

**TERMS AND CONDITIONS OF SALE**

Property known as “Carlisle Hill”

1025 Carlisle Hill, Franklin, Williamson County, Tennessee 37064

Online Bidding Begins May 14<sup>th</sup>. Live Auction Tuesday, May 21st, 2019 at 2:00 pm (CT) Onsite

**TARGET AUCTION & LAND COMPANY, INC.** (“Auction Company”/“Auctioneer”) has a contract with **Joseph L. Melz** (Hereinafter referred to as the “Seller”), to offer the Home on 9.84± acres also referred to as Carlisle Hill (“Property”) located at 1025 Carlisle Lane, Franklin, TN 37064, selling with a \$4.99M published reserve amount for the Home on 9.84± acres. The remaining 15± acres is selling subject to Seller’s confirmation of bid.

***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**

The Property will be offered individually and in combinations.

The Home on 9.84± acres will be offered with a reserve amount of \$4,990,000: The Purchaser of the home on 9.84± acres has the first right of refusal on the 15± acres at an additional bid price of \$2,000,000 and must immediately exercise the option after being declared the high bidder.

The Auctioneer reserves the right to rebid or regroup any or all of the tracts with a minimum of a five percent (5%) raise over the total price obtained in tracts to regroup. The Auctioneer and Seller reserve the right to sell the property in any manner they so desire. Individual purchases are to be considered as singular transactions and are not contingent upon the sale of any other properties.

**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 at the conclusion of the auction (for a live winning bidder) or by 4:00 pm CT on Wednesday, May 22nd (for an online winning bidder). 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”). The registration fee, if applicable, will be applied toward the required down payment. 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 and may resell the property and retain the registration fee (if any).
- F. No personal property, furnishing, or equipment will be conveyed with the real estate.
- G. Possession of property will be at closing.
- H. The registration fee and down payment will be held by Hale and Hale, PLC, as “Escrow Agent”, in a non-interest bearing account.
- I. A registration fee of \$25,000 is required to register to bid on the Home on 9.84± acres. No registration fee is required to bid on the additional 15± acres. For those online bidders who are not the Purchaser, the registration fee will be refunded to the payor within five (5) business days from the date the auction concludes in the form of a check written on the account of the Escrow Agent and delivered to payor via overnight federal express mail to an address provided to Escrow Agent by payor in writing. For live bidders, who are not the Purchaser, the registration fee will be refunded immediately after the auction.
- J. The Registration Fee and down payment will be forfeited should Purchaser not perform as outlined herein.
- K. Escrow Agent shall not be liable to anyone for any damages, losses or expenses which may occur as a result of Escrow Agent performing its duties provided for herein or as provided for in the Contract for Sale and Purchase attached hereto, acting, or failing act; provided however, Escrow Agent shall be liable for damages arising out of its willful default hereunder. Accordingly,

Escrow Agent shall not incur any such liability with respect to (i) any good faith act or omission upon advice of counsel given with respect to any questions relating to the duties and responsibilities of Escrow Agent hereunder, or (ii) any good faith act or omission in reliance upon any document, including any written notice or instructions provided for in the Agreement, not only as to its due execution and to the validity and effectiveness of its provisions but also as to the truth and accuracy of any information contained therein, which Escrow Agent shall in good faith believe to be genuine, to have been signed or presented by the proper person or persons and to conform with the provisions hereunder and the provisions of the Contract for Sale and Purchase attached hereto.

- L. Escrow Agent shall not be liable for any loss or damage resulting from the following: The effect of the transaction underlying this agreement and the Contract for Sale and Purchase attached hereto including without limitation, any defect in the title to the real estate, any failure or delay in the surrender of possession of the property, the rights or obligations of any party in possession of the property, the financial status or insolvency of any other party, and/or any misrepresentation of fact made by any other party; the default, error, act or failure to act by any other party to the escrow; Any loss, loss of value or impairment of funds which have been deposited in escrow while those funds are in the course of collection or while those funds are on deposit in a depository institution if such loss or loss of value or impairment results from the failure, insolvency or suspension of a depository institution; Escrow Agent’s compliance with any legal process including but not limited to, subpoena, writs, orders, judgments and decrees of any court whether issued with or without jurisdiction and whether or not subsequently vacated, modified, set aside or reversed.
- M. SURVEY: The property has not been surveyed for the Auction and will be selling by existing legal description. The property 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, rights-of-way, easements of record, and any other items of record.
- B. Seller will convey all mineral, gas or oil rights applicable to the Property owned by Seller, if any.
- C. The property is being sold unfurnished.
- D. Existing built-in appliances will remain.
- E. Existing window treatments and draperies will remain.
- F. The property is selling “AS IS, WHERE IS”.
- G. The property is subject to the Hillcrest Hillside Overlay District (which is available for review).

