

Date: **June 8, 2023**

AGREEMENT TO PURCHASE

The undersigned Buyer(s) ("Buyer") offer(s) to purchase the real estate put up for bids via timed online auction conducted by Schrader Real Estate & Auction Co., Inc. ("Auction Company") on behalf of the Don S. & Sharon J. Balka Rev. Trust dtd 10/14/2022, the Timothy R. & Susan K. Good Rev. Trust dtd 12/7/2022, David L. Albert, and Susan Albert (collectively, "Seller"), being the real estate in Marshall County, Indiana identified as Lot 1 (the "Property") in the plat of Albert Michigan Road Minor Subdivision originally certified by J. Bernard Feeney, PS on February 28, 2023 (the "Plat"). This offer incorporates the provisions set forth in this Agreement to Purchase and in the attached **Addendum A** (collectively, this "Agreement").

- 1. PURCHASE PRICE. The purchase price is \$ \_\_\_\_\_, to be paid via wired funds at closing, plus expenses charged to Buyer, less applied Earnest Money and any other credits due Buyer, as provided in this Agreement.
2. EARNEST MONEY. On or before Friday, June 9, 2023, at least 10% of the purchase price shall be delivered to Auction Company as an earnest money deposit ("Earnest Money"), to be held in escrow and applied to the purchase price at closing.
3. TAXES. "Taxes" refers to all general real estate taxes and any special assessments that are or may become a lien against all or any part of the Property. "Seller's Taxes" refers to all such Taxes except: (a) general real estate taxes attributed to any period after closing (prorated on a calendar year basis to the day of closing), to the extent attributed to the Property; and (b) any special assessments that are last payable without a penalty after closing, to the extent attributed to the Property. Any unpaid Seller's Taxes shall be withheld from Seller's proceeds at closing and paid directly to the county treasurer; provided, however, any portion of Seller's Taxes that is not ascertainable and payable at the time of closing shall be estimated and (to the extent attributed to the Property) paid via credit against the sums due from Buyer at closing, with no further settlement or adjustment after closing; provided, further, if this sale involves a tax parcel split then, in lieu of a credit to Buyer at closing, Seller may elect to require collection of each party's share of the estimated Parent Parcel Taxes at closing, to be either: (i) held in escrow and applied towards payment of the Parent Parcel Taxes when billed after closing; or (ii) paid directly to the county treasurer as an estimated prepayment of the Parent Parcel Taxes. ("Parent Parcel Taxes" refers to all Taxes that, at the time of closing, are not yet ascertainable and payable but constitute a lien against any parcel(s) that include(s) any part of the Property and other real estate.) In any event, Buyer shall pay all Taxes due after closing to the extent attributed to the Property and not paid via escrow or estimated prepayment. After closing, if any Parent Parcel Taxes are billed as a lump sum with portions attributed to the Property and other real estate, Buyer shall cooperate with the owner(s) of the other real estate to facilitate the allocation and timely payment of the balance due and Buyer shall pay the portion attributed to the Property. Any estimate of Taxes shall be based on the amounts last billed for a calendar year. The extent to which any Taxes are attributed to any new parcel resulting from a split shall be based on a split calculation provided by the appropriate property tax official (or, if an official split calculation is not available, based on an estimated split calculation using available assessment data).
4. SURVEY. The Property shall be conveyed by reference to the Plat, without obtaining a new post-auction survey.
5. DEED; TITLE INSURANCE. The Property shall be conveyed by Warranty Deed (subject to the Permitted Exceptions), to be furnished at Seller's expense. Seller shall also furnish a commitment, updated to a date after the Auction and prior to closing, for the issuance of an ALTA standard coverage owner's title insurance policy in the amount of the purchase price insuring fee simple title to the Property in Buyer's name, free and clear of any material encumbrance that does not constitute a Permitted Exception (the "Final Title Commitment"). At closing, Seller shall pay for the cost of issuing a standard owner's title insurance policy in accordance with the Final Title Commitment.
6. PERMITTED EXCEPTIONS. Buyer agrees to accept the title subject to and notwithstanding any of the following matters (each a "Permitted Exception"; collectively, the "Permitted Exceptions"): (a) existing roads, utilities and drains; (b) any visible or apparent use; (c) any variation between a deeded boundary line and a visible or apparent occupancy or occupancy line; (d) any plat, easement, condition, restriction, or other matter of record (except liens); (e) any outstanding right or severance as to minerals; (f) any recorded oil and gas lease (active or not); (g) a lien for Taxes that are not yet due and payable; and/or (h) the provisions of (and any matter, except liens, described or disclosed in) Addendum A, the Plat, the preliminary title insurance schedules, and any document referenced in said Addendum, Plat and/or the preliminary schedules.
