

**AGREEMENT TO PURCHASE**

Date: **December 20, 2023**

I/We the undersigned Buyer(s) ("Buyer") offer to purchase the real estate put up for bids via timed online auction conducted by Schrader Real Estate and Auction Company, Inc. ("Auction Company") on behalf of Whitley Tax Services LLC ("Seller"), being the commercial office building, parking lot and any other improvements and/or permanent fixtures located at 307 N. State St., South Whitley, Indiana (Whitley County) and identified for property tax purposes as Lots 4 & 5 Ex N 40ft Lot 5 & 10' Alley b/n Lots 4 & 5 in CW Edwards Addition (Parcel ID 92-08-04-115-004.900-002) (the "Property"). This offer incorporates the terms and conditions set forth herein and the bidding procedures and auction terms attached as **Addendum A** (collectively, this "Agreement").

$$\begin{array}{rcccl}
 \$ & & + & \$ & = & \$ \\
 & \text{(Bid Amount)} & & \text{(3\% Buyer's Premium)} & & \text{(Purchase Price)}
 \end{array}$$

1. **PURCHASE PRICE.** The Purchase Price consists of the Bid Amount plus a 3% Buyer's Premium as shown above, and shall 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 at least 10% of the purchase price to Auction Company as an earnest money deposit ("Earnest Money") on or before **Thursday, December 21, 2023**, to be held in escrow and applied to the purchase price at closing.
3. **TAXES; ASSESSMENTS.** "Seller's Taxes" refers to: (a) real estate taxes assessed against the Property and attributed to the period up to and including the day of closing, **prorated** on a calendar year basis to the date of closing, and (b) any special assessments attributed to the Property and last payable without a penalty on or before the 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 Seller's prorated portion of the amount thus estimated shall be paid via credit against the sums due from Buyer at closing, with no further settlement or adjustment after closing. Buyer shall then pay all real estate taxes and assessments due after closing.
4. **SURVEY.** A new survey shall be obtained **if and only if** obtained in accordance with the survey provisions of **Addendum A**.
5. **DEED; TITLE INSURANCE.** Seller is purchasing the Property from Dennis G. Norris pursuant to an unrecorded Land Sale Contract. Upon The Property shall be conveyed to Seller (upon satisfaction of the Land Sale Contract in connection with the closing) and then conveyed to Buyer by Warranty Deed (subject to the Permitted Exceptions), to be furnished at Seller's expense. Seller shall also furnish a commitment, updated to a date after the Auction and prior to closing, for the issuance of an ALTA standard coverage owner's title insurance policy in the amount of the purchase price insuring fee simple title to the Property in Buyer's name, free and clear of any material encumbrance that does not constitute a Permitted Exception (the "Final Title Commitment"). At closing, Seller shall pay for the cost of issuing a standard owner's title insurance policy in accordance with the Final Title Commitment.
6. **PERMITTED EXCEPTIONS.** Buyer agrees to accept title and title insurance subject to and notwithstanding any of the following matters (each a "Permitted Exception"; collectively, the "Permitted Exceptions"): (a) existing roads, utilities and drains; (b) any visible or apparent use; (c) any variation between a deeded boundary line and a visible or apparent occupancy or occupancy line; (d) any subdivision plat, easement, condition, restriction, or other matter of record (except liens); (e) any outstanding right or severance as to minerals; (f) any recorded oil and gas lease (active or not); (g) a lien for property taxes or assessments not yet payable; (h) any matter disclosed in Addendum A; and/or (i) any matter (except liens) referenced or shown in the preliminary title insurance schedules (and/or the 1997 survey) described in Addendum A.
7. **CLOSING.** It is anticipated that the closing will be scheduled by mutual agreement and completed **on or before January 22, 2024**. In any event, Seller may arrange for the closing to be held on a date specified in an email or other written notice from Seller or Seller's agent to Buyer or Buyer's agent, and Buyer shall be obligated to close on the specified date if such date is not earlier than **January 22, 2024** and at least 7 days after: (a) sending such notice; and (b) completion of the survey (if applicable) and the Final Title Commitment. The closing shall be held at and/or administered by the office of **Gates Land Title Corp., 232 W. Van Buren Ste. 106, Columbia City, IN (Tel: 260-244-5127)**.
8. **RISK OF LOSS.** The Property shall be conveyed at closing in substantially its present condition, normal wear and tear excepted. Seller assumes the risk of loss and damage until closing. Seller's insurance may be canceled as of the closing date.
9. **POSSESSION.** Possession shall be delivered in accordance with Addendum A. Seller shall pay for all utilities until possession is delivered.