**3. PROPERTY INFORMATION**

- A. The Property will be conveyed by Special 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. BIDDER REGISTRATION & BIDDING DETAILS**

**A. 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). The bidder must deliver the required funds to Hale and Hale, PLC, located at 198 E Main St., Suite 200, Franklin, TN 37064. **A registration fee of \$25,000 is required for online bidding on the Home on 9.84± Acres** (plus any wire transfer fee). Should you not be the Purchaser, your registration fee will be returned.
2. Bidder must be approved by Auction Company.
3. Purchaser must deliver via wire transfer the required TEN PERCENT (10%) down payment (based on Total Contract Price) to Hale and Hale, PLC by the end of next business day. The \$25,000 registration fee will be applied toward the ten percent (10%) down payment.
4. The registration fee from an online bidder and the down payment amount shall be delivered to Escrow Agent via wire transfer. Sender shall contact Escrow Agent via Escrow Agent’s published telephone number in order to receive secure written wiring instructions. Prior to any wire transfer being initiated, sender shall call Escrow Agent’s published telephone number to confirm the wiring instructions having been received by sender are accurate. **WIRE FRAUD IS ON THE RISE AND YOU SHOULD BE EXTREMELY CAUTIOUS WHEN SENDING A WIRE. ESCROW AGENT WILL ONLY SEND WRITTEN WIRING INSTRUCTIONS VIA ESCROW AGENT’S SECURE EMAIL PORTAL. ESCROW AGENT WILL NEVER CHANGE THE METHOD FOR DELIVERY OF WIRING INSTRUCTIONS AS DESCRIBED HEREIN NOR WILL ESCROW AGENT EVER CHANGE RECEIVING ACCOUNT DETAILS.** Escrow Agent is not liable for loss of funds due to wire fraud.

**B. LIVE Bidding Requirements:**

1. Bidder must register onsite auction day to obtain a bidder number.
2. Bidder must submit **a registration fee of \$25,000 bid live on the Home on 9.84± Acres** in the form of a certified or cashier’s check made payable to Hale and Hale, PLC. Should you not be the Purchaser, your registration fee will be immediately returned.
3. The Purchaser must pay the required TEN PERCENT (10%) down payment (based on Total Contract Price) to Hale and Hale, PLC as Escrow Agent immediately, via wire transfer. The \$25,000 registration fee having been delivered by the Purchaser, shall be deposited into Escrow Agent’s IOLTA Trust account and will be applied toward the ten percent (10%) down payment.
4. The down payment amount shall be delivered to Escrow Agent via wire transfer. Sender shall contact Escrow Agent via Escrow Agent’s published telephone number in order to receive secure written wiring instructions. Prior to any wire transfer being initiated, sender shall call Escrow Agent’s published telephone number to confirm the wiring instructions having been received by sender are accurate. **WIRE FRAUD IS ON THE RISE AND YOU SHOULD BE EXTREMELY CAUTIOUS WHEN SENDING A WIRE. ESCROW AGENT WILL ONLY SEND WRITTEN WIRING INSTRUCTIONS VIA ESCROW AGENT’S SECURE EMAIL PORTAL. ESCROW AGENT WILL NEVER CHANGE THE METHOD FOR DELIVERY OF WIRING INSTRUCTIONS AS DESCRIBED HEREIN NOR WILL ESCROW AGENT EVER CHANGE RECEIVING ACCOUNT DETAILS.** Escrow Agent is not liable for loss of funds due to wire fraud.

- C. Any bid/offer made by a bidder either online or at the live auction shall be binding on the bidder.
- D. The Purchaser shall execute and return to Auction Company a completed Sales Contract on auction day, together with all related Exhibits for such Property. The fully-executed Sales Contract (together with all related Exhibits thereto, including this Exhibit) 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. PURCHASER WILL BE REQUIRED TO ENTER INTO THE SALES CONTRACT “AS IS” ON AUCTION DAY.**
- E. **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 Thursday, June 20, 2019** The balance of the Total Contract Price is due at closing. The closing will be completed by Hale and Hale, PLC, located at 198 E Main St., Suite 200, Franklin, TN 37064, Kathleen Hale McClellan, 615-794-1312. It is the Purchaser’s responsibility to schedule your closing. **Deadline to close is on or before Thursday, June 20, 2019.** Hale and Hale, PLC will act as closing agent and will issue the owner’s and lender’s title insurance policies.
- B. The proceeds due from the Purchaser at closing shall be delivered via wire transfer to Hale and Hale, PLC.

- C. **Seller** will pay for preparation of the deed, title exam/commitment, title insurance policy and prorated taxes. **Purchaser** will be required to pay all other closing cost, including but not limited to, survey fees, recording fees, attorney’s fees, wiring fees and loan/financing fees, if any, etc. All taxes will be prorated to day of closing.
- D. 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 paid 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 Tennessee and the venue and jurisdiction for any action filed in relation to this agreement shall be in the state courts sitting in Williamson County, Tennessee.

**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 or expel anyone from the auction whom attempts to disrupt 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**

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 five pages, has read and understood same; these terms are made a part of the CONTRACT FOR SALE AND PURCHASE.**

**Executed by Purchaser(s) on May 21st, 2019**

**Executed by Seller(s) on May 21st, 2019**

\_\_\_\_\_  
**Purchaser**

\_\_\_\_\_  
**JOSEPH L. MELZ**

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**Purchaser**