7. CLOSING. It is anticipated that the closing will be scheduled by mutual agreement and completed on or before July 10, 2023. In any event, Seller may arrange for the closing to be held on a date specified in an email or other written notice from Seller or Seller's agent to Buyer or Buyer's agent, and Buyer shall be obligated to close on the specified date if such date is: (a) at least 7 days after sending such notice (but not earlier than July 10, 2023); and (b) at least 7 days after the completion of the Final Title Commitment. The closing shall be held at and/or administered by the office of Meridian Title Corporation, 202 S. Michigan St., Ste. 300, South Bend, IN (Tel: 574-232-5845).
8. POSSESSION. Possession shall be delivered in accordance with Addendum A.
9. THE PROPERTY IS SOLD "AS IS", WITHOUT ANY WARRANTY OF ANY KIND AS TO ITS CHARACTER OR CONDITION OR ITS SUITABILITY FOR ANY PARTICULAR USE OR PURPOSE.
10. REMEDIES. In the event of nonpayment or ineffective payment of the Earnest Money and/or any other nonperformance, breach and/or default with respect to an obligation of Buyer under this Agreement ("Buyer Default"), Seller shall have the right to: (a) give notice terminating Buyer's right to acquire the Property (whereupon Seller shall have the absolute right to re-sell the Property free and clear of any right or claim of Buyer); and (b) recover 10% of the purchase price as liquidated damages. Buyer agrees that 10% of the purchase price is fairly proportionate to the amount of Seller's damages due to a Buyer Default, which damages would otherwise be uncertain and difficult to ascertain. If such liquidated damages are adjudicated as unenforceable, Seller shall recover actual damages plus attorney fees and expenses. If this sale fails to close due to Seller's default: (i) Buyer shall have the right to demand and receive a refund of the Earnest Money and, upon such demand and receipt, this Agreement shall terminate; or (ii) at any time prior to such termination, Buyer may elect instead to seek specific performance; provided, however, if the title or title insurance does not conform to (or if Seller is otherwise unable to convey the Property in conformance with) the requirements of this Agreement, either party may terminate this Agreement by written notice to the other and, in the event of such termination by either party, Buyer shall receive the Earnest Money as Buyer's sole and exclusive remedy; provided, further, prior to any such termination by Buyer, Buyer must give Seller sufficient written notice of the nonconformity to enable Seller to cure the nonconformity and Seller shall have the right to extend the closing date for up to 60 days after receiving such notice in order to cure such nonconformity. If this sale fails to close, the Earnest Money shall be retained in escrow pending disbursement instructions: (A) signed by both parties (or by one party authorizing disbursement to the other); or (B) in a final court order. In the event of a Buyer Default, Buyer agrees to sign and deliver a release of the Earnest Money for payment of the liquidated damages due Seller (or, if Buyer fails to do so, Seller shall have the right to recover, in addition to any other recovery, attorney's fees and other expenses thereafter incurred by Seller in seeking to enforce any right or remedy). In a lawsuit to enforce a right or remedy under this Agreement, the prevailing party shall recover attorneys' fees and expenses and ANY RIGHT TO A TRIAL BY JURY IS WAIVED.
11. 1031 EXCHANGE. If a party intends to structure the transfer or acquisition of the Property as part of an exchange under 26 U.S.C. §1031, the other party(ies) shall reasonably cooperate (but shall not be required to assume or incur any additional obligation or expense).
12. GENERAL PROVISIONS. Auction Company and its affiliated agents represent only Seller, not Buyer. This Agreement shall bind and benefit the parties and their respective heirs, personal representatives and successors. This Agreement constitutes the entire agreement between Buyer and Seller regarding the Property. No party is relying upon any other statement or promise and no party shall be bound by any purported oral modification or waiver. Time is of the essence. All terms of this Agreement shall be read and construed together as a harmonious whole and, unless otherwise provided or required by the express terms of this Agreement, shall survive closing. This Agreement may be executed in multiple counterparts, all of which together shall constitute the same instrument. The electronic transmission of a signed counterpart via email, fax or a commonly-used electronic signature service such as DocuSign® shall have the same effect as the delivery of an original signature.
13. ACCEPTANCE DEADLINE. This offer shall be deemed automatically withdrawn and the Earnest Money shall be returned to Buyer if this offer is not accepted by Seller in writing before the end of the first business day after the close of bidding.

