

**REAL ESTATE**

**PRELIMINARY TERMS AND CONDITIONS OF SALE**

**Online-Only Auction**

Multiple Properties in Talladega County, Alabama

Bidding ends Thursday, November 7<sup>th</sup>, 2019 at 1:00 p.m. CT

**TARGET AUCTION & LAND CO., INC.** ("Auction Company"/"Auctioneer") has a contract with **Land Sakes-GA, LLC** (Hereinafter referred to as the "Seller"), to offer at auction **85± Acres in 4 tracts, 15± Recreational Acres, 1 commercial lot and 1 residential lot** ("Property"), located in **Talladega County, Alabama**. The Property will be sold absolute to the highest bidder regardless of price.

**OFFERING:**

**The properties will be offered individually as follows:**

**PROPERTY 1:** TRACT 1: 14± Acres fronting on Stephen J. White Memorial Drive.

**PROPERTY 2:** TRACT 2: 34± Acres fronting on Stephen J. White Memorial Drive and Davis Street.

**PROPERTY 3:** TRACT 3: 27.2± Acres fronting on Stephen J. White Memorial Drive and Avenue F.

**PROPERTY 4:** TRACT 4: 9.6± Acres fronting on Avenue H, Oliver Street and Davis Street.

**PROPERTY 5:** 15± Acre Recreational Tract. No legal access.

**PROPERTY 6:** Commercial Lot (2 lots selling as one) on the corner of South Street West and East Street South.

**PROPERTY 7:** Residential Lot (2 lots selling as one) between Park Circle and Circle Drive.

***THE PROPERTY IS BEING SOLD AS-IS AND WITH NO CONTINGENCIES***

**A 10% BUYER'S PREMIUM WILL BE ADDED TO THE WINNING BID TO DETERMINE THE TOTAL CONTRACT PRICE**

**1. TERMS OF SALE**

- A. This is a CASH SALE with a TEN PERCENT (10%) down payment based on the Total Contract Price for the Property due by 4:00 pm CT on Friday, November 8<sup>th</sup>. The remaining balance due at closing within 30 days. The Contract for Sale & Purchase ("Sales Contract") shall be executed on auction day immediately after being declared the winning bidder ("Purchaser"). This sale is not contingent upon the Purchaser's ability to obtain financing. No credit cards will be accepted.
- B. A 10% Buyer's Premium will be added to the final bid to determine the Total Contract Price paid by the Purchaser.
- C. Any person bidding on behalf of another person or entity must have a valid, legally enforceable, unexpired, Power of Attorney approved by Auctioneer before the being approved to place bids.
- D. By submitting a bid in the name of a business entity or corporation, the individual submitting the bid has the authority to bid and enters into a guaranty agreement whereby s/he personally guarantees payment of the bid amount.
- E. If for any reason the Purchaser fails or refuses to execute the Sales Contract and/or deposit the required funds immediately after being confirmed the Purchaser, the Seller reserves the right to declare the bidder's rights forfeited, may resell the property and Seller reserves the right to sue for specific performance.
- F. Possession of property will be at closing.
- G. SURVEY: The property has not been surveyed for the Auction and will be conveyed by existing legal description. Should Purchaser desire any survey work, it will be at Purchaser's option and expense, and will not affect the closing. If a survey shows a greater or lesser amount of acreage, the Sales Contract price will not be adjusted.

**2. PROPERTY DISCLOSURES**

- A. The Property is selling subject to all matters contained in the Title Commitment (which is available for review) including all restrictions, zoning, encroachments, rights-of-way, easements of record, and any other items of record.

Purchaser(s) Initials \_\_\_\_\_

Seller(s) Initials \_\_\_\_\_

- B. Seller will convey all mineral, gas or oil rights applicable to the Property owned by Seller, if any.
- C. PROPERTY 5: 15± Arce Recreational Tract is landlocked with no legal access.
- D. The property is selling "AS IS, WHERE IS".

**3. PROPERTY INFORMATION**

- A. The Property will be conveyed by Statutory Warranty Deed free and clear of all liens and encumbrances subject to any liens and encumbrances contained in the Sales Contract and the Title Commitment.
- B. The Property is selling "AS IS, WHERE IS" and the SALES CONTRACT IS NOT CONTINGENT upon, any state of facts an updated survey or personal inspection of the Property may reveal, any existing or proposed rights-of-way, prior reservation or conveyances, restrictive or protective covenants, easements, encroachments, rights or claims of parties in possession, zoning, building codes, permits, governmental agencies regulations, environmental conditions (including but not limited to wetlands, riparian, or littoral rights), flood zones, zoning or subdivision regulations, hazardous materials, water rights or water access, mineral rights or reservations, leases or tenancies, and subject to all title exceptions as set forth in the Title Commitment.

