

To: Jerry W. Barker & Susan R. Barker ("Seller")

**AGREEMENT TO PURCHASE**

Date: October 27, 2020

I/We the undersigned Buyer(s) ("Buyer") offer to purchase Tract(s) \_\_\_\_\_, being approx. \_\_\_\_\_ (±) acres of land in Rogers County, Oklahoma, as identified by reference to the same tract number(s) in the attached **Exhibit A**, together with the improvements and permanent fixtures, if any, presently existing on said land (the "Property"), and being one or more of the tracts put up for bids at the public auction conducted on this date by Schrader Real Estate and Auction Company, Inc.. This offer incorporates the terms and conditions set forth herein, the Auction Tract Map attached as **Exhibit A** and the auction announcements attached as **Addendum A** (collectively, this "Agreement").

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

- PURCHASE PRICE.** The purchase price consists of the bid amount plus a 4% Buyer's Premium as shown above (subject to adjustment if and only if an adjustment is applicable in accordance with the terms of Addendum A) and shall 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.
- EARNEST MONEY.** Concurrently with this offer, Buyer shall deliver an earnest money deposit in the amount of \$ \_\_\_\_\_ (the "Earnest Money") payable to Escrow Agent, to be held in escrow and applied to the purchase price at closing. "Escrow Agent" refers to **Executives Title & Escrow, LLC, 8522 E. 61st St., Tulsa, OK (Tel: 918-392-3632)**.
- TAXES.** "Seller's Taxes" refers to general real estate taxes and any special assessments that have been or will be assessed against any tax parcel that includes any part of the Property for the first part of the calendar year in which the closing occurs, **prorated** on a calendar year basis to the date of closing, and all prior years. 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 ascertainable and payable at the time of closing shall be estimated based on 100% of the amount last billed for a calendar year and the amount thus estimated (after adjusting for any tax parcel split and prorating to the date of closing) 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 and assessments when due after closing to the extent attributed to the Property.
- SURVEY.** A new survey shall be obtained if and only if obtained in accordance with the provisions of Addendum A.
- DEED; EVIDENCE OF TITLE.** The Property shall be conveyed by Warranty Deed (subject to the Permitted Exceptions), to be furnished at Seller's expense. Seller shall also furnish at Seller's expense a commitment, dated after the Auction and prior to closing, for the issuance of a standard owner's title insurance policy in the amount of the purchase price insuring marketable title to the Property in Buyer's name, subject to standard exceptions, conditions and requirements and subject to the Permitted Exceptions (the "Final Title Commitment"). If Buyer and/or Buyer's lender elect(s) to purchase title insurance, all costs of issuing any owner's and/or lender's title insurance policy shall be charged to Buyer and Seller shall reasonably cooperate with respect to the satisfaction of any reasonable and customary requirements for issuing an ALTA standard coverage title insurance policy; *provided, however,* Seller shall have no obligation with respect to and Buyer's obligations are not contingent upon: (a) the satisfaction of any requirement that is contrary to or inconsistent with the provisions of this Agreement; (b) the satisfaction of any requirement that can only be satisfied by Buyer or that reasonably should be satisfied by Buyer as opposed to Seller; and/or (c) the availability or issuance of any extended or special title insurance coverage or title insurance endorsement.
- PERMITTED EXCEPTIONS.** Buyer agrees to accept the title, any title insurance and any survey subject to and notwithstanding any of the following matters (collectively the "Permitted Exceptions"): (a) existing roads, public utilities and drains; (b) visible and/or apparent uses and easements; (c) existing pipelines, whether or not visible or apparent and whether or not appearing of record; (d) any variation between a deeded boundary line and a fence line, field line, ditch line or other visible occupancy or occupancy line; (e) any lien for current, non-delinquent property taxes; (f) local ordinances and zoning laws; (g) any outstanding reservations, severances, leases and/or other rights with respect to minerals; (h) any matter disclosed in this Agreement; and (i) easements, conditions, restrictions, reservations and/or other matters (except liens, if any) appearing of record and disclosed, identified or listed as exceptions in the preliminary title insurance schedules described in Addendum A.
- CLOSING.** The closing shall be held at and/or administered through the office of the Escrow Agent and shall be completed **on or before November 27, 2020** (or as soon as possible after said date upon completion of the Final Title Commitment and Seller's closing documents). If Seller is 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, however,* prior to any such termination by Buyer, Buyer must give Seller sufficient written notice of the non-conformity to enable Seller to cure such nonconformity and Seller shall have the right to extend the time for closing, in order to cure such nonconformity, for a period of up to 60 days from the later of the effective delivery of such notice or the targeted closing date stated above.
- POSSESSION; RISK OF LOSS.** Possession of the Property shall be delivered at closing in substantially its present condition, normal use, wear and tear excepted. Seller assumes the risk of loss and damage until closing.
- THE PROPERTY IS SOLD "AS IS, WHERE IS", WITHOUT ANY WARRANTY, EXPRESS OR IMPLIED, AS TO ITS CHARACTER OR CONDITION AND/OR ITS SUITABILITY FOR ANY PARTICULAR USE OR PURPOSE.**
- REMEDIES.** If the Earnest Money is not effectively paid in accordance with this Agreement *or* if this sale fails to close due to Buyer's default (each a "Buyer Default"), Seller shall have the right to recover 10% of the purchase price as liquidated damages and the right to give notice terminating Buyer's right to acquire the Property (without prejudice to the right to recover liquidated damages). Upon such termination, Seller shall have the absolute and unconditional right to re-sell the Property free and clear of any right or claim of Buyer. 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 may recover actual damages plus attorney fees and expenses. If this sale fails to close due to Seller's default: (a) Buyer shall have the right to demand and receive a refund of the Earnest Money and, upon such demand and receipt, this Agreement shall be terminated in all respects; or (b) at any time prior to such termination, Buyer may elect instead to seek specific performance. If this sale fails to close, the Earnest Money shall be retained in escrow pending disbursement instructions: (i) signed by both parties (or by one party authorizing disbursement to the other); or (ii) 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 and, 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**.
- 1031 EXCHANGE.** Each party shall reasonably cooperate if another party intends to structure the transfer or acquisition of the Property as part of an exchange under 26 U.S.C. § 1031 ("Exchange"). This Agreement may be assigned for purposes of an Exchange, but the assignor shall not be released from any obligation. A party is not required to assume or incur any additional obligation in connection with another party's Exchange.
- GENERAL PROVISIONS.** Schrader Real Estate and Auction Company, Inc. and its agents are acting solely on behalf of and exclusively as the agents for the Seller. This Agreement shall bind and benefit the parties and their heirs, legal representatives and successors. This Agreement constitutes the entire agreement between the parties regarding the Property. Neither party is relying on any other statement or promise and neither shall be bound by any purported oral modification or waiver. Time is of the essence. All provisions of this Agreement shall be read and construed together as a harmonious whole and shall survive the 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 or fax and/or the use of an e-signature service such as DocuSign® shall have the same effect as the delivery of an original signature.
- 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, 2020**.

