

AGREEMENT TO PURCHASE

Date: **November 16, 2021**

I/We the undersigned Buyer(s) ("Buyer") offer to purchase the real estate in Whitley County, Indiana located at 1105 E. 100 S. in Columbia City and identified as Parcel ID 92-06-12-000-303.000-004 (the "Property"), being the real estate put up for bids via online auction conducted by Schrader Real Estate and Auction Company, Inc. ("Auction Company") on behalf of Joan F. Simon ("Seller") and concluded on November 16, 2021. 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").

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 Wednesday, November 17, 2021**, to be held in escrow and applied to the purchase price at closing.
3. **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.
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 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").
7. **CLOSING.** Closing shall be held **on or before December 16, 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, 236 Frontage Rd., 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.
8. **POSSESSION.** Possession shall be delivered in accordance with Addendum A. Seller shall pay for all utilities until possession is delivered.
9. **INCLUDED / EXCLUDED ITEMS.** Notwithstanding any other provision, the "Property" includes or excludes any item that is specifically included or excluded according to Addendum A or any residential disclosure form signed by Seller. Propane tanks are excluded unless otherwise provided.
10. **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.**
11. **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.**
12. **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.
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.** 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.
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 on or before 11:59 pm on **Wednesday, November 17, 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 November, 2021:

EARNEST MONEY in the amt. of \$ _____ was received by the Auction Company on the _____ day of November, 2021. Schrader Real Estate and Auction Company, Inc.

Sign: _____
Joan F. Simon

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: Joan F. Simon

Online Bidding Ends: November 16, 2021 at 6:00 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 6:00 o'clock p.m. on Tuesday, November 16, 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 offer 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 Seller's acceptance or rejection.**
6. As an update to the marketing materials, the earnest money deposit shall be \$5,000. The earnest money may be delivered by check or wire transfer, but it must be received by Auction Company **on or before Wednesday, November 17, 2021.**
7. The balance of the purchase price is due in cash at closing. Bidding is not contingent on financing. Each bidder is responsible for having arranged any financing prior to bidding.
8. The closing will be scheduled in accordance with Section 7 of the Agreement to Purchase. The targeted closing period is on or before December 16, 2021.
9. Seller reserves the right to retain possession for up to thirty days after closing.

10. 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.
11. Real estate taxes will be prorated to the date of closing.
12. 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.
13. Preliminary title insurance schedules dated October 27, 2021 have been prepared by Doma Insurance Agency of Indiana and posted to the auction website.
14. Buyer agrees to accept title and acquire the property subject to the "Permitted Exceptions" as defined in Section 6 of the Agreement to Purchase.
15. It is expected that the property will be conveyed using the existing legal description, 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.
16. If a new survey is obtained, the survey shall be ordered by the Auction Company and shall be sufficient for the purpose of recording the conveyance, but the type of survey shall otherwise be determined solely by the Seller. The cost of any such survey shall be shared equally (50:50) by Sellers and Buyer.
17. The advertised acreage is an approximation based on the acres shown in the property tax records and existing legal description. No warranty or authoritative representation is made as to the number of acres included with the property.
18. Boundary lines depicted in the auction marketing materials are approximations provided for identification and illustration purposes only. They are not provided as survey products and are not intended to depict or establish authoritative boundaries or locations.
19. The Seller's Residential Real Estate Sales Disclosure form and the lead-based paint disclosure form have been posted to the auction website and shall be signed by the Buyer at the end of the auction.
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 condition, character or suitability 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".
21. 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.
22. Schrader Real Estate and Auction Company, Inc. and its agents and representatives are exclusively the agents of the Seller.