

## PURCHASE AND SALE AGREEMENT

**THIS PURCHASE AND SALE AGREEMENT** (this "**Agreement**") is entered into as of January \_\_\_\_, 2021 (the "**Effective Date**") between **Nudadec, LLC**, a New York limited liability company having an office at 23 Garden Street, New York Mills, New York 13417 ("**Buyer**"), and **Herkimer County Industrial Development Agency**, a public benefit corporation having an office at 420 E. German Street #101A, Herkimer, New York 13350 ("**Seller**").

1. **Purchase and Sale.** Seller agrees to sell, and Buyer agrees to purchase, all of Seller's right, title, and interest in and to:

(a) that certain 47.94± acres of vacant land located at the Schuyler Business Park, Herkimer Road, Town of Schuyler, Herkimer County, New York (being a portion of tax map no. 105.3-1-3.2) (the "**Premises**"),

(b) all easements and rights-of-way appurtenant to the Premises, strips or gores adjacent to or abutting the Premises, land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Premises, and awards made or to be made in lieu of any of the foregoing and any unpaid award for damages to the Premises by reason of any change of grade of any street (collectively the "**Land**"),

(c) all infrastructure constructed or to be constructed by Seller to allow utilities to service the site, including but not limited to connections for water, natural gas, electrical, phone, high-speed internet and cable, and an access road (the "**Infrastructure Improvements**") and all existing buildings and other improvements, structures, parking facilities, and fixtures placed, constructed, installed, or located on the Premises or the Land, and all plants, trees, sculptures, and other appurtenances located upon, over, or under the Premises or the Land, (together with the Infrastructure Improvements, the "**Improvements**"; the Premises, the Land, and the Improvements are sometimes referred to as the "**Real Property**"), and

2. **Purchase Price.** The purchase price for the Premises is \$15,000.00 per acre. Based upon a 47.94± acre parcel, the purchase price is Seven Hundred Nineteen Thousand One Hundred Dollars (\$719,100.00) (the "**Purchase Price**"), payable in cash or certified funds at Closing (as defined below) and subject to application of the Deposit (as defined below) to the Purchase Price. The Purchase Price may be adjusted based upon the acreage as determined by the Survey (as defined below).

3. **Deposit.** Within three days of the Effective Date, Buyer shall deposit with Seller's attorney, as escrow agent, the sum of \$15,000.00 (the "**Deposit**"). The Deposit shall be held in a non-interest-bearing account and credited to Buyer at Closing. The Deposit shall be returned to Buyer in the event this Agreement is terminated in accordance with the provisions of this Agreement.

4. **Closing Date and Place.** The transfer of title shall take place at a location agreed to by and between the parties, on or about 45 days following the later of the expiration of the Due Diligence Period (as defined below) and the Approvals Period (defined below), or on such other

date as Seller and Buyer shall mutually agree, but in no event later than May 3, 2021 (the “*Closing*”).

5. **Due Diligence Material.** Within twenty (20) days (or, in the case of the Title Documents (as defined below), 30 days) of the Effective Date, Seller shall deliver to Buyer the items listed below ((a) through (f) below are collectively the “*Due Diligence Materials*”). Buyer shall then have 45 days from the date upon which Seller provides the last of the Due Diligence Materials to review the Due Diligence Materials, and perform any other due diligence Buyer desires (the “*Due Diligence Period*”). If Buyer is not satisfied with any of its due diligence for any reason, in Buyer’s sole and absolute discretion, Buyer shall have the right to provide written notice to Seller prior to the expiration of the Due Diligence Period terminating this Agreement and Buyer shall be entitled to the prompt return of the Deposit.

