

**Contract of Sale—Unimproved Developable Land Located at Schuyler
Business Park in Schuyler, NY**

between

HERKIMER COUNTY INDUSTRIAL DEVELOPMENT AGENCY

(“Seller”)

and

TBD (a to-be-formed LLC affiliated with or controlled by

Marcus Ventures Inc.)

(“Purchaser”)

dated April_____, 2022

Premises:

Street Address:	tbd
Town:	Schuyler
County:	Herkimer
State:	New York

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Contract of Sale—Office, Commercial and Multi-Family Residential Premises

CONTRACT dated April _____, 2022 between **Herkimer County Industrial Development Agency**, a public benefit corporation duly existing under the laws of the State of New York with offices at 420 E. German Street, Suite 101A, Herkimer, New York 13350 (“Seller”) and **Marcus Ventures Inc.** (“Purchaser”) or a **to-be-formed entity affiliated with or controlled by Purchaser.**

Seller and Purchaser hereby covenant and agree as follows:

Section 1. Sale of Premises and Acceptable Title

§1.01. Seller shall sell to Purchaser, and Purchaser shall purchase from Seller, at the price and upon the terms and conditions set forth in this contract: (a) the parcel of land more particularly described in Schedule A attached hereto (“Land”); and (b) the appurtenances and all the estate and rights of Seller in and to the Land (collectively, “Premises”). For purposes of this contract, “appurtenances” shall include all right, title and interest of Seller in and to (i) surveys, soil and substrata studies relating to the Land in Seller’s possession; (ii) data and records regarding the Land in Seller’s possession.

§1.02. Seller shall convey and Purchaser shall accept fee simple title to the Premises in accordance with the terms of this contract.

Section 2. Purchase Price, Acceptable Funds, Existing Mortgages, Purchase Money Mortgage, Escrow of Downpayment and Foreign Persons

§2.01. The purchase price (“Purchase Price”) to be paid by Purchaser to Seller for the Premises shall be an amount equal to Fifteen Thousand Dollars (\$15,000.00) per acre, which the parties estimate to be approximately One Hundred Sixty-Five Thousand Dollars (\$165,000.00) with the exact amount to be calculated down to the second decimal place using a mutually agreed upon measurement of the Premises.

§2.02. All monies payable under this contract, unless otherwise specified in this contract, shall be paid by (a) certified checks, official bank checks or wire transfer of immediately available federal funds to an account designated by Seller, payable to the order of Seller.

§2.03. Within two (2) business days of the mutual execution hereof, Purchaser shall deposit \$15,000.00 with the Langdon Title (“Escrowee”), as and for the “Soft Deposit,” to be credited against the Purchase Price in the event of the Closing unless otherwise disposed of pursuant to the terms of this Contract.

§2.04. (a) If the Soft Deposit or any other sums paid on account of the Purchase Price prior to the Closing (collectively, “Downpayment”) are paid by check or checks drawn to the order of and delivered to the Escrowee, the Escrowee shall hold the proceeds

thereof in escrow in a special bank account (or as otherwise agreed in writing by Seller, Purchaser and Escrowee) until the Closing or sooner termination of this contract and shall pay over or apply such proceeds in accordance with the terms of this section. Escrowee need not hold such proceeds in an interest-bearing account, but if any interest is earned thereon, such interest shall be paid to the same party entitled to the escrowed proceeds, and the party receiving such interest shall pay any income taxes thereon. The tax identification numbers of the parties are either set forth in Schedule C or shall be furnished to Escrowee upon request. At the Closing, such proceeds and the interest thereon, if any, shall be paid by Escrowee to Seller. If for any reason the Closing does not occur and either party makes a written demand upon Escrowee for payment of such amount, Escrowee shall give written notice to the other party of such demand. If Escrowee does not receive a written objection from the other party to the proposed payment within 10 business days after the giving of such notice, Escrowee is hereby authorized to make such payment. If Escrowee does receive such written objection within such 10-day period or if for any other reason Escrowee in good faith shall elect not to make such payment, Escrowee shall continue to hold such amount until otherwise directed by written instructions from the parties to this contract or a final, non-appealable, judgment of a court. However, Escrowee shall have the right at any time to deposit the escrowed proceeds and interest thereon, if any, with the clerk of the Supreme Court of the county in which the Land is located. Escrowee shall give written notice of such deposit to Seller and Purchaser. Upon such deposit Escrowee shall be relieved and discharged of all further obligations and responsibilities hereunder.

