

AUTHORIZING RESOLUTION

At a meeting of the **HERKIMER COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, Herkimer County, New York (the “Agency”), held at 420 E. German Street, Herkimer, New York on the 25th day of May, 2021 at 8:00 a.m., the following members of the Agency were:

Present: Vincent J. Bono, Catherine Ricci, John Scarano, Michael Werenczak; Present By Phone: Cory Albrecht, David Chlus

Absent: Ann Gaworecki

Also Present: John Piseck, Stacey Holleran, Anthony G. Hallak, Victoria Adams, Jerry Pritchard

After the meeting had been duly called to order, the Chairman announced that the purpose of the meeting was to consider and take action on certain matters pertaining to Nudadec, LLC (the “Company”).

The following resolution was duly moved, seconded, discussed and adopted with the following members voting:

AYE	NAY	ABSTAINED
*ALL	*NONE	*NONE

RESOLUTION AUTHORIZING THE AGENCY TO EXECUTE ALL RELEVANT CLOSING DOCUMENTS WITH RESPECT TO THE CONVEYANCE OF AN INTEREST IN THE REAL PROPERTY SITUATE IN THE TOWN OF SCHUYLER, COUNTY OF HERKIMER AND STATE OF NEW YORK, THE CONSTRUCTION OF CERTAIN IMPROVEMENTS THEREON, AND THE ACQUISITION OF PERSONAL PROPERTY TO BE ACQUIRED AND LOCATED THEREAT (COLLECTIVELY, THE “FACILITY”); TO ASSIST THE COMPANY WITH FINANCIAL ASSISTANCE, LEASING SAID FACILITY TO AGENCY THROUGH A LEASE AGREEMENT AND THROUGH SALES AND MORTGAGE TAX EXEMPTIONS AND REAL PROPERTY TAX ABATEMENTS; TO ADDRESS ENVIRONMENTAL ISSUES AND TO PROVIDE FOR INDEMNIFICATION OF THE AGENCY ON SUCH ISSUES RELATING TO THE FACILITY THROUGH THE EXECUTION OF AN ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION AGREEMENT WITH THE COMPANY (THE “ECIA”); TO LEASEBACK SAID FACILITY TO THE COMPANY; TO PROVIDE FOR A RECAPTURE AGREEMENT RELATING TO THE CREATION OF JOBS AND MAKING

CERTAIN FINDINGS AND DETERMINATIONS WITH RESPECT
TO THE PROJECT.

WHEREAS, Nudadec, LLC (the “Company”) has requested that the Agency undertake a project (the “Project”) consisting of the following: (A) (1) the acquisition of an interest in an approximately 49 acre parcel of land located in the Schuyler Business Park in the Town of Schuyler, New York and more particularly described in **Exhibit A** attached hereto and made a part hereof (the “Land”), (2) the construction on, under and over the Land of an approximately 195,000± square foot warehouse and distribution center, with potential expansion at the Company’s option up to 400,000 square feet, and related facilities and improvements, including without limitation, offices, a water tank, electric transformers and parking for vehicles and truck trailers (collectively, the “Improvements”) and (3) the acquisition and installation of machinery, equipment and other personal property (the “Equipment”) in, on, around, over and under the Improvements and the Land (the Land, the Improvements and the Equipment being collectively referred to as the “Facility”); (B) the granting of certain “financial assistance” (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing, including potential exemptions from sales taxes and mortgage tax, real property transfer taxes and exemptions from real property taxes (collectively, the “Financial Assistance”); and (C) the lease (with an obligation to purchase) of the Facility to Agency and leaseback of the Facility to the Company or such other person as may be designated by the Company and agreed upon the Agency; and

WHEREAS, the Company will lease the Facility to the Agency pursuant to Article 18A of the General Municipal Law of the State of New York, and Chapter 410 of the Laws of 1970 of the State of New York, as may be amended from time to time (collectively the “Act”) and the Agency will lease the Facility back to the Company pursuant to a Leaseback Agreement (the “Leaseback Agreement”); and

