

**SCHRADER REAL ESTATE AND AUCTION COMPANY, INC. 1-800-451-2709**

**AGREEMENT TO PURCHASE REAL ESTATE**

To: Virginia McDonald Miller, as Trustee of the Virginia McDonald Miller Trust, and Jay Holmes McDonald, as Trustee of the Jay McDonald Rev. Trust (collectively, "Seller")

Date: **October 27, 2015**

I/We the undersigned ("Buyer") offer to purchase the real estate identified as tract(s) \_\_\_\_\_ in the auction brochure prepared for purposes of the auction conducted on this date by Schrader Real Estate and Auction Company, Inc. ("Auction Company"), said tract(s) being approximately \_\_\_\_\_ (±) acres located in Sec. 15-T21N-R13E and/or Sec. 22-T21N-R13E in Tulsa County, Oklahoma ("Property"). This offer incorporates the provisions of this Agreement to Purchase Real Estate and the attached **Addendum A** (collectively, the "Agreement"). If Seller accepts this offer in writing, the Agreement shall become a contract binding upon the parties to the Agreement.

1. **PURCHASE PRICE.** The purchase price consists of the bid amount, plus a 4% Buyer's Premium, as follows.

\$ \_\_\_\_\_ + \$ \_\_\_\_\_ = \$ \_\_\_\_\_  
(Bid Amount) (4% Buyer's Premium) (Purchase Price)

The purchase price shall be paid in cash at closing, less applied Earnest Money and any other credits due Buyer as may be provided in the Agreement. If a new survey of the Property is hereafter provided in accordance with Section 4, below, the purchase price shall be adjusted proportionately to reflect the difference, if any, between the advertised acres and the gross acres shown in the survey.

