

## **INDUCEMENT AND PROJECT AGREEMENT**

This INDUCEMENT AND PROJECT AGREEMENT (the "Agreement") is between the HERKIMER COUNTY INDUSTRIAL DEVELOPMENT AGENCY, 420 E. German Street, Herkimer, New York 13350 (the "Agency") and NUDADEC, LLC, 23 Garden Street, New York Mills, New York 13417 (the "Company").

### **ARTICLE I PRELIMINARY STATEMENT**

Among the matters of mutual inducement which have resulted in the execution of this Agreement are the following:

1.01. The Agency is authorized and empowered by the provisions of Article 18-A of the General Municipal Law of the State of New York as amended, and Chapter 898 of the Laws of 1970 of the State of New York (collectively, the "Act") to provide financial assistance to "Projects" (as defined in the Act) and to acquire title to Projects and to lease or sell the same upon such terms and conditions as the Agency may deem advisable.

1.02. The purposes of the Act are (i) to promote industry and develop trade by inducing manufacturing, industrial, warehousing, research, recreation and commercial enterprises to locate or remain in the State and (ii) to encourage and assist in the providing of industrial pollution control facilities. The Act vests the Agency with all powers necessary to enable it to accomplish such purposes, including the power to provide assistance through sales tax, mortgage tax and real property tax incentives .

1.03. The Company has requested that the Agency assist in the acquisition of a 49.35± acre parcel of vacant land situated in the Schuyler Business Park, Town of Schuyler, County of Herkimer (the "Land"), construction on the Land of a single-story, 195,000± square foot distribution center with up to 30 dock doors and loading docks, office space, restrooms, break room and meeting room, including construction of all infrastructure, driveways, sidewalks, parking lot and landscaping to service the same (collectively, the "Improvements") and the acquisition and installation of fixtures, furniture and equipment (collectively, the "Equipment" and together with the Land and Improvements, the "Facility" and the construction and equipping of the Facility is the "Project"), all for the purpose of providing a warehouse/distribution facility and lease (with an obligation to purchase) or sell the Facility to the Company. The Company will further sublease the Facility to The Fountainhead Group, Inc. (the "Sublessee") for its operation.

1.04. The Company hereby represents to the Agency that (other than is permitted by law) the financing of the Facility through the Assistance will not result in the removal of an industrial or manufacturing plant from one area of the State to another area of the State or the abandonment of one or more plants of the Company located in the State, except for the various warehouse locations currently leased by Sublessee, which leases will be terminated and locations abandoned. The Company hereby represents to the Agency that the abandonment of the warehouse locations to consolidate the Sublessee's distribution operation is reasonably necessary to preserve the competitive position of the Sublessee in its industry.

1.05. The Agency has determined that the acquisition, constructing and equipping of the Facility, as described in the Company's application to the Agency (the "Application") and the leasing or sale thereof to the Company will promote and further the purposes of the Act.

1.06. On February 23, 2021 the Agency adopted a resolution (the "Resolution") agreeing to undertake the Assistance in order to assist the Company and to effectuate the purposes of the Act and, subject to the happening of all acts, conditions and things required precedent to such assistance and the satisfactory completion of such additional acts and reviews as the Agency may deem appropriate.

1.07. In the Resolution, the Agency appointed the Company its agent for the purposes of acquiring, constructing, equipping, and financing the Facility, entering into contracts and doing all things requisite and proper for completing the Facility.

1.08. In the Resolution, the Agency contemplates that it will provide assistance to the Company in the form of exemptions from sales tax (value estimated at \$412,500), exemptions from mortgage recording tax (value estimated at \$135,000) and exemptions from real property taxes (value estimated at \$1,220,000) (collectively, the "Assistance"), which Assistance is a deviation from the Agency's Uniform Tax Exemption Policy, to be more particularly described in a final authorizing resolution.

1.09. Attached as Exhibit A to this Agreement is a representative copy of the PILOT Agreement that reflects the Assistance currently contemplated by the Agency in the Resolution.