10. **EXCLUDED ITEMS.** This purchase does not include any personal property presently existing on the Property.
11. **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.**
12. **REMEDIES.** In the event of nonpayment or ineffective payment of the Earnest Money and/or any other nonperformance, breach and/or default with respect to an obligation of Buyer under this Agreement ("Buyer Default"), Seller shall have the right to: (a) give notice terminating Buyer's right to acquire the Property (whereupon Seller shall have the absolute right to re-sell the Property free and clear of any right or claim of Buyer); and (b) recover 10% of the purchase price as liquidated damages. Buyer agrees that 10% of the purchase price is fairly proportionate to the amount of Seller's damages due to a Buyer Default, which damages would otherwise be uncertain and difficult to ascertain. If such liquidated damages are adjudicated as unenforceable, Seller shall recover actual damages plus attorney fees and expenses. If this sale fails to close due to Seller's default: (i) Buyer shall have the right to demand and receive a refund of the Earnest Money and, upon such demand and receipt, this Agreement shall terminate; or (ii) at any time prior to such termination, Buyer may elect instead to seek specific performance; **provided, however**, if the title or title insurance does not conform to (or if Seller is otherwise unable to convey the Property in conformance with) the requirements of this Agreement, either party may terminate this Agreement by written notice to the other and, in the event of such termination by either party, Buyer shall receive the Earnest Money as Buyer's sole and exclusive remedy; **provided, further**, prior to any such termination by Buyer, Buyer must give Seller sufficient written notice of the nonconformity to enable Seller to cure the nonconformity and Seller shall have the right to extend the closing date for up to 30 days after receiving such notice in order to cure such nonconformity. If this sale fails to close, the Earnest Money shall be retained in escrow pending disbursement instructions: (A) signed by both parties (or by one party authorizing disbursement to the other); or (B) in a final court order. In the event of a Buyer Default, Buyer agrees to sign and deliver a release of the Earnest Money for payment of the liquidated damages due Seller (or, if Buyer fails to do so, Seller shall have the right to recover, in addition to any other recovery, attorney's fees and other expenses thereafter incurred by Seller in seeking to enforce any right or remedy). In a lawsuit to enforce a right or remedy under this Agreement, the prevailing party shall recover attorneys' fees and expenses and **ANY RIGHT TO A TRIAL BY JURY IS WAIVED**.
13. **1031 EXCHANGE.** If a party intends to structure the transfer or acquisition of the Property as part of an exchange under 26 U.S.C. §1031, the other party(ies) shall reasonably cooperate (but shall not be required to assume or incur any additional obligation or expense).
14. **GENERAL PROVISIONS.** Auction Company and its affiliated agents represent only Seller, not Buyer. This Agreement shall bind and benefit the parties and their respective heirs, personal representatives and successors. This Agreement constitutes the entire agreement between Buyer and Seller regarding the Property. No party is relying upon any other statement or promise and no party shall be bound by any purported oral modification or waiver. Time is of the essence. All terms of this Agreement shall be read and construed together as a harmonious whole and, unless otherwise provided or required by the express terms of this Agreement, shall survive closing. This Agreement may be executed in multiple counterparts, all of which together shall constitute the same instrument. The electronic transmission of a signed counterpart via email, fax or a commonly-used electronic signature service such as DocuSign® shall have the same effect as the delivery of an original signature.
15. **ACCEPTANCE DEADLINE.** This offer shall be deemed automatically withdrawn and the Earnest Money shall be returned to Buyer if this offer is not accepted by Seller in writing before 11:59 pm on **December 22, 2023**.

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

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

Buyer's Address: \_\_\_\_\_

Buyer's Tel: \_\_\_\_\_ Buyer's Email: \_\_\_\_\_

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

**ACCEPTED BY SELLER** on the date indicated below:

WHITLEY TAX SERVICES LLC, by:

Sign: \_\_\_\_\_  
(Ben Romine, Member/Manager) (date)

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

Sign: \_\_\_\_\_

Print: \_\_\_\_\_

Date Received: \_\_\_\_\_

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: Whitley Tax Services LLC (“Seller”)

**Online Bidding Ends: December 20, 2023 at 6:00 p.m. (EDT) \***

(\* unless extended as provided below)

