

**AGREEMENT TO PURCHASE**

Date: **April 27, 2021**

I/We the undersigned Buyer(s) ("Buyer") offer to purchase Tract(s) \_\_\_\_\_, being approx. \_\_\_\_\_ (±) ac. of land in Whitley County, Indiana, as identified by reference to the same tract number(s) in the attached **Exhibit A** (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. ("Auction Company") on behalf of the trustee(s) of the Edward A. Leeuw Rev. Trust dtd 8/15/2005 ("Seller"). This offer incorporates the terms and conditions set forth herein together with: (i) **Exhibit A** (Auction Tract Map); (ii) **Addendum A** (bid procedures and auction announcements); (iii) **Addendum B** (if applicable) regarding pre-closing access; and (iv) **Addendum C** (if applicable) regarding a potential easement for a perimeter drain outlet (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). The purchase price shall be adjusted at closing if and only if an adjustment is applicable in accordance with the terms of Addendum A.
2. **EARNEST MONEY.** Concurrently with this offer, Buyer shall deliver to Auction Company the sum of \$ \_\_\_\_\_ (the "Earnest Money"), to be held in escrow, delivered to the closing agent at or prior to closing, and applied to the purchase price at closing.
3. **TAXES AND ASSESSMENTS.** "Taxes" refers to general real estate taxes and any drainage and/or other special assessments that are or will be assessed against any tax parcel that include(s) any part of the Property. "Seller's Taxes" refers to general real estate taxes assessed against any such tax parcel for the calendar year **2020** (due in **2021**), and all prior years, and any drainage and/or other special assessments attributed to any such tax parcel 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. Buyer shall pay all subsequent Taxes to the extent attributed to the Property. If the billing of any Taxes after closing includes portions attributed to the Property and other real estate: (a) Buyer (and Seller, if Seller owns any of such real estate at that time) shall fully cooperate with any other owner(s) of such real estate (and with each other, if Seller owns any of such real estate at that time) with respect to obtaining and/or estimating the split calculation in order to facilitate timely payment of the total amount billed; (b) Buyer shall pay the portion attributed to the Property; and (c) if Seller owns any of the real estate affected by such Taxes at that time, Seller shall pay the portion attributed to the real estate owned by Seller. For purposes of this Agreement, the extent to which any Taxes are attributed to the Property (or to any other new tax parcel) shall be based on a split calculation provided by the appropriate property tax official or, if an official split calculation is not available, based on an estimated split calculation using available assessment data. Notwithstanding any other provision, Seller may elect to have the closing agent collect from each party at closing their respective shares of the estimated 2021 Taxes due in 2022, to be paid directly to the county treasurer as an estimated prepayment. If Seller so elects, the 2021 Taxes due in 2022 shall be estimated based on the amount billed for the 2020 Taxes due in 2021 and the amount thus estimated shall be allocated between the new tax parcels based on a split calculation or estimated split calculation as described above.
4. **SURVEY.** A new survey shall be obtained if and only if obtained in accordance with the provisions of Addendum A.
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 title, title insurance and any survey subject to and notwithstanding any of the following matters (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 fence line, field line, ditch line or other visible or apparent occupancy or occupancy line; (d) any 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 this Agreement; and/or (i) any matter (except liens) referenced or shown in the preliminary title insurance schedules described in Addendum A.
7. **CLOSING.** Closing shall be held **on or before May 27, 2021** or as soon as possible after said date upon: (a) completion of the survey (if applicable), the Final Title Commitment and Seller's closing documents; and (b) obtaining final plat approval (if applicable). The closing shall be held at the office of **North American Title Company** in Columbia City, Indiana. 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.
8. **POSSESSION.** Possession shall be delivered in accordance with Addendum A.
9. **THE PROPERTY IS SOLD "AS IS, WHERE IS", WITHOUT ANY WARRANTY OF ANY KIND REGARDING THE CHARACTER OR CONDITION OF THE PROPERTY OR ITS SUITABILITY FOR ANY PARTICULAR PURPOSE.**
10. **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.**
11. **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.
12. **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. 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.
13. **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 27, 2021**.