Printed Name(s) of Buyer(s): \_\_\_\_\_

Signature(s) of Buyer(s): \_\_\_\_\_

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

Buyer's Email: \_\_\_\_\_ Lender/Contact: \_\_\_\_\_

**ACCEPTED BY SELLER** on this 27th day of October, 2020:

Sign: \_\_\_\_\_ (Jerry W. Barker) Sign: \_\_\_\_\_ (Susan R. Barker)

**RECEIPT OF EARNEST MONEY** in the amt. of \$ \_\_\_\_\_ is acknowledged by Escrow Agent as of \_\_\_\_ / \_\_\_\_ / 2020:

EXECUTIVES TITLE & ESCROW, LLC, by: Sign: \_\_\_\_\_ Print: \_\_\_\_\_

# EXHIBIT A

## Auction Tract Map

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

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

Auction Date: 10/27/2020

Pt. NE4 Sec. 12-T23N-R14E in Rogers County, State of Oklahoma



Boundary lines and/or acreages depicted in the marketing materials and auction tract maps, including this Exhibit A, are approximations and are provided for identification and illustration purposes only. They are not provided or intended as survey products or as authoritative representations of property boundaries and/or acreages.

I/We have read this Addendum and agree to these auction conditions.

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

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

## ADDENDUM A

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

**Date:** October 27, 2020

**Owners:** Jerry W. Barker and Susan R. Barker

**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. An auction tract map is included in your Bidder's Packet as **Exhibit A**. You may bid on any tract or combination of tracts or the entire property. Bidding will remain open on individual tracts and combinations until the close of the auction.
3. Bidding will be on a lump sum basis. Minimum bids are at the auctioneer's discretion.
4. Bids are not contingent on financing, so be sure you have arranged financing, if needed, and are able to pay cash at closing.
5. 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:**

6. A Buyer's Premium equal to 4% of the high bid amount will be charged to each Buyer and added to the bid amount to arrive at the purchase price.
7. 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.
8. The closing will be scheduled in accordance with the Agreement to Purchase in your Bidder's Packet. The targeted closing period is on or before November 27, 2020.