SIGNED BY BUYER on June \_\_\_\_\_, 2023:

ACCEPTED BY SELLER on June \_\_\_\_\_, 2023:

Printed Name(s) of Buyer(s)

Sign: \_\_\_\_\_ (Sharon J. Balka, Trustee)

Signature(s) of Buyer(s)

Sign: \_\_\_\_\_ (Don S. Balka, Trustee)

Buyer's Address: \_\_\_\_\_

Sign: \_\_\_\_\_ (Susan K. Good, Trustee)

Buyer's Tel: \_\_\_\_\_

Sign: \_\_\_\_\_ (Timothy R. Good, Trustee)

Buyer's Email: \_\_\_\_\_

Sign: \_\_\_\_\_ (David L. Albert)

Deed to: \_\_\_\_\_

Sign: \_\_\_\_\_ (Susan Albert)

Lender/Contact: \_\_\_\_\_

EARNEST MONEY: Auction Company acknowledges receipt of the Earnest Money on June \_\_\_\_\_, 2023 in the amount of \$ \_\_\_\_\_.

SCHRADER REAL ESTATE AND AUCTION COMPANY, INC., By: \_\_\_\_\_ Print: \_\_\_\_\_

Buyer(s): \_\_\_\_\_

Sellers: \_\_\_\_\_

ADDENDUM A  
BIDDING PROCEDURES AND AUCTION TERMS

*For timed online auction conducted by:*  
Schrader Real Estate and Auction Company, Inc.

*On behalf of:*  
The Don S. & Sharon J. Balka Rev. Trust dtd 10/14/2022;  
The Timothy R. & Susan K. Good Rev. Trust dtd 12/7/2022;  
David L. Albert; and Susan Albert.

***Online Bidding Ends: June 8, 2023 at 4:00 p.m. (EDT) \****  
*(\* unless extended as provided below)*

**PART A - BIDDING PROCEDURES:**

1. Bidding is online only and is open to anyone who has:
  - Registered as a bidder and obtained an online bidding number for this auction through the online bidding platform (<https://bid.schraderauction.com>);
  - Agreed to the Online Bidding Terms, as posted to the auction website ([www.schraderauction.com/auctions/8467](http://www.schraderauction.com/auctions/8467)); and
  - Agreed to the particular Auction Terms that apply to this auction (“Auction Terms”), consisting of the provisions contained in the Agreement to Purchase and this Addendum A, as posted to the auction website.
2. The initial bidding period ends at 4:00 o’clock p.m. (EDT) on Thursday, June 8, 2023, at which time all bidding will close *unless* the bidding is extended in accordance with paragraph 3 below.
3. If a bid is received during the *final minute* of the initial bidding period (or during the *final minute* of any extended bidding period): (a) bidding will remain open for an extended bidding period ending two minutes after the end of the last prior bidding period; and (b) this extension of bidding will continue until an extended bidding period ends with no bid having been made during the final minute thereof, at which time all bidding will close. The time of any bid and the end of any bidding period shall be determined solely by the online bidding platform.