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

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

Address: \_\_\_\_\_ Phone: \_\_\_\_\_

Deed to: \_\_\_\_\_ Lender/Contact: \_\_\_\_\_

EARNEST MONEY in the amt. of \$ \_\_\_\_\_ received by: \_\_\_\_\_ on \_\_\_\_\_, 2021

ACCEPTED BY SELLER on this 27th day of April, 2021:

*Signing as the duly-authorized trustee(s) of the Edward A. Leeuw Revocable Trust dated August 15, 2005:*

Signature(s) of Authorized Trustee(s): \_\_\_\_\_

Printed Name(s) of Authorized Trustee(s): \_\_\_\_\_

# EXHIBIT A

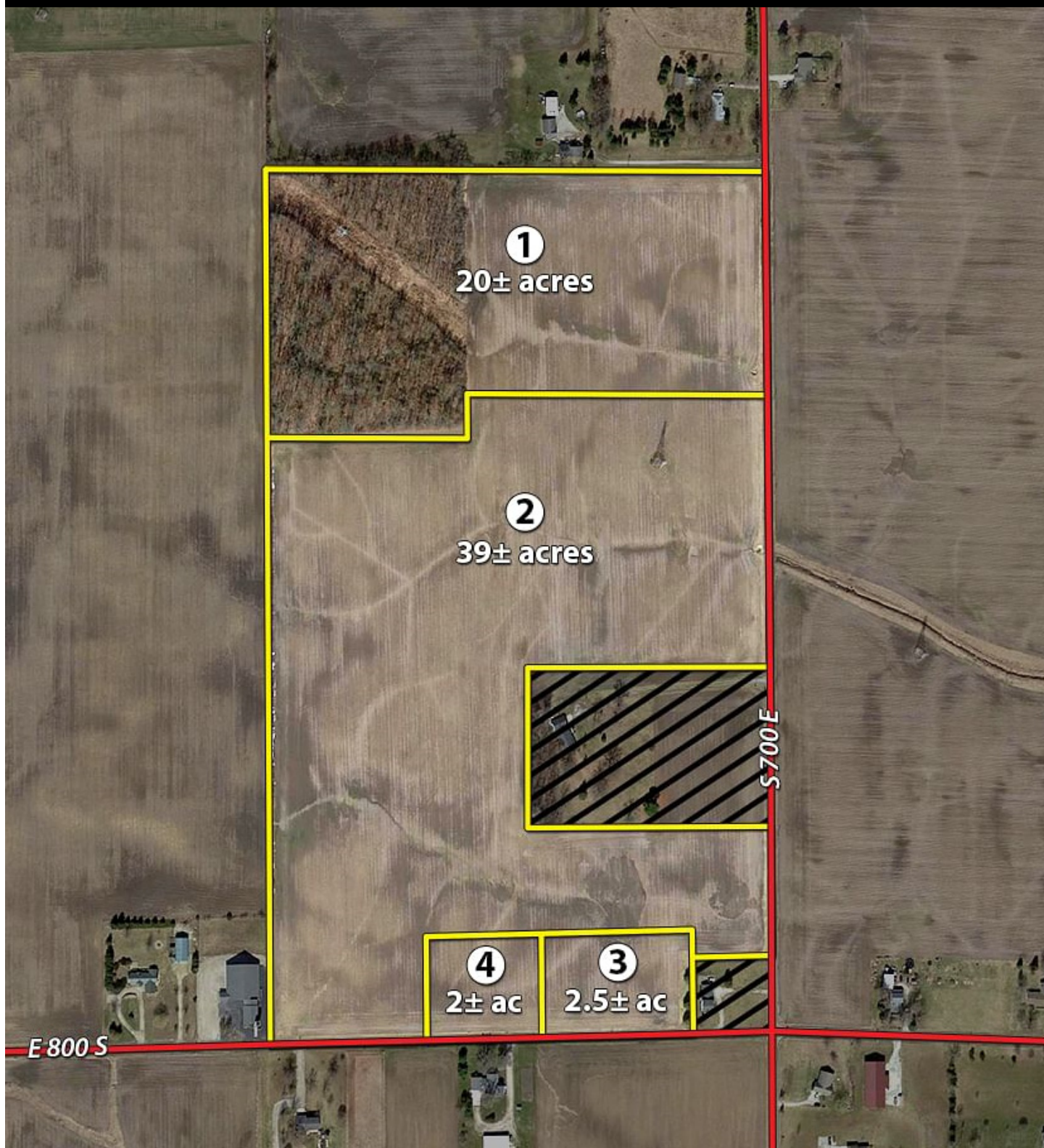
## Auction Tract Map

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

Seller: \_\_\_\_\_

Auction Date: 4/27/2021

Pt. N2 SE4 Sec. 14-T30N-R10E (Jefferson Twp.) in Whitley County, State of 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.

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

**Date:** April 27, 2021

**Owner:** Edward A. Leeuw Rev. Trust dtd 8/15/2005

**Sale Manager:** Ritter Cox and Tim Kreider

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 Seller is 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 Seller's acceptance or rejection.

### **PART B - TERMS OF SALE OUTLINED:**

6. An earnest money deposit is due at the close of auction in the amount of 10% of the purchase price (or 20% if you intend to begin crop farming activities prior to closing). A cashier's check or a personal or corporate check immediately negotiable is satisfactory for the earnest money. The balance of the purchase price is due in cash at closing.
7. 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 27, 2021. If

Tract 2 is sold apart from Tract 3 and/or Tract 4, the time for closing will be extended as necessary to obtain final plat approval, as further provided below.

8. The closing agent's fee to administer the closing will be shared equally (50:50) between Buyer and Seller. Buyer will pay all costs of any loan obtained by Buyer.