## **ARTICLE II UNDERTAKINGS ON THE PART OF THE AGENCY**

Based upon the statements, representations and undertakings of the Company regarding the Facility and subject to the conditions set forth herein, the Agency agrees as follows:

2.01. Upon satisfactory completion of the conditions precedent set forth herein and in the Resolution and the satisfactory completion of such additional acts and reviews as the Agency may deem appropriate, the Agency will adopt, or cause to be adopted, such proceedings and authorize the execution of such documents as may be necessary or advisable for (i) the acquisition by deed or lease and the construction, equipping, and financing of the Facility, and (ii) the assignment of the rights and delegation of duties respecting the Facility to the Company, all as shall be authorized by law and by mutually satisfactory to the Agency and the Company.

2.02. The Agency will take title to or a leasehold interest in the Facility and will enter into a Leaseback Agreement respecting the Facility with the Company (the "Leaseback Agreement"). The Lease Agreement shall contain all provisions required by law and such other provisions as shall be mutually acceptable to the Agency and the Company.

2.03. The Agency will take or cause to be taken such other acts and adopt such further proceedings as may be required to implement the aforesaid undertakings or as it may deem

appropriate in the pursuance thereof.

2.04. Within thirty (30) days of appointing the Company as its agent and pursuant to Section 874(9) of the Act, the Agency agrees to file with the New York State Department of Taxation and Finance, on a form and in such manner as is prescribed by the New York State Commissioner of Taxation and Finance (the "Thirty-Day Sales Tax Report"), a statement identifying the Company as agent of the Agency, setting forth the taxpayer identification number of the Company, giving a brief description of the goods and/or services intended to be exempted from sales taxes as a result of such appointment as agent, indicating a rough estimate of the value of the goods and/or services to which such appointment as agent relates, indicating the date when such designation as agent became effective and indicating the date upon which such designation as agent shall cease.

### **ARTICLE III UNDERTAKINGS ON THE PART OF THE COMPANY**

Based upon the statements, representations and undertakings of the Agency herein and in the Resolution and subject to the conditions set forth herein and in the Resolution, the Company agree as follows:

3.01. The Company hereby accepts the appointment made by the Agency in the Resolution to be the true and lawful agents of the Agency to (i) construct, renovate, equip, and finance the Facility and (ii) make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agents of the Agency, and in general to do all things which may be requisite or proper for completing the Facility, all with the same powers and the same validity as the Agency could do if acting on its own behalf. The Company shall file with the New York State Department of Taxation and Finance an annual statement of the value of all sales and use tax exemptions claimed in connection with the Facility in compliance with Section 874(8) of the Act.

3.02. The Company will, to the extent deemed by it to be necessary or desirable, enter into a contract or contracts for the acquisition, construction, equipping, and financing of the Facility (including any necessary contracts for the acquisition of real property necessary or useful in said Facility) and, on mutually agreeable terms and conditions, it will transfer to the Agency, or cause to be transferred to the Agency title to the land and all improvements comprising the Facility.

3.03. The Agency will enter into the Lease Agreement with the Company or designated company provided said company is an applicant containing, among other things, the terms and conditions described in Section 2.02 hereof and together with Company enter into such other financing agreements, indentures, guarantees, and related agreements as shall be necessary or appropriate to the Company.

3.04. (a) The Company shall not permit to stand, and will, at its own expense, take all steps reasonably necessary to remove (or bond the same if acceptable to the Agency and its counsel), any mechanics' or other liens against the Facility for labor or materials furnished in connection with the renovation, construction, and equipping of the Facility. The Company shall

forever defend, indemnify and hold the Agency, its members, officers, employees and agents, and anyone for whose acts or omissions the Agency or any of them may be liable, harmless from and against all costs, losses, expenses, claims, damages and liabilities of whatever kind or nature arising, directly or indirectly, out of or based on labor, services, materials and supplies, including equipment, ordered or used in connection with the renovation, construction and equipping of the Facility or arising out of any contract or other arrangement therefor (and including any expenses of the foregoing), whether such claims or liabilities arise as a result of the Company acting as agent for the Agency pursuant to this Agreement or otherwise.