**PART B - AUCTION TERMS:**

4. The Auction Terms consist of the provisions contained in the Agreement to Purchase and this Addendum A, both of which have been posted to the auction website. These Auction Terms are non-negotiable and they supersede and control over any other

terms or statements, including any oral statements, any written terms in the auction brochure, and any written terms posted to the auction website (other than the Agreement to Purchase and this Addendum A).

5. After the bidding closes, a purchase offer for the final high bid will be completed by the Auction Company and delivered to the high bidder ("Buyer") who shall then sign and return the purchase offer to the Auction Company. The purchase offer will be in the form of the Agreement to Purchase and this Addendum A (as posted to the auction website) and may be signed and/or delivered electronically.
6. The final high bid is subject to the Sellers' acceptance or rejection. The final high bid may be accepted at any time before the end of the first business day after the close of bidding.
7. An earnest money deposit is due from Buyer in the amount of at least 10% of the Buyer's high bid. The earnest money must be delivered to and received by Auction Company **on or before Friday, June 9, 2023**.
8. The balance of the purchase price is due in cash at closing. Bids are not contingent on financing. Each bidder is responsible for having arranged any financing prior to bidding.
9. The closing will be scheduled in accordance with Section 7 of the Agreement to Purchase. The targeted closing period is on or before July 10, 2023.
10. Delivery of title and possession will be effective upon completion of the closing.
11. The closing agent's fee to administer the closing will be shared equally (50:50) between the Buyer and Sellers. Buyer will pay all costs of any loan obtained by Buyer.
12. Real estate taxes will be prorated to the date of closing in accordance with Section 3 of the Agreement to Purchase. Buyer will assume and pay drainage and other special assessments that are last payable without a penalty after the day of closing.
13. Sellers will furnish the deed and owner's title insurance at Sellers' expense in accordance with Section 5 of the Agreement to Purchase.
14. The Property to be conveyed at closing consists of Lot 1 in the plat of Albert Michigan Road Minor Subdivision originally certified by J. Bernard Feeney, PS on February 28, 2023 (hereinafter referred to as the "Plat"). The Plat was recorded on May 31, 2023 as #202302241 and a copy has been posted to the auction website. The Property will be conveyed by reference to the Plat, without obtaining a new post-auction survey.
15. At closing, Buyer shall reimburse Sellers for one-half of the surveyor fees incurred in connection with the preparation of the Plat. Buyer's one-half share of the surveyor fees is \$2,267.50. Sellers shall pay all other fees incurred in connection with the approval and recording of the Plat, including planning department fees and recording fees.