WHEREAS, the Company will construct and equip the Facility as agent of the Agency;
and

WHEREAS, the Act authorizes and empowers the Agency to promote, develop, encourage and assist projects such as the Facility and to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York; and

WHEREAS, representations made by the Company in their Application for Financial Assistance support the finding that the Project will promote employment opportunities in the area served by the Agency; and

WHEREAS, the Company will further sublease the Facility to the Sublessee for its operation pursuant to a Sublease Agreement (the “Sublease Agreement”) between the Company and the Sublessee; and

WHEREAS, in order to induce the Company to develop the Facility, the Agency is willing to sell the Land to the Company, to take a leasehold interest in the Land, Improvements and Equipment pursuant to the terms and conditions contained in the Lease Agreement and to

lease the Land, Improvements and Equipment back to the Company pursuant to the terms of the Leaseback Agreement; and

WHEREAS, on February 3, 2021 the Agency afforded a 90 Day Notice for the State of New York Authority Budget Office, the Comptroller for the State of New York, the Director of the Budget for the State of New York, the Temporary President of the NYS Senate, the Speaker of the NYS Assembly and Commission of the New York State Office of General services; and

WHEREAS, based upon recommendations made by the Company in its Application, the value of financial assistance is described as follows:

Sales and Use Tax Exemptions estimated at \$412,500.00, but shall not exceed \$412,500.00 in aggregate;

Mortgage Recording Tax not to exceed \$135,000.00; and

Real Property Tax Abatement estimated at \$1,220,000.00.

WHEREAS, prior to the closing of a lease-leaseback transaction, and the granting of any tax benefits, a public hearing (the "Hearing") was held so that all persons with views in favor of or opposed to either the Financial Assistance contemplated by the Agency, or the location or nature of the Facility, could be heard; and

WHEREAS, notice of the Hearing was given prior to the closing of a lease-leaseback transaction, and the granting of any tax benefits, and such notice (together with proof of publication) was in the form annexed hereto as **Exhibit B**; and

WHEREAS, the minutes of the Hearing are or will be annexed hereto as **Exhibit C**; and

WHEREAS, on March 5, 2021, Notice was given to each of the taxing jurisdictions affected by the project of the intent to deviate from the Agency's Uniform Tax Exemption Policy in the form attached hereto as **Exhibit D**; and

WHEREAS, on May 7, 2021 notice was given to interested entities of the Sublessee's abandonment of facilities in the County of Oneida and County of Oswego, copies of which are on file at the office of the Agency; and

WHEREAS, the Agency will provide the Financial Assistance to the Company including, exemptions from sales and use taxes, abatements from real property taxes and assisting in the procurement of grant money; and

WHEREAS, the Agency has given due consideration to the application of the Company and to representations by the Company that the proposed lease-leaseback transaction is an inducement to the Company to locate and construct the Facility in the County and is also necessary to maintain the competitive position of the Company in its industry; and

WHEREAS, to aid the Agency in determining whether the Facility may have a significant effect upon the environment, the Agency has reviewed the negative declaration issued by the Town Board of the Town of Schuyler, New York, as lead agency under the State Environmental Quality Review Act dated May 19, 2021, a copy of which is on file as the office of the Agency;

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE HERKIMER COUNTY INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

Section 1. The Agency hereby finds and determines:

- (a) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes of the Act and to exercise all powers granted to it under the Act; and
- (b) The Facility constitutes a “project,” such as that term is defined in the Act; and
- (c) The sale of the Land to the Company, the acquisition, construction and equipping of the Facility, and the leasing of the Facility to the Company will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of Herkimer County and the State of New York and improve their standard of living and thereby serve the public purposes of the Act; and
- (d) The acquisition, construction and equipping of the Facility are reasonably necessary to induce the Company to locate and construct the Facility in the State of New York; and
- (e) Based upon representations of the Company, the Facility conforms with the local zoning laws and planning regulations of Herkimer County and all regional and local use plans for the area in which the Facility is located; and
- (f) It is desirable and in the public interest for the Agency to sell the Land to the Company, acquire a leasehold interest in the Facility and lease the Facility back to the Company; and
- (g) The Lease is an effective instrument whereby the Company conveys a leasehold interest to the Agency; and
- (h) The Leaseback Agreement is an effective instrument whereby the Company leases the Facility from the Agency; and
- (i) Based upon the materials submitted by the Company and the review of the Negative Declaration by the Town Board of the Town of Frankfort and the Agency’s knowledge of the Project, the Facility will result in no adverse environmental impacts.