(b) The Company shall forever defend, indemnify and hold harmless the Agency, its members, officers, employees and agents, and anyone for whose acts or omissions the Agency or any of them may be liable, from and against all claims, causes of action, liabilities and expenses howsoever arising for loss or damage to property or any injury to or death of any person (including, without limitation, death of or injury to any employees of the Company) that may occur subsequent to the date hereof by any cause whatsoever in relation to the Facility, including the failure to comply with the provisions of Article 3.04 hereof, or arising, directly or indirectly, out of the ownership, construction, renovation, operation, maintenance, repair or financing of the Facility, and including, without limitation, any expenses incurred by the Agency in defending any claims, suits or actions which may arise as a result of the foregoing, including any proceedings or actions commenced challenging the actions of the Agency in regards to the Assistance or the Facility.

(c) The defense and indemnities provided for in this Article 3 shall apply whether or not the claim, liability, cause of action or expense is caused or alleged to be caused, in whole or in part, by the activities, acts, fault or negligence of the Agency, its member, officers, employees and agents, anyone under the direction and control of any of them, or anyone for whose acts or omissions the Agency or any of them may be liable, and whether or not based upon the breach of a statutory duty or obligation or any theory or rule of comparative or apportioned liability, subject only to any specific prohibition relating to the scope of indemnities imposed by statutory law.

(d) The Company shall provide and carry worker's compensation and disability insurance as required by law and comprehensive liability insurance with such coverages (including, without limitation, owner's protection for the benefit of the Agency contractual coverage covering the indemnities herein provided for), with such limits and with such Company as may be approved by the Agency with the Agency in all cases named as an "added insured." Upon the request of the Agency, the Company shall provide certificates of insurance in form satisfactory to the Agency evidencing such insurance.

3.05. The Company agrees that, as agent for the Agency or otherwise, they will comply with all the requirements of all federal, state and local laws, rules and regulations of whatever kind and howsoever denominated applicable to the Agency and/or the Company with respect to the Facility, the acquisition, construction, equipping, and financing thereof, the operation and maintenance of the Facility and the financing thereof. Every provision required by law to be inserted herein shall be deemed to be set forth herein as if set forth in full; and upon the request of either party, this Agreement shall be amended to specifically set forth any such provision or



provisions. The Company certifies, under penalty of perjury, that it is in substantial compliance with all local, state and federal tax, worker protection and environmental laws, rules and regulations.

3.06. The Company will take such further action and adopt such further proceedings as may be required to implement its aforesaid undertakings or as it may deem appropriate in pursuance thereof.

3.07. If it should be determined that any State or local sales or compensatory use taxes are payable with respect to the acquisition, purchase or rental of machinery or equipment, materials or supplies in connection with the Facility, or are in any manner otherwise payable directly or indirectly in connection with the Facility, the Company shall pay the same and defend and indemnify the Agency from and against any liability, expenses and penalties arising out of, directly or indirectly, the imposition of any such taxes.

3.08 The Company acknowledges that the Assistance shall be subject to modification, suspension or discontinuance in accordance with the policies adopted by the Agency.

3.09 In accordance with Section 875(3) of the General Municipal Law, the policies of the Agency, and the Resolution, the Company covenants and agrees that it may be subject to recapture of any and all Assistance if it is determined by the Agency that:

(a) the Company or its subagents, if any, authorized to make purchases for the benefit of the Project is not entitled to the sales and use tax exemption benefits; or

(b) the sales and use tax exemption benefits are in excess of the amounts authorized by the Agency to be taken by the Company or its subagents, if any; or

(c) the sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; or

(d) the Company failed to comply with a material term of condition to use property of services in the manner required hereunder.