(a) *Title.* (i) a full land/title abstract covering the Real Property (minimum 60 year search), together with a current title “date down” dated after the Effective Date (“*Abstract*”), (ii) complete tax search for the Real Property dated after the Effective Date (“*Tax Search*”), (iii) legible recorded copies of all liens and encumbrances pertaining to the Real Property (“*Recorded Documents*”), (iv) a survey or surveys dated after the Effective Date (“*Survey*”) (v) a description of the easement to be reserved by Seller in the Deeds for the purpose of developing water and utility infrastructure (“*Infrastructure Easement*”), with such Infrastructure Easement to be shown on the Survey, and (vi) state and county UCC and judgment searches for Seller and previous owners of the Real Property for the five years prior to the Effective Date (the “*Searches*,” and collectively with the Abstract, Tax Search, Recorded Documents, Infrastructure Easement, and Survey, the “*Title Documents*”).

(b) All relevant documentation related to the Zoning/approval process currently in Seller’s possession.

(c) Copies of all reports, correspondence, and other materials in Seller’s possession or control which relate to environmental, soil conditions, improvement plans, and related matters pertaining to the Premises.

(d) Documentation that confirms the proposed use of the Premises by Buyer as a distribution center is in compliance with current zoning.

(e) Copies of all contracts or agreements affecting or relating to the Premises which are in Seller's possession or control.

(f) Any warranties, guarantees, indemnities and claims inuring to the benefit of Seller with respect to the Premises.

(g) Such other documentation readily available to Seller related to the Premises as Buyer may reasonably request.

6. **Title Review.** At any time following receipt of the Title Documents, Buyer may, at its expense, obtain a current title report or title commitment for the Premises (the “*Title Report*”).

Buyer shall have until the later of (i) the expiration of the Due Diligence Period or (ii) 10 days from receipt of the Title Documents and Survey to satisfy itself with respect to matters of title disclosed in the Title Documents and the Title Report. Within 15 days of receipt of the Title Report, Buyer shall deliver a written notice to Seller (the "**Title Notice**") specifying those title matters of which Buyer disapproves (the "**Disapproved Title Matters**"). Seller shall notify Buyer in writing (the "**Title Response**"), within 10 days of receipt of the Title Notice, whether Seller will cure the Disapproved Title Matters. If Seller is unable or unwilling to eliminate or cure all of the Disapproved Title Matters, other than Monetary Objections (as defined below), or to make arrangements satisfactory to Buyer, in its discretion, to have all such matters eliminated or cured prior to Closing, Buyer will have the right, at its option, to (i) waive the Disapproved Title Matters and proceed to Closing, or (ii) terminate this Agreement by notice to Seller, in which event the Deposit with this Agreement will be immediately refunded to Buyer. If Buyer does not terminate this Agreement under this Section, then the exceptions to title disclosed in the Title Report will be deemed permitted exceptions, excluding any (i) delinquent taxes or assessments, (ii) monetary liens, security interests, or encumbrances ((i) and (ii) are collectively the "**Monetary Objections**"), and (iii) standard printed exceptions, including those relating to parties in possession, all of which Seller is obligated to cure. Seller shall cause any Monetary Objections to be paid off or otherwise satisfied, discharged, and removed prior to Closing.

7. **Right to Enter Premises and Conduct Testing.** During the Due Diligence Period, Buyer may enter the Premises to undertake any such studies or inspections of the Premises as Buyer deems necessary or appropriate. In connection therewith, Buyer or its agents shall have the right to do all environmental, surveying, engineering, soil borings and other tests with respect to the Premises, including a Phase I Environmental Site Assessment and, if deemed appropriate by Buyer in its sole discretion, a Phase II Environmental Site Assessment. Buyer agrees to materially return the Premises to pre-inspection condition subsequent to any intrusive or destructive testing that is performed by Buyer or at its direction. If Buyer is dissatisfied with any such test or report, in Buyer's sole and absolute discretion, Buyer may terminate this Agreement by providing Seller with written notice prior to the expiration of the Due Diligence Period and receive a return of the Deposit. Buyer shall have the right, upon reasonable prior notice to Seller, to enter onto the Premises in order to conduct such inspections as Buyer deems appropriate, provided, however, that Buyer shall not conduct any intrusive or destructive testing without prior Seller permission.

