

STATE OF TEXAS

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COUNTY OF FORT BEND

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**TAX ABATEMENT AGREEMENT BETWEEN
FORT BEND COUNTY, 1330 INDUSTRIAL BLVD, LLC¹ AND
HEALIX INFUSION THERAPY, INC.**

This Tax Abatement Agreement, hereinafter referred to as “Agreement,” is executed by and between **FORT BEND COUNTY, TEXAS**, hereinafter referred to as “County,” acting by and through its Commissioners’ Court, **1330 INDUSTRIAL BLVD, LLC**, a Texas limited liability company, as Owner of the Real Property subject to this Agreement, and **HEALIX INFUSION THERAPY, INC.**, a Texas corporation, as Tenant of the Real Property.

1. Authorization:

- a. This Agreement is authorized by the Property Redevelopment and Tax Abatement Act, Chapter 312 of the Texas Tax Code as it exists on the effective date of this Agreement, and;
- b. The Guidelines and Criteria for Granting Tax Abatement in Reinvestment Zones were approved by the County's Commissioners Court on February 24, 2015. County has determined that the request for Tax Abatement presented by Owner conforms to the criteria established in the Guidelines for Tax Abatement.
- c. No official of County has an interest in the property subject to this Agreement.

2. Definition: As used in this Agreement, the following terms shall have the meanings set forth below:

- a. The "Certified Appraised Value or Value" means the value certified as of January 1 of each year of this Agreement regarding the property within City of Sugar Land Reinvestment Zone No. 2015-03 by the FBCAD.
- b. "Real Property" means the approximate 3.409 acre tract of land described in Exhibit "Two" attached hereto and incorporated herein for all purposes, and all improvements currently located thereon, which tract of land is located within the Reinvestment Zone 2015-03.
- c. "Improvements" means a new building to be used for office and distribution facility located in Reinvestment Zone No. 2015-03 containing at least 40,000 square feet of floor space, and the interior improvements to such office, distribution and warehousing building and any sidewalks, parking lots, outdoor lighting, landscaping and other improvements to serve the building.
- d. "Abatement" means the full or partial exemption from ad valorem taxes of certain property in the City of Sugar Land Reinvestment Zone No. 2015-03 designated for economic development purposes.
- e. "Ineligible Property" means real property, existing improvements, tangible personal property that the FBCAD classifies as inventory or supplies, real property used primarily to provide retail sales or services to the public, real property used for residential purposes, tangible personal property classified as

¹ Business name is 1330 Industrial Blvd, LLC.

furnishings, tangible personal property located in the reinvestment zone prior to the execution date of the tax abatement agreement, real property with a productive life of less than 10 years, or any other property for which abatement is not allowed by state law.

- f. "Owner" means 1330 Industrial Blvd., LLC.
- g. "County" means the County of Fort Bend, Texas.
- h. "FBCAD" means Fort Bend Central Appraisal District.
- i. "Tenant" means Healix Infusion Therapy, Inc.
- j. "Employee" means a person who:
 - i. Is an employee of the Tenant; and
 - ii. Regularly works at least 40 hours a week at the site of the Improvements, excluding time taken for holidays, vacations, sick leave, or other regular leave.

3. Subject Property:

- a. The City of Sugar Land Reinvestment Zone No. 2015-03 is an area located in Fort Bend County, Texas, being legally described in Exhibit One attached hereto and incorporated herein for all purposes.
- b. The FBCAD has established the base year values for the subject property as of January 1, 2016.

4. Responsibilities of Owner and Tenant: In consideration of receiving the tax abatement granted herein, Owner and Tenant represent and agree:

- a. That construction of the Improvements will commence without delay.
- b. That construction of the Improvements shall be completed on or before October 1, 2016.
- c. That Owner shall provide the County's Tax Assessor/Collector a certified statement evidencing a minimum of \$3,000,000 in project costs with respect to the design and construction of the Improvements within sixty (60) days after completion of the Improvements.
- d. That Owner shall provide the County's Tax Assessor/Collector with a copy of the Certificate of Occupancy for the Improvements on or before October 1, 2016. Owner's failure to present a copy of the Certificate of Occupancy to County may result in a forfeiture of the tax abatement of tax year 2017.
- e. That the Certified Appraised Value of the Improvements on January 1, 2017, and on each and every January 1 thereafter during the term of this Agreement must not be less than \$2,400,000. During the term of this Agreement Owner may install, or permit Tenant to install additional improvements, and modify, remove or replace existing improvements as Owner may determine in their discretion. However, failure to meet the \$2,400,000 requirement of this section will invalidate the tax abatement for the year this requirement was not satisfied.
- f. Beginning on October 1, 2016 and continuing through December 31, 2026 Tenant will have and maintain at least 27 persons employed at the Improvements of which 23.5 must be Employees as defined in this Agreement. The Employees required by this Agreement must have at least an average Annual Salary of at least \$62,264.
- g. Tenant shall annually furnish County with only those payroll records allowed

by law and necessary for County to confirm Tenant's compliance with this Agreement (e.g. number of employees is appropriate; payroll dollars, taxes, benefits, and bonuses are not appropriate)..

- h. That at least Owner or Tenant will participate in the continuing economic development process in Fort Bend County by becoming a Regular Member (\$2,000/yr. dues) of the Greater Fort Bend Economic Development Council for a minimum period coinciding with the term of this Agreement.
- i. OWNER SHALL BE RESPONSIBLE FOR NOTIFYING THE FBCAD OF THE ABATEMENT, INCLUDING FILING WITH THE FBCAD ANY APPLICATION OR OTHER FORMS NECESSARY TO QUALIFY FOR OR RECEIVE THE ABATEMENT GRANTED.
- j. OWNER SHALL BE RESPONSIBLE FOR REQUESTING AN ASSIGNMENT OF THIS AGREEMENT IN THE EVENT THE REAL PROPERTY THE SUBJECT OF THIS AGREEMENT IS SOLD, TRANSFERRED OR ASSIGNED. EXCEPT AS OTHERWISE PROVIDED HEREIN, ANY ASSIGNMENT IS NOT EFFECTIVE UNTIL APPROVED IN WRITING BY COUNTY.
- k. That Owner and Tenant each have, as of the effective date of this Agreement, the financial resources to implement the above representations.
- l. That Owner shall ensure that taxes on all property owed in Fort Bend County are current. Delinquent taxes for any Fort Bend County Property is a default of Owner's obligations and will be grounds for termination regardless of whether the delinquent property is subject to an abatement.

5. Value and Term of Abatement:

- a. This Agreement shall be effective on the date executed by County and shall terminate (unless earlier terminated in accordance with the terms hereof) on December 31, 2026. In no event shall this Agreement extend beyond December 31, 2026.
- b. In each year that this Agreement is in effect, the amount of abatement shall be an amount equal to the percentage indicated below of the taxes assessed upon the Improvements.
- c. Subject to the limitations imposed by law and conditioned upon the representations outlined in Section 4 herein above, there shall be granted and allowed hereunder a property tax abatement for the following years and in the following amounts on the value of the Improvements:

Tax Year	Percentage Abatement
2017	30%
2018	30%
2019	30%
2020	30%
2021	30%
2022	30%
2023	30%
2024	30%
2025	30%
2026	30%

- i. The abatement granted shall not apply to the value of the Real Property, increases in the value of the Real Property, Ineligible Property, Eligible Property, inventory or supplies.
- ii. All Eligible Property shall be placed and/or installed in accordance with applicable laws, ordinances, rules or regulations in effect at the time such Eligible Property is placed and/or installed.
- iii. The FBCAD's determination of values shall be used to determine the value of the property subject to this Agreement. If Owner or Tenant protests the FBCAD's valuation of the property, the valuation placed on the property after the protest is resolved under State law shall be used.
- iv. On or before September 1 of each year of this Agreement, Owner and Tenant shall each certify in writing to the Fort Bend County Tax Assessor/Collector their compliance with each term of this Agreement.
- v. Owner may terminate this Agreement with thirty (30) days written notification to the County. Owner shall not be entitled to a tax abatement for the year in which such termination is made. If taxes for the year of termination have been abated, the Owner shall, with such notice, make payment to the County of any abated taxes for the year of termination with appropriate interest and penalty.