(b) The parties acknowledge that Escrowee is acting solely as a stakeholder at their request and for their convenience, that Escrowee shall not be deemed to be the agent of either of the parties, and that Escrowee shall not be liable to either of the parties for any act or omission on its part unless taken or suffered in bad faith, in willful disregard of this contract or involving gross negligence. Purchaser shall indemnify and hold Escrowee harmless from and against all costs, claims and expenses, including reasonable attorneys' fees, incurred in connection with the performance of Escrowee's duties hereunder, except with respect to actions or omissions taken or suffered by Escrowee in bad faith, in willful disregard of this contract or involving gross negligence on the part of Escrowee.

(c) Escrowee has acknowledged agreement to these provisions by signing in the place indicated on the signature page of this contract.

(d) Escrowee may act or refrain from acting in respect of any matter referred to in this §2.03 in full reliance upon and with the advice of counsel which may be selected by it (including any member of its firm) and shall be fully protected in so acting or refraining from action upon the advice of such counsel.

Section 3. The Closing

§3.01. Except as otherwise provided in this contract, the closing of title pursuant to this contract ("Closing") shall take place on the scheduled date and time of closing specified in Schedule C (the actual date of the Closing being herein referred to as "Closing Date") at the place specified in Schedule C, or via escrow by delivery of all executed

documents and funds required to close to the Escrow Agent on a date prior to the Closing Date.

§3.02. Notwithstanding the Closing Date set forth in Schedule C, in the event all approvals and other conditions precedents and contingencies have been met and satisfied Purchaser and Seller agree to reasonably cooperate to close on fifteen (15) days' notice from Purchaser that Purchaser is prepared to proceed to Closing.

Section 4. Acknowledgments, Representations and Warranties of Seller

Seller represents and warrants to Purchaser as follows:

§4.01. Unless otherwise provided in this contract, Seller is the sole owner of the Premises.

§4.02. Except as otherwise set forth in Schedule C, Seller has no actual knowledge of any assessment payable in annual installments, or any part thereof, which has become a lien on the Premises.

§4.03. Seller is not a "foreign person" as defined in the Code Withholding Section.

§4.04. Seller has not entered into any leases, licenses or occupancy agreements granting any third parties that right to use and/or occupy the Premises for any purpose, nor granted any third party an option to purchase the Premises or a right of first refusal or first offer with respect to a sale of the Premises. The Premises is vacant and unoccupied and will be vacant and unoccupied when delivered to Purchaser at Closing.

§4.05. There are no service, maintenance, supply, management contracts, or any similar types of agreements, relating to maintenance of the Premises ("Service Contracts"), as of the date hereof.

§4.06. Seller has and/or will have taken all necessary action to authorize the execution, delivery and performance of this contract and has the power and authority to execute, deliver and perform this contract and consummate the transaction contemplated hereby. Assuming due authorization, execution and delivery by each other party hereto, this contract and all obligations of Seller hereunder are the legal, valid and binding obligations of Seller, enforceable in accordance with the terms of this contract, except as such enforcement may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

§4.07. The execution and delivery of this contract and the performance of its obligations hereunder by Seller will not conflict with any provision of any law or regulation to which Seller is subject or any agreement or instrument to which Seller is a party or by which it is bound or any order or decree applicable to Seller or result in the creation or imposition of any lien on any of Seller's assets or property which would materially and adversely affect the ability of Seller to carry out the terms of this contract. Subject to §4.10

Seller has obtained any consent, approval, authorization or order of any court or governmental agency or body required for the execution, delivery or performance by Seller of this contract.

