

**PRELIMINARY TERMS AND CONDITIONS OF SALE**

**Online-Only Auction**

Commercial Restaurant Building with Contents, Adjacent Lot and Billboard on 6.15± Acres

Birmingham, Jefferson County, Alabama

Tuesday, March 17<sup>th</sup>, 2020 at 1:00 p.m. CT

**TARGET AUCTION & LAND CO., INC.** ("Auction Company"/"Auctioneer") has a contract with **Leigh Beasley Simmons as Trustee of The Estate of Virginia Rivers Beasley** (Hereinafter referred to as the "Seller"), to offer at auction **three parcels** ("Property"), located in Birmingham, Jefferson County, Alabama.

**OFFERING:** The following parcels will be offered as an Entirety:

**Commercial Building/Restaurant (Former Golden Corral):**

1193 Center Point Pkwy, Birmingham, AL 35215 - Parcel ID# 1200302017011.003

**Adjoining Lots:**

- 1. 1185 Center Point Pkwy, Birmingham, AL 35215 - Parcel ID# 1200302017011.001 (Vacant Lot)
- 2. 1143 Center Point Pkwy, Birmingham, AL 35215 - Parcel ID# 1200302017011.002 (Billboard)

***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 Wednesday, March 18th. The remaining balance due at closing within 30 days. The Contract for Sale & Purchase ("Sales Contract"), along with all related Exhibits, 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. The Property will be sold at or above a high bid price of \$149,000.00.
- D. Any person bidding on behalf of another person or entity must have a valid, legally enforceable, unexpired, Power of Attorney approved by Auctioneer before being approved to place bids.
- E. 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 he/she personally guarantees payment of the bid amount.
- F. If for any reason the Purchaser fails or refuses to execute the Sales Contract and/or deposit the required funds, as outlined above, 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.
- G. No changes to the Sales Contract or the Terms and Conditions of Sale will be permitted. The fully-executed Sales Contract (together with all related Exhibits thereto) shall control and constitute the entire agreement between Purchaser and Seller.
- H. The Property is selling "AS IS, WHERE IS".
- I. 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.
- J. Possession of Property will be at closing.
- K. 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.

Purchaser Initials \_\_\_\_\_

Seller Initials \_\_\_\_\_

**2. PROPERTY DISCLOSURES**

- A. Seller will convey all mineral, gas or oil rights applicable to the Property owned by Seller, if any.
- B. A portion of the Property may or may not be in a flood zone.
- C. The parcel located at 1143 Center Point Pkwy, Birmingham, AL 35215 currently has a Real Estate Lease between Seller and Patrick Media Group, INC., who has erected a billboard on the Property. The Seller receives rent of \$1,100.00 per year from the lease and the lease will expire on August 14, 2023. Rent will be prorated to the day of closing and the lease will be transferred to the Purchaser. Seller does not own the billboard.
- D. The Furniture, Fixtures and Equipment ("FFE") will remain with the building. There is no itemized inventory of the FFE. However, the sale of the Real Estate is not contingent upon any items remaining.
- E. **The building was burglarized and some of the wiring/copper was removed. It is the Purchaser's responsibility to inspect the premises as to the extent and cost of repair.**

**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. In the event, Seller needs additional time to satisfy or remedy any liens, Purchaser agrees to extend closing up to 60 days after auction day. If Seller cannot convey Title after this extension, Purchaser will be refunded their full deposit.
- 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, municipalities, local governing authority, 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, municipalities, 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**

- A. Bidder must complete the required online registration found on the Property's bid page at [www.targetauction.com](http://www.targetauction.com).
- B. Bidder must be approved by Auction Company.
- C. Any bid/offer made by a bidder shall be binding on the bidder.
- D. **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.
- E.

**6. CLOSING**

- A. **Closing shall be completed on or before Thursday, April 16<sup>th</sup>, 2020.** The balance of the Total Contract Price is due at closing. The closing will be completed by Friedman, Dazzio, Zulanis & Bowling, PC, 3800 Corporate Woods Drive, Birmingham, AL 35242 contact Stacy Aycock at 205-278-7025 or [stacy@friedman-lawyers.com](mailto:stacy@friedman-lawyers.com). It is the Purchaser's responsibility to contact closing agent and schedule closing.

Purchaser Initials \_\_\_\_\_

Seller Initials \_\_\_\_\_

- B. The proceeds due from the Purchaser at closing shall be delivered via wire transfer or Cashier's Check (from US Bank) to Friedman, Dazzio, Zulanis & Bowling, PC.
- C. **Seller** will pay for preparation of the deed, title exam/commitment. Ad valorem taxes and Billboard lease will be prorated as the day of closing.  
**Purchaser** will be required to pay all other closing cost, including but not limited to, title insurance policy, survey fees (if any), recording fees, attorney's fees, wiring fees and loan/financing fees, if any, etc. Ad Valorem Taxes will be prorated as of the day of closing.

**7. DEFAULT**

It is agreed by all parties that in the event the Purchaser fails to close and pay the 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.

**12. LIABILITY**

Purchaser Initials \_\_\_\_\_

Seller Initials \_\_\_\_\_

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 AND COUNTERPARTS**

Electronic Signatures and Facsimiles shall serve as valid authority for this document and all documents pertaining thereto may be executed in counterparts, each of which is deemed an original and together constitute one document.

**By signing below, each Purchaser and Seller 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 on March, 17<sup>th</sup>, 2020

Executed by Seller(s) on March 17th, 2020

\_\_\_\_\_  
PURCHASER

**SELLER: LEIGH BEASLEY SIMMONS AS TRUSTEE OF THE  
ESTATE OF VIRGINIA RIVERS BEASLEY**

BY: \_\_\_\_\_  
**LEIGH B. SIMMONS**  
ITS: **TRUSTEE** \_\_\_\_\_

Purchaser Initials \_\_\_\_\_

Seller Initials \_\_\_\_\_