- 2. **EARNEST MONEY.** Concurrently with this offer, Buyer is delivering the sum of \$ \_\_\_\_\_ ("Earnest Money") to Executives Title & Escrow Company, LLC, to be held in escrow and applied to the purchase price at closing.
- 3. **TAXES AND ASSESSMENTS.** "Seller's Taxes" means the real estate taxes assessed against and attributable to the Property for: (a) the first part of the calendar year in which the closing occurs, *prorated* on a calendar year basis to the date of closing; and (b) all earlier periods. Any unpaid Seller's Taxes shall be withheld from Seller's proceeds at closing and paid directly to the county; *provided, however*, any portion of Seller's Taxes that is not payable at the time of closing shall be estimated using the most current assessment, rate and/or parcel split information then available and the amount thus estimated shall be paid via credit against the sums due from Buyer at closing, with no further settlement or adjustment after closing. Buyer shall then pay all real estate taxes attributable to the Property which become due after closing. Buyer shall pay all drainage and other assessments, if any, that are last payable without a penalty after closing.
- 4. **SURVEY.** A new perimeter survey of the Property will be provided if and only if: (a) the conveyance of the Property will involve the creation of a new parcel for which there is/are no existing legal description(s); or (b) the official(s) responsible for recording the deed will not accept the conveyance for recording without a new survey; or (c) a new survey is deemed necessary or appropriate for any other reason in Seller's sole discretion. If a new survey is provided: (i) the survey shall be ordered by Auction Company; (ii) the survey shall be sufficient for the purpose of recording the conveyance, but the type of survey shall be determined solely by the Seller; and (iii) the survey costs shall be shared equally (50:50) by Seller and Buyer.
- 5. **DEED; TITLE INSURANCE.** Seller shall furnish at Seller's expense and shall execute and deliver at closing a Warranty Deed conveying the Property to Buyer, subject to the Permitted Exceptions. Seller shall also furnish at Seller's expense an owner's title insurance policy, in the amount of the purchase price, insuring marketable title to the Property; subject, however, to all standard exceptions, conditions and requirements and subject to the Permitted Exceptions. Prior to closing, Buyer shall be entitled to receive a commitment for the issuance of such title insurance policy dated after the date of the Agreement ("Final Title Commitment").
- 6. **PERMITTED EXCEPTIONS.** Buyer shall accept the title, deed, title insurance and any survey subject to and notwithstanding the following matters (each a "Permitted Exception" and collectively the "Permitted Exceptions"): (a) existing roads, public utilities and drains; (b) visible uses and easements; (c) any variation between a deeded boundary line and a fence line, field line, ditch line or other visible occupancy line; (d) recorded easements, conditions, restrictions, reservations and other matters (except liens) appearing of record; (e) current taxes and assessments; (f) any matter disclosed in the Agreement; (g) any lease, reservation, right, title or interest of any person with respect to minerals; and (h) any matter (except liens, if any) disclosed or listed in the preliminary title insurance schedules described in Addendum A.
- 7. **CLOSING.** Closing shall be held on or before January 12, 2016 (or as soon as possible after said date upon completion of the survey, if applicable, the Final Title Commitment and Seller's closing documents). The closing shall be held at the office of Executives Title & Escrow Company, LLC, 8522 E. 61<sup>st</sup> St., Tulsa, OK (Tel: 918-745-9977), or otherwise as mutually agreed. If Seller is unable to convey the Property in conformance with the requirements of the Agreement, either party may terminate the Agreement by written notice to the other, but only after giving the other at least 14 days prior written notice of such nonconformity and opportunity to cure (if Buyer is giving notice) or to waive the nonconformity (if Seller is giving notice). In the event of such termination, Buyer shall receive the Earnest Money as Buyer's sole remedy.
- 8. **RISK OF LOSS.** The Property shall be conveyed at closing in substantially its present condition, normal wear and tear excepted. Seller assumes the risk of loss and damage until closing. Seller's insurance may be canceled as of the closing date.
- 9. **POSSESSION.** Possession shall be delivered in accordance with Addendum A. Seller shall pay for all utilities until possession is delivered.
- 10. **PROPERTY INCLUDED.** The "Property" includes improvements and permanent fixtures, if any, presently existing on the tract(s) identified above. The Property include Seller's interest, if any, with respect to subsurface minerals. However, Seller and Auction Company make no promise, warranty or representation as to the existence, nature or extent of any minerals and/or Seller's interest therein.
- 11. **THE PROPERTY IS SOLD "AS IS" AND "WHERE IS". ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE CONDITION OF THE PROPERTY, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED. IN NO EVENT SHALL SELLER OR AUCTION COMPANY BE LIABLE FOR CONSEQUENTIAL DAMAGES.** Without limiting the foregoing provision, Seller, Auction Company and their respective agents and representatives disclaim any representation or warranty with regard to acreages, zoning matters, location or availability of utilities, availability of building or other permits, whether or not the property qualifies for any specific use or purpose and/or the accuracy of any third party reports or materials provided in connection with the Auction or the Agreement.
- 12. **REMEDIES.** Except as otherwise provided above, if either party ("Defaulting Party") fails to complete this transaction and is in default, the other party may elect either to: (a) terminate the Agreement by written notice to the Defaulting Party; or (b) seek specific performance and/or any other remedy available in equity or at law. If Buyer is the Defaulting Party, the Earnest Money shall be either delivered to Seller as liquidated damages (if Seller elects to terminate the Agreement) or applied towards any judgment for damages or specific performance. If Seller is the Defaulting Party, the Earnest Money shall be returned to Buyer. Notwithstanding any other provision, if this transaction fails to close, the escrow agent or closing agent holding the Earnest Money is authorized to hold such funds until it receives either: (i) written disbursement instructions signed by Buyer and Seller; (ii) a written release signed by one party authorizing disbursement to the other party; or (iii) a final court order specifying the manner in which the Earnest Money is to be disbursed.
- 13. **AGENCY. Auction Company and its agents and representatives are acting solely on behalf of, and exclusively as the agent for, the Seller. The Agreement is solely between Buyer and Seller. The Auction Company and its employees, representatives and independent agents shall not be liable for any existing or arising defects or deficiencies in any land, improvements, fixtures or equipment.**
- 14. **GENERAL PROVISIONS.** The Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, personal representatives and successors. The Agreement constitutes the entire agreement between Buyer and Seller regarding the Property. Neither party is relying upon any other statement or promise and neither shall be bound by any purported oral modification or waiver.
- 15. **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 on or before 11:59 pm on **October 27, 2015**.

Buyer's Name: \_\_\_\_\_ Buyer's Name: \_\_\_\_\_  
Sign: \_\_\_\_\_ Sign: \_\_\_\_\_  
Address: \_\_\_\_\_ Phone: \_\_\_\_\_  
Deed to: \_\_\_\_\_  
Lender / Contact: \_\_\_\_\_ Buyer's Attorney: \_\_\_\_\_  
Earnest Money in the amount of \$ \_\_\_\_\_ received by: \_\_\_\_\_ on \_\_\_\_\_, 2015

**ACCEPTANCE BY SELLER:** Seller hereby accepts this offer on this **27th** day of **October, 2015** and agrees to pay the commission due Auction Company, per separate agreement, from the first payment to Seller.