§4.08. There are no pending proceedings or appeals to correct or reduce the assessed valuation of the Premises.

§4.09. Seller has not received written notice of and has no knowledge of any action, suit, arbitration, unsatisfied order or judgment, government investigation or proceeding pending against Seller with respect to the Premises which if adversely determined could have a material adverse effect on the Premises or interfere with the consummation of the transaction contemplated by this contract.

§4.10. Seller acknowledges and agrees that Purchaser's obligations hereunder are wholly and entirely contingent upon compliance with notice provisions of New York State Public Authorities Law, and Seller covenants that in the event the sale of the Premises to Purchaser is objected to by the State of New York as of the date of Closing, Purchaser's obligations hereunder shall be released and the Downpayment shall be returned to Purchaser in full. Seller shall make, at its sole cost and expense, all commercially reasonable efforts required to obtain the approval of the State of New York as may be required to consummate the sale of the Premises to Purchaser.

The representations and warranties made by Seller in this contract shall be deemed restated and shall be true and accurate on the Closing Date.

Section 5. Acknowledgments, Representations and Warranties of Purchaser

Purchaser acknowledges that:

§5.01. Purchaser has inspected the Premises, is fully familiar with the physical condition and state of repair thereof, and, subject to the provisions of §6.01, shall accept the Premises "as is" and in its present condition, without any reduction in the Purchase Price for any change in such condition by reason thereof subsequent to the date of this contract.

§5.02. Before entering into this contract, Purchaser has made such examination of the Premises, the operation, income and expenses thereof, Declaration of Restrictions and all other matters affecting or relating to this transaction as Purchaser deemed necessary. In entering into this contract, Purchaser has not been induced by and has not relied upon any representations, warranties or statements, whether express or implied, made by Seller or any agent, employee or other representative of Seller or by any broker or any other person representing or purporting to represent Seller, which are not expressly set forth in this contract, whether or not any such representations, warranties or statements were made in writing or orally.

Purchaser represents and warrants to Seller that:

§5.03. The funds comprising the Purchase Price to be delivered to Seller in accordance with this contract are not derived from any illegal activity.

§5.04. Purchaser has taken all necessary action to authorize the execution, delivery and performance of this contract and has the power and authority to execute, deliver and perform this contract and the transaction contemplated hereby. Assuming due authorization, execution and delivery by each other party hereto, this contract and all obligations of Purchaser hereunder are the legal, valid and binding obligations of Purchaser, enforceable in accordance with the terms of this contract, except as such enforcement may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

§5.05. The execution and delivery of this contract and the performance of its obligations hereunder by Purchaser will not conflict with any provision of any law or regulation to which Purchaser is subject or any agreement or instrument to which Purchaser is a party or by which it is bound or any order or decree applicable to Purchaser or result in the creation or imposition of any lien on any of Purchaser's assets or property which would materially and adversely affect the ability of Purchaser to carry out the terms of this contract. Purchaser has obtained any consent, approval, authorization or order of any court or governmental agency or body required for the execution, delivery or performance by Purchaser of this contract.

Section 6. Responsibility for Violations

§6.01. All notes or notices of violations of law or governmental ordinances, orders or requirements which are noted or issued prior to the date of Closing by any governmental department, agency or bureau having jurisdiction as to conditions affecting the Premises and all liens which have attached to the Premises prior to the Closing in connection therewith, if applicable, shall be removed or complied with by Seller and Seller shall pay any fines or penalties imposed by reason of any such violations.

§6.02. If required, Seller, upon written request by Purchaser, shall promptly furnish to Purchaser written authorizations to make any necessary searches for the purposes of determining whether notes or notices of violations have been noted or issued with respect to the Premises or liens have attached thereto.

Section 7. Destruction, Damage or Condemnation

§7.01. The provisions of Section 5-1311 of the General Obligations Law shall apply to the sale and purchase provided for in this contract.

