

## AGREEMENT TO PURCHASE REAL ESTATE AT PUBLIC AUCTION

THIS AGREEMENT TO PURCHASE REAL ESTATE AT PUBLIC AUCTION ("Contract"), made and entered into as of this 10th day of February, 2022, by and between Catherine Borkowski, Trustee of Aileen Robison Trust, "Seller" and \_\_\_\_\_ ("Purchaser"), as the highest bidder on the Property (as hereinafter defined) at the Public Auction on the date herewith (the "Auction"), is made subject to the following terms, covenants and conditions:

1. **PROPERTY.** Seller agrees to sell and Purchaser agrees to purchase approximately 146.81 acres of real estate, more or less, situated in Clark County, Indiana, as more particularly described on *Exhibit A* attached hereto and made a part hereof, together with any improvements located thereon (the "Property"), but specifically excluding any and all fixtures or personal property owned by the Tenant(s) (as that term is hereinafter defined) except as otherwise provided herein. Purchaser hereby acknowledges and understands that the Property is being sold on an "**AS IS, WHERE IS, WITH ALL FAULTS**" basis. Purchaser further acknowledges that this Contract is not contingent upon financing and that failure to close this transaction on or before March 10, 2022, due to any delay other than a delay caused by Seller, shall constitute a default by Purchaser, entitling Seller to immediate payment of the Earnest Money (as hereinafter defined). Any remaining personal property on the auction tracts that is owned by the Seller as of the date of closing, shall be transferred to, and become property of, the Purchaser.
2. **PURCHASE PRICE.** Purchaser agrees to pay to Seller the total sum of \$\_\_\_\_\_ (the "Purchase Price") or \$\_\_\_\_\_ per acre ("Purchase Price per Acre") for the Property, subject to adjustment (if necessary) as provided for herein. Purchaser will pay \$\_\_\_\_\_ upon execution of this Contract as earnest money, which amount is equal to ten percent (10%) of the Purchase Price, to be held in the escrow account of The Loranda Group, Inc. as escrow agent, hereunder for delivery to Seller at the time of closing or as otherwise provided for herein ("the Earnest Money"). The balance of the Purchase Price shall be paid by Purchaser to Seller at closing in cash or other form of payment acceptable to Seller.
3. **TITLE.** Seller, at Seller's expense, shall furnish Purchaser with an Owner's Title Insurance Commitment ("Title Commitment"), issued by a title insurance company authorized to transact business in the state in which the subject real estate is located. The title insurance commitment shall commit the subject title company to issue Purchaser its standard owner's policy in the amount of purchase price, showing title to the Property in the name of Seller, subject to the following permitted exceptions: (i) rights or claims of parties in possession not shown by the public records; (ii) easements or claims of easements not shown by the public records; (iii) encroachments, overlaps, boundary line disputes or other matters which would be disclosed by an accurate survey or inspection of the Property; (iv) any lien or right of lien for services, labor or material heretofore or hereinafter furnished, imposed by law and not shown by the public record; (v) taxes or special assessments which are not shown as existing liens; (vi) any water, mineral or other rights already granted or reserved by other parties, including but not limited to any mineral leases; (vii) the rights of any current tenants in possession of the Property (the "Tenant"); and (viii) such easements, covenants, restrictions, conditions, and other matters, if any, identified in the Title Commitment. In the event that the Seller is unable to convey the Property in accordance with the terms of this Contract, Purchaser shall elect to either (i) take the Property "as is" and waive any and all objections thereto without abatement of the Purchase Price, or (ii) receive a refund of the Earnest Money, and upon such refund being made, this Contract shall terminate and be of no further force and effect. Purchaser hereby agrees that Seller shall have no obligation to commence proceedings, suits or other actions or to expend any funds to provide clear title to the Property or to eliminate any defects of title in the Property.
4. **SURVEY.** No survey will be provided to the Purchaser.
5. **CLOSING.** The closing shall take place on or before March 10, 2022, at a time and place designated by Seller and agreed upon by Purchaser. Concurrently with the closing, Purchaser shall pay to Seller the Purchase Price, less the Earnest Money as provided for herein. Upon full receipt of the entire Purchase Price by Seller, Seller shall deliver to Purchaser a Deed conveying title in and to the Property to the Purchaser. Seller shall assume the risk of loss and damage to the Property until the closing.
6. **POSSESSION.** Full possession of the property will be given at closing.
7. **DISCLAIMER OF WARRANTIES.** Purchaser acknowledges that a full inspection of the Property and all related information was made and, with respect to this Contract, that Purchaser is satisfied in all respects with the condition of the Property and all matters pertaining thereto. Purchaser accepts the Property "**AS IS, WHERE IS, WITH ALL FAULTS**" and in its present condition with Purchaser assuming risk thereof. Purchaser understands that Seller makes no warranty or representation of any kind, either express or implied or arising by operation of law, as to the