9. Seller will pay the real estate taxes for the calendar year 2020 due in 2021 and any drainage assessments that are last payable without a penalty on or before the date of closing. Buyer will pay all subsequent taxes and assessments to the extent attributed to the purchased tract(s).
10. At closing, 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.
11. Preliminary title insurance schedules dated April 21, 2021 have been prepared by North American Title Company and are available to review in the auction display area, along with copies of the recorded documents listed as exceptions.
12. Buyer agrees to accept the title and acquire the purchased tract(s) subject to all easements and all other "Permitted Exceptions" as defined in Section 6 of the Agreement to Purchase.
13. Possession shall be delivered at closing. However, Buyer may begin farming activities prior to closing in accordance with the terms and conditions of the Pre-Closing Access Addendum which is included in each Bidder's Packet as Addendum B. In order to obtain access prior to closing, Buyer must sign and deliver Addendum B, deliver an additional 10% down payment (for a total of 20%) and provide proof of insurance.
14. A new survey will be obtained for each closing. 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 Seller. Any survey of adjacent tracts purchased in combination will be for the perimeter only.
15. The cost of the survey obtained in accordance with this Addendum A shall be shared equally (50:50) by Seller and Buyer.
16. The purchase price shall be adjusted proportionately to reflect the difference, if any, between the acre estimates shown in Exhibit A and the gross acres shown in the survey; provided, however, no such adjustment shall be made with respect to any sale consisting of only Tract 3 or Tract 4 or Tracts 3 and 4 combined.
17. If Tracts 1 – 4 are sold together as a whole unit, the purchase price adjustment shall be based on the gross acres shown in the survey compared to the total of the acre estimates shown in Exhibit A (63.5± acres) notwithstanding any reference to 63± total acres in the marketing materials.