Section 8. Covenants of Seller

Seller covenants that between the date of this contract and the Closing:

§8.01. Seller shall not withdraw, settle or otherwise compromise any protest or reduction proceeding affecting real estate taxes assessed against the Premises for any fiscal period in which the Closing is to occur or any subsequent fiscal period without the prior written consent of Purchaser, which consent shall not be unreasonably withheld. Real estate tax refunds and credits received after the Closing Date which are attributable to the fiscal tax year during which the Closing Date occurs shall be apportioned between Seller and Purchaser, after deducting the expenses of collection thereof, which obligation shall survive the Closing.

§8.02. Seller shall not enter into any Service Agreement or any other types of agreement relating to the Premises that would be binding on the Purchaser following Closing.

§8.03. Seller shall allow Purchaser or Purchaser's representatives access to the Premises and other documents required to be delivered under this contract upon reasonable prior notice at reasonable times.

§8.04. Seller shall execute any and all documents reasonably requested by Purchaser in connection with any applications to any governmental authority, including applications for permits desired by Purchaser, and Seller shall execute any and all documents reasonably requested by Purchaser in connection with any applications for financial assistance (including but not limited to any application to the Herkimer County Industrial Development Agency for Financial Assistance), but Seller shall not bear any costs or expenses related to any such applications.

§8.05. Upon execution hereof, Seller shall take the necessary steps required to obtain all governmental approvals required for the subdivision and separation of title to the Premises. Seller shall use commercially reasonable efforts to complete the subdivision of the Premises within seventy-five (75) days after the execution hereof. Seller shall pay all expenses incurred in said subdivision.

§8.06. Upon execution hereof, Seller shall take all necessary steps, and pay all expenses, to complete the extension of the road, the water line(s), and natural gas and electrical lines to the Premises (collectively, the "Utility Work"). As a condition prerequisite to Purchaser's obligation to close this transaction, Seller shall provide Buyer with satisfactory proof that it has undertaken sufficient work to implement the Utility Work prior to Closing, though it is understood by Seller and Purchaser that the Utility Work may not be complete by the date of Closing.

Section 9. Seller's Closing Obligations

At the Closing, Seller shall deliver the following to Purchaser:

§9.01. A statutory form of bargain and sale deed with covenants against grantor's acts, containing the covenant required by Section 13 of the Lien Law, and properly executed in proper form for recording so as to convey the title required by this contract.

§9.02. Such affidavits as Purchaser's title company shall reasonably require in order to omit from its title insurance policy all exceptions for judgments, bankruptcies or other returns against persons or entities whose names are the same as or similar to Seller's name.

§9.03. (a) Checks to the order of the appropriate officers in payment of all applicable real property transfer taxes and copies of any required tax returns therefor executed by Seller, which checks shall be certified or official bank checks if required by the taxing authority, unless Seller elects to have Purchaser pay any of such taxes and credit Purchaser with the amount thereof, and (b) a certification of non-foreign status, in form required by the Code Withholding Section, signed under penalty of perjury. Seller understands that such certification will be retained by Purchaser and will be made available to the Internal Revenue Service on request.

§9.04. Possession of the Premises in the condition required by this contract.

§9.05. A certificate of Seller confirming that the warranties and representations of Seller set forth in this contract are true and complete on and as of the Closing Date (the statements made in such certificate shall be subject to the same limitations on survival as are applicable to Seller's representations and warranties under §4).

§9.06. Any other documents required by this contract to be delivered by Seller.

Section 10. Purchaser's Closing Obligations

At the Closing, Purchaser shall:

§10.01. Deliver to Seller checks or wire transfer of immediately available federal funds to Seller, in payment of the portion of the Purchase Price payable at the Closing, as adjusted for apportionments under Section 12.

§10.02. Cause the deed to be recorded, duly complete all required real property transfer tax returns and cause all such returns and checks in payment of such taxes to be delivered to the appropriate officers promptly after the Closing.

§10.03. Deliver to Seller a certificate confirming that the warranties and representations of Purchaser set forth in this contract are true and complete as of the Closing Date.

