

RESOLUTION NO. 2021-1

**A RESOLUTION OF NAVARRO COUNTY, TEXAS, APPROVING THE TERMS AND CONDITIONS OF CERTAIN DOCUMENTS INVOLVING THE COUNTY OF NAVARRO, TEXAS, AN EXISTING COMMERCIAL/INDUSTRIAL TAX REINVESTMENT ZONE/TAX ABATEMENT POLICY, AUTHORIZING EXECUTION BY THE COUNTY JUDGE; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Commissioner’s Court has been presented (i) a proposed Assignment and Assumption of Tax Abatement Agreements between Hughes Commercial Real Estate and Development LLC (“Hughes”), as assignor, and Pinchal & Company, LLC, and its assignees (“Pinchal”), as assignee, providing for an assignment by Hughes and assumption by Pinchal of the “Owner’s” interest under that certain Tax Abatement Agreement dated September 28, 2020 (the “Tax Abatement Agreement”), by and between Navarro County, Texas and Hughes, a copy of which is attached hereto as Exhibit A (hereinafter called the “ASSIGNMENT”) and (ii) a proposed First Amendment to Tax Abatement Agreement, by and among Navarro County, Texas, Pinchal and Corsicana Bedding, LLC, the tenant of the property benefitted by the Tax Abatement Agreement, a copy of which is attached hereto as Exhibit B (hereinafter called the “AMENDMENT”); and

**WHEREAS**, upon full review and consideration of the AMENDMENT and the ASSIGNMENT, and all matters attendant and related thereto, the Commissioner’s Court is of the opinion that the terms and conditions thereof should be approved, and that the County Judge shall be authorized to consent to the ASSIGNMENT and execute the AMENDMENT on behalf of the County of Navarro;

**NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSIONER’S COURT OF THE COUNTY OF NAVARRO, TEXAS:**

**Section 1.** The terms and conditions of the proposed ASSIGNMENT, having been reviewed by the County of Navarro and found to be acceptable and in the best interest of the County of Navarro and its citizens, are hereby in all things approved and the County of Navarro consents to the assignment and assumption transaction therein described.

**Section 2.** The terms and conditions of the proposed AMENDMENT, having been reviewed by the County of Navarro and found to be acceptable and in the best interest of the County of Navarro and its citizens, are hereby in all things approved.

**Section 3.** The County Judge is hereby authorized to execute the AMENDMENT and all other documents in connection therewith on behalf of the County of Navarro, substantially according to the terms and conditions set forth in the AMENDMENT.

**Section 4.** That this approval and execution of the AMENDMENT on behalf of the County of Navarro is not conditional upon approval and execution of any other tax abatement agreement by any other taxing entity.

**Section 5.** This Resolution shall become effective from and after its passage.

**PASSED** and **APPROVED** on this the 8<sup>th</sup> day of February, 2021.



**ATTEST:**

*Sherry Dowd*  
\_\_\_\_\_  
Sherry Dowd, County Clerk

*H.M. Davenport Jr.*  
\_\_\_\_\_  
H.M. Davenport Jr., County Judge

**EXHIBIT A**

**Form of Assignment**

**EXHIBIT B**

**Form of Amendment**

## FIRST AMENDMENT TO TAX ABATEMENT AGREEMENT

THIS FIRST AMENDMENT TO TAX ABATEMENT AGREEMENT (this "First Amendment") is executed as of February 8, 2021 (the "Effective Date"), by and among the COUNTY OF NAVARRO, TEXAS ("Navarro County"), PINCHAL & COMPANY, LLC, a Texas limited liability company, and its assignees (the "Owner"), and CORSICANA BEDDING, LLC, a Texas limited liability company (the "Tenant").

### RECITALS

A. Navarro County and Hughes Commercial Real Estate and Development LLC ("Hughes"), entered into that certain Tax Abatement Agreement dated September 28, 2020 (the "Tax Abatement Agreement"), which established a reinvestment zone/tax abatement policy with respect to certain commercial industrial property located in the City of Corsicana, Navarro County, Texas as more particularly described in the Tax Abatement Agreement (the "Property").

