

AGREEMENT TO PURCHASE

Date: **March 23, 2021**

I/We the undersigned Buyer(s) ("Buyer") offer to purchase the residential lot and improvements located at 302 W. Washington St. in the Town of North Webster, Kosciusko County, Indiana (the "Property"), being the real estate put up for bids via online auction conducted on this date by Schrader Real Estate and Auction Company, Inc. ("Auction Company") on behalf of Malcolm Joe Beezley, Sheila R. Beezley and Teresa M. Day (collectively, "Seller"). This offer incorporates the terms and conditions set forth herein and the bidding procedures and auction announcements set forth in Addendum A (collectively, this "Agreement").

- 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).
- EARNEST MONEY.** Buyer shall deliver to Auction Company an earnest money deposit in the amount of \$ _____ ("Earnest Money") **on or before Wednesday, March 24, 2021**, to be held in escrow and applied to the purchase price at closing.
- TAXES AND ASSESSMENTS.** "Seller's Taxes" refers to: (a) real estate taxes assessed or to be assessed against 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 for all prior years; and (b) any drainage or other special assessments attributed to the Property and last payable without a penalty on or before the closing date. 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 based on 100% of the amount last billed for a calendar year and the amount thus estimated (and prorated 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 due after closing.
- SURVEY.** A new survey shall be obtained if and only if obtained in accordance with the provisions of Addendum A.
- 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 furnish a commitment, updated to a date 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"). At closing, Seller shall pay for the cost of issuing a standard owner's title insurance policy in accordance with the Final Title Commitment.
- PERMITTED EXCEPTIONS.** Buyer agrees to accept the title and acquire the Property subject to and notwithstanding: (a) existing roads, utilities and drains; (b) any visible or apparent use; (c) any variation between a deeded boundary line and a fence line, field line, ditch line or other visible or apparent occupancy or occupancy line; (d) any easement, condition, restriction or other matter (except liens) appearing of record; (e) any outstanding right or severance as to minerals; (f) any recorded oil and gas lease and/or wind energy easement, active or not; (g) current property taxes and assessments; (h) any matter disclosed in this Agreement; and/or (i) any matter (except liens) referenced or depicted in the preliminary title insurance schedules described in Addendum A (collectively, the "Permitted Exceptions").
- CLOSING.** Closing shall be held **on or before April 23, 2021** (or as soon as possible after said date upon completion of the survey, if applicable, the Final Title Commitment and Seller's closing documents) at the office of **North American Title Co., 3534 Commerce Dr., Warsaw, IN (Tel: 574-376-4099)**, or otherwise as mutually agreed. 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 nonconformity to enable Seller to cure the nonconformity and Seller shall have the right to extend the closing date for up to 30 days after receiving such notice in order to cure such nonconformity.
- POSSESSION.** Possession shall be delivered in accordance with Addendum A.
- THE PROPERTY IS SOLD "AS IS, WHERE IS", WITHOUT ANY WARRANTY OF ANY KIND AS TO ITS CHARACTER OR CONDITION AND/OR ITS SUITABILITY FOR ANY PARTICULAR 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.**
- AGENCY.** Auction Company and its affiliated agents represent only Seller, not Buyer. This Agreement is between Buyer and Seller. Auction Company and its agents and representatives shall not be liable for any defect or deficiency in any land, improvements, fixtures or equipment.
- 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.** 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. Neither party is relying upon any other statement or promise and neither 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.
- 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 **Wednesday, March 24, 2021**.

Printed Name(s) of Buyer(s): _____

Signature(s) of Buyer(s): _____

Address: _____ Phone: _____

Deed to: _____ Lender/Contact: _____

ACCEPTED BY SELLER on the _____ day of March, 2021:

Sign: _____
(Malcolm Joe Beezley)

Sign: _____
(Sheila R. Beezley)

Sign: _____
(Teresa M. Day)

RECEIPT OF THE EARNEST MONEY is hereby acknowledged by the Auction Company as follows:

Amount Received: \$ _____

Date Received: _____ / _____ / 2021

SCHRADER REAL ESTATE AND AUCTION COMPANY, INC., by:

Sign: _____

Print: _____

Buyer(s): _____

Sellers: _____

ADDENDUM A

BIDDING PROCEDURES AND AUCTION TERMS

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

On behalf of: Malcolm Joe Beezley, Sheila R. Beezley and Teresa M. Day

Online Bidding Ends: March 23, 2021 at 6:00 p.m. *

*(*or 5 minutes after the last bid)*

1. Bidding is online only and is open to anyone who:
 - a. Has obtained an Online Bidding Number by successfully applying for access to Online Bidding Services and agreeing to the Online Bidding Terms and Conditions through the Auction Company's website (<http://www.schraderauction.com> and/or <https://schrader.nextlot.com>); and
 - b. Has successfully registered to participate in this auction and agreed to the Auction Terms that apply to this auction.
2. The Auction Terms that apply to this auction ("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. The Auction Terms contained in the Agreement to Purchase and this Addendum A are non-negotiable and they supersede and control over any oral statements and/or any other written terms stated in the auction brochure, the auction website or otherwise.
3. Bidding will close at 6:00 o'clock p.m. on Tuesday, March 23, 2021; provided, however, if any bid is received within the last 5 minutes prior to the scheduled close of bidding, the online bidding platform will extend the bidding for an additional five minutes beyond the last bid received. This extension of bidding will continue until no bid has been made for a period of five minutes.
4. After the close of bidding, a purchase contract shall be executed by the high bidder ("Buyer") in the form of the Agreement to Purchase posted to the auction website and this Addendum A.
5. The final high bid is subject to the Sellers' acceptance or rejection.
6. Buyer shall deliver an earnest money deposit to Auction Company in the amount of 10% of the purchase price. The earnest money may be delivered by check or wire transfer, but it must be received by Auction Company **on or before Wednesday, March 24, 2021.**

7. The balance of the purchase price is due in cash at closing. Bidding is not contingent on financing. Each bidder is responsible for having arranged any financing prior to bidding.
8. The closing will be scheduled in accordance with Section 7 of the Agreement to Purchase. The targeted closing period is on or before April 23, 2021.
9. 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.
10. Real estate taxes shall be prorated to the date of closing. Buyer will assume and pay all assessments, including drainage assessments, if any, that are last payable without a penalty after the date of closing.
11. At closing, Sellers will furnish the deed and owner's title insurance at Sellers' expense in accordance with the terms of Section 5 of the Agreement to Purchase.
12. Preliminary title insurance schedules dated of February 11, 2021 have been prepared by North American Title Company and posted to the auction website.
13. Buyer agrees to acquire the property subject to all matters defined as "Permitted Exceptions" in Section 6 of the Agreement to Purchase.
14. Delivery of possession will be effective upon completion of the closing.
15. It is expected that the property will be conveyed using existing legal descriptions, without obtaining a new survey. A new survey shall be obtained if and only if: (a) the official(s) responsible for recording the deed will not accept the conveyance for recording without a new survey; or (b) Sellers elect to obtain a new survey for any other reason in Sellers' sole discretion.
16. 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. The cost of any such survey shall be shared equally (50:50) by Sellers and Buyer.
17. The advertised acres are based on the acres shown in the property tax records and existing legal description. No warranty or authoritative representation is made as to the number of acres included with the auction property. The purchase price shall not be subject to adjustment regardless of the number of acres shown in any survey or other record prepared before or after the auction.
18. 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.

19. 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.
20. Information booklets have been provided to prospective buyers in printed form and/or via download from the auction website. The information booklets include information obtained or derived from third-party sources, including home maintenance invoices, 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.
21. The Seller's Residential Real Estate Sales Disclosure form and the lead-based paint disclosure form have been posted to the auction website and shall be signed by the Buyer at the end of the auction.
22. Buyer's obligation to purchase and acquire the Property at closing is not contingent upon any post-auction inspection, investigation or evaluation of the condition of the Property. Buyer is responsible for having completed all such 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".
23. 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.
24. Schrader Real Estate and Auction Company, Inc. and its agents and representatives are exclusively the agents of the Sellers.