

**AGREEMENT TO PURCHASE**

Date: **September 3, 2021**

I/We the undersigned Buyer(s) ("Buyer") offer to purchase the residential lot and improvements located at 7455 N 350 W, Columbia City, Indiana, being Lot 4 in Elsie Ward's Subdivision in Whitley County (the "Property"), and being the real estate put up for bids via online auction concluded on September 3, 2021 by Schrader Real Estate and Auction Company, Inc. ("Auction Company") on behalf of the Estate of David Waggoner ("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 Tuesday, September 7, 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 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 **Personal Representative's 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 October 4, 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. The closing shall be held at the office of **Doma Insurance Agency of Indiana, LLC, 236 Frontage Road, Columbia City, IN (Tel: 260-248-5880)**, 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 OR ITS SUITABILITY FOR ANY PARTICULAR USE OR PURPOSE.**
- REMEDIES.** If the Earnest Money is not effectively and timely 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 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.
- 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 **Tuesday, September 7, 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 September, 2021: **EARNEST MONEY** in the amt. of \$ \_\_\_\_\_ was received by the Auction Company on the \_\_\_\_\_ day of September, 2021.

Sign: \_\_\_\_\_ Schrader Real Estate and Auction Company, Inc.

Simone M. Waggoner, Personal Representative

By: \_\_\_\_\_

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

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

ADDENDUM A  
BIDDING PROCEDURES AND AUCTION TERMS

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

On behalf of: Estate of David Waggoner

**Online Bidding Ends: September 3, 2021 at 5:30 p.m. \***

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

1. Bidding is online only and is open to anyone who has:
  - a. Obtained an Online Bidding Number by successfully applying for access to Online Bidding Services and agreeing to the Online Bidding Terms through the Auction Company's website (<http://www.schraderauction.com> and/or <https://schrader.nextlot.com>); and
  - b. Successfully registered to participate in this auction and agreed to the particular 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 and/or the auction website or otherwise.
3. Bidding will close at 5:30 o'clock p.m. on Friday, September 3, 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 Personal Representative's 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 Tuesday, September 7, 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. 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 October 4, 2021.

9. The closing agent's fee to administer the closing will be shared equally (50:50) between the Buyer and Seller. Buyer will pay all costs of any loan obtained by Buyer.
10. Real estate taxes will 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, 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.
12. Preliminary title insurance schedules with an effective date of August 10, 2021 have been prepared by Doma Insurance Agency of Indiana and posted to the auction website.
13. The title is to be conveyed and the title insurance is to be issued free and clear of liens (except current taxes), but subject to all easements and all other "Permitted Exceptions" as defined in Section 6 of the Agreement to Purchase.
14. 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) Seller elects to obtain a new survey for any other reason in Seller's sole discretion.
15. 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 Seller. The cost of any such survey shall be shared equally (50:50) by Sellers and Buyer.
16. Advertised square footages and dimensions are approximate and have been estimated based on property tax information. No warranty or authoritative representation is made as to the size or dimensions of the lot or any improvements. The purchase price shall not be subject to adjustment regardless of the size or dimensions of the lot or any improvements as shown in any record prepared before or after the auction.
17. The lead-based paint disclosure form for the home has been posted to the auction website and shall be signed by the Buyer at the end of the auction.
18. 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".
19. 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.
20. Schrader Real Estate and Auction Company, Inc. and its agents and representatives are exclusively the agents of the Seller.

**Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards**

**Lead Warning Statement**

Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

**Seller's Disclosure**

(a) Presence of lead-based paint and/or lead-based paint hazards (check (i) or (ii) below):

(i) \_\_\_\_\_ Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).

✓ (ii) SMA Seller has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

(b) Records and reports available to the seller (check (i) or (ii) below):

(i) \_\_\_\_\_ Seller has provided the purchaser with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below).

✓ (ii) SNP Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

**Purchaser's Acknowledgment (initial)**

(c) \_\_\_\_\_ Purchaser has received copies of all information listed above.

(d) \_\_\_\_\_ Purchaser has received the pamphlet *Protect Your Family from Lead in Your Home*.

(e) Purchaser has (check (i) or (ii) below):

(i) \_\_\_\_\_ received a 10-day opportunity (or mutually agreed upon period) to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards; or

(ii) X waived the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

**Agent's Acknowledgment (initial)**

(f) RDC Agent has informed the seller of the seller's obligations under 42 U.S.C. 4852(d) and is aware of his/her responsibility to ensure compliance.

**Certification of Accuracy**

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

✓ <u>[Signature]</u>	<u>8.25.21</u>	_____	_____
Seller	Date	Seller	Date
_____	_____	_____	_____
Purchaser	Date	Purchaser	Date
<u>Richard D Cox</u>	<u>8/25/21</u>	_____	_____
Agent	Date	Agent	Date