6. Taxability: During the period that this tax abatement is effective, taxes shall be payable by as follows:

- a. The value of Real Property, Ineligible Property and Eligible Property shall be fully taxable, including inventory, and
- b. The value of existing improvements, if any, and existing Eligible Property shall be determined in the base year by the FBCAD.

7. Event of Default:

- a. County may declare a default of this Agreement if: (1) either Owner or Tenant or both fails to comply with any term of this Agreement or (2) Owner allows County ad valorem taxes on any property owned in Fort Bend County to become delinquent, even if the delinquent taxes are for a property not subject to an abatement or (3) Owner or Tenant ceases operations on the Real Property for a continuous period of one hundred eighty (180) days before the expiration of the term of the Abatement without the prior written consent of the County, except that in the event of (i) a temporary shutdown of the facility, with assurance of the resumption of operations, for the purpose of facility modification, expansion, improvement, retooling or similar purpose, (ii) the facility is being actively marketed, the County shall not unreasonably withhold consent to a reasonable extension to such period to permit the sale of the facility to another operator, (iii) the closure of the facility pending settlement of insurance, casualty or condemnation claims or (iv) the closure of the facility due to inadequate or unacceptable raw water supply shall not constitute a vacating of or a cessation of operations on the Real Property under this Section 7(a)(3). Such exceptions are subject to further extension for force majeure as defined in Section 11 herein.
- b. County shall notify Owner or Tenant (as applicable) of any default in writing

specifying the default. Owner or Tenant (as applicable) shall have sixty (60) days from the date of the notice to cure any default. If Owner or Tenant (as applicable) fails to cure the default within ninety (90) days from receipt of notice, County may terminate this Agreement by written notice.

- c. If this Agreement is terminated by County, as County's sole and exclusive remedy, Owner or Tenant (as applicable) agrees that they are liable for and will pay to County within thirty (30) days of the termination of this Agreement:
 - i. The amount of all taxes abated during the term of this Agreement; and
 - ii. Interest on the abated amount at the rate provided for in the Texas Tax Code for delinquent taxes.
 - iii. Penalties on the amount abated in the year of default, at the rate provided for in the Texas Tax Code for delinquent taxes.
- d. County shall have a lien against the Real Property, Ineligible Property and Eligible Property for the taxes and interest owed because of the recapture of taxes under this paragraph during the time period beginning on the date such payment obligation accrues and continuing until the date is paid.
- e. This paragraph is required by Chapter 2264, Texas Government Code and governs over any conflicting provisions of this Agreement. Owner and Tenant are prohibited from knowingly employing undocumented workers as that term is defined in Section 2264.001, Texas Government Code. If Owner or Tenant is convicted of a violation under 8 U.S.C. Section 1324a(f), the conviction shall be considered default of this Agreement, from which no cure provisions shall apply. In such event, County shall provide written notice to Owner and Tenant of the default and this Agreement shall automatically terminate on the 30th day after the date of the notice of default from County. In the event of termination under this paragraph, the convicted party shall repay to County the amount of all property taxes abated under this Agreement, plus interest on the abated amount at the rate provided for in the Texas Tax Code for delinquent taxes.

8. Administration and Inspection

- a. This Agreement shall be administered on behalf of the Fort Bend County Tax Assessor/Collector or her designee. Owner and Tenant shall allow employees or other representatives of County who have been designated by the Tax Assessor/Collector to have access to the Real Property (during normal business hours) during the term of the Agreement. All regular inspections shall be made only after two (2) business days prior notice and will be conducted in such a manner as not to unreasonably interfere with the construction or operation of the facility. A representative of Owner and Tenant may accompany the inspector. County shall cause each of its employees and representatives who conduct such inspections to abide by all of Owner's and Tenant's security, safety and operational rules (as the same may be amended from time to time), copies of which have been made available to County.
- b. Upon completion of the placement and/or installation of the Eligible Property, County shall annually evaluate the Improvements and any Eligible Property to ensure compliance with the terms and provisions of this Agreement and shall

report potential defaults to the Owner.

