

AGREEMENT TO PURCHASE

To: **Robert J. Napleton** ("Seller")

Date: **April 18, 2020**

I/We the undersigned Buyer(s) ("Buyer") offer to purchase the real estate put up for bids at the public auction conducted on this date by Schrader Real Estate and Auction Company, Inc. ("Auction Company") in cooperation with Real Estate Network LLC, said real estate being approx. 14.803(±) acres of land in pt. SW4 Sec. 16-T27N-R3W (Union Twp.) White County, Indiana identified for property tax purposes as Parcel # 91-73-16-000-030.502-020, and approximately depicted in the attached Exhibit A (the "Property"). This offer incorporates the terms and conditions set forth herein, the Revised Auction Tract Map attached as **Exhibit A** and the auction announcements 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.** Buyer shall deliver to Auction Company an earnest money deposit in the amount of \$ _____ ("Earnest Money") **on or before Tuesday, April 21, 2020**. The Earnest Money shall be held in escrow and applied to the purchase price at closing; *provided, however*, in the event of a Buyer Default: (a) the Earnest Money shall be applied towards payment of the sums Seller is entitled to recover from Buyer; (b) Buyer shall execute and deliver, upon demand, an instrument authorizing the delivery of Earnest Money funds to Seller up to the amount due Seller; and (c) if Buyer fails to execute and deliver such authorization, Seller shall have the right to recover from Buyer, in addition to any other recovery, all expenses, including attorney's fees, incurred by Seller as a result of such failure.
3. **TAXES AND ASSESSMENTS.** "Seller's Taxes" refers to real estate taxes assessed (or to be assessed) on 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 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 due after closing. Buyer shall pay any special assessments that are last payable without a penalty after closing.
4. **SURVEY.** The Property will be conveyed to Buyer using the existing legal description 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 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.
6. **PERMITTED EXCEPTIONS.** Buyer agrees to accept the title, deed, title insurance and any survey subject to and notwithstanding the following matters (collectively the "Permitted Exceptions"): (a) existing roads, public utilities and drains; (b) visible and/or apparent uses and easements; (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) recorded easements, conditions, restrictions, reservations and other matters (except liens) appearing of record; (e) current taxes and assessments; (f) any matter disclosed in this Agreement (including Addendum A); and (g) 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 May 18, 2020** (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 **White County Abstract & Title Co., 111 W. Broadway, Monticello, IN (Tel: 574-583-8052)**, 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 date of closing for up to 30 days in order to cure such nonconformity.
8. **POSSESSION.** Delivery of possession shall be effective upon completion of the closing.
9. **THE PROPERTY IS SOLD "AS IS, 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.**
10. **REMEDIES.** Upon nonpayment or defective payment of the Earnest Money, or Buyer's failure to complete this transaction notwithstanding Seller's tender of performance, or notice of Buyer's intention not to complete this transaction regardless of Seller's performance (each a "Buyer Default"), Seller shall have the right to: (a) recover 10% of the purchase price as liquidated damages; and/or (b) terminate Buyer's right to acquire the Property under this Agreement (without prejudice to the right to recover liquidated damages) by giving notice of termination to Buyer. 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, in the event of a Buyer Default, it would be impractical and extremely difficult to calculate the damages which Seller may suffer and that the 10% liquidated damages is a reasonable estimate of the economic detriment Seller would suffer due to a Buyer Default. If this transaction 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 be terminated in all respects; or (ii) at any time prior to such termination, Buyer may elect instead to seek specific performance of Seller's obligations. If this transaction fails to close, the Earnest Money shall be retained in escrow pending receipt of: (A) disbursement instructions signed by Buyer and Seller; or (B) a release signed by one party authorizing disbursement to the other; or (C) disbursement instructions in a final court order. In a lawsuit to enforce a remedy under this Agreement, the prevailing party shall be entitled to recover attorneys' fees and expenses and **ANY RIGHT TO A TRIAL BY JURY IS HEREBY WAIVED**.
11. **AGENCY. Auction Company and its agents and representatives are acting solely on behalf of, and exclusively as the agent for, the Seller. This 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.**
12. **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.
13. **GENERAL PROVISIONS.** This Agreement shall be binding upon and inure to the benefit of 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 and conditions of this Agreement (including Addendum A) shall survive the closing. This Agreement to Purchase and Addendum A shall be read and construed together as a harmonious whole. This Agreement may be executed in multiple counterparts, all of which together shall constitute the same instrument and, for such purposes, 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.
14. **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 **April 18, 2020**.