16. The platted lot to be conveyed at closing was created by combining certain parcels owned by all of the Sellers with additional land owned by some of the Sellers. For the purpose of administering and documenting the closing, it may be necessary (or, in any event, Sellers may elect) to allocate the purchase price between such parcels and additional land. Any such allocation shall be determined solely by the Sellers.
17. Preliminary title insurance schedules dated May 31, 2023 have been prepared by Meridian Title Corporation and posted to the auction website, along with copies of the recorded documents listed as exceptions. The preliminary title insurance schedules were updated during the marketing period to reflect the recording of the Plat and the recent transfers to the trusts identified above.
18. Buyer agrees to accept the title and acquire the Property notwithstanding all easements and other Permitted Exceptions as defined in Section 6 of the Agreement to Purchase.
19. Without limiting Section 6 of the Agreement to Purchase, Buyer agrees to accept the title and acquire the Property notwithstanding: (a) the various easements and rights-of-way that are shown in the Plat and/or referenced in the preliminary title insurance schedules; (b) the provisions of the Environmental Restrictive Covenant described below; and (c) the provisions of the No Action Letter described below.
20. The Property is subject to the provisions of an Environmental Restrictive Covenant recorded on July 27, 2022 which: (a) refers to certain corrective action implemented as a result of a release of petroleum relating to the Albert's Service Station; and (b) imposes various covenants, restrictions and obligations upon the Property and the owners and future owners of the Property, which are enforceable by the Indiana Department of Environmental Management ("IDEM"). A copy of this document has been posted to the auction website.
21. The deed to Buyer will include the notice required by Part II, Section 5 of the Environmental Restrictive Covenant.
22. Sellers will provide notice to IDEM of the conveyance to Buyer within 30 days after closing, as required by Part II, Section 6 of the Environmental Restrictive Covenant.
23. The Property is also subject to the terms and conditions of a No Further Action letter from IDEM dated September 13, 2022. A copy of this document has been posted to the auction website.
24. Buyer agrees to assume all covenants, obligations, conditions and provisions set forth in the Environmental Restrictive Covenant and the No Further Action letter described above that apply or pertain to the Property, the future owners of the Property, and/or the future ownership, use, development and/or operation of the Property. Such assumption shall be effective automatically as of the completion of the closing, without the execution of a separate instrument of assumption, and without any warranty or representation of any kind.

25. Boundary lines and auction tract maps depicted in the auction brochure and other marketing information are approximations provided for identification and illustration purposes only. They are not provided as survey products and are not intended to depict or establish authoritative boundaries or locations.
26. If a dispute arises prior to closing as to the location of any boundary, the Auction Company may (but need not) terminate the purchase contract by giving written notice of termination to Buyer, but only with the Sellers' consent. In the event of such termination, the earnest money shall be refunded to Buyer and the Property may be re-sold free and clear of any claim of Buyer. In lieu of consenting to such termination, Sellers may elect instead to enforce the purchase contract according to its terms.
27. The advertised acreage and square footage are based on the acres shown in the Plat. No warranty or authoritative representation is made as to the number of acres or square feet included with the Property. The purchase price shall not be subject to adjustment regardless of the size, area or dimensions shown in any survey or other record prepared before or after the auction.
28. Information booklets have been provided to prospective buyers in printed form and/or via download from the auction website and are available for further review in the auction display area. The information booklets include information obtained or derived from third-party sources, including property tax information, copy of unrecorded Plat (without approval signatures), the Environmental Restrictive Covenant described above, the No Further Action letter described above, 2021 INDOT average annual daily traffic count map, county zoning information, and preliminary title insurance schedules. Such information has been provided subject to (and not as a substitute for) a prospective buyer's independent investigation and verification. Although believed to be from reliable sources, the Auction Company disclaims any warranty or liability for the information provided.
29. Buyer's obligation to purchase and acquire the Property at closing is not contingent upon any post-auction inspection, investigation or evaluation of the character, condition or suitability of the Property. Buyer is responsible for having completed all inspections, investigations and evaluations before bidding. Buyer acknowledges that Buyer has either completed all such inspections, investigations and evaluations or has knowingly and willingly elected to purchase the Property without having done so. In either case, Buyer assumes all risks and agrees to acquire the Property "AS IS".
30. Without limiting the foregoing provisions, Sellers and Auction Company and their respective agents and representatives make no warranty or representation as to: (a) environmental matters; (b) zoning matters; (c) whether or not the Property qualifies for any particular use; (d) the availability or location of utilities; (e) the availability of any permit; or (f) the accuracy of any materials or information prepared or provided by any third party regarding the auction and/or the Property.
31. Schrader Real Estate and Auction Company, Inc. and its agents and representatives are exclusively the agents of the Sellers.