18. The acres shown in Exhibit A have been estimated using aerial mapping software. All pre-auction acre estimates are provided as provisional approximations, subject to the post-auction survey(s).
19. No warranty or authoritative representation is made as to the number of gross acres or tillable acres included with any tract or set of tracts.
20. As an update to the marketing materials, and without limiting the foregoing disclaimer, Tract 1 includes approximately 10.5± tillable acres (not 11.5±, as advertised).
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. Flag markers were placed on site prior to the auction as 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. 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 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.
23. The following provisions apply if Tract 2 is sold apart from either or both of Tracts 3 and/or 4:
  - a. The conveyance of Tracts 3 and/or 4 (if sold apart from Tract 2) will require the preparation, filing and approval of a subdivision plat in accordance with the requirements of the local planning authorities.
  - b. The Auction Company will arrange for the preparation and filing of a subdivision plat by a surveyor or engineering firm. For purposes of the Agreement to Purchase and this Addendum A, the subdivision plat shall be deemed and treated as a "survey" obtained in accordance with this Addendum A.
  - c. The professional fees incurred for the preparation of the subdivision plat shall be shared equally (50:50) between Seller and the Buyer(s) of the platted tract(s). If both Tracts 3 and 4 are purchased as individual tracts by separate Buyers, each Buyer will be charged 25% of the cost to prepare the subdivision plat.
  - d. Seller shall pay the filing fees required by the local planning authorities in connection with the submission of the subdivision plat for approval.

- e. The obligations of the parties to complete the sale and purchase of Tracts 2, 3 and 4 shall be contingent upon obtaining final approval of the subdivision plat and Seller shall have the right to extend the time for closing for a reasonable amount of time in order to obtain such approval.
  - f. Notwithstanding the boundaries and acre estimates shown in Exhibit A, the final boundaries and acres shown for Tracts 3 and 4 in the subdivision plat will reflect the dedication of additional road right-of-way along CR 800 South in accordance with the requirements of the local planning authorities.
24. As an update to the marketing materials, the sewer line on CR 800 South is not available for connection to the auction property. The Auction Company is informed that none of the auction tracts will be required or permitted to connect to the sewer line on CR 800 South.
25. **NEW EASEMENT FOR PERIMETER DRAIN OUTLET:** This paragraph applies if Tract 2 is sold apart from either or both of Tracts 3 and/or 4. If this paragraph applies:
- a. The entire auction property (Tracts 1 – 4) shall be subject to and shall have the benefit of a new easement for the purpose of providing access to an outlet for any perimeter drain that may be required in connection with the lawful installation, maintenance and/or use of a private septic system within any of the auction tracts.
  - b. A Declaration of Easement shall be executed and recorded (prior to the recording of the first conveyance of any auction tract) in substantially the form which is included in your Bidder's Packet as part of Addendum C.
26. The southwest part of Tract 2 adjoins a church property with a paved parking lot and/or driveway. The county's GIS map appears to show an encroachment of the paved area onto the southwest part of Tract 2. The Buyer of Tract 2 agrees to acquire the purchased tract(s) subject to any rights and notwithstanding any claims that may exist with respect to any such encroachment.
27. Information booklets are available to review in the auction information area. The information booklets include information obtained or derived from third-party sources, including soils map, wetlands map, topography map, tax parcel data, property tax information and FSA information. 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.
28. Your bids are to be based solely upon your inspection. All 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, 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.

29. 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, this Addendum A, Addendum B (if applicable) and Addendum C (if applicable). The terms of these documents are non-negotiable.
30. 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. Deeds shall be recorded in the order designated by the Seller.
31. 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.

ADDENDUM B  
PRE-CLOSING ACCESS ADDENDUM

*(Applies only if Buyer elects to have pre-closing access.)*

This Addendum is executed in connection with an agreement ("Purchase Agreement") pursuant to which the undersigned Buyer(s) (hereinafter "Buyer", whether one or more) has/have agreed to purchase from the trustee(s) of the Edward A. Leeuw Rev. Trust dtd 8/15/2005 ("Seller") the real estate identified in the Purchase Agreement (the "Real Estate"), being one or more of the tracts located in Whitley County, Indiana offered at the public auction conducted on April 27, 2021.