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

Signature(s) of Buyer(s): _____

Address: _____ Phone: _____

Deed to: _____ Lender/Contact: _____

ACCEPTED BY SELLER on April 18, 2020: **Sign:** _____ **(Robert J. Napleton)**

EARNEST MONEY rec'd on April _____, 2020 in the amt. of \$ _____, **By:** _____

EXHIBIT A

Revised Auction Tract Map

Buyer(s): _____

Seller(s): _____

Auction Date: April 18, 2020

Pt. SW4 Sec. 16-T27N-R3W (Union Twp.) White County, Indiana



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.

EXISTING LEGAL DESCRIPTION:

Part of the real estate conveyed to White County, Indiana in Deed Record 101, Page 380 (4-1-1907), being part of the Southwest Quarter of Section 16, Township 27 North, Range 3 West, Union Township, White County, Indiana, more particularly described as follows: Commencing at the Southwest corner of the Southwest Quarter, being marked by a railroad spike; Thence South 89°05'00" East, along the South line of the Southwest Quarter and approximate centerline of Norway Road, a distance of 978.00 feet to the Point of Beginning of this description being marked by a railroad spike; Thence North 00°10'00" East, a distance of 612.00 feet to the Southeast corner of Lot 12 in Highland Cove Subdivision recorded in Plat Cabinet 1, Slide 109 and being marked by an iron pipe; Thence North 26°17'00" East, along the East line of Lot 12, a distance of 196.70 feet to the Northeast corner of Lot 12 being marked by a 5/8 inch diameter rebar with a plastic cap stamped "RWG 880043" and hereafter referred to as a standard monument; Thence North 72°00'00" West, along the North line of Lot 12, a distance of 22.60 feet to the property line of SFLECC as recorded in Instrument Number 95-06-2200, Page 64; Thence the next seven (7) courses along the SFLECC property line: 1) North 22°00'00" East, a distance of 257.04 feet; 2) North 56°00'00" East, a distance of 186.00 feet; 3) South 45°30'00" East, a distance of 198.00 feet to a standard monument; 4) South 54°15'00" East, a distance of 291.00 feet to a standard monument; 5) South 23°00'00" West, a distance of 110.00 feet to a standard monument; 6) North 85°30'00" East, a distance of 27.00 feet to a standard monument; 7) North 53°00'00" East, a distance of 60.80 feet to the Northwest corner of Lot 14 in Beechview Subdivision recorded in Plat Cabinet 1, Slide 101, being marked by a standard monument; Thence South 14°24'21" West, along the West line of Lots 14 and 15 in Beechview Subdivision, a distance of 310.08 feet to an iron pipe; Thence South 00°05'45" West, along the West line of Lots 15, 16 and 17 in Beechview Subdivision, a distance of 476.40 feet to the South line of the Southwest Quarter and approximate centerline of Norway Road, being marked by a railroad spike; Thence North 89°05'00" West, along the South line of the Southwest Quarter and approximate centerline of Norway Road, a distance of 649.91 feet to the Point of Beginning, containing 14.803 Acres, more or less.

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

Buyer(s): _____

Seller: _____

ADDENDUM A

SCHRADER REAL ESTATE AND AUCTION COMPANY, INC.