§10.04. Deliver any other documents required by this contract to be delivered by Purchaser.

Section 11. Apportionments

§11.01. The following apportionments shall be made between the parties at the Closing as of the close of business on the day prior to the Closing Date:

(a) real estate taxes, water charges and sewer rents, if any, on the basis of the fiscal period for which assessed, except that if there is a water meter on the Premises, apportionment at the Closing shall be based on the last available reading, subject to adjustment after the Closing when the next reading is available;

(b) any other items listed in Schedule C.

Section 12. Objections to Title, Failure of Seller or Purchaser to Perform and Vendee's Lien

§12.01. Purchaser shall promptly order an examination of title and shall cause a copy of the title report to be forwarded to Seller's attorney upon receipt. Seller shall be entitled to a reasonable adjournment or adjournments of the Closing for up to 60 days prior to the scheduled date of Closing, whichever occurs first, to remove any defects in or objections to title noted in such title report and any other defects or objections which may be disclosed on or prior to the Closing Date.

§12.02. If Seller shall be unable to convey title to the Premises at the Closing in accordance with the provisions of this contract or if Purchaser shall have any other grounds under this contract for refusing to consummate the purchase provided for herein, Purchaser, nevertheless, may elect to accept such title as Seller may be able to convey with a credit against the monies payable at the Closing equal to the reasonably estimated cost to cure the same (up to the Maximum Expense described below), but without any other credit or liability on the part of Seller. If Purchaser shall not so elect, Purchaser may terminate this contract and the sole liability of Seller shall be to refund the Downpayment to Purchaser. Upon such refund and reimbursement, this contract shall be null and void and the parties hereto shall be relieved of all further obligations and liability other than any arising under Section 14. Seller shall not be required to bring any action or proceeding or to incur any expense in excess of the Maximum Expense specified in Schedule C (or if none is so specified, the Maximum Expense shall be one-half of one percent of the Purchase Price) to cure any title defect or to enable Seller otherwise to comply with the provisions of this contract, but the foregoing shall not permit Seller to refuse to pay off at the Closing, to the extent of the monies payable at the Closing, mortgages or other liens on the Premises which can be satisfied or discharged by payment of a sum certain of which Seller has actual knowledge.

§12.03. Any unpaid taxes, assessments, water charges and sewer rents, together with the interest and penalties thereon to a date not less than two days following the Closing Date, and any other liens and encumbrances which Seller is obligated to pay and discharge or which are against corporations, estates or other persons in the chain of title, together with the cost of recording or filing any instruments necessary to discharge such liens and encumbrances of record, may be paid out of the proceeds of the monies payable at the Closing if Seller delivers to Purchaser on the Closing Date official bills for such taxes, assessments, water charges, sewer rents, interest and penalties and instruments in recordable form sufficient to discharge any other liens and encumbrances of record. Upon request made at a reasonable time before the Closing, Purchaser shall provide at the Closing separate checks for the foregoing payable to the order of the holder of any such lien, charge

or encumbrance and otherwise complying with §2.02. If Purchaser's title insurance company is willing to insure Purchaser that such charges, liens and encumbrances will not be collected out of or enforced against the Premises, then, Seller shall have the right, in lieu of payment and discharge to deposit with the title insurance company such funds or assurances or to pay such special or additional premiums as the title insurance company may require in order to so insure. In such case the charges, liens and encumbrances with respect to which the title insurance company has agreed so to insure shall not be considered objections to title.

§12.04. If Purchaser shall default in the performance of its obligation under this contract to purchase the Premises, the sole remedy of Seller shall be to retain the Downpayment as liquidated damages for all loss, damage and expense suffered by Seller, including without limitation the loss of its bargain.

§12.05. Purchaser shall have a vendee's lien against the Premises for the amount of the Downpayment, but such lien shall not continue after default by Purchaser under this contract.