1. **Grant of License.** Upon execution of the Purchase Agreement and this Addendum and prior to Buyer's acquisition of title pursuant to the Purchase Agreement at closing (the "Closing"), Buyer shall have a license to enter upon the Real Estate for the sole and limited purpose of conducting Authorized Activities on that part of the Real Estate now comprised of tilled cropland (within existing field lines), subject to the terms and conditions of this Addendum. This Addendum grants only a limited, temporary license under the terms and conditions stated herein. Nothing herein shall be construed to create or convey (and Buyer hereby disclaims) any leasehold interest, right of exclusive possession, or other legal or equitable interest in the Real Estate by virtue of this Addendum.
2. **Authorized Activities.** As used herein, the term "Authorized Activities" refers to normal crop farming activities (within existing field lines), including soil testing, fertilizer application, tillage and/or otherwise preparing for and/or planting the Spring 2021 crop, whether conducted by Buyer or Buyer's employee(s), independent contractor(s), agent(s), guest(s) and/or invitee(s). Authorized Activities shall be conducted in compliance with all applicable laws, taking all reasonable measures to prevent injury to person or damage to property. Until the Closing, Buyer shall not: (a) conduct or permit any activities on the Real Estate other than the Authorized Activities; or (b) make any alteration of, change to or improvement on the Real Estate other than alterations and/or changes that are clearly contemplated by the description (and clearly entailed by the performance) of Authorized Activities, as expressly defined above. Buyer assumes responsibility for all expenses incurred in connection with the Authorized Activities.
3. **Additional Earnest Money.** Buyer shall not conduct any Authorized Activities prior to Closing unless and until Buyer has delivered as additional earnest money a sum equal to 10% of the purchase price due under the Purchase Agreement (the "Additional Earnest Money"), in addition to the earnest money otherwise required under the Purchase Agreement. The Additional Earnest Money shall be delivered to the same escrow agent holding the earnest money otherwise delivered pursuant to the Purchase Agreement, to be held and disbursed pursuant to the same terms and conditions that apply to the earnest money under the terms of the Purchase Agreement.
4. **Indemnification.** As a material part of the consideration for the license granted herein, Buyer hereby: (i) assumes all risk of Loss (as defined below); (ii) waives and releases any claim against Seller for any Loss; and (iii) agrees to defend, protect, indemnify and hold harmless Seller from and against (and to the extent paid by Seller, Buyer agrees to reimburse Seller for) any Loss and any and all liabilities, suits, actions, judgments, costs and expenses (including attorneys' fees and expenses) incurred by Seller in connection with any Loss. "Loss" means any injury to or death of any person and/or any damage to or loss of property (whether sustained by Buyer, Seller, or any other person or entity, and whether due to the fault of Buyer or others) directly or indirectly arising out of or resulting from or in any way connected with: (a) the Authorized Activities; (b) the entry upon the Real Estate by Buyer; (c) the entry upon the Real Estate by any other person in connection with the Authorized Activities and/or with the express, implied, actual or ostensive permission of Buyer; and/or (d) any breach of or default with respect to any obligation of Buyer under this Addendum. Buyer's obligation under this paragraph shall survive notwithstanding: (A) Buyer's acquisition of the Real Estate at a Closing; (B) the failure of Buyer to acquire the Real Estate for any reason; and/or (C) the termination of the Purchase Agreement and/or this Addendum for any reason. If Buyer consists of more than one individual and/or entity, Buyer's obligations under this paragraph shall be joint and several as between each such individual and/or entity.
5. **Insurance.** Buyer shall have and maintain general liability insurance coverage of not less than \$1,000,000 insuring against claims for bodily injury, death and/or property damage occurring in connection with Buyer's activities at the Real Estate. Buyer shall provide Seller with proof of such insurance prior to conducting any Authorized Activities and shall maintain such insurance until the Closing.
6. **Buyer's Failure to Acquire Real Estate.** If for any reason Buyer fails to acquire the Real Estate pursuant to the Purchase Agreement: (a) the rights of Buyer under this Addendum shall terminate immediately and automatically as of the earliest time that Seller is no longer obligated to sell the Real Estate pursuant to the terms of the Purchase Agreement; and (b) Buyer shall not be entitled to any reimbursement for Buyer's time, expenses and/or inputs in connection with any Authorized Activities.
7. **Additional Limitations and Conditions.** This Addendum shall not be recorded. The rights granted to Buyer in this Addendum may not be assigned, sold, transferred, leased, pledged or mortgaged by Buyer. Until Closing, Seller reserves all rights and privileges that are not inconsistent with the limited rights specifically granted to Buyer in this Addendum.
8. **Prospective Tenants; Third Parties.** Buyer has no right to lease the Real Estate prior to Closing. However, Buyer may permit a prospective tenant or other third party to conduct Authorized Activities on behalf of Buyer prior to Closing. Buyer shall notify any such prospective tenant or third party of the provisions of this Addendum, including the provisions that apply in the event Buyer fails to acquire the Real Estate pursuant to the Purchase Agreement, and Buyer shall indemnify and hold harmless Seller and Seller's agents from and against all claims of any such prospective tenant or third party.

