

REAL ESTATE

TERMS AND CONDITIONS OF SALE

Online Auction: 3 Prime Commercial Properties in Calhoun County, AL

5012 US HWY 431, Alexandria, AL

353 Alexandria-Wellington Rd, Alexandria, AL

3017 Alexandria Rd, Anniston, AL

Bidding ends Thursday, August 8th, 2019

TARGET AUCTION & LAND CO., INC. (“Auction Company”/“Auctioneer”) has a contract with **Donald L. & Nina M. Smith**, (Hereinafter referred to as the “Seller”), to offer at auction 3 properties: 1) **an automotive facility located at 5012 US HWY 431, Alexandria, AL**, 2) **a large shop and mini storage units located at 353 Alexandria-Wellington Rd, Alexandria, AL**, and 3) **the former headquarters of Model City Plumbing, located at 3017 Alexandria Rd, Anniston, AL (“Property”)**. The two properties in Alexandria, AL will be sold with a reserve, subject to Seller approval. The property in Anniston, AL will be sold Absolute with no minimums or reserves.

OFFERING:

The two properties in Alexandria will be offered individually or as an Entirety. The property in Anniston is a separate offering and sold as an entirety.

1. **5012 US HWY 431 consists of:** An automotive facility formally used as an automotive repair and body shop situated on approximately 2.11± acres. **Bidding will end August 8th at 10:00 am CT.**
2. **353 Alexandria-Wellington Rd consists of:** A large shop and 3 sets of storage units situated on approximately 2.06± acres. **Bidding will end August 8th at 10:00 am CT.**
3. **3017 Alexandria Rd consists of:** An office/storage building, a storage building/shop, a storage building situated on approximately 2.99± acres. **Bidding will end August 8th at 11:00 am CT.**

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.

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) The Contract for Sale & Purchase (“Sales Contract”) must be executed and returned to Auction Company on auction day. This is a CASH SALE with a TEN PERCENT (10%) down payment (based on the Total Contract Price) for the Property due no later than August 9th, 2019 at 4:00 p.m. (CT). The balance of the purchase price is due at closing within 30 days. This sale is not contingent upon Purchaser’s ability to obtain financing. No credit cards will be accepted.
- B) A 10% (TEN PERCENT) 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 Auction Company before being approved to place bids.
- D) By submitting a bid in the name of a business entity or corporation, the individual submitting the bid must have the authority to bid and enters into a guaranty agreement whereby the bidder personally guarantees payment of the bid amount.
- E) If for any reason the high bidder fails or refuses to execute the Sales Contract and/or deposit the required funds as outlined above in Item A, the Seller reserves the right to declare the bidder’s rights forfeited and may resell the property.
- F) No personal property, furnishings, or equipment will be conveyed with the real estate. However, the 2 paint booths and the lifts will be included in the sale of the auto facility located at 5012 US HWY 431, Alexandria, AL.
- G) Possession of property will be at closing.

Purchaser(s) Initials _____ Seller(s) Initials _____

- H) The Properties located at 353 Alexandria Rd (shop & storage units) and 5012 US Hwy 431 (automotive facility) presently share the same water meter. If these properties are sold to different Purchasers, the Purchaser of 353 Alexandria Rd (shop & storage units) will be required to disconnect from the existing water line and install a meter and water line to said property. The existing meter and lines will be conveyed with 5012 US Hwy 431 (automotive facility).
- I) SURVEY: The property has not been surveyed for the Auction. 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 contract price will not be adjusted.
- J) Unless the Seller’s reserve amount is met, the Seller reserves the right to accept or reject any bids on the two Alexandria, AL properties until Friday, August 9th at 2:00 p.m. CT and high bidders agree their bid offered is binding until such time.

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, 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 selling “AS IS, WHERE IS”.
- D) The powder coat booth & oven located at the former HQ of Model City Plumbing is sold and will be removed before closing.
- E) The paint booth located at the former HQ of Model City Plumbing is sold and will be removed before closing.
- F) The propane tank located at 5012 US Hwy 431 (automotive facility) will not be conveyed with the Property and will be removed before closing.
- G) The air compressor located at 5012 US Hwy 431 (automotive facility) will not be conveyed with the Property and will be removed before closing.

3) PROPERTY INFORMATION

- A) The Property will be conveyed by Warranty Deed free and clear of all liens and encumbrances subject to the terms and conditions relating to such liens and encumbrances contained in the Sales Contract and the Title Commitment.
- B) The Property is selling “AS IS” and any 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 real property and the immediate surroundings, and to be satisfied as to their 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, etc., was provided by the Seller and is believed to be correct; however, neither the Seller nor the Auctioneer make 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.

Purchaser and/or Purchaser’s Agent/Broker shall bear the responsibility to confirm all information relevant to the Property prior to bidding and/or for verifying all acreage and square footage amounts through public records.

5) BIDDER REGISTRATION & BIDDING REQUIREMENTS

- A) To register for online bidding, the bidder must (1) must complete the required online registration found on the Property’s bid page on www.targetauction.com.
- B) Bidder must be approved by Target Auction Company.

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- C) Any bid/offer made by the bidder shall be binding on the bidder.
- D) Purchaser must wire/deliver the required TEN PERCENT (10%) down payment (based on Total Contract Price) to Target Auction Company by 4:00 p.m. (CT) August 9th, and it shall be deposited in escrow until closing.
- E) The Purchaser shall execute and deliver to the 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) shall control all Terms and Conditions of Sale and constitute the entire agreement between Purchaser and Seller. NO CHANGES TO THE TERMS OF THE CONTRACT WILL BE PERMITTED. PURCHASER WILL BE REQUIRED TO ENTER INTO THE CONTRACT “AS IS”.
- F) **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. Seller has the right to modify the reserve at any time.

6) CLOSING

- A) **Closing shall be completed on or before Monday, September 9th, 2019.** The balance of the Total Contract Price is due at closing. The closing will be completed by [Wilson, Dillon, Pumroy & James, LLC located at 1431 Leighton Avenue, Anniston, AL 36207, contact Lisa Johnsey, \(256\) 236-4222 or email johnseyl@wdpj-atty.com](#). It is the Purchaser’s responsibility to schedule your closing. **Deadline to close is on or before Monday, September 9th, 2019.**
- B) The proceeds due from the Purchaser at closing shall be delivered to [Wilson, Dillon, Pumroy & James, LLC](#) by certified or cashier’s check or wire transfer.
- C) **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. All taxes will be prorated to day of closing. Title Insurance is available at the Purchaser’s option and expense.
- 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 Alabama and the venue and jurisdiction for any action filed in relation to this agreement shall be in the state courts sitting in Calhoun 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

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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, 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 the 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 SELLERS 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 THE 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, Purchaser(s) and Seller(s) acknowledge this 'Exhibit A' consists of four pages, has read and understood same and is made a part of the CONTRACT FOR SALE AND PURCHASE.

Executed by Purchaser on August 8th, 2019

Executed by Sellers on August 8th, 2019

PURCHASER

Donald L. Smith

Nina M. Smith

Purchaser(s) Initials _____ Seller(s) Initials _____