Section 13. Broker

§13.01. Seller and Purchaser mutually represent and warrant that there is no broker whom they have dealt in connection with this contract and that neither Seller nor Purchaser knows of any broker who has claimed or may have the right to claim a commission in connection with this transaction. The parties acknowledge that this contract was brought about by direct negotiation between Seller and Purchaser and that neither Seller nor Purchaser knows of any broker entitled to a commission in connection with this transaction. Seller and Purchaser shall indemnify and defend each other against any costs, claims or expenses, including attorneys' fees, arising out of the breach on their respective parts of any representations, warranties or agreements contained in this paragraph. The representations and obligations under this paragraph shall survive the Closing or, if the Closing does not occur, the termination of this contract.

Section 14. Notices

§14.01. All notices under this contract shall be in writing and shall be delivered personally or shall be sent by prepaid certified mail, or by prepaid overnight courier with receipt acknowledged, addressed as set forth in Schedule C, or as Seller or Purchaser shall otherwise have given notice as herein provided.

Section 15. Limitations on Survival of Representations, Warranties, Covenants and other Obligations

§15.01. Except as otherwise provided in this contract, no representations, warranties, covenants or other obligations of Seller set forth in this contract shall survive the Closing, and no action based thereon shall be commenced after the Closing.

§15.02. The delivery of the deed by Seller, and the acceptance thereof by Purchaser, shall be deemed the full performance and discharge of every obligation on the

part of Seller to be performed hereunder, except those obligations of Seller which are expressly stated in this contract to survive the Closing.

Section 16. Due Diligence Period

§16.01. Upon the mutual execution hereof, Purchaser will have a six (6) month period to perform due diligence and secure any and all land use approvals and work permits that would be required or advisable to use and operate the Premises (“Due Diligence and Approvals Period”). Seller shall execute any and all documents reasonably requested by Purchaser in connection with any applications to any governmental authority, including applications for permits, land use approvals, and variances, but Seller shall not bear any costs or expenses related to any such applications

§16.02. Purchaser shall have the right to extend the Due Diligence and Approvals Period for two (2) sixty (60) day periods (each an “Extension” and together with the original Due Diligence and Approvals Period the “Extended Due Diligence and Approvals Period”), subject to Purchaser’s delivery of notice of extension (each an “Extension Notice”) to Seller. Each Extension Notice shall be an agreement that twenty percent (20%) of the Soft Deposit is non-refundable and to be credited to the Purchase Price at Closing (subject only to Seller’s default, in which case all such sums shall be fully refunded).

§16.03. If at any time during the Due Diligence and Approvals Period and/or the Extended Due Diligence and Approvals Period, Purchaser in its own discretion is not satisfied with the results of its due diligence review, or does not secure any approvals required to use and operate the Premises as an industrial property, Purchaser shall have the right to terminate this Contract, in its sole and absolute discretion, by providing written notice to the Seller, and upon receipt by the Seller thereof this Contract shall be null and void and the Downpayment shall be returned to the Purchaser, subject to any funds that may be retained by Seller pursuant to Section 16.02 above.

Section 17. Miscellaneous Provisions

§17.01. This contract embodies and constitutes the entire understanding between the parties with respect to the transaction contemplated herein, and all prior agreements, understandings, representations and statements, oral or written, are merged into this contract. Notwithstanding anything in the prior sentence to the contrary, the sections of the Letter of Intent dated February 25, 2022, and mutually executed by the parties on March 2 and 3, 2022, labeled “Exclusivity Clause” and “Confidentiality” are hereby incorporated into this contract by reference. Neither this contract nor any provision hereof may be waived, modified, amended, discharged or terminated except by an instrument signed by the party against whom the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument.

§17.02. Purchaser may assign this contract to any entity which is affiliated with Purchaser, prior to Closing, upon written notice to Seller.

§17.03. This contract shall be governed by, and construed in accordance with, the law of the State of New York.

§17.04. The captions in this contract are inserted for convenience of reference only and in no way define, describe or limit the scope or intent of this contract or any of the provisions hereof.

