaces for students' bicycles plus a B-Cycle station accessible to both the public and students (the "Facility") along with the construction of capital improvements to enhance safety and walkability in the pedestrian realm of Interstate 45 at Cullen Boulevard; and

City of Houston Business Information Form

Division of Economic Development

Project Timeline & Investments

Estimated Value On Site	Land	Improvements	Personal Property
Estimated value on site after project	\$3,400,000	\$44,283,232	\$1,185,942
Value on January 1 st on site before the project	\$1,318,872	\$0	\$0
Estimated Difference	\$2,081,128	\$44,283,232	\$1,185,942

Expected Timetable

Project Construction Begins 6/1/2014

Project Construction Ends 8/1/2015

Project Operations Begin 7/15/2015

Project Becomes Fully Operational 8/15/2015

EXHIBIT 4

PROJECT SUMMARY AND ECONOMIC IMPACT ANALYSIS

Aspen Heights Proposed Tax Abatement Revenue Analysis

Tax Year	Calendar Year	COH Tax Rate	Taxable Value (Land) 2013 HCAD	Ad Valorem Revenue (Land)	Taxable Value (Building)	Taxable Value (Real Property) at 80% cost	Ad Valorem Revenue (Real Property)	Requested by Aspen Abatement at 90%	Ad Valorem Revenue after Abatement	Total Ad Valorem Tax Revenue after Abatement	Taxable Value Growth Scenario
2012	2013	0.6387500	1,318,872	8,424	56,326,288	45,061,030	287,827	259,045	28,783	37,207.03	5.00%
2013	2014	0.6387500	1,318,872	8,424	59,142,602	47,314,082	302,219	271,997	30,222	38,646.16	5.00%
2014	2015	0.6387500	1,318,872	8,424	62,099,733	49,679,786	317,330	285,597	31,733	40,157.26	5.00%
2015	2016	0.6387500	1,318,872	8,424	65,204,719	52,163,775	333,196	299,877	33,320	41,743.91	5.00%
2016	2017	0.6387500	1,318,872	8,424	68,464,955	54,771,964	349,856	314,870	34,986	43,409.89	5.00%
2017	2018	0.6387500	1,318,872	8,424	71,888,203	57,510,562	367,349	330,614	36,735	45,159.17	5.00%
2018	2019	0.6387500	1,318,872	8,424	75,482,613	60,386,090	385,716	347,145	38,572	46,995.91	5.00%
2019	2020	0.6387500	1,318,872	8,424	79,256,744	63,405,395	405,002	364,502	40,500	48,924.49	5.00%
2020	2021	0.6387500	1,318,872	8,424	83,219,581	66,575,665	425,252	382,727	42,525	50,949.50	5.00%
2021	2022	0.6387500	1,318,872	8,424	87,380,560	69,904,448	446,515	401,863	44,651	53,075.76	5.00%
2022	2023	0.6387500	1,318,872	8,424	90,875,782	72,700,626	464,375	-	46,437.5	472,799.54	4.00%
2023	2024	0.6387500	1,318,872	8,424	94,510,814	75,608,651	482,950	-	48,295.0	491,374.55	4.00%
2024	2025	0.6387500	1,318,872	8,424	98,291,246	78,632,997	502,268	-	50,226.8	510,692.56	4.00%
2025	2026	0.6387500	1,318,872	8,424	102,222,896	81,778,317	522,359	-	52,235.9	530,783.29	4.00%
2026	2027	0.6387500	1,318,872	8,424	106,311,812	85,049,449	543,253	-	54,325.3	551,677.65	4.00%
2027	2028	0.6387500	1,318,872	8,424	110,564,284	88,451,427	564,983	-	56,498.3	573,407.79	4.00%
2028	2029	0.6387500	1,318,872	8,424	114,986,856	91,989,485	587,583	-	58,758.3	596,007.13	4.00%
2029	2030	0.6387500	1,318,872	8,424	119,586,330	95,669,064	611,086	-	61,108.6	619,510.44	4.00%
2030	2031	0.6387500	1,318,872	8,424	124,369,783	99,495,826	635,530	-	63,553.0	643,953.89	4.00%
2031	2032	0.6387500	1,318,872	8,424	129,344,574	103,475,659	660,951	-	66,095.1	669,375.07	4.00%
2032	2033	0.6387500	1,318,872	8,424	133,224,912	106,579,929	680,779	-	68,077.9	689,203.59	3.00%
2033	2034	0.6387500	1,318,872	8,424	137,221,659	109,777,327	701,203	-	70,120.3	709,626.97	3.00%
2034	2035	0.6387500	1,318,872	8,424	141,338,309	113,070,647	722,239	-	72,223.9	730,663.05	3.00%
2035	2036	0.6387500	1,318,872	8,424	145,578,458	116,462,766	743,906	-	74,390.6	752,330.22	3.00%
2036	2037	0.6387500	1,318,872	8,424	149,945,812	119,956,349	766,223	-	76,622.3	774,647.39	3.00%
2037	2038	0.6387500	1,318,872	8,424	154,444,186	123,555,349	789,210	-	78,921.0	797,634.09	3.00%
2038	2039	0.6387500	1,318,872	8,424	159,077,512	127,262,009	812,886	-	81,288.6	821,310.38	3.00%
2039	2040	0.6387500	1,318,872	8,424	163,849,837	131,079,870	837,273	-	83,727.3	845,696.96	3.00%
2040	2041	0.6387500	1,318,872	8,424	168,765,332	135,012,266	862,391	-	86,239.1	870,815.14	3.00%
2041	2042	0.6387500	1,318,872	8,424	173,828,292	139,062,634	888,263	-	88,826.3	896,686.87	3.00%
2042	2043	0.6387500	1,318,872	8,424	179,043,141	143,234,513	914,910	-	91,491.0	923,334.74	3.00%
2043	2044	0.6387500	1,318,872	8,424							
2044	2045	0.6387500	1,318,872	8,424							
2045	2046	0.6387500	1,318,872	8,424							
2046	2047	0.6387500	1,318,872	8,424							
2047	2048	0.6387500	1,318,872	8,424							

NPV 17,914,882 3,258,235 14,656,647 14,917,800
\$10,165,221 \$2,709,175 \$7,456,047 \$7,619,082

Assumptions:
Annual Growth at 5% for the first ten years and declining by 1% at each 10 year cycle
No Abatement on the Personal Property
NPV = 3.25%
Land value based on 2013 HCAD value