**BUYER:** Printed Name(s): \_\_\_\_\_

Signature(s): \_\_\_\_\_ Date: \_\_\_\_\_

**SELLER:** Signing as the duly-authorized trustee(s) of the Edward A. Leeuw Revocable Trust dated August 15, 2005:

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

Signature(s): \_\_\_\_\_ Date: \_\_\_\_\_



Acknowledged and agreed:

[Do not record this cover page.]

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

Seller: \_\_\_\_\_

ADDENDUM C  
**FORM OF DECLARATION OF EASEMENT**

**Auction Date:** April 27, 2021

**Auction Company:** Schrader Real Estate and Auction Company, Inc.

**Auction Property:** Approx. 63.5± acres of land in pt. N2 SE4 Sec. 14-T30N-R10E (Jefferson Twp.) in Whitley County, Indiana, offered in four separate auction tracts.

1. This Addendum C applies if Tract 2 is sold apart from either or both of Tracts 3 and/or 4.
2. If this Addendum C applies, the entire auction property (all of Tracts 1, 2, 3 and 4) will be subject to and have the benefit of a Declaration of Easement substantially in the form set forth in the following pages, to be executed and recorded prior to the recording of the conveyance of either tract.

**This Addendum C, including the attached form of Declaration of Easement, was prepared by an attorney who represents only the Auction Company, in order to facilitate the sale of real estate at public auction. All other parties, including Seller and all Buyers, are responsible for consulting with their own respective attorneys regarding the legal effect of this Addendum C, the Declaration of Easement and/or any other matter pertaining to the auction and/or the auction property.**

## **DECLARATION OF EASEMENT**

This Declaration is executed by the trustee(s) of the Edward A. Leeuw Revocable Trust dated August 15, 2005 (“Declarant”) as the owner of the real estate located in Whitley County, Indiana and described in the attached **Exhibit A** (the “Subject Property”).

Declarant may hereafter convey all or part of the Subject Property by one or more conveyances creating two or more separate parcels. In connection with such conveyance(s), Declarant intends to provide for access to a suitable outlet, if any, for a Perimeter Drain that may be required for an Approved Septic System within a Benefited Parcel.

NOW, THEREFORE, Declarant hereby declares that the Subject Property and all parcels comprising any part of the Subject Property are subject to the easements, covenants, rights and obligations set forth in this Declaration which shall run with the land, shall be binding upon Declarant and Declarant’s successors and assigns and all parties having or acquiring any interest in the Subject Property or any part thereof, and shall inure to the benefit of the owner(s) and future owner(s) of any parcel comprising any part of the Subject Property (subject to all pre-existing rights and easements of record).