- (j) The construction by the Company of a state-of-the-art distribution facility will allow the Sublessee and operator of the Facility, The Fountainhead Group, Inc., to consolidate several warehouse locations for finished goods into one location. The consolidation reduces inefficiencies in distribution, allows for modernization and will support anticipated growth.

Section 2. In furtherance of Purchase, Sale and Development Agreement and consistent with the Uniform Tax Exemption Policy, the Agency hereby determines to deviate from its policy with regard to real property tax abatements for the following reasons:

- (a) The lands are currently lying fallow and are exempt from real property taxes assessed for special use and/or district charges;
- (b) The construction and equipping of a 195,000± square foot facility with potential expansion up to 400,000 square feet will be a fundamental component in the buildout of the Schuyler Business Park. The Project has the ability to add up to 150 jobs, exclusive of spin off industry and employment;
- (c) Construction of a state-of-the-art distribution facility will support the Company's modernization of its business and anticipated growth in the industry;
- (d) Notice of Economic Impact was afforded to those jurisdictions (to wit, the City of Utica, County of Oneida, Town of Volney, County of Oswego) of the abandonment and consolidation of the facilities;
- (e) The tax revenue generated on a \$15 million dollar facility in the later years of the PILOT will be a significant cash inflow to the local taxing jurisdictions as well as derivative sales tax in the community;
- (f) Based upon the materials submitted by the Company, the Facility will produce significant and substantial economic and community benefit to Herkimer County within the meaning of the Agency's Uniform Tax Exemption Policy; and
- (g) The incentive is a fundamental component to induce the acquisition, constructing and equipping of the Facility as well as create jobs as heretofore described.

Section 3. In furtherance of Section 2895 et seq. of Title 5-A of the Public Authorities Law (the "PAL"), the Agency has negotiated the terms of the disposition of the Land and such disposition furthers an economic development interest of the State of New York and County of Herkimer and is within the purpose of the Act. The Agency afforded Notice of Disposal of Public Authority Property under Section 2897 of the PAL (the "PAL Notice), and the Agency has received no objection thereto. The Agency has considered the information provided in the PAL Notice and the Agency hereby finds that the negotiated disposition at market value and transfer of the Land to the Company that would achieve statutory goals and purposes of the Agency. The Agency further finds that the Agency has complied with the provisions of Section 2897 of the PAL so long as the transfer of the Land to the Company does not occur prior to May 5, 2021.

Section 4. In furtherance of Section 862 of the New York General Municipal Law it is recognized that leasing warehouse and/or manufacturing space in various locations causes inefficiencies. The consolidation contemplated by the Project is reasonably necessary to correct the business inefficiencies and maintain a competitive position in the industry.

Section 5. In consequence of the foregoing, the Agency hereby determines to proceed with the Project, to sell the Land to the Company, to acquire a leasehold interest in the Facility from the Company and to lease the Facility back to the Company and to execute and deliver a deed to the Company, the Lease Agreement and a memoranda thereof, the Leaseback Agreement and memoranda thereof, the ECIA, the PILOT Agreement, the Recapture Agreement, the Section 875 General Municipal Law Recapture Agreement and all related documents reasonable and necessary or desirable to fulfill the intent of this resolution and the Financial Assistance proffered by the Agency as well as the County of Herkimer and State of New York (collectively the Closing Documents) and to do all things necessary or desirable to accomplish the foregoing. All acts heretofore taken by the officers and employees of the Agency with respect to the Project are hereby ratified and confirmed.