Seller: \_\_\_\_\_ Seller: \_\_\_\_\_  
Virginia McDonald Miller, as Trustee of the Virginia McDonald Miller Trust Jay Holmes McDonald, as Trustee of the Jay McDonald Rev. Trust

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

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

## ADDENDUM "A"

**SCHRADER REAL ESTATE AND AUCTION COMPANY, INC.**  
**Auction Marketing Specialists Nationwide**

**DATE: October 27, 2015**

**OWNERS: Virginia McDonald Miller, as Trustee of the Virginia McDonald Miller Trust, and Jay Holmes McDonald, as Trustee of the Jay McDonald Rev. Trust**

**SALE MANAGER: Brent Wellings**

**SCHRADER REAL ESTATE AND AUCTION COMPANY, INC., welcomes you to bid YOUR price on the real estate offered at this auction.**

### **PART A - BIDDING PROCEDURES TO KEEP IN MIND**

- 1. All bidding is open to the public. You will need to raise your hand or call out your bid as the auctioneer asks for bids. It is easy! Don't be bashful! This is a one-time opportunity. Watch the auctioneer and his bid assistants. They will take your bid and will assist you with any questions.**
- 2. You may bid on any tract or combination of tracts or the entire property, subject to the following limitations:**
  - (a) Tract 8 is a "swing tract" and may be purchased only by an adjoining landowner or as part of a tract combination providing road frontage.**
  - (b) Tract 15 may be purchased only as a separate tract or as part of a combination that includes Tract 13.**
- 3. Bidding will remain open on individual tracts and all combinations until the close of the auction. Bidding will be on a lump sum basis. Minimum bids are at the discretion of the auctioneer.**
- 4. Your bidding is not conditional upon financing, so be sure you have arranged financing, if needed, and are capable of paying cash at closing.**
- 5. At the close of bidding, each high bidder shall be required to execute a written offer in the form of the Agreement to Purchase Real Estate and Addendum A provided in each Bidder's Packet, with the blanks filled in as applicable. These documents are hereinafter referred to respectively as the "Agreement to Purchase" and this "Addendum A" and collectively as the "Agreement".**
- 6. The Sellers are present and we anticipate that the top bid(s) at the close of the auction will be accepted. The final bid(s), however, are subject to the Sellers' acceptance or rejection.**

## PART B - TERMS OF SALE OUTLINED

7. A Buyer's Premium equal to 4% of the high bid amount will be charged to the Buyer and added to the bid amount to arrive at the contract purchase price.
8. 10% of the purchase price is due as a cash down payment at the close of auction. A cashier's check or a personal or corporate check immediately negotiable is satisfactory for the down payment. The balance of the purchase price is due in cash at closing.
9. The closing shall be held on or before January 12, 2016 (or as soon as possible after said date upon completion of the survey, if applicable, the final title commitment and Sellers' closing documents). The closing agent's fee for administering the closing shall be shared equally (50:50) between Buyer and Sellers. Buyer shall pay any closing charges due to Buyer securing a mortgage.
10. At closing, Sellers shall furnish at Sellers' expense the deed and owner's title insurance in accordance with the terms of Section 5 of the Agreement to Purchase. The title is to be conveyed and the title insurance is to be issued free and clear of liens (except current taxes), but subject to all easements and all other "Permitted Exceptions" which are described in Section 6 of the Agreement to Purchase.
11. Preliminary title insurance schedules have been prepared by Executives Title & Escrow Company, LLC for Tracts 1 thru 10 (dated September 11, 2015) and Tracts 11 thru 15 (dated August 28, 2015) and are available for your review in the auction display area.
12. The title company has provided copies of the pipeline easements and other recorded exceptions listed in the preliminary title insurance schedules, all of which are available for your review in the auction display area. The listed exceptions include an ingress-egress easement over the south 35 feet of Tract 15 serving adjoining land to the east.
13. The land described in the preliminary title insurance schedules includes a 10-acre parcel to the north of Tract 10 that is not part of the auction property and will be excepted in the Final Title Commitment.
14. The sale of the auction property or any part thereof includes all of Sellers' interest, if any, with respect to subsurface minerals. However, Sellers and Auction Company make no promise, warranty or representation as to the existence, nature or extent of any minerals and/or Sellers' interest therein.
15. Real estate taxes shall be prorated to the date of closing in accordance with the terms of the Agreement to Purchase. Buyer shall assume and pay all special assessments, if any, that are last payable without a penalty after the date of closing.
16. Possession shall be delivered at closing except that possession of Tracts 11 thru 15 shall be delivered subject to the rights of the tenant under the existing lease which expires on February 28, 2016.
17. If any tract or combination is sold which cannot be conveyed using existing legal description(s), one or more new surveys shall be procured in accordance with the

terms of the Agreement to Purchase. Otherwise, a new survey shall be provided only as Sellers may deem necessary or appropriate in Sellers' sole discretion.