- c. The Chief Appraiser of the FBCAD shall annually determine (1) the taxable value under the terms of this abatement of the Improvements, and any Eligible Property located on the Real Property and (2) the full taxable value without abatement of the Real Property, the Improvements, and any Eligible Property located on the Real Property. The Chief Appraiser shall record both abatement taxable value and full taxable value in the appraisal records. The full taxable value figure listed in the appraisal records shall be used to compute the amount of abated taxes that is terminated in a manner that results in recapture of abated taxes.
- d. Owner shall furnish the Chief Appraiser annually such information as provided for under Chapter 22 of the Texas Tax Code. Such information, including payroll records, shall also be provided annually to the County Tax Assessor/Collector in preparation of its annual evaluation for compliance with the terms and provisions of this Agreement.

9. Assignment

- a. This Agreement may not be assigned without prior written consent of County. No assignment shall be effective or approved if County has declared a default hereunder which has not been cured or the assignee is delinquent in the payment of any ad valorem taxes owed to County. Approval shall not be unreasonably withheld.
- b. Any and all assignments shall contain the same terms and conditions as set out in this Agreement and shall be granted for the remaining term of the original Agreement only.
- c. Notice shall be provided to County within ninety (90) days of any sale or assignment of the Real Property subject to this Agreement.

10. Indemnity It is understood and agreed that Owner, in performing obligations hereunder, is acting independently, and County assumes no responsibilities or liabilities in connection therewith to third parties. **OWNER AND TENANT EACH AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS COUNTY AND THE FBCAD FROM ANY AND ALL CLAIMS, SUITS, AND CAUSES OF ACTION OF ANY NATURE WHATSOEVER ARISING OUT OF EACH PARTIE'S BREACH OF ITS OBLIGATIONS HEREUNDER EXCEPT THAT THE INDEMNITY SHALL NOT APPLY TO THAT PORTION OF RESPONSIBILITIES AND LIABILITIES RESULTING FROM THE FAULT OR NEGLIGENCE OF COUNTY OR TAXING UNITS, THEIR RESPECTIVE OFFICERS, AGENTS OR EMPLOYEES. THESE INDEMNIFICATION OBLIGATIONS INCLUDE THE PAYMENT OF REASONABLE ATTORNEYS FEES AND EXPENSES INCURRED IN THE DEFENSE OF ANY SUCH CLAIMS, SUITS, AND CAUSES OF ACTION WHICH ARE NOT DUE TO COUNTY'S, THE DISTRICT'S OR THEIR REPRESENTATIVES' INTENTIONAL CONDUCT OR NEGLIGENCE. THE INDEMNIFYING PARTY SHALL BE RESPONSIBLE FOR ALL FEES INCURRED BY COUNTY IN THE DEFENSE OF ANY SUCH CLAIMS, SUITS, OR CAUSES OF ACTION. NOTHING IN THIS AGREEMENT SHALL BE**

INTERPRETED TO PROHIBIT COUNTY FROM INCURRING REPRESENTATION OF ANY SUCH CLAIM, SUIT OR CAUSE OF ACTION AND THE INDEMNIFYING PARTY SHALL NOT BE RESPONSIBLE FOR ANY SUCH COSTS AND OR FEES SO INCURRED.