If the Agency determines to recapture any Assistance, the Company agrees and covenants that it will (i) cooperate with the Agency in its efforts to recover or recapture any or all Financial Assistance obtained by the Company and (ii) promptly pay over any or all such amounts to the Agency that the Agency demands in connection therewith. Upon receipt of such amounts, the Agency shall then redistribute such amounts to the appropriate affected tax jurisdiction(s), unless agreed to otherwise by any tax jurisdiction(s). The Company further understands and agrees that in the event that the Company fails to pay over such amounts to the Agency, the New York State Tax Commissioner may assess and determine the New York State and local sales and use tax due from the Company, together with any relevant penalties and interest due on such amounts.

3.10 In order to accomplish the foregoing and to assist the Agency in preparing its annual compliance report, the Company shall provide annually, to the Agency, a certified statement and

documentation in substantially the form attached hereto as Exhibit B.

#### **ARTICLE IV GENERAL PROVISIONS**

4.01. This Agreement shall take effect on the last date of execution hereof by the Agency and the Company and shall remain in effect until the Lease Agreement becomes effective, it is the intent of the Agency and the Company that this Agreement be superseded in its entirety by the Lease Agreement, except for the indemnities contained herein, which shall survive. No Assistance shall be provided to the Company prior to the effective date of this Agreement.

4.02. It is understood and agreed by the Agency and the Company that the execution of the Lease Agreement and related documents are subject to (i) obtaining all necessary governmental approvals (including, without limitation, the approvals required by the Tax Equity and Fiscal Responsibility Act of 1982), (ii) approval of the Company, (iii) approval of the members of the Agency, (iv) compliance with the State Environment Quality Review Act, (v) payment by the Company of the Agency's disbursements, Agency's agency fee and legal fee as described in Article 4.03.

4.03 The Company agrees that it will reimburse the Agency for all reasonable and necessary direct out-of-pocket expenses, which the Agency may incur as a consequence of executing this Agreement or performing its obligations hereunder. Without limiting those expenses and in addition the Company also agree to pay (i) an application fee of \$500.00; (ii) an Agency fee of \$150,000.00 being 1% of the total project amount of \$15,000,000.00 (Project Amount), fifteen percent (15%) of which is payable upon execution of this Agreement (the "Project Fee Deposit") and the balance of which is payable at the closing of the transaction contemplated hereunder; and (iii) Agency counsel fees to the firm of Felt Evans, LLP in the amount of between \$40,000.00 - \$44,000.00 in connection with the Inducement Resolution, this Agreement, the Lease Agreement, the Leaseback Agreement, the Approving Resolution, the Environmental Compliance and Indemnification Agreement, the Recapture Agreement, the Project Opinion, any Funding and related opinions, as well as such other documents as are reasonably to facilitate the transaction contemplated by this Agreement. The Company acknowledges that as a condition precedent to the Agency's obligation to proceed it shall be required to secure the consent of Nudadec, LLC who shall, in the Agency's discretion, be made a signatory and obligor to the Project and Project documents.

4.04. If for any reason the Lease Agreement is not executed on or before eighteen (18) months from the execution hereof, the provision of this Agreement (other than the provisions of Articles 3.04, 3.05, 3.06 and 3.08 above, which shall survive) shall, at the sole discretion of the Agency, terminate and be of no further force and effect, and following such termination neither party shall have any rights against the other party except:

(a) The Agency shall deduct from the Project Fee Deposit all expenses which were incurred by the Agency in connection with the acquisition, construction, equipping, and financing of the Facility;

(b) The Company shall assume and be responsible for any contracts for construction or purchase of equipment entered into by the Agency at the request of or as agent for the Company in connection with the Facility; and

(c) The Agency shall deduct from the Project Fee Deposit the out-of-pocket expenses of members of the Agency and Agency counsel incurred in connection with the Facility and will pay the reasonable fees of Agency counsel for legal services incurred as of the date of termination relating to the Facility in accordance with Article 4.03; and

(d) After the Agency deducts the fees and expenses described in (a) and (c) above, the Agency shall return the balance of the Project Fee Deposit to the Company.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]  
SIGNATURE PAGE TO FOLLOW**

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement on this 15<sup>th</sup> day of April, 2021.