8. **Conditions to Closing.** Buyer is not obligated to close the transaction contemplated by this Agreement unless each of the following conditions are satisfied (i) in the case of subsections 8(a) and (f), within 60 days of the Effective Date (the "**Initial Approvals Period**") and (ii) in the case of subsections 8(b), (c), (d) or (e) on or before the Closing:

(a) ***Government Approvals.*** Buyer shall have obtained, within the Initial Approvals Period, any and all government approvals, in final, non-appealable form and upon such terms and conditions as Buyer deems satisfactory in its discretion, necessary for Buyer to use the Premises for Buyer's intended use (collectively the "**Approvals**"). Should Buyer need additional time to secure the Approvals, Buyer will have the right to extend (i) the Initial Approvals Period for an additional 30-day period (the "**First Extended Approvals Period**") by providing written notice to Seller on or prior to the expiration of the Initial Approvals Period and (ii) the First Extended Approvals Period for an additional 30-day period (the "**Second Extended Approvals Period**"), and

collectively with the Initial Approvals Period and the First Extended Approvals Period, the “*Approvals Period*”) by providing written notice to Seller on or prior to the expiration of the First Extended Approvals Period. Seller agrees to reasonably cooperate without delay in Buyer’s efforts to obtain the Approvals. If Buyer is unable to secure the Approvals within the Approvals Period, Buyer may terminate this Agreement by providing Seller with written notice prior to the expiration of the Due Diligence Period and receive a return of the Deposit.

(b) *Representations and Warranties.* The representations and warranties made by Seller in Section 9 shall be true and correct in all material respects on and as of the Closing with the same force and effect as though such representations and warranties had been made on and as of the Closing.

(c) *Contracts.* Seller shall have terminated effective as of or before the Closing, any Contracts that Buyer does not elect to assume as of the Closing.

(d) *Financing.* Buyer having received (a) financing on terms acceptable to Buyer, and the Lender’s willingness to provide same, as of the date of closing and (b) written confirmation from New York State that Buyer’s Empire State Development Corporation Consolidated Funding Application has been approved.

(e) *Property Condition.* As of the Closing, the Premises shall be in substantially the same condition as it was on the Effective Date, ordinary wear and tear excepted.

(f) *IDA Financial Assistance.* Seller shall have adopted all resolutions necessary to enter into a lease-leaseback transaction with Buyer at Closing, and to grant to Buyer certain financial assistance in the form of exemptions from sales tax, exemptions from mortgage recording tax, and reduction of real property tax for a period of fifteen years during which time Buyer shall pay PILOT Payments calculated on a sliding scale starting at 25% of the assessed value and increasing 5% each succeeding year.

If any of the conditions set forth in this Section are not satisfied on or before the Closing, or within such shorter time period as set forth above, then Buyer may, at its option, (i) waive such condition and proceed to Closing, (ii) terminate this Agreement by written notice to Seller and receive a return of the Deposit, or (iii) if the failure of the condition is due to a breach by Seller, pursue any of its remedies under Section 14.

9. **Seller’s Representations and Warranties.** Seller represents and warrants to Buyer that the following matters are true and correct as of the date of this Agreement and as of the Closing. These provisions shall survive the Closing, or if the Closing does not occur, the termination of this Agreement:

(a) *Authorization.* Seller is the lawful owner of the Premises and has full power and authority to enter into this Agreement and perform Seller’s obligations under this Agreement.

(b) *Litigation, etc.* There is no suit, action, litigation, administrative hearing, arbitration, labor controversy, negotiation, proceeding, or governmental inquiry or investigation

affecting Seller or the Premises (including but not limited to environmental or land use proceedings) pending or, to the best of Seller's knowledge after due inquiry, threatened against Seller which, if resolved adversely, would have a material adverse effect on the Premises or on the ability of Seller to consummate the transactions contemplated by this Agreement. There are no known judgments, consent decrees or injunctions against, affecting, or binding upon Seller. Seller has not received any notice of any violations of any governmental law, ordinance, code, requirement, order, or regulation the violation of which would have a material adverse effect on the Premises or on the ability of Seller to consummate the transactions contemplated by this Agreement, and Seller has not received any notice of any claimed default with respect to any of the foregoing.

