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

Date: **January 9, 2023**

AGREEMENT TO PURCHASE

I/We the undersigned Buyer(s) ("Buyer") offer to purchase the real estate put up for bids via timed online auction conducted by Schrader Real Estate and Auction Company, Inc. ("Auction Company") on behalf of Stephen P. Harris and Carla A. Harris ("**Seller**"), being the commercial office building, parking lot and any other improvements and/or permanent fixtures located at 222 N. Buffalo St., Warsaw, Indiana (Kosciusko County) and identified for property tax purposes as N 1/2 Lot 52 O P (Parcel ID 43-11-08-300-708.000-032) and N 1/2 LOT 51 & S 1/2 LOT 52 OP (Parcel ID 43-11-08-300-755.000-032) (the "Property"), and being the real estate identified for purposes of the auction as "**Tract 1**". This offer incorporates the terms and conditions set forth herein and the bidding procedures and auction terms attached as **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.** At least 10% of the purchase price shall have been (or shall be) delivered to Auction Company to be held in escrow as an earnest money deposit ("Earnest Money") and applied to the purchase price at closing. Any bid deposit delivered by Buyer shall be held by the Auction Company as the Earnest Money for purposes of this Agreement. If and to the extent not paid from Buyer's bid deposit, the Earnest Money must be delivered to and received by Auction Company on or before ***Tuesday, January 10, 2023***.
3. **TAXES; ASSESSMENTS.** "Seller's Taxes" refers to: (a) real estate taxes assessed against the Property and attributed to the period up to and including the day of closing, **prorated** on a calendar year basis to the date of closing; and (b) any special assessments attributed to the Property and last payable without a penalty on or before the date of closing. 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 Seller's prorated portion of 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 and assessments due after closing.
4. **SURVEY.** The Property shall be conveyed using the existing legal descriptions without obtaining a new 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 and title insurance 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 subdivision 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 property taxes or assessments not yet payable; (h) any matter disclosed in Addendum A; and/or (i) any matter (except liens) referenced or shown in the preliminary title insurance schedules described in Addendum A.
7. **CLOSING.** It is anticipated that the closing will be scheduled by mutual agreement and completed **on or before February 9, 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 **February 9, 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 **Fidelity National Title Company, 108 W. Main St., Warsaw, IN (Tel: 574-268-0065)**.
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. **EXCLUDED ITEMS.** This purchase does not include any personal property presently existing on the purchased tract(s).
11. **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.**
12. **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**.
13. **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.
14. **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.
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 before the end of the ***first business day after the close of bidding***.

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

Signature(s) of Buyer(s): ____

Buyer's Address: ____

Buyer's Tel: ______________________ Buyer's Email: ______________________

Deed to: ______________________ Lender/Contact: ______________________

ACCEPTED BY SELLER on January _______, 2023:

Sign: ______________________ (Stephen P. Harris) **Sign:** ______________________ (Carla A. Harris)

EARNEST MONEY RECEIPT: Auction Company acknowledges receipt of the Earnest Money in the amount of $__________________________.
SCHRADER REAL ESTATE AND AUCTION COMPANY, INC., by:

Sign: ______________________ **Print:** ______________________ **Date Received:** ______________________

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

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:
Stephen P. Harris and Carla A. Harris

Online Bidding Ends: January 9, 2023 at 6:00 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/8377)**; 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. Please note the following updates to the marketing materials:
   a. Tract 2 has been withdrawn. Bidding is on Tract 1 only.
   b. To bid more than $50,000, you must deliver a bid deposit to the Auction Company prior to bidding. Any bid over $50,000 will be limited to ten times (10x) the amount of your bid deposit.

3. The initial bidding period ends at 6:00 o'clock p.m. (EDT) on Monday, January 9, 2023, at which time all bidding will close *unless* the bidding is extended in accordance with paragraph 4 below.

4. 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:

5. 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 terms are non-negotiable and they supersede and control over any oral statements and/or any other written terms stated in the auction brochure and/or the auction website or otherwise.

6. 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.

7. 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.

8. An earnest money deposit is due from each Buyer in the amount of at least 10% of the Buyer's high bid. The Buyer's bid deposit will be held by the Auction Company as the Earnest Money for purposes of the Agreement to Purchase. If not paid from the bid deposit, the earnest money must be delivered to and received by Auction Company **on or before Tuesday, January 10, 2023**.

9. 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.

10. Delivery of title and possession will be effective upon completion of the closing, to be scheduled in accordance with Section 7 of the Agreement to Purchase. The targeted closing period is on or before February 9, 2023.

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. Real estate taxes will be prorated to the date of closing.

12. Sellers will furnish the deed and owner's title insurance at Sellers' expense in accordance with Section 5 of the Agreement to Purchase.

13. The Property will be conveyed using the existing legal descriptions without obtaining a new survey.

14. Preliminary title insurance schedules dated November 14, 2022 have been prepared by Fidelity National Title Company and posted to the auction website, along with copies of the recorded documents listed as exceptions.

15. Buyer agrees to accept title and acquire the Property subject to the Permitted Exceptions as defined in Section 6 of the Agreement to Purchase, including but not limited to the Encroachment Agreement described below.

16. The Property is subject to an Encroachment Agreement, recorded on February 1, 1993, between the City of Warsaw and a former owner of the Property. This agreement refers to an encroachment of the building structure into the public right-of-way and provides that the structure shall be allowed to encroach into the public right-of-way only for so long as the structure continues to exist in a usable condition. Should the structure be destroyed by any means it must be relocated so as not to encroach onto the public right-of-way. The agreement includes an indemnification provision in favor of the City. A complete copy of the recorded Encroachment Agreement is posted to the auction website with the preliminary title insurance schedules.

17. 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.

18. 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.

19. Advertised acres, square footages and dimensions are approximations and have been estimated based on property tax records. No warranty or authoritative representation is made as to the number of acres included with any tract or as to the size or dimensions of any building or structure. The purchase price shall not be subject to adjustment regardless of the size, area or dimensions of any lot or structure shown in any record prepared before or after the auction.

20. 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".

21. 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 permit; or (e) the accuracy of any materials or information prepared or provided by any third party regarding the auction and/or the Property.

22. Schrader Real Estate and Auction Company, Inc. and its agents and representatives are exclusively the agents of the Sellers.