**HERKIMER COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY**

By: Vincent J. Bono  
Vincent J. Bono, Chairman

**NUDADEC, LLC, by its sole member  
THE FOUNTAINHEAD GROUP, INC.**

By: Daniel J. O'Toole  
Daniel J. O'Toole, President

STATE OF NEW YORK )  
COUNTY OF HERKIMER ) ss.:

On the 16<sup>th</sup> day of April, 2021, before me, the undersigned, a Notary Public, in and for said State, personally appeared, **Vincent J. Bono**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

**STACEY J HOLLERAN, 5004200**

Notary Public, State of New York  
Qualified in Herkimer County  
My Commission Expires 11-16-2022

Stacey J. Holleran  
Notary Public

STATE OF NEW YORK )  
COUNTY OF ) ss.:

On the 15 day of April, 2021, before me, the undersigned, a Notary Public, in and for said State, personally appeared, **Daniel J. O'Toole**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

**LAURIE ROSE**  
Notary Public, State of New York  
Appointed in Herkimer County  
Reg. No. 01MU6070216  
Commission Exp. Aug. 12, 2022

Laurie Rose  
Notary Public

CERTIFICATION OF PROJECT OPERATOR

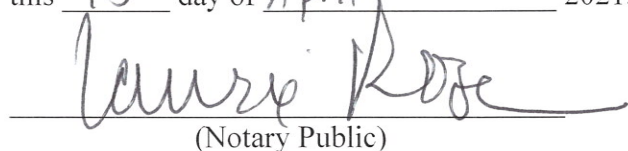
STATE OF NEW YORK     )  
COUNTY OF ONEIDA     ) ss.:

DANIEL J. O'TOOLE, being first duly sworn, deposes and says:

1. That I am the President of The Fountainhead Group, Inc., sole member of Nudadec, LLC, and that I am duly authorized on behalf of the Company to bind the Company and to execute this Agreement.
2. That the Company confirms and acknowledges that the owner, occupant, or operator receiving Assistance for the Project is in substantial compliance with all applicable local, state and federal tax, worker protection and environmental laws, rules and regulations.

  
Daniel J. O'Toole

Subscribed and affirmed to me under penalties of perjury  
this 15 day of April 2021.

  
(Notary Public)

LAURIE ROSE  
Notary Public, State of New York  
Appointed in Herkimer County  
Reg. No. 01MU6070216  
Commission Exp. Aug. 12, 2022

EXHIBIT A  
PILOT AGREEMENT



**NUDADEC, LLC**

and

**HERKIMER COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

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**PAYMENT-IN-LIEU-OF-TAX AGREEMENT**

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**Herkimer County Industrial Development Agency  
Real Estate Lease**

## **PAYMENT-IN-LIEU-OF-TAX AGREEMENT**

THIS PAYMENT-IN-LIEU-OF-TAX AGREEMENT, dated as of this \_\_\_\_ day of \_\_\_\_\_, 2021 is by and between **NUDADEC, LLC**, a New York Limited Liability Company having an address of 23 Garden Street, New York Mills, New York 13417 (the “Company”) and the **HERKIMER COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, an industrial development agency and a public benefit corporation of the State of New York having its principal office at 420 E. German Street, Suite 101A, Herkimer, New York 13350 (the “Agency”).