9. The closing agent's fee to administer the closing will be shared equally (50:50) between Buyer and Sellers. Buyer will pay all costs of any loan obtained by Buyer. Sellers will pay the documentary stamp tax.
10. Real estate taxes and assessments will be prorated to the date of closing.
11. Preliminary title insurance schedules dated September 21, 2020 have been prepared by Executives Title & Escrow and are available to review in the auction display area, along with copies of the recorded documents listed as exceptions.
12. Sellers will furnish a Final Title Commitment at Sellers' expense in accordance with the terms of Section 5 of the Agreement to Purchase. If Buyer elects to purchase title insurance, the cost of issuing any title insurance policy will be charged to Buyer.
13. The title is to be conveyed and the title insurance is to be issued free and clear of any mortgage or lien (except a lien for property taxes not yet due and payable). However, Buyer agrees to accept title and acquire the property subject to all easements and other "Permitted Exceptions" as defined in Section 6 of the Agreement to Purchase.
14. Any sale will include the minerals currently owned by Sellers (if any). However, no promise, warranty or representation will be made as to the existence or value of any minerals or the nature or extent of Sellers' interest therein.
15. Possession shall be delivered at closing.
16. For any closing, a new survey shall be obtained if and only if: (a) the conveyance will involve the creation of a new parcel; or (b) the official(s) responsible for recording the deed will not accept the conveyance for recording without a new survey; or (c) Sellers elect to obtain a new survey for any other reason in Sellers' sole discretion.
17. If a new survey is obtained, the survey shall be ordered by the Auction Company and shall be sufficient for the purpose of recording the conveyance, but the type of survey shall otherwise be determined solely by the Sellers. Any survey of adjacent tracts purchased in combination will be for the perimeter only.
18. The cost of any survey obtained in accordance with this Addendum A shall be shared equally (50:50) by Sellers and Buyer.
19. If a new survey is obtained for any closing in accordance with the provisions of this Addendum A, the purchase price shall be adjusted proportionately to reflect any difference between the acre estimates shown in Exhibit A and the gross acres shown in the survey except with respect to Tract 2 or any combination that includes Tract 2.
20. The acres shown in Exhibit A have been estimated based on the approximate total acres shown in the property tax records and an approximate, provisional allocation of the total between the potential new tracts. No warranty or authoritative representation is made as to the number of acres included with any tract or set of tracts.

21. Boundary lines and auction tract maps depicted in Exhibit A and the auction marketing materials 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.
22. 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.
23. Advertised square footages and dimensions are approximate. The square footage of the home has been estimated based on property tax information. No warranty or authoritative representation is made as to the size or dimensions of any building or structure or any part thereof.
24. The Residential Property Condition Disclosure Statements for the home and cabin on Tract 2 are posted (including additional pages for items marked "yes"). These disclosure statements shall be signed by the Buyer of Tract 2 at the end of the auction.
25. The sale of Tract 2 includes the hot tub located on the back patio.
26. 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 information area. The information booklets include information obtained or derived from third-party sources, including soil maps, flood zone maps, topography maps, property tax 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.
27. Your bids are to be based solely upon your inspection. All property is sold "AS IS" without any warranty. Without limiting the foregoing provisions, Sellers and Auction Company and their respective agents and representatives make no warranty or authoritative representation as to: (a) zoning matters; (b) whether or not the property qualifies for any particular use; (c) the availability or location of utilities; (d) the availability of any building permit, driveway permit, septic permit or any other permit; or (e) the accuracy of any materials or information prepared or provided by any third party regarding the auction and/or the property.
28. At the close of the auction, each high bidder shall execute a purchase contract in the form provided in each Bidder's Packet, consisting of the Agreement to Purchase, Exhibit A and this Addendum A. The terms of these documents 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.

29. Schrader Real Estate and Auction Company, Inc. and its agents and representatives are exclusively the agents of the Sellers. Each Bidder's Packet includes the Oklahoma form of "Disclosure to Seller or Buyer of Brokerage Duties, Responsibilities and Services" which shall be signed by the parties and attached to the Agreement to Purchase.

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

ANY ANNOUNCEMENTS MADE BY THE AUCTIONEER  
TAKE PRECEDENCE OVER THIS PRINTED MATERIAL.

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:

- Buyer Brokerage Agreement, Listing Brokerage Agreement, Option Agreement, Sales Agreement, Exchange Agreement, 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.
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.

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.

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 \_\_\_\_\_, 20\_\_\_\_\_.

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

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