- 11. Force Majeure:** If by reason of force majeure, Owner or Tenant is unable to perform any obligation of this Agreement, it shall give notice of the force majeure to County in writing within thirty (30) calendar days after Owner or Tenant first becomes aware or should have become aware of the occurrence relied upon. By doing so, the obligation of Owner and/or Tenant, to the extent and for the period of time affected by the force majeure, shall be suspended. Owner and Tenant shall endeavor to remove or overcome the inability with all reasonable effort. For purposes of this provision, “force majeure” shall include, but not be limited to acts of God, landslides, lightning, earthquakes, hurricanes, storms, floods, or other natural occurrences; strikes, lockouts, insurrections, riots, wars or other civil or industrial disturbances; orders of any kind of the federal or state government or of any civil or military authority; explosions, fires, breakage or accidents to machinery, lines, or equipment, or the failure or lack of capacity of the wastewater system or water supply system; or any other cause not reasonably within the control of the Owner or Tenant.
- 12. Commissioners Court Approval:** This Agreement is conditioned entirely upon the approval of the Commissioners’ Court by the affirmative vote of a majority of the members present at a duly scheduled meeting of the Commissioner’s Court.
- 13. Compliance with State and Local Regulations:** This Agreement shall not be construed to alter or affect the obligations of Owner to comply with any city ordinance or federal or state law or regulation.
- 14. Changes in Laws/Vested Rights:** The tax abatement provided in this Agreement is conditioned upon and subject to any changes in the state tax laws during the term of this Agreement, but only the extent required by law to be enforceable and after giving Owner and Tenant all vesting, non-conforming and/or “grandfather” rights, contained in and applicable to this Agreement and allowed by law.
- 15. Miscellaneous:**
- a. This Agreement and the rights and obligations of each party shall be construed and enforced under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Fort Bend County, Texas.
 - b. In the event of one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
 - c. The waiver by either party of a breach of any provision of this Agreement shall not operate as or be construed as a waiver of any subsequent breach.

- d. Any amendments of this Agreement shall be of no effect unless in writing and signed by both parties hereto.

16. Notices

- a. Any notice required to be given under the provisions of this Agreement shall be in writing and shall be duly served when it shall have been hand delivered or deposited, enclosed in a wrapper with the proper postage prepaid thereon, and certified, return receipt requested, in a United States Post Office, addressed to County, Owner, and Tenant at the mailing address as hereinafter set out. If mailed, any notice of communication shall be deemed to be received three (3) business days after the date of deposit in the United States Mail.
- b. Unless otherwise provided in this Agreement, all notices shall be delivered to Owner or County at the following addresses:

To County: Fort Bend County
401 Jackson
Richmond, Texas 77469
Attention: County Judge

To the Tax Assessor/Collector: The Honorable Patsy Schultz
Fort Bend County Tax Assessor-Collector
1317 Eugene Heimann Circle
Richmond, Texas 77469

To the Owner: 1330 Industrial Blvd, LLC²
14140 Southwest Fwy, Ste. 400³
Sugar Land, Texas 77478
Attn: Frank Chaveleh

To the Tenant: Healix Infusion Therapy, Inc.
14140 Southwest Fwy, Ste. 400
Sugar Land, Texas 77478
Attn: Joseph Gallegos

- c. Any party may designate a different address by giving the other parties ten (10) days prior written notice thereof. Failure of Owner to provide County Tax Assessor/Collector thirty (30) days notice of a change of address may result in termination of this Agreement.

- 17. Entire Agreement** This Agreement contains the entire Agreement among the parties and supercedes all other negotiations and agreements, whether written or oral. This Agreement shall inure to the benefit of and be binding upon the parties hereto and each of their respective successors and assigns. Attached hereto are (a) Exhibit One – City of Sugar Land Ordinance No. 2035 designating Reinvestment Zone No. 2015-03 (b) Exhibit Two - legal description of Real Property which are made part of this Agreement.

² Business name

³ Street address

18. **Execution.** IN TESTIMONY OF WHICH, THIS AGREEMENT has been executed by County, Owner and Tenant, as of the dates below stated. All Parties warrant and represent that the individuals executing this agreement on behalf of each have full authority to execute this Agreement and bind each to the same.

FORT BEND COUNTY, "COUNTY"

By: _____
Robert E. Hebert, County Judge

ATTEST:

Date: _____

Laura Richard, County Clerk

1330 INDUSTRIAL BLVD, LLC, 'OWNER'

By: _____

Printed: Name: _____

Title: _____

ATTEST:

Date: _____

Printed Name: _____

HEALIX INFUSION THERAPY, "TENANT"

By: _____

Printed: Name: _____

Title: _____

ATTEST:

Date: _____

Printed Name: _____

Exhibit One: City of Sugar Land Ordinance No. 2035

Exhibit Two: Legal Description of Real Property