### **W I T N E S S E T H:**

WHEREAS, the Agency is authorized and empowered by the provisions of Title 1 of Article 18-A of the General Municipal Law, Chapter 99 of the Consolidated Laws of New York, as amended, (the “Enabling Act”), and Chapter 372 of the Laws of 1970 of the State of New York, as amended, constituting Section 901 of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the “Act”) to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of, among others, industrial facilities for the purpose of promoting, attracting and developing economically sound commerce and industry in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, in order to induce the Company to develop the Facility, the Agency is willing to accept a leasehold interest in the Facility pursuant to the terms and conditions contained in the Lease Agreement dated of even date herewith; to acquire a leasehold interest in certain real property located in the Town of Schuyler, County of Herkimer, State of New York, more particularly described on Exhibit A thereof; and

WHEREAS, the Company has executed and delivered a Leaseback Agreement, dated of even date herewith, with the Agency to acquire a leasehold interest in the same real property located in the Town of Schuyler, County of Herkimer, New York, more particularly described in Exhibit “A” attached to the Leaseback Agreement, and to construct and equip a facility thereon (the “Facility”); and

WHEREAS, the Agency has agreed to accept a leasehold interest in the Facility in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York; and

WHEREAS, the Facility is exempt from real property taxes, general property taxes, general school district taxes, general assessments, service charges or other governmental charges of a similar nature levied and/or assessed upon the Facility or the interest therein of the Company or the occupancy thereof by the Company commencing March 1, 2022, the taxable status date, (the “Exempt Taxes”), because the Agency has a leasehold interest in the Facility and the Facility is used for a purpose within the meaning of the applicable Constitutional and statutory provisions,

including the Enabling Act, provided, however, such exemption does not extend to special assessments or ad valorem levies; and

WHEREAS, the Company understands that it, as lessee of the Facility leased by the Agency, will, in fact, have Exempt Taxes to pay under the provisions of the Leaseback Agreement commencing July 1, 2022 through the term of the Leaseback Agreement (the "Exemption Term") (each year measured by the twelve month period commencing with the first day of July, herein referred to as an "Exemption Year"); and

WHEREAS, the Agency and the Company deem it necessary and proper to enter into an agreement making provision for payments-in-lieu-of-taxes and such assessments by the Company to the Town of Schuyler, or any existing incorporated village or any village which may be incorporated after the date hereof, within which the Facility is or may be, wholly or partially located, Herkimer County, the Frankfort-Schuyler Central School District and appropriate special districts (hereinafter each a "Taxing Authority" and collectively the "Taxing Authorities") in which any part of the Facility is or is to be located; and

WHEREAS, all defined terms herein as indicated by the capitalization of the first letter thereof and not otherwise defined herein shall have the meanings ascribed to such terms as set forth in the Leaseback Agreement.

NOW, THEREFORE, to provide for certain payments to the Taxing Authorities, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. The Company shall pay to each Taxing Authority:
  - (a) all taxes that are due with respect to the Facility prior to the Exemption Term, no later than the last day during which such payments may be made without penalty; and
  - (b) all special assessments and ad valorem taxes coming due and payable during the term of the Lease Agreement and the Leaseback Agreement for which the Facility is not exempt, no later than the last day during which such payments may be made without penalty.
2. The Company shall pay to the Agency for the benefit of each Taxing Authority:
  - (a) in lieu of general real property taxes for the Facility, the Company shall pay the following percentages of the actual real property taxes which would be due if the Facility were fully taxable on the tax rolls of the Taxing Jurisdictions:

<u>Year</u>	
1	25
2	30
3	35
4	40
5	45
6	50
7	55
8	60
9	65
10	70
11	75
12	80
13	85
14	90
15	95
16	100
(and each successive year of the term of the lease pursuant to the Lease Agreement)	

- (b) Upon receipt of a bill from the Agency, Company shall make payments in lieu of taxes through the Agency based upon calculations of payments due furnished in writing by the Agency to the Company. Payments shall be made to coincide with each individual Taxing Jurisdiction's schedule due dates for payment of taxes. The Agency shall accept payment from the Subtenant.
- (c) Anything herein to the contrary, notwithstanding, upon the failure of the Company in making any payment when due hereunder and upon failure to cure such default within thirty (30) days of receipt of notice as herein provided, the Company shall henceforth pay as PILOT Payments on hundred (100%) percent of the Exempt Taxes together with interest at the rate of five (5%) percent per annum on any delinquent PILOT Payments together with expenses of collection, including but not limited to, payment of attorneys' fees; provided, however, nothing herein contained shall be deemed to limit any other rights and remedies the Agency may have hereunder or under any other Transaction Document.