(c) *Condemnation.* No condemnation action has been filed or threatened against the Premises.

(d) *Environmental Compliance.* Seller has not received any notice of, or been subject to, any administrative or judicial proceedings pursuant to such laws or regulations regarding Hazardous Materials (as defined below) either now or at any time. There are no present facts or circumstances that could form the basis for the assertion of any claim against Seller arising from past or present environmental practices asserted under the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, or any other federal, state, or local environmental statute, rule, regulation, permit, license, order, directive, or policy relating to the protection of the environment, human health, or governing the use, storage, treatment, generation, transportation, processing, handling, production, or disposal of any Hazardous Materials (collectively "*Environmental Laws*"). No part of the Premises contains any offensive, toxic, or contaminated materials, Hazardous Materials, or any other substances which constitute a health, safety, or environmental risk to any person or Premises. For purposes of this Agreement, the term "*Hazardous Materials*" means materials defined as "hazardous substances," "hazardous wastes," or "solid wastes" in any Environmental Laws.

(e) *No Flood Plain.* The Premises is not located in a regulatory flood plain area (inclusive of flood way area) as defined by the most recent FEMA mapping for the community in which the Premises is located.

(f) *Water Availability.* There is public water available at the Premises.

(g) *No Other Agreements.* There are no unrecorded agreements or agreements which will affect the Premises and/or Buyer from and after the Closing.

(h) *No Encumbrances.* There are no easements, rights of way, gas, timber, mineral rights, or other encumbrances except as set forth in the Abstract, as to such encumbrances set forth in the Abstract, Seller received no notice of any default or breach by Seller under any covenant, condition, restriction, right of way or easement and no such default or breach now exists, and Seller warrants that it will not further encumber the Premises without Buyer's prior written consent.

(i) *Absence of Untrue Statements.* No representation or warranty contained in this Agreement by or on behalf of Seller, and no statement or certificate furnished under or in

accordance with this Agreement or in connection herewith, contains or will contain an untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements contained there not misleading.

(j) *Bankruptcy.* Seller has not (i) made a general assignment for the benefit of creditors, (ii) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by Seller's creditors, (iii) suffered the appointment of a receiver to take possession of all or substantially all of Seller's assets, or (iv) suffered the attachment or other judicial seizure of all or substantially all of Seller's assets.

(k) *Defects.* To the best of Seller's knowledge, there are no material defects with respect to any of the structural components of the Improvements, the roof, exterior walls and the related improvements.

(l) *No Violations.* Seller has received no notice of violation of any applicable governmental requirement with respect to the use, occupation and construction of the Premises, including, but not limited to, environmental, zoning, subdivision, Americans with Disabilities Act and other land use requirements which have not been heretofore corrected to the satisfaction of the appropriate governmental authority, Seller has received no notice and has no notice of any violations or investigations relating to any such governmental requirement, and Seller has no knowledge of any fact, circumstance or condition, which with notice, the passage of time or both, would violate any applicable governmental requirement.

10. **Covenants of Seller.** Seller covenants with Buyer as follows:

(a) *Agreements.* Seller shall not, without the prior written consent of Buyer, enter into any agreement or service contract with respect to the Premises which shall survive the Closing.

(b) *Operation Pending Closing.* During the period commencing on the Effective Date and ending on the Closing, Seller (i) shall, at Seller's sole expense, (1) maintain and operate the Premises in good condition and repair and in compliance with all laws, ordinances, and other requirements of any governmental authority having jurisdiction and substantially in the same manner in which it maintained and operated the Premises immediately before entering into this Agreement as though Seller were retaining the Premises, (2) maintain Seller's insurance in full force and effect, (3) immediately notify Buyer of any material change with respect to the Premises, or with respect to any information, representation, or warranty furnished by Seller under this Agreement, and (4) pay all outstanding taxes, assessments, maintenance, and other charges related to the Premises, and (ii) shall not (1) sign any new leases without the written approval of Buyer or (2) do anything which would impair or modify the status of title as shown on the Title Documents or Title Report except utility easements and rights of way required for the development of the business park.