§17.05. This contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs or successors and permitted assigns. Notwithstanding anything to the contrary contained herein, this contract may be assigned to an entity affiliated with or controlled by Purchaser, provided said entity assumes all obligations under this contract of sale.

§17.06. This contract shall not be binding or effective until properly executed and delivered by Seller and Purchaser.

§17.07. As used in this contract, the masculine shall include the feminine and neuter, the singular shall include the plural and the plural shall include the singular, as the context may require.

§17.08. If the provisions of any schedule or rider to this contract are inconsistent with the provisions of this contract, the provisions of such schedule or rider shall prevail. Set forth in Schedule C is a list of any and all schedules and riders which are attached hereto but which are not listed in the Table of Contents. Set forth in Schedule D are building covenants and restrictions affecting lands in the Schuyler Business Park.

IN WITNESS WHEREOF, the parties hereto have executed this contract as of the date first above written.

Seller:

HERKIMER COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By:


John J. Piseck, Chief Executive Officer

Purchaser: Marcus Ventures Inc.

By:


Aaron Marcus, President

Receipt by Escrowee

The undersigned Escrowee hereby acknowledges receipt of \$15,000.00 by check subject to collection, to be held in escrow pursuant to §2.03 and §2.04.

Schedule A

DESCRIPTION OF PREMISES

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 "E", as shown on the map entitled "Subdivision Map Showing Lands Belonging to Herkimer County Industrial Development Agency Designated as Parcels "D", "E", "F", "G", "H", "J" and Proposed Roads", dated March 24, 2022, prepared by Emrich Land Surveying, PLLC; said parcel more particularly described as follows:

BEGINNING at an iron pin (set) located on the westerly road boundary of a proposed town road (Road B) at its intersection with the division line between the herein described property, designated as Parcel "E" on the south and the property, designated as Parcel "D" on the north;

Thence South 06° 42' 00" East, along said westerly boundary of a proposed town road, a distance of 606.26 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, designated as Parcel "E" on the north and the property, designated as Parcel "F" on the south;

Thence South 82° 45' 20" West, along the last mentioned division line, a distance of 563.62 feet to an iron pin (set) located on the northerly highway boundary of the New York State Thruway;

Thence North 59° 52' 50" West, along said northerly highway boundary of the New York State Thruway, a distance of 351.11 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, designated as Parcel "E" on the east and the property of Linda P. Williams (reputed owner) as described by Deed L. 1375 P. 220 on the west;

Thence North 05° 38' 00" West, along the last mentioned division line, a distance of 232.86 feet to an iron pin (found); said pin located at the intersection of the last mentioned division line with the division line between the herein described property, designated as Parcel "E" on the east and the property, designated as Parcel "J" on the west;

Thence North 06° 49' 55" West, along the last mentioned division line, a distance of 160.40 feet to an iron pin (set); said pin located at the intersection of the last mentioned division line with the aforementioned division line between the herein described property, designated as Parcel "E" on the south and the property designated as Parcel "D" on the north;

Thence North 82° 45' 20" East, along the last mentioned division line a distance of 840.75 feet to the point of beginning, containing 480,979 ± square feet or 11.041 acres, more or less;

RESERVING: a Permanent Easement to be granted for utility purposes; said easement being fifty (50) feet in width, westerly of, adjacent to and parallel with the westerly road boundary of a proposed town road as described above and as shown on the above referenced map.

RESERVING: a Permanent Stormwater Easement [tbd].

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.