- 3. The Company will make PILOT Payments for the benefit of each Taxing Authority hereunder for each exemption Year by making the required payment to such Taxing Authority no later than the last day during which

such Exempt Taxes could otherwise be made without penalty as if the Agency did not have a leasehold or other interest in the Facility.

4. The PILOT Payments to be made by the Company pursuant to this Agreement are intended to be in lieu of all Exempt Taxes that would have to be paid on the Facility leased to the Company by the Leaseback Agreement if the Agency did not have a leasehold or other interest in the Facility.
5. If by reason of a change in the Constitution or laws of the State of New York, or an interpretation of the Constitution or the laws of the State of New York by the Court of Appeals (or such lower court from which the time to appeal has expired) of the State of New York, or for any other reason, the Company is required to pay any tax which the payments specified herein are intended to be in lieu of, the Company may deduct the aggregate of any such payments made by it from the amount herein agreed to be paid in lieu of such taxes and need only pay the difference. Furthermore, inasmuch as the PILOT Payments herein agreed to be made by the Company are intended to be in lieu of all Exempt Taxes, it is agreed that said payments shall not, as to any Exemption Year, be in an amount greater than would be payable for such year for such Exempt Taxes, in the aggregate, by a private corporation on account of its ownership of the Facility.
6. This Agreement shall be binding upon the successors and assigns of the parties.
7. It is the intent of the parties that the Company will have all the rights and remedies of a taxpayer with respect to any real property or other tax, service charge, special benefit, ad valorem levy, assessment or special assessment or service charge because of which, or in lieu of which, the Company is obligated to make a payment hereunder, as if and to the same extent as if the Agency did not have a leasehold or other interest in the Facility. It is the further intent of the parties that the Company will have all of the rights and remedies of a taxpayer as if and to the same extent as if the Agency did not have a leasehold or other interest in the Facility with respect to any proposed assessment or change in assessment concerning the property, or any portion thereof, whether through an assessor, board of assessment review, court of law, or otherwise and likewise will be entitled to protest before and be heard by such assessor, board of assessment review, court of law or otherwise and will be entitled to take any and all appropriate appeals or initiate any proceedings to review the validity or amount of any taxes that would have been payable but for the provisions hereof. In the event, however, that a court of competent jurisdiction shall enter an order or judgment determining or declaring that, by reason of the Agency's interest in the Facility, the Company does not have the right to bring a proceeding to review such assessment under the Real Property Tax Law or any other law, then the

Company shall have the right to contest such assessment in the name and as the agent of the Agency, and the Agency agrees to cooperate with the Company in all respects in any such proceeding at the sole cost and expense of the Company.

8. All amounts payable by the Company hereunder will be paid to the respective Taxing Authority and will be payable in such lawful money of the United States of America as at the time of payment is legal tender for the payment of public and private debts, including a check payable in such money.
9. The Guarantor, unconditionally, and for its heirs, successors and assigns, guarantee the payment and performance of obligations under this Agreement to the Agency. Guarantor waives any and all claims for offset and defenses of payment.
10.
  - (a) If any term or provision hereof should be for any reason held or adjudged to be invalid, illegal or unenforceable by any court of competent jurisdiction, such term or provision will be deemed separate and independent and the remainder hereof will remain in full force and effect and will not be invalidated, impaired or otherwise affected by such holding or adjudication.
  - (b) This agreement may not be effectively amended, changed, modified, altered or terminated except by an instrument in writing executed by the parties hereto.
  - (c) All notices, certificates or other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when mailed by United States registered or certified mail, postage prepaid, return receipt requested, to the Agency or the Company, as the case may be, addressed as follows:

To the Agency:       Herkimer County Industrial Development Agency  
420 E. German Street – Suite 101A  
Herkimer, New York 13350  
Attn: John J. Piseck, Jr., Executive Director

With a Copy to:       Felt Evans, LLP  
4 - 6 North Park Row  
Clinton, New York 13323  
Attention: Anthony G. Hallak, Esq.