(c) *Leases.* There are no leases and/or tenancies affecting the Premises after the Closing. Seller shall not enter into any new leases without Buyer's written approval.

(d) *Infrastructure Improvements.* Seller shall construct, at its sole cost and expense, the Infrastructure Improvements.

11. **Recording Costs, Transfer Tax, and Closing Adjustments.** Seller will pay for the real property transfer tax, the Title Documents, and any other costs customarily paid by sellers of real property. Buyer will pay for recording the Deeds (as defined below), recording any mortgage(s) and mortgage tax, if applicable, and other costs customarily paid by buyers of real property. The real estate taxes, if any, as well as water, pure waters, sewerage charges and all other expense items affecting the Premises which are not otherwise hereunder provided for and which are attributable to a particular period of time, shall be prorated at the time of Closing; provided, Seller agrees that any liabilities for maintenance and operation of the Premises incurred prior to Closing (i) are not based on time and (ii) shall be paid in full by Seller.

12. **Seller's Closing Documents.** At Closing the following shall occur:

(a) *Property.* Seller shall deliver to Buyer Bargain and Sale Deed(s) in proper form for recording, duly executed by the Seller which owns the applicable Real Property and acknowledged (the "*Deeds*") so as to convey to Buyer good and marketable title in fee simple to the Real Property, free and clear of all claims, liabilities, obligations, security interests, liens, judgments, and encumbrances except (i) as specifically provided otherwise in this Agreement, (ii) real estate taxes for the current year which are a lien on the Premises but are not yet due and payable, (iii) the Infrastructure Easement, and (iv) easements and restrictions of record disclosed in a title report approved by Buyer. Seller shall deliver possession of the Premises free of all persons or parties in possession. Seller shall also provide other documents as may be appropriate or necessary to convey the real property interest intended to be conveyed, including without limitation, a bill of sale, an assignment and assumption of agreements and warranties, an affidavit regarding Seller's identity for purposes of Section 1445 of the Internal Revenue Code and such evidence or affidavits as may be reasonably required by Buyer or Buyer's title company regarding the status of title and the authority of the persons executing the various documents on behalf of Seller in connection with the transactions contemplated hereby.

13. **Survival of Representations.** All representations, warranties and agreements made by either party shall survive Closing and transfer of title.

14. **Default.** If Buyer breaches any covenants or other obligations of Buyer contained in this Agreement or if any representation or warranty made by Buyer in this Agreement is untrue or false in any material respect, Seller may keep and retain the Deposit as full and liquidated damages hereunder. If Seller breaches any covenants or obligations of Seller contained in this Agreement or any representation or warranty made by Seller in this Agreement is untrue or false in any material respect, Buyer shall be entitled to:

- (a) Close the transaction contemplated by this Agreement, thereby waiving such breach, default, or failure; or
- (b) Sue Seller for performance of this Agreement; or
- (c) Terminate this Agreement and have the Deposit returned.

15. **Possession.** Buyer shall have possession and occupancy of the Premises from and after the Closing free and clear of any tenancies.

16. **Risk of Loss.** Risk of loss or damage to the Premises by fire or other causes or taking by eminent domain until delivery of the Deed is assumed by Seller. In the event of such loss, damage, or taking, Buyer shall have the option of terminating the Agreement or accepting the Premises subject to such loss or taking, without abatement of the Purchase Price but shall be entitled to any insurance proceeds collectible or award for such taking.