condition, quality, environmental condition, serviceability or merchantability or fitness for a particular purpose of the Property or any portion thereof, and in no event shall Seller be liable for consequential damages. Purchaser is relying solely on its own independent inspections, investigations, inquiries, and all due diligence concerning the Property and the Auction. Purchaser acknowledges that Seller has not agreed to perform any work on or about the Property as a condition of Purchaser's purchase of the same. Purchaser understands that by entering into this Contract and agreeing to accept the Property and pertinent structures in an "AS IS, WHERE IS, WITH ALL FAULTS" condition, that Purchaser is buying the Property subject to any and all recorded easements, leases, covenants and restrictions of record, and all ditch/drainage assessments, whether or not of record.

8. **MINERAL RIGHTS.** The mineral rights owned by Seller with respect to the Property, if any, shall be conveyed to Purchaser at closing.
9. **REAL ESTATE TAXES AND ASSESSMENTS.** Seller shall pay the 2021 real estate and drainage taxes payable in 2022, when due. Purchaser(s) shall pay real estate taxes due and payable in 2023 and all tax payments and drainage taxes/assessments thereafter.
10. **FARM INCOME/EXPENSE.** All rent, government payments and other income derived from the property applicable to the crops grown in 2021, or before, shall belong to Seller and/or Tenant. All rent, government payments, and other income from the property applicable to the crops grown in 2022 shall belong to Purchaser.
11. **TRANSFER DECLARATIONS AND RECORDING FEES.** Seller and Purchaser agree to execute any real estate transfer declarations required by the State, county or municipality in which the Property is located. Seller shall pay the cost of revenue stamps, if applicable, and Purchaser shall pay the charge for recording the Deed.
12. **LIABILITY OF ESCROW AGENT.** The parties acknowledge that any Escrow Agent hereunder is acting at the request and at their convenience. The Escrow Agent when acting in such capacity shall not be deemed to be the agent of either of the parties hereto and the escrow Agent shall not be liable to either of the parties for any acts or omissions on its part unless taken or suffered in bad faith, in willful disregard of this Contract, or involving gross negligence. Seller and Buyer shall, jointly and severally, indemnify, defend and hold Escrow Agent harmless from and against all costs, claims, and expenses, including reasonable attorneys' fees, incurred in connection with the performance of Escrow Agent's duties hereunder except with respect to acts or omissions taken or suffered by Escrow Agent in bad faith, in willful disregard of this Contract, or involving gross negligence on the part of the Escrow Agent. In no event shall the Escrow Agent be liable for unearned interest with respect to the earnest money deposit.
13. **DEFAULT.** If Purchaser fails to perform any obligation imposed by this Contract, Seller may serve written notice of default upon Purchaser and if such default is not corrected within ten (10) days thereafter, at the option of the Seller, this Contract shall terminate and the Seller shall be entitled to payment of the earnest money paid hereunder as liquidated damages; provided, however, that in the event Purchaser fails to close on the scheduled closing date for any reason, other than a delay caused by Seller, Seller shall be entitled to immediate payment of the earnest money deposit. In the event of failure of Seller to perform the obligations imposed by this Contract, Purchaser's sole remedy hereunder is to terminate this Contract and receive a refund of the earnest money upon similar notice served upon Seller and similar expiration of time period. The Escrow Agent, upon receiving an affidavit from the non-defaulting party stating that his Contract has been terminated as provided herein, shall be entitled to rely upon such affidavit and shall deliver the earnest money to the non-defaulting party. Default by Purchaser shall entitle Seller to court costs and reasonable attorneys' fees incurred in enforcing the provisions of this Contract.
14. **ENTIRE AGREEMENT.** This Contract contains the entire agreement of the parties and no representations, warranties or agreements have been made by either of the parties except as set forth in this Contract.
15. **HEIRS, SUCCESSORS AND ASSIGNS.** This Contract shall enure to the benefit of and shall be binding upon the parties hereto and their respective heirs, successors, and permitted assigns, provided, however, that Purchaser may not assign its rights or obligations hereunder without the prior written consent of the Seller.
16. **TIME IS OF THE ESSENCE.** The time for performance of the obligations of the parties is of the essence of this Contract.
17. **JURISDICTION.** This Contract shall be constructed in accordance with the laws of the State of Indiana. Any provision of this Contract which is unenforceable or invalid, or the inclusion of which would affect the validity, legality, or enforcement of this Contract shall be of no effect, but all the remaining provisions of the Contract shall remain in full force and effect.