18. If a new survey is provided, the survey will be ordered by Auction Company and the survey costs shall be shared equally (50:50) between Buyer and Sellers. Any survey of adjacent tracts purchased in combination will be for the perimeter only.
19. If a new survey is provided, the purchase price shall be adjusted proportionately to reflect the difference, if any, between the advertised acres and the gross acres shown in the survey.
20. If Buyer disputes the location of a surveyed boundary or any other boundary, Auction Company, with the consent of Sellers, may (but is not required to) terminate the Agreement by giving written notice of termination to Buyer and, in the event of such termination, the earnest money shall be refunded to Buyer and Buyer shall have no further rights with respect to the property and/or the Agreement.
21. Boundary lines and auction tract maps depicted in the auction brochure and other marketing materials are approximations provided for illustrative purposes only. Flags and lath posted prior to the auction indicate approximate locational references only. Such maps and markers are not provided as survey products and are not intended to depict or establish authoritative boundaries or locations.
22. The advertised acres are approximate and have been estimated based on property tax information, existing legal descriptions and/or aerial mapping. No warranty or authoritative representation is made with respect to the number of acres included with the auction property as a whole or any individual auction tract.
23. Tract 15 has 23 feet of street frontage on Hudson Ave. according to the county engineer's office. Unless it is purchased either in combination with Tract 13 or by an adjoining landowner, Tract 15 will require a variance from the 30-foot minimum street frontage requirement in order to qualify for a building permit. An application for such a variance has been filed with the Tulsa County Board of Adjustment and is scheduled to be heard on November 17, 2015. Sellers shall have no obligation with respect to the variance application except to present the application at the Board of Adjustment hearing. The Buyer of Tract 15 agrees to cooperate with Sellers' efforts to obtain such a variance. All Buyers agree not to object to the granting of such a variance.
24. If this paragraph 24 applies, the Buyer of Tract 15 shall have the right to cancel the purchase of Tract 15 and receive a full refund of the earnest money. This paragraph 24 shall apply if and only if: (a) Tract 15 is purchased as a separate tract and not in combination with Tract 13; (b) Tract 15 is purchased by someone other than an adjoining landowner; and (c) a variance is not granted by the Tulsa County Board of Adjustment prior to January 12, 2016 which would permit future building with the existing frontage on Hudson Ave.
25. If Tract 15 is purchased in combination with Tract 13 or by an adjoining landowner, Buyer shall be obligated to purchase Tract 15 in accordance with the Agreement regardless of whether the variance is granted.

26. Information booklets (as updated from time to time throughout the marketing period) 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 information area. The information booklets include information obtained or derived from third-party sources, including surety® soil maps, topographical map, FSA information, flood zone map, water line map, water availability information, water district rules and regulations, school district map, property tax information, and preliminary title opinions. Although believed to be from reliable sources, such information is subject to verification by a prospective buyer and is not intended as a substitute for a prospective buyer's independent review and investigation of the property. Auction company and Sellers disclaim any warranty or liability for the information provided.
27. Sellers shall have no obligation to erect any fencing before or after closing and shall have no liability for the cost of any fencing. Any fencing deemed necessary or desirable by a Buyer shall be the sole responsibility and expense of that Buyer.
28. Your bids are to be based solely upon your inspection. All property is sold "AS IS" without any warranty. Without limiting the foregoing, Sellers and Auction Company and their respective agents and representatives make no warranty with respect to: any specific zoning classifications or that the property qualifies for any specific use or purpose; availability or location of utilities; availability of building, driveway, water or septic permits; or any information or materials prepared or provided by any third party regarding the auction property.
29. Deeds shall be recorded in the order designated by Sellers.
30. The terms of the Agreement to Purchase and this Addendum A are non-negotiable. You will be closing on the tract or combination of tracts on which you are the successful bidder in the manner in which you bid at the auction.
31. Schrader Real Estate and Auction Company, Inc. and its agents and representatives are exclusively the agents of Sellers.
32. Time is of the essence. All terms and conditions of the Agreement and Addendum A shall survive the closing. The Agreement to Purchase and this Addendum A shall be construed as a whole and shall be harmonized to the extent possible. However, if any provision of this Addendum A is in conflict with a provision of the Agreement to Purchase, the provision of this Addendum A shall control.

Thank you for your interest in this offering. If you have any questions, please feel free to talk to one of our representatives.