B. Hughes, as assignor, and its development partner with respect to the Property, Pinchal & Company, LLC, and its assignees ("Pinchal"), as assignee, entered into that certain Assignment and Assumption of Tax Abatement Agreements dated February \_\_\_\_, 2021 pursuant to which Hughes assigned and Pinchal assumed the interests and obligations of the "Owner" under the Tax Abatement Agreement.

C. Navarro County, Owner and Tenant desire to modify the Tax Abatement Agreement to provide for, among other things, the joinder of Tenant as a party to the Tax Abatement Agreement, on the terms and conditions set forth below.

D. Capitalized terms used herein but not defined herein shall have the respective meanings ascribed to such terms in the Lease.

### AGREEMENTS

**NOW, THEREFORE**, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby expressly acknowledged by Landlord and Tenant, and intending to be legally bound hereby, Landlord and Tenant hereby agree to amend the Lease as follows:

1. Joinder. Tenant hereby joins as a party to the Tax Abatement Agreement and agrees to be jointly and severally liable together with Landlord for the performance of the obligations of the "Owner" under the Tax Abatement Agreement. Navarro County hereby consents to Tenant's joinder as an "Owner" party under the Agreement.

2. Amendment. The second (2<sup>nd</sup>) sentence of Paragraph 2.2 of the Tax Abatement Agreement is hereby deleted and is replaced with the following: "On or before January 1, 2022, OWNER shall commence construction of the Improvements and on or before January 1, 2023, OWNER shall substantially complete all Improvements and cause an increase in Taxable Value as shown in Exhibit D".

3. Miscellaneous.

(a) Except as expressly modified herein, each and every other provision, term and condition of the Lease is hereby ratified and confirmed, and shall remain unmodified and in full force and effect from and after the date hereof. In the event of any direct conflict between the terms of this First Amendment and the terms of the Tax Abatement Agreement, the terms of this First Amendment shall govern and control.

(b) This First Amendment shall be binding upon, and inure to the benefit of, the respective successors and assigns of Navarro County, Owner and Tenant. Notwithstanding anything in the Tax Abatement Agreement or this First Amendment to the contrary, upon written notice to Navarro County, Owner may assign its rights under the Tax Abatement Agreement to Corsicana BTS, LLC or another affiliate or subsidiary of Owner, subject to Owner remaining liable for all of its obligations hereunder.

(c) This First Amendment may be executed in any number of counterparts, each of which shall be deemed an original instrument and all of which shall constitute one and the same amendment. Facsimile or .PDF transmission of an executed counterpart of this First Amendment shall be deemed to constitute due and sufficient delivery of such counterpart, and such facsimile or .PDF signatures shall be deemed original signatures for purposes of enforcement and construction of this First Amendment.

(d) This First Amendment shall be governed, construed, applied and enforced in accordance with the laws of the State of Texas.

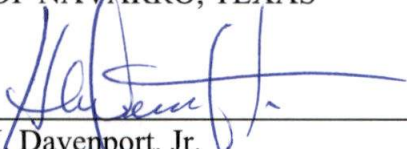
(e) The Tax Abatement Agreement, as amended hereby, may only be further amended or supplemented only by an instrument in writing executed by and among Navarro County, Owner and Tenant.

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**IN WITNESS WHEREOF**, the parties have executed this First Amendment as of the Effective Date.

**NAVARRO COUNTY:**

COUNTY OF NAVARRO, TEXAS

By:  \_\_\_\_\_  
H.M. Davenport, Jr.  
County Judge

**OWNER:**

PINCHAL & COMPANY, LLC,  
a Texas limited liability company

By: \_\_\_\_\_  
Brian W. McMackin  
Vice President

**TENANT:**

CORSICANA BEDDING, LLC,  
a Texas limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## **ASSIGNMENT AND ASSUMPTION OF TAX ABATEMENT AGREEMENTS**

This Assignment and Assumption of Tax Abatement Agreements (this "***Assignment***") is entered into effective as of February \_\_\_\_, 2021 (the "***Effective Date***"), between HUGHES COMMERCIAL REAL ESTATE AND DEVELOPMENT LLC, a Texas limited liability company ("***Assignor***"), and PINCHAL & COMPANY, LLC, a Texas limited liability company, and its assignees ("***Assignee***").