1. As used herein, the following terms shall have the following meanings (whether used in the singular form or plural form):

(a) “Approved Septic System” refers to a private septic system approved for installation within a particular parcel of real estate by the government agency having authority to approve the installation and/or use of a private septic system within such parcel.

(b) “Benefited Parcel” refers to a parcel of real estate, now existing or hereafter created within the boundaries of the Subject Property, on which there is or may be an Approved Septic System with a Perimeter Drain that has no suitable outlet within the boundaries of such parcel but for which a suitable outlet is available and/or accessible elsewhere within the Subject Property and/or by crossing a portion of the Subject Property.

(c) “Benefited Parcel Owner” means, with respect to any installed or proposed Easement Tile, the owner(s) of the Benefited Parcel(s) served by (or to be served by) such Easement Tile.

(d) “Easement Property” means any portion of the Subject Property that is or would be affected or burdened by any installed or proposed Easement Tile.

(e) “Easement Property Owner” means the owner(s) of the Easement Property.

(f) "Easement Tile" means a system of subsurface drainage tile(s) or pipe(s) connected to one or more Perimeter Drain(s) located within one or more Benefited Parcel(s), and extending beyond the boundaries of such Benefited Parcel(s) for the sole purpose of accessing a suitable outlet for such Perimeter Drain(s).

(g) "Excluded Areas" refers to the ground located immediately under any residence or other substantial, permanent improvements (except driveways), whether currently existing or hereafter constructed, and any point within twenty (20) feet of such residence or other substantial, permanent improvements (except driveways).

(h) "Subject Property" refers to all of the above-described real estate which is identified as the "Subject Property" in the first part of this Agreement.

(i) "Perimeter Drain" means a perimeter drain that is required in connection with the lawful installation, maintenance and/or use of an Approved Septic System.

2. A Benefited Parcel Owner shall have the right to install, maintain and use an Easement Tile across the Subject Property at the expense of such Benefited Parcel Owner in accordance with and subject to the terms and conditions of this Declaration; *provided, however*, no Easement Tile shall be installed within the Excluded Areas. The route and depth of any Easement Tile must be reasonable taking into consideration the cost of installation, the topography and use of the land and the location of the most appropriate outlet. The route of any Easement Tile shall not interfere with any existing buildings or improvements or a potential primary building site on the Subject Property; *provided, however*, the route of an Easement Tile may cross a driveway.

3. Without the prior consent of each Easement Property Owner, a new Easement Tile shall not be installed until at least 30 days after sending written notice of the Easement Tile plans and proposed route to each Easement Property Owner. An Easement Property Owner who objects to the installation of any Easement Tile may seek equitable relief, but shall have the burden of proving that the Easement Tile or proposed Easement Tile does not conform to the requirements of this Declaration. All notices described in this Declaration shall be sent to the parties via U.S. mail or commercial courier at their respective real estate tax billing addresses as shown in the county auditor's records.

4. All work performed in connection with the installation, maintenance, repair and/or replacement of the Easement Tile shall be performed as expeditiously as possible in accordance with good construction practice including, without limitation, taking all reasonable measures to: (a) prevent injury to person; (b) prevent damage to property except as reasonably necessary to install the Easement Tile; and (c) minimize interference with the use of the surrounding Easement Property. The Benefited Parcel Owner shall restore the Easement Property affected by such work to at least as good a condition and appearance as existed prior thereto, including re-seeding of any disturbed soil. The Benefited Parcel Owner shall be responsible for any crop damage or other damage resulting from the installation and/or maintenance of any Easement Tile (except damage consisting of the removal of trees and non-crop vegetation to the extent reasonably necessary to install and maintain the Easement Tile).

5. If any portion of an Easement Tile serves more than one Benefited Parcel, the cost of installation and maintenance of the shared portion shall be shared equally by the owners of each such Benefited Parcel.