#### PART A - BIDDING PROCEDURES:

1. Bidding is online only and is open to anyone who has:
  - 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://schraderauction.com> and/or <https://schrader.nextlot.com>; and
  - 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 this 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. The initial bidding period ends at 6:00 o’clock p.m. (EDT) on Wednesday, December 20, 2023, at which time all bidding will close *unless* the bidding is extended in accordance with paragraph 4 below.
4. If a bid is received during the *final minute* of the initial bidding period (or during the *final minute* of any extended bidding period): (a) bidding will remain open for an extended bidding period ending five minutes after the end of the last prior bidding period; and (b) this extension of bidding will continue until an extended bidding period ends with no bid having been made during the final minute thereof, at which time all bidding will close. The time of any bid and the end of any bidding period shall be determined solely by the online bidding platform.

## PART B - AUCTION TERMS:

5. The Auction Terms consist of the provisions contained in the Agreement to Purchase and this Addendum A, both of which have been posted to the auction website. These terms are non-negotiable and they supersede and control over any oral statements and/or any other written terms stated in the auction brochure and/or the auction website or otherwise.
6. After the bidding closes, a purchase offer for each final high bid will be completed by the Auction Company and delivered to the high bidder ("Buyer") who shall then sign and return the purchase offer to the Auction Company. The purchase offer will be in the form of the Agreement to Purchase and this Addendum A (as posted to the auction website) and may be signed and/or delivered electronically.
7. **A Buyer's Premium equal to 3% of the high bid amount will be charged to each Buyer and added to the bid amount to arrive at the purchase price.**
8. The final high bid is subject to the Seller's acceptance or rejection. The final high bid may be accepted at any time on or before December 22, 2023.
9. 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 Thursday, December 21, 2023.**
10. The balance of the purchase price is due in cash at closing. Bids are not contingent on financing. Each bidder is responsible for having arranged any financing prior to bidding.
11. The closing will be scheduled in accordance with Section 7 of the Agreement to Purchase in your Bidder's Packet. The targeted closing period is on or before January 22, 2024.
12. Delivery of possession will be effective upon completion of the closing or January 20, 2024, whichever is later.
13. 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. Real estate taxes will be prorated to the date of closing.
14. 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.
15. Buyer agrees to accept title and acquire the Property subject to all "Permitted Exceptions" as defined in Section 6 of the Agreement to Purchase.
16. Preliminary title insurance schedules dated November 29, 2023 have been prepared by Gates Land Title Corp. and posted to the auction website.

17. The Seller herein (Whitley Tax Services LLC) is purchasing the Property from the owner identified in the preliminary title insurance schedules (Dennis G. Norris) pursuant to an unrecorded Land Sale Contract. The Property will be conveyed to Seller upon satisfaction of the Land Sale Contract in connection with the closing, and then conveyed to Buyer in accordance with the Agreement to Purchase.
18. The preliminary title insurance schedules refer to an April 9, 1997 survey of the adjoining property (identified as "Lot 3") south of the auction property. A copy of this survey is included with the preliminary title insurance schedules posted to the auction website.
19. According to the April 9, 1997 survey, the paved parking lot on the auction property extends over the north line of Lot 3. Buyer agrees to acquire the Property AS IS, regardless of and notwithstanding whatever rights and/or claims may or may not exist with respect to such encroachment.
20. It is expected that the Property will be conveyed using the existing legal description, without obtaining a new survey. In any event, a new survey shall be obtained if and only if a new survey is deemed necessary or appropriate in Seller's sole discretion.
21. 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. If a new survey is obtained in accordance with the provisions of this Addendum A, the cost of such survey shall be shared equally (50:50) by Seller and Buyer.
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. Buyer's obligation to purchase and acquire the Property at closing is not contingent upon any post-auction inspection, investigation or evaluation of the character, condition or suitability of the Property. Buyer is responsible for having completed all inspections, investigations and evaluations before bidding. Buyer acknowledges that Buyer has either completed all such inspections, investigations and evaluations or has knowingly and willingly elected to purchase the Property without having done so. In either case, Buyer assumes all risks and agrees to acquire the Property "AS IS".
24. 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 the Property qualifies for any particular use; (c) the availability or location of utilities; (d) the availability of any permit; or (e) the accuracy of any materials or information prepared or provided by any third party regarding the auction and/or the Property.
25. Schrader Real Estate and Auction Company, Inc. and its agents and representatives are exclusively the agents of the Seller.