### **RECITALS:**

Assignee, as landlord, and Corsicana Bedding, LLC ("***Tenant***"), as tenant, executed that certain Industrial Triple Net Lease dated December 10, 2020 (as amended by First Amendment to Lease dated January \_\_\_\_, 2021, the "***Lease***"), pursuant to which Assignee leases to Tenant, approximately 370,320 rentable square feet of space (the "***Premises***"), located in the building (the "***Building***"), to be located in the City of Corsicana, Navarro County, Texas and being more specifically described in the Lease.

Assignor, who is Assignee's development partner in connection with the Lease and the Building, has previously executed certain Tax Abatement Agreements with the City of Corsicana, County of Navarro, Texas and the Navarro College Board of Trustees, as set forth on **Exhibit A** hereto, benefitting the "Owner" of the Building, Tenant and the Building (the "**Tax Abatement Agreements**").

### **ASSIGNMENT:**

In consideration of the mutual promises and covenants set forth herein, effective as of the Effective Date, Assignor assigns and transfers to Assignee all right, title and interest of Assignor as "Owner" in and to the Tax Abatement Agreements, and Assignee accepts from Assignor all right, title, and interest of Assignor, as "Owner", in and to the Tax Abatement Agreements, subject to the terms and conditions set forth in this Assignment.

### **ASSUMPTION OF OBLIGATIONS:**

Assignee assumes and agrees to fulfill all of the terms, covenants, conditions and obligations required to be performed and fulfilled by Assignor, as "Owner" under the Tax Abatement Agreements, from and after the Effective Date.

### **ASSIGNOR'S COVENANTS:**

Assignor covenants that the schedule of the Tax Abatement Agreements attached as **Exhibit A** is a true and accurate schedule of the Tax Abatement Agreements that are currently in effect.

### **LITIGATION COSTS:**

If any litigation between Assignor and Assignee arises out of this Assignment or concerning the meaning or interpretation of this Assignment, the losing party shall pay the



prevailing party's costs and expenses of the litigation, including, without limitation, reasonable attorneys' fees.

**INDEMNIFICATION:**

Assignor indemnifies Assignee from and against any loss, cost or expense, including attorneys' fees and court costs relating to the failure of Assignor to fulfill Assignor's obligations as "Owner" under the Tax Abatement Agreements, and accruing with respect to the period on or prior to the Effective Date. Assignee indemnifies Assignor from and against any loss, costs or expenses, including attorneys' fees and court costs relating to the failure of Assignee to fulfill Assignee's obligations as "Owner" under the Tax Abatement Agreements, and accruing with respect to the period from and after the Effective Date.

**SUCCESSORS AND ASSIGNS:**

This Assignment shall be binding on and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns.

**GOVERNING LAW:**

This Assignment shall be governed by and construed in accordance with the laws of the State of Texas and may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

**AUTHORITY:**

Each person signing hereunder warrants that they have the capacity and the authority to sign this Assignment on behalf of the respective person or entity which is being represented. Notwithstanding anything appearing to the contrary in this Assignment, no direct or indirect partner, member or shareholder of (i) Assignor (or any of its officers, directors, agents, members, managers, personal representatives, trustees or employees of any such direct or indirect partner, member or shareholder) shall be personally liable for the performance of the obligations of, or in respect of any claims against, Assignor arising under this Assignment, and (ii) Assignee (or any of its officers, directors, agents, members, managers, personal representatives, trustees or employees of any such direct or indirect partner, member or shareholder) shall be personally liable for the performance of the obligations of, or in respect of any claims against, Assignee arising under this Assignment. No personal judgment shall be sought or obtained against any of the foregoing in connection with this Assignment.

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The parties have executed this Assignment on the dates shown below, but effective as of the Effective Date.

**ASSIGNOR:**

HUGHES COMMERCIAL REAL ESTATE  
AND DEVELOPMENT LLC,  
a Texas limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ASSIGNEE:**

PINCHAL & COMPANY, LLC,  
a Texas limited liability company

By: \_\_\_\_\_  
Brian W. McMackin  
Vice President

**EXHIBIT A**

**Schedule of Tax Abatement Agreements**

1. Tax Abatement Agreement dated September 14, 2020, by and between the City of Corsicana, Texas and Assignor.
2. Tax Abatement Agreement dated September 17, 2020, by and between the Navarro College Board of Trustees and Assignor.
3. Tax Abatement Agreement dated September 28, 2020, by and between the County of Navarro, Texas and Assignor.