**4. PROPERTY INSPECTION**

- A. It is the Purchaser's sole responsibility, before bidding, to 1) inspect the Property and the immediate surroundings, and to be satisfied as to its condition prior to bidding; 2) review all Property information; 3) independently verify any information deemed important including, but not limited to, information available in public records; and 4) inquire of public officials as to the applicability of and compliance with land use laws, zoning, building codes, health, sanitary, safety and fire codes, any environmental laws and regulations, and any other local, state or federal laws and regulations.
- B. All information contained in any and all promotional materials, including, but not limited to, square footages, acreage, dimensions, zoning, maps, taxes, income, etc., was provided by the Seller and is believed to be correct; however, neither the Seller nor the Auction Company makes any guarantee or warranty as to the accuracy or completeness of such information. Neither the Seller nor the Auctioneer is required to update any information.
- C. Any work performed by a potential bidder or on behalf of a potential bidder is solely at the expense and responsibility of the potential bidder.
- D. Purchaser and/or Purchaser's Agent/Broker shall bear the responsibility to confirm all information relevant to the Property prior to bidding.

**5. REGISTRATION & BIDDING DETAILS**

***ONLINE Bidding Requirements:***

- 1. Bidder must complete the required online registration found on the Property's bid page on [www.targetauction.com](http://www.targetauction.com).
- 2. Bidder must be approved by Auction Company.
- 3. The required TEN PERCENT (10%) down payment amount shall be delivered to Auction Company via wire (wire instructions will be provided). The down payment will be held by Target Auction in a non-interest-bearing account.
  - A. Any bid/offer made by a bidder shall be binding on the bidder.
  - B. The Purchaser shall execute and return to Auction Company a completed Sales Contract on auction day. The fully-executed Sales Contract shall control all Terms and Conditions of Sale and constitute the entire agreement between Purchaser and Seller. NO CHANGES TO THE TERMS OF THE SALES CONTRACT WILL BE PERMITTED.
  - C. **MaxBids** that are placed on the online bidding platform are private; however they can be seen by Auctioneer. Auctioneer reserves the right to bid on behalf of the Seller (on reserve auctions) up to the reserve amount.

**6. CLOSING**

- A. **Closing shall be scheduled on or before Monday, December 6<sup>th</sup>, 2019** The balance of the Total Contract Price is due at closing. The closing will be completed by Stringer, Montgomery & Montgomery located at 138 East Street, North, Talladega, AL 35161 Contact Person: Jake Montgomery (256) 362-3154 [stringermm@mindspring.com](mailto:stringermm@mindspring.com). It is the Purchaser's responsibility to schedule your closing. **Deadline to close is on or before Monday, December 6<sup>th</sup>, 2019.**
- B. The proceeds due from the Purchaser at closing shall be delivered via wire transfer to Stringer, Montgomery & Montgomery
- C. wire instructions will be provided.
- D. **Seller** will pay for preparation of the deed, title exam/commitment and prorated taxes. **Purchaser** will be required to pay all other closing cost, including but not limited to, title insurance policy, survey fees, recording fees, attorney's fees, wiring fees and loan/financing fees, if any, etc. Taxes will be prorated the day of closing.

Purchaser(s) Initials \_\_\_\_\_

Seller(s) Initials \_\_\_\_\_

E. If Purchaser is obtaining a loan to finance the Property purchase, Purchaser agrees not to use any lender that restricts the selling agent’s fees, commission, or any expense money that is due Auctioneer. It is the Purchaser’s responsibility to inquire in advance of loan application/commitment with lender about any fee restriction to the Seller’s agent. This sale is not contingent upon Purchaser’s ability to obtain financing.

**7. DEFAULT**

It is agreed by all parties that in the event the Purchaser fails to close and pay his/her balance when due, Seller and Auction Company reserve all rights allowed by law and the Sales Contract, including a suit for damages, specific performance or cancellation of the transaction, with the Seller to retain the Down Payment. In the event of any breach of the terms of this Agreement by Purchaser, escrow agent is expressly authorized and instructed to disburse the Down Payment without the requirement of any further writing or agreement of the Seller and/or Purchaser. Any action taken after Purchaser’s default shall be solely at the Seller’s option with all costs incurred by Seller being reimbursed by the Purchaser. If any legal action is required to enforce this agreement, or to collect any fees or costs earned or advanced pursuant thereto, the Seller or Auction Company shall be entitled to recover any and all costs of such action, including, but not limited to, the expenses and court costs of the action and a reasonable attorney’s fee. This agreement shall be interpreted under the laws of the State of Alabama and the venue and jurisdiction for any action filed in relation to this agreement shall be in the state courts sitting in Etowah County, Alabama.