Section 6. The form and substance of the Closing Documents (each in substantially the forms presented to the Agency and which, prior to the execution and delivery thereof, may be redated) are hereby approved.

Section 7.

- (a) The Chairman, Vice Chairman, Secretary or any member of the Agency and the Executive Director, Stephen Smith, are hereby authorized, on behalf of the Agency, to execute and deliver the closing documents, all in substantially the forms thereof presented to this meeting with such changes, variations, omissions and insertions as the Chairman, Vice Chairman, Secretary, Executive Director or any member of the Agency shall approve, and such other related documents as may be, in the judgment of the Chairman and Agency Counsel, necessary or appropriate to effect the transactions contemplated by this resolution. The execution thereof by the Chairman, Vice Chairman, Executive Director or any member of the Agency shall constitute conclusive evidence of such approval.
- (b) The Chairman, Vice Chairman, Secretary or member of the Agency and the Executive Director, Stephen Smith are further hereby authorized, on behalf of the Agency, to designate any additional Authorized Representatives of the Agency (as defined in and pursuant to the Lease Agreement).

Section 8. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Closing Documents, and to execute and deliver all such additional certificates, instruments and documents, pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Closing Documents binding upon the Agency.

EXHIBIT A

Legal Description

ALL THAT TRACT, PIECE OR PARCEL OF LAND situate within the Town of Schuyler, County of Herkimer and State of New York, designated as Parcel "A", as shown on the map entitled "Subdivision Map Showing Lands Belonging to Herkimer County Industrial Development Agency Designated as Parcels "A", "B", "C" and Proposed Road", dated February 2, 2021, prepared by Emrich Land Surveying, PLLC; said parcel more particularly described as follows:

BEGINNING at an iron pin (set) located on the southerly road boundary of a proposed town road at its intersection with the division line between the herein described property, designated as Parcel "A" on the east and the property of Herkimer County Industrial Development Agency (reputed owner) as described by Deed L. 860 P. 184 on the west;

Thence easterly, along said southerly road boundary of a proposed town road, the following five (5) courses and distances:

- 1) South 89° 59' 00" East, a distance of 240.21 feet to a point of curvature;
- 2) Easterly, following a curve to the left having a radius of 550.00 feet with an arc distance of 161.45 feet to a point of tangency;
- 3) North 73° 11' 50" East, a distance of 303.00 feet to a point of curvature;
- 4) Easterly, following a curve to the right having a radius of 50.00 feet with an arc distance of 37.12 feet to a point of reverse curve;
- 5) Easterly, following a curve to the left having a radius of 116.00 feet with an arc distance of 135.83 feet to an iron pin (set);

Thence South 06° 42' 00" East, through the property of Herkimer County Industrial Development Agency (reputed owner) as described by Deed as Instrument No. RP2020-29, a distance of 532.54 feet to an iron pin (set);

Thence South 82° 45' 20" West, continuing through said property of Herkimer County Industrial Development Agency, a distance of 861.46 feet to an iron pin (set); said pin located at the intersection of the last mentioned course with the division line between the herein described property on the north and the property of Foothills Development, LLC (reputed owner) as described by Deed L. 1600 P. 202 on the west;

Thence North 06° 42' 05" West, along the last mentioned division line and the aforementioned division line between the herein described property on the east and said property of Herkimer County Industrial Development Agency on the west, a distance of 515.43 feet to the point of beginning, containing 435,746 ± square feet or 10.003 acres, more or less;

BEING: a portion of the premises conveyed by Dale Windecker and Deborah S. Windecker to Herkimer County Industrial Development Agency by Warranty Deed dated January 2, 2020, recorded in the Herkimer County Clerk's Office on January 3, 2020 by Deed as Instrument Number RP2020-29.

EXHIBIT B

Notice of Public Hearing

Proof of Publication

EXHIBIT C

Public Hearing Minutes

EXHIBIT D

**Notice(s) of Intent to Deviate from the
Agency's Uniform Tax Exemption Policy**