**SUPPLEMENTAL ANNOUNCEMENTS: With Sellers' consent, the auctioneer may make one or more official announcements to supplement this Addendum A. Such supplemental announcement(s), if any, shall be posted for review in the auction display area, shall be read by the auctioneer along with this Addendum A prior to bidding and shall be signed by the high bidder(s) at the close of bidding. If any such supplemental announcement is in conflict with a provision of the Agreement to Purchase or this Addendum A, the provision of such supplemental announcement shall control.**

**(To be attached to Agreement to Purchase)**  
**\*Schrader Real Estate and Auction Company, Inc. represents only Seller.\***

**OKLAHOMA REAL ESTATE COMMISSION**

**DISCLOSURE TO SELLER OR BUYER OF BROKERAGE DUTIES, RESPONSIBILITIES AND SERVICES**

This notice may be part of or attached to any of the following:

- |                                                               |                                                      |                                           |
|---------------------------------------------------------------|------------------------------------------------------|-------------------------------------------|
| <input type="checkbox"/> Buyer Brokerage Agreement            | <input type="checkbox"/> Listing Brokerage Agreement | <input type="checkbox"/> Option Agreement |
| <input checked="" type="checkbox"/> Sales Agreement (auction) | <input type="checkbox"/> Exchange Agreement          | <input type="checkbox"/> Other _____      |

**1. Duties and Responsibilities.** A Broker who provides Brokerage Services to one or both parties shall describe and disclose in writing the Broker's duties and responsibilities prior to the party or parties signing a contract to sell, purchase, option, or exchange real estate.

A Broker shall have the following duties and responsibilities which are mandatory and may not be abrogated or waived by a Broker, whether working with one party, or working with both parties:

- A. treat all parties to the transaction with honesty and exercise reasonable skill and care;
- B. unless specifically waived in writing by a party to the transaction:
  - 1) receive all written offer and counteroffers;
  - 2) reduce offers or counteroffers to a written form upon request of any party to a transaction; and
  - 3) present timely all written offers and counteroffers.
- C. inform, in writing, the party for whom the Broker is providing Brokerage Services when an offer is made that the party will be expected to pay certain closing costs, Brokerage Service costs and the approximate amount of the costs;
- D. keep the party for whom the Broker is providing Brokerage Services informed regarding the transaction;
- E. timely account for all money and property received by the Broker;
- F. keep confidential information received from a party or prospective party confidential. The confidential information shall not be disclosed by a Broker without the consent of the party disclosing the information unless consent to the disclosure is granted in writing by the party or prospective party disclosing the information, the disclosure is required by law, or the information is made public or becomes public as the result of actions from a source other than the Broker. The following information shall be considered confidential and shall be the only information considered confidential in a transaction:
  - 1) that a party or prospective party is willing to pay more or accept less than what is being offered,
  - 2) that a party or prospective party is willing to agree to financing terms that are different from those offered,
  - 3) the motivating factors of the party or prospective party purchasing, selling, optioning or exchanging the property, and
  - 4) information specifically designated as confidential by a party unless such information is public.
- G. disclose information pertaining to the Property as required by Residential Property Condition Disclosure Act;
- H. comply with all requirements of the Oklahoma Real Estate Code and all applicable statutes and rules;
- I. when working with one party or both parties to a transaction, the duties and responsibilities set forth in this section shall remain in place for both parties.

**2. Brokerage Services provided to both parties to the transaction.** The Oklahoma broker relationships law (Title 59, Oklahoma Statutes, Section 858-351 – 858-363) allows a real estate Firm to provide brokerage services to both parties to the transaction. This could occur when a Firm has contracted with a Seller to sell their property and a prospective Buyer contacts that same Firm to see the property. If the prospective Buyer wants to make an offer on the property, the Firm must now provide a written notice to both the Buyer and Seller that the Firm is now providing brokerage services to both parties to the transaction. The law states that there are mandatory duties and responsibilities that must be performed by the broker for each party.

**3. Broker providing fewer services.** If a Broker intends to provide fewer Brokerage Services than those required to complete a transaction, the Broker shall provide written disclosure to the party for whom the Broker is providing services. The disclosure shall include a description of those steps in the transaction that the Broker will not provide and state that the Broker assisting the other party in the transaction is not required to provide assistance with these steps in any manner.

**4. Confirmation of disclosure of duties and responsibilities.** The duties and responsibilities disclosed by the Broker shall be confirmed in writing by each party in a separate provision, incorporated in or attached to the contract to purchase, option or exchange real estate.

I understand and acknowledge that I have received this notice on \_\_\_\_\_ day of \_\_\_\_\_, 2015.

(Print Name) \_\_\_\_\_ (Signature) \_\_\_\_\_

(Print Name) \_\_\_\_\_ (Signature) \_\_\_\_\_