To the Company:     Nudadec, LLC  
                             23 Garden Street  
                             New York Mills, New York 13417  
                             Attn: Daniel O'Toole, President

With a Copy to:     Bond, Schoeneck & King PLLC  
                             501 Main Street  
                             Utica, New York 13501-1245  
                             Attn: Linda E. Romano, Esq.

Provided, that the Agency or the Company may, by notice given hereunder to the other, designate any further or different addresses to which subsequent notices, certificates or other communications to them shall be sent.

- (e)     This Agreement shall be governed by and constructed in accordance with the laws of the State of New York.

**[Signature page follows]**

IN WITNESS WHEREOF, the parties have executed this **PILOT Agreement** as of the date first above written.

HERKIMER COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

By: \_\_\_\_\_  
John J. Piseck, Jr., Executive Director

NUDADEC, LLC, by its sole member  
The Fountainhead Group, Inc.

By: \_\_\_\_\_  
John F. Romano, Chairman

STATE OF NEW YORK     )  
COUNTY OF               ) ss.:

On this \_\_\_\_ day of \_\_\_\_\_, 2021, before me, a notary public in and for said State, did personally appear **John J. Piseck, Jr.**, to me personally known or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

STATE OF NEW YORK     )  
COUNTY OF               ) ss.:

On this \_\_\_\_ day of \_\_\_\_\_, 2021, before me, a notary public in and for said State, did personally appear **John F. Romano**, to me personally known or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

## 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 "B", 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 located at its intersection with the division line between the herein described property, designated as Parcel "B" on the south and the property of Alexander Ripka (reputed owner) as described by Deed as Instrument No. RP2016-202553 on the north and the division line between the property of Herkimer County Industrial Development Agency (reputed owner) as described by Deed as Instrument No. RP2020-29 on the west and said property of Alexander Ripka on the east;

Thence North 82° 45' 20" East, along the first mentioned division line, a distance of 1059.32 feet to an iron pin (set); said pin located at the intersection of the last mentioned division line with the division line between the herein described property, designated as Parcel "B" on the southwest and the property, designated as Parcel "C" on the northeast;

Thence South 61° 01' 30" East, along the last mentioned division line, a distance of 744.46 feet to an iron pin (set); said pin located at the intersection of the last mentioned division line with the division line between the herein described property on the west and the property of Alexander Ripka (reputed owner) as described by Deed as Instrument No. RP2016-202553 on the east;

Thence South 15° 36' 30" East, along the last mentioned division line, a distance of 828.96 feet to an iron pin (set);

Thence South 82° 45' 20" West, through the property of Herkimer County Industrial Development Agency (reputed owner) as described by Deed as Instrument No. RP2020-29, a distance of 1897.50 feet to an iron pin (set);

Thence North 06° 42' 00" West, continuing through said property of Herkimer County Industrial Development Agency, a distance of 1173.94 feet to an iron pin (set) located on a curved portion of a cul-de-sac being the easterly road boundary of a proposed town road;

Thence northwesterly, along said boundary of a proposed town road, following a curve to the left having a radius of 116.00 feet with an arc distance of 95.43 feet to an iron pin (set);

Thence North 82° 45' 20" East, continuing through said property of Herkimer County Industrial Development Agency, being the westerly extension of the first mentioned division line, a distance of 140.27 feet to the point of beginning, containing 2,149,694 ± square feet or 49.350 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;

**RESREVING:** a Permanent Easement to be granted for utility purposes; said easement being thirty (30) feet in width, adjacent to and parallel with the northerly, northeasterly and easterly property line as described above and shown on the above referenced map.

**RESREVING:** a Permanent Easement to be granted to Mohawk Valley Water Authority for utility purposes; said easement being thirty (30) feet in width, parallel with and 30 feet distant, measured from the northerly, northeasterly and easterly property line as described above and shown on the above referenced map.