Schedule B

PURCHASE PRICE

The Purchase Price shall be paid as follows:

- (a) By check subject to collection, the receipt of which is hereby acknowledged by Seller: \$ 15,000.00
- (b) By check or checks delivered to Seller at the Closing in accordance with the provisions of §2.02: \$ (an amount to be determined based on the rate of \$15,000.00 per acre)

Purchase Price

\$ 165,000.00

Schedule C

MISCELLANEOUS

1. Title insurer designed by the Purchaser (§1.02): Langdon Title
5. Seller's tax identification number: 16-1239356
6. Purchaser's tax identification number (§2.03):
7. Scheduled time and date of Closing (§3.01): on or about 90 days from the expiration of the Due Diligence and Approvals Period or the Extended Due Diligence and Approvals Period, such as the case may be.
8. Place of Closing (§3.01):
9. Assessed valuation of Premises: currently tax exempt
10. Fiscal year and annual real estate taxes on Premises (§4.02):
11. Tax abatements or exemptions affecting Premises (§4.02):
12. Assessments on Premises: Fire, Water
14. Maximum Expense of Seller to cure title defects, etc.: None
15. Broker, if any: NONE
16. Party to pay broker's commission: NA
17. Address for notices: (per §14.01)

If to Seller:

John J. Piseck, Chief Financial Officer
Herkimer County Industrial Development Agency
420 E. German Street – Suite 101A
Herkimer, NY 13350
Email: jpiseck@herkimercountyida.org

with a copy to Seller's attorney: Anthony G. Hallak, Esq
Felt Evans, LLP
4 – 6 North Park Row
Clinton, NY 13323
Email: ahallak@felt-evans.com

If to Purchaser:

with a copy to Purchaser's attorney: Daniel Seidenstein, Esq.
Thompson, LLP
75 Broad Street, Suite 2120
New York, NY 10004
Email: dseidenstein@thomplegal.com

18. Limitation Date for actions based on Seller's surviving representations and other obligations (§15.01): **No representations or warranties shall survive closing of title.**
19. Additional Schedules or Riders: Schedule D

Schedule D

1. Declaration of Restrictions – attached.
2. No future Subdivision of Premises.
3. Project to be completed within two (2) years. In the event Purchaser fails to initiate construction within two (2) years of closing, and no extension is granted, Purchaser shall reconvey the Premises to the Agency for the Purchase Price paid pursuant to this Agreement.
4. Premises to be subject to utility easements along road and reservations storm water management.

**ASSIGNMENT AND AMENDMENT DATED AS OF JULY ____, 2022 TO THE
CONTRACT OF SALE DATED APRIL 20, 2022 BY AND BETWEEN HERKIMER
COUNTY INDUSTRIAL DEVELOPMENT AGENCY, AS SELLER, AND MARCUS
VENTURES INC., AS PURCHASER**

1. **Amendment to Prevail.**

In the event of any inconsistencies between the terms of this Assignment and Amendment and those contained in any other portion of the Contract of Sale, the terms contained in this Assignment and Amendment shall govern.

2. **Purchaser.**

Marcus Ventures Inc. (“Assignor”) hereby assigns all rights, title, and interest in and to the Contract of Sale including without limitation all rights to the Downpayment, Bloom Utica LLC (“Assignee”) and all obligations arising thereunder. Bloom Utica LLC hereby assumes all of Purchaser’s rights and obligations under the Contract of Sale.

3. **Execution.**

This Assignment and Amendment may not be modified orally. This Assignment and Amendment may be signed in two or more counterparts, or by electronic or facsimile signature, each of which shall be deemed an original but all of which shall be deemed to constitute a single instrument.

4. **Ratification.**

Except as modified by this Assignment and Amendment, the parties hereby ratify and confirm each and every provision of the Contract of Sale as if set forth in full herein.

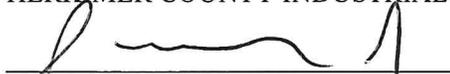
5. **Consent.**

Seller hereby consents to this Assignment and Amendment.

[Signatures Appear on Following Page]

APPROVED AND CONSENTED TO:

HERKIMER COUNTY INDUSTRIAL DEVELOPMENT AGENCY


By: _____

ASSIGNOR:

MARCUS VENTURES INC.


By: _____

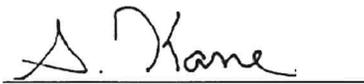
ASSIGNEE:

BLOOM UTICA LLC


By: _____

ESCROWEE

LANGDON TITLE


By: Stefanie Kane