**8. AUCTIONEER’S AGENCY DISCLOSURE**

The Auctioneer is acting exclusively as the agent for the Seller in this transaction and is to be paid a fee by the Seller pursuant to a separate written agreement between Seller and the Auction Company. The Auctioneer is not acting as an Agent in this transaction for the Purchaser. Any third party Buyer Broker is not a Subagent of Auction Company.

**9. DISCLAIMER**

- A. Personal on-site inspection of the Property is recommended and bidders are advised to independently verify all information they deem important. This Property is being sold “as is, where is” and “with all faults”. The Seller, Auctioneer, and/or Auction Company have not made, do not make and will not make, and hereby disclaim any representation or warranty, whether expressed or implied or statutory, whether oral or written, with respect to the Property, including, without limitation, any warranty as to their value, condition, suitability, merchantability, marketability, operability, tenant ability, habitability, zoning or subdivision regulations, income, mineral rights, environmental condition, soil condition, sink holes or percolation, compliance with any building code, safety and health codes, or other governmental agency rules or regulations, or fitness for a particular use or purpose. No guarantees are given as to the availability of utilities or accesses or the permitted or allowable uses on the Property.
- B. Neither the Seller, its attorneys, Escrow Agent, any broker, nor the Auction Company shall be liable for any relief including damages, rescission, reformation, allowance or adjustments based on the failure of the Property, including, but not limited to, amount of square feet, acreage, zoning, and environmental or hazardous conditions to conform to any specific standard or expectation, or any third party documents or information.

**10. EQUAL OPPORTUNITY CLAUSE**

All bidding is open to the public. The Property is available to qualified Purchaser(s) without regard to race, color, religion, sex, familial status, national origin, or physical handicap.

**11. AUCTIONEER’S NOTE**

- A. All decisions of the Auctioneer are final as to the methods of bidding, disputes among bidders, increments of bidding and any other matters that may arise before, during, or after the auction. Auctioneer reserves the right to deny any person to participate in the auction.
- B. All announcements made auction day supersede any prior oral or written statements. The Seller reserves the right to add to or delete all or a portion of the Property prior to commencement of the bidding, by gavel of Auctioneer, for that lot or portion of the Property, before or at the auction. Auction Company may, at its discretion, change or modify any part of the Sales Contract or terms of sale at any time prior to execution of Sales Contract without further notice to any bidder or Purchaser.

Purchaser(s) Initials \_\_\_\_\_

Seller(s) Initials \_\_\_\_\_

**12. LIABILITY**

ALL PERSONS WHO ATTEND THE SALE OR VIEW PROPERTIES DO SO AT THEIR OWN RISK. NEITHER THE SELLER AND/OR TARGET AUCTION COMPANY NOR ANY OTHER PERSON CONNECTED WITH THE SALE ASSUME ANY LIABILITY LEGAL OR OTHERWISE, FOR ANY ACCIDENTS WHICH MAY OCCUR. TARGET AUCTION COMPANY IS ACTING AS SELLING AGENT ONLY.

**13. SIGNATURES**

Electronic Signatures and Facsimiles shall serve as valid authority for this document and all documents pertaining thereto.

**14. COUNTERPARTS**

This contract may be executed in counterparts, each of which is deemed an original and together constitute one document.

**By signing below, each Purchaser(s) and Seller(s) acknowledge that: this 'Exhibit A' consists of four pages, has read and understood same; these terms are made a part of the **CONTRACT FOR SALE AND PURCHASE**.**

**Executed by Purchaser(s) on November 7th, 2019**

**Executed by Seller(s) on November 7th, 2019**

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**PURCHASER**

**SELLER: LAND SAKES-GA, LLC**

**BY: \_\_\_\_\_**

**JEAN B. PAYNE**

**ITS: MEMBER**

**BY: \_\_\_\_\_**

**JOHN BINGHAM, JR**

**ITS: MEMBER**

**Purchaser(s) Initials \_\_\_\_\_**

**Seller(s) Initials \_\_\_\_\_**