18. **ENVIRONMENTAL/DISCLOSURES.** The Purchaser acknowledges that the Seller has not made, will not make and hereby disclaims any and all representations and warranties concerning the environmental condition of the Property. In addition, Seller will not be obligated to remove or cure any existing trash, refuse, or environmental problem.
19. **PROVISIONS RELATING SPECIALLY TO SELLER/TRUST/TRUSTEES/CO-TRUSTEES/SETTLOR AND THEIR RESPECTIVE SPECIAL CIRCUMSTANCES.** Each fiduciary comprising Seller executes this instrument only in its representative capacity and shall not be bound or obligated hereunder except in such capacity. Purchaser acknowledges and agrees that this Agreement is made by such fiduciaries solely in their fiduciary capacity as described in the signatures affixed hereto, and that such fiduciaries shall not be liable for any breach or any failure to perform any obligation under this Agreement except from assets held in the fiduciary capacity described.
20. **SELLING AGENT.** This agreement is solely between Purchaser and Seller. The auctioneer(s)/broker(s)/sales agent(s) shall not be liable for any existing or arising defects or deficiencies in the Property, improvements or other appurtenant structures thereon, nor for any information provided to the Purchaser from sources deemed reliable. The Purchaser acknowledges that it has conducted its own independent investigations, inspections, inquiries and due diligence concerning the Property. The Loranda Group, Inc. (the "Auction Company") and its licensed representatives are exclusively designated agents for the Seller and do not represent the Purchaser(s).
21. **AUCTION/SALES FEE.** The parties agree that no real estate commission/sales/auction fee is due any party in regard to this transaction other than the auction company which Seller has agreed to pay. Each party agrees to indemnify the other and hold it harmless in respect to any commissions, fees, judgments, or expenses of any nature or kind which it may become liable to pay by reason of any claims by or on behalf of brokers, finders, or agents employed by the other party in connection with the transaction contemplated by this contract, or any litigation or similar proceeding arising from such claims. Each party represents to the other that, other than as stated herein, there is no valid basis for such claims.
22. **STRICT CONSTRUCTION.** The language used in this Contract shall be deemed to be the language approved by all parties hereto to express their mutual intent and no rule of strict construction shall be applied against either party.
23. **BINDING.** This contract shall not be binding on Seller unless executed by all the duly authorized representatives of Seller within 24 hours after all auction bidding has been completed.

IN WITNESS WHEREOF, the parties have executed this Contract in two counterparts, each of which shall be deemed an original instrument, as of the day, month and year first above written.

**SELLER:** Catherine Borkowski, Trustee of Aileen Robison Trust

By: \_\_\_\_\_

Date: \_\_\_\_\_

**PURCHASER:** \_\_\_\_\_

Signature: \_\_\_\_\_

**PURCHASER:** \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

**Exhibit "A"**

Tax Parcel Numbers:

10-12-02-100-013.000-034 Clark County, IN (138.74 Acres – S21, T2N, R9E)

10-12-02-200-026.000-034 Clark County, IN (8.07 Acres - S22, T2N, R9E)