6. At any time and from time to time, any interested party may obtain a survey description for a corridor, not to exceed twenty (20) feet in width, within which any Easement Tile is or will be located and have prepared a written Addendum to this Declaration of Easement in recordable form which refers to this Declaration of Easement and includes a description of the easement corridor based on the survey description and/or drawing. An Addendum prepared in accordance with the foregoing provision shall, upon request, be executed and delivered by the Benefited Parcel Owner and the fee owner(s) of the surveyed corridor and may be recorded as notice of the location of such easement corridor.

7. No Easement Tile shall be installed within the Excluded Areas. No residence or other permanent improvement (except driveways) shall be constructed within twenty (20) feet of an Easement Tile. No pond or wetland shall be constructed or created within twenty (20) feet of an Easement Tile. However, an Easement Tile shall be subject to re-location and re-routing in order to accommodate the construction of any such improvement, at the expense of the owner of such improvement, in accordance with paragraph 8, below.

8. An Easement Property Owner shall have the right (at such owner's expense) to re-locate, re-route, re-design and/or re-configure an existing Easement Tile (which may include incorporating the Easement Tile into a drainage system for development purposes) as may be necessary in connection with the construction of any improvement on and/or the development of the land of such Easement Property Owner; *provided, however,* that any such change must adequately preserve the function of the original Easement Tile. Without the prior consent of the Benefited Parcel Owner, no such change to an existing Easement Tile shall be made until at least 30 days after sending written notice of the proposed change to the Benefited Parcel Owner. A Benefited Parcel Owner who objects to a change or proposed change to an existing Easement Tile may seek equitable relief, but shall have the burden of proving that the change or proposed change does not conform to the requirements of this Declaration.

9. If any obstruction of or damage to any Easement Tile is caused by the acts or omissions of an owner of any part of the Subject Property or such owner's agent, such owner shall be responsible for the cost of removing the obstruction and/or repairing the damage. Obstruction or damage includes any condition that prevents or significantly impedes the flow of water through the drain.

10. This Declaration of Easement shall become effective upon the first conveyance of any part of the Subject Property by Declarant.

11. The individual signing below (or each of them, if more than one) hereby certifies, represents and warrants that: (a) he or she is (or they are) currently the incumbent, acting trustee(s) of the Edward A. Leeuw Revocable Trust dated August 15, 2005 (the "Trust"); and (b) as such, he or she is (or they are) fully empowered and duly authorized to execute and deliver this Declaration as the binding act of the owner of the Subject Property.

IN WITNESS WHEREOF, this Declaration is signed on the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

**Signing as the duly-authorized trustee(s) of the  
Edward A. Leeuw Revocable Trust dated August 15, 2005:**

Signature(s) of Authorized Trustee(s): \_\_\_\_\_

Printed Name(s) of Authorized Trustee(s): \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

Before me, the undersigned, a Notary Public in and for said County and State, this \_\_\_\_\_ day of \_\_\_\_\_, 2021, personally appeared \_\_\_\_\_ who acknowledged the execution of the foregoing Declaration and who, having been duly sworn, stated that the representations therein are true.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.

My commission expires: \_\_\_\_\_ Signature: \_\_\_\_\_  
County of Residence: \_\_\_\_\_ Print: \_\_\_\_\_

Pursuant to I.C. 32-23-2-5, the most recent deed(s) of record with respect to the Subject Property was/were recorded as document number(s) \_\_\_\_\_.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. [Name:] \_\_\_\_\_

This instrument was prepared by Attorney J. Earl Tison, Columbia City, Indiana.

This instrument was prepared in order to facilitate the sale of real estate at public auction and was prepared by an attorney who represents only the auction company. All other parties, including Seller and all Buyers, are responsible for consulting with their own respective attorneys regarding the legal effect of this instrument and/or any other matter pertaining to the auction and/or the auction property.

Prepare and attach Exhibit A  
and discard this instruction page.

**Instructions:**

1. An Exhibit A should be prepared and attached to this Declaration of Easement.
2. Exhibit A should contain the legal descriptions for the entire auction property – i.e., *all of Tracts 1, 2, 3 and 4.*