Auction Marketing Specialists Nationwide

In cooperation with Real Estate Network LLC

Date: April 18, 2020

Owner: Robert J. Napleton

Sale Managers: Jim Hayworth and Jimmy Hayworth

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. Bidding is open to registered bidders who have made arrangements with the Auction Company to bid online or via telephone. The auction will be conducted by and at the direction of the auctioneer calling the bids via live simulcast to online bidders and bid assistants.
2. The terms of sale are contained in the Agreement to Purchase, Exhibit A and this Addendum A, all of which have been posted to the auction website and included in the Bid Packets distributed via mail and/or email prior to the auction.
3. Bidding will be on a lump sum basis. Minimum bids are at the auctioneer's discretion.
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. The final bid is subject to the Seller's acceptance or rejection.

PART B - TERMS OF SALE OUTLINED:

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 Tuesday, April 21, 2020.**
7. The balance of the purchase price is due in cash at closing. 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 May 18, 2020.
8. The closing agent's fee for administering the closing will be shared equally (50:50) between Buyer and Seller. Buyer will pay all costs of any loan obtained by Buyer.

9. The real estate taxes for 2019 (due in 2020), in the amount of \$5,501.36, will be paid by Seller at or before the time of closing. The 2020 taxes (due in 2021) will be prorated to the date of closing in accordance with the Agreement to Purchase. Buyer will pay any special assessments that are last payable without a penalty after the date of closing.
10. Seller will furnish the deed and owner's title insurance at Seller's expense in accordance with the terms of Section 5 of the Agreement to Purchase. Delivery of title and possession will be effective upon completion of the closing.
11. Buyer agrees to accept the title and title insurance subject to and notwithstanding all easements and all other "Permitted Exceptions" as defined in Section 6 of the Agreement to Purchase.
12. Preliminary title insurance schedules dated March 27, 2020 have been prepared by White County Abstract & Title Co. and posted to the auction website, along with copies of the recorded documents listed as exceptions.
13. A survey prepared by R. W. Gross & Associate depicts the 14.803(±) acres of land comprising the auction property and certain buildings which have since been removed. An unsigned copy of this survey has been posted to the auction website.
14. At closing, the property will be conveyed using the existing legal description without obtaining a new survey.
15. As an update to the marketing materials, the depiction of the property has been revised in **Exhibit A**. In the marketing materials the property is depicted based on the county's GIS map which does not match the existing legal description. The revised boundaries depicted in **Exhibit A** are intended to approximate the boundaries depicted in the R. W. Gross survey.
16. Boundary lines depicted in Exhibit A 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.
17. If any dispute arises prior to closing with respect to the location of any boundary, the Auction Company may (but shall not be required to) terminate the purchase contract by giving written notice of termination to Buyer, but only with the Seller's 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, Seller may elect instead to enforce the purchase contract according to its terms.
18. The acres shown in Exhibit A are approximate and have been estimated based on the acres shown in the property tax records, existing legal description and the R. W. Gross survey. No warranty or authoritative representation is made as to the number of included acres. 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.

19. Advertised lake and road frontages are approximate. No warranty or authoritative representation is made as to the lake frontage or road frontage.
20. A small area in the southeast corner of the property is within a NIPSCO easement corridor, as shown in the R. W. Gross survey. The survey also shows an old water well lying on adjoining ground owned by the Shafer & Freeman Lakes Environmental Conservation Corp., near the lake frontage.
21. In the auction brochure, the “property class” is identified as commercial based on property tax assessment records. However, a local planning official advises that the zoning classification is residential. The county’s online GIS map has a zoning layer which identifies this property as “L-1 Lake Residence”.
22. Your bids are to be based solely upon your inspection. The property is sold “AS IS” without any warranty. Without limiting the foregoing provisions, Seller 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 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.
23. At the close of the auction, the high bidder shall execute a purchase contract consisting of the Agreement to Purchase, Exhibit A and this Addendum A. The terms of these documents are non-negotiable.
24. Schrader Real Estate and Auction Company, Inc. and its agents and representatives are exclusively the agents of the Seller.

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.