18. **Notices.** All notices given in connection with this Agreement shall be in writing and shall be effective only if sent by email and delivered personally, or sent via nationally recognized overnight carrier, to the parties as follows:

*Buyer:* Nudadec, LLC  
23 Garden Street  
New York Mills, New York 13413  
Attn: Daniel J. O'Toole, President  
Email: dotoole@TheFGI.com

*With copy by email and regular mail to:*

Bond, Schoeneck & King, PLLC  
501 Main Street  
Utica, New York 13501  
Attn: Linda E. Romano, Esq.  
Email: lromano@bsk.com

*Seller:* Herkimer County Industrial Development Agency  
420 East German Street, #101A  
Herkimer, New York 13350  
Attn: John J. Piseck, Jr., Executive Director  
Email: jpiseck@herkimercountyida.org

*With copy by email and regular mail to:*

Felt Evans, LLP  
4 – 6 North Park Row  
Clinton, New York 13323  
Attn: Anthony J. Hallak, Esq.  
Email: AHallak@felt-evans.com

17. **Brokers.** Buyer and Seller each represent and warrant to the other that they have not employed, retained, or consulted any broker, agent, or finder in connection with this Agreement or the purchase and sale referenced to here. Buyer and Seller shall indemnify each other and hold each other harmless from and against any and all claims, demands, causes of action, debts, liabilities, judgments, and damages (including costs and reasonable attorneys' fees) which



may be asserted or recovered against each other on account of any brokerage fee, commission, or other compensation arising by reason of Buyer's or Seller's breach of this representation and warranty.

18. **Successors and Assigns.** This Agreement inures to the benefit of and is binding upon the successors, heirs, distributees, legal representatives, and assigns of the respective parties. This Agreement is not assignable by either party without the prior written consent of the other party; provided, Buyer may, without the prior written consent of Seller, assign Buyer's rights under this Agreement to an entity owned by, or under common ownership with, Buyer.

19. **IRC Exchange.** The parties agree to cooperate with one another in the event either party desires to effect an Internal Revenue Code Section 1031 exchange, provided the election does not delay the Closing or cause additional expense to the non-electing party. Upon prior written notice to the non-electing party, the electing party's rights under this Agreement may be assigned to a qualified intermediary for the purpose of completing the exchange.

20. **Entire Agreement.** This offer, when accepted, shall constitute the entire agreement between the parties relating to the sale and purchase of the Premises and may not be changed except by an instrument in writing signed by Buyer and Seller or persons duly authorized in writing to act on their behalf. This offer may be executed in any number of counterparts and each counterpart shall constitute an original instrument, but all such separate counterparts shall constitute only one and the same instrument.

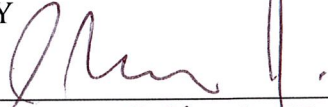
21. **Miscellaneous.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement will continue in full force and effect and will in no way be impaired or invalidated, and the parties agree to substitute for the invalid or unenforceable provision a valid and enforceable provision that most closely approximates the intent and economic effect of the invalid or unenforceable provision. This Agreement is governed by the laws of the State of New York. The parties waive the right to trial by jury of any matters or claims directly or indirectly arising out of or otherwise relating to the subject matter of this Agreement. If the time period by which any right, option or election provided under this Agreement must be exercised, or by which any act required hereunder must be performed, or by which the Closing must be held, expires on a Saturday, Sunday or legal or bank holiday, then such time period will be automatically extended through the close of business on the next regularly scheduled Business Day. For purposes of this Agreement, "***Business Day***" shall mean a day other than a Saturday, Sunday or legal or bank holiday in the State of New York.

*[signatures to appear on next page]*

Seller and Buyer have entered into this Agreement as of the Effective Date.

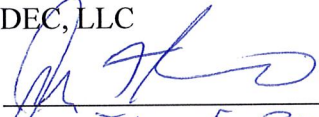
**SELLER:**

HERKIMER COUNTY INDUSTRIAL DEVELOPMENT  
AGENCY

By:   
Name: John J. Piseck, Jr.  
Its: Executive Director

**BUYER:**

NUDADEC, LLC

By:   
Name: John F. Romano  
Its: C.E.O.