Tel: 087 1950 343
Cell: 083 280 4728
info@auction-all.com

Reg NR: 2014/121584/07
VAT Nr: 408 027 6613
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15/547 de Rust
Kameelzynkraal
Welbekend, Pretoria

Conditions of Sale

(Hereafter referred to as the SELLER), to sell on behalf of the seller, by public auction or by private treaty the under-mentioned property known as:

Property Address:

ERF 8254, 8254 PHAKAMILE ROAD, JOUBERTON EXT 2, NORTH WEST

Registered Size:	**575 m²**
AND HELD BY DEED OF TRANSFER:	**T101185/2014**
In favour of:	**DAVID MAKHAYA MDLIVA, (6601095536081)**
and	**KENEILWE WILHEMINA MDLIVA, (6802180452081)**

Subject to the following terms and conditions:

1. **INTERPRETATION**

1.1.1 The one gender shall include the other gender.
1.1.2 Natural persons shall include legal persons and vice versa.
1.1.3 The singular shall include the plural and vice versa.
1.1.4 References to the trustees or liquidators shall include the provisional trustees or provisional liquidators.
1.1.5 Bid shall also mean purchase price and vice versa.
1.1.6 Bidder shall also mean purchaser and vice versa.

1,2 **In the event of this agreement not arising from a public auction but as a private treaty, then all references to –**

1.2.1 **AUCTIONEER** shall be deemed to refer to as the Agent.
1.2.2 **AUCTIONEER'S** commission shall be deemed to refer to as Agent's commission.
1.2.3 Bid shall be deemed to refer to purchase price.

1,3 And any other alteration shall be applicable mutatis mutandis.

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2. **SALE PROPERTY, PURCHASE AND SALE**

2.1 The following immovable property will be sold as of the date of sale: -

ERF 8254, 8254 PHAKAMILE ROAD, JOUBERTON EXT 2, NORTH WEST

2.1.1 The Property as defined hereinbefore.
above mentioned herein referred to as the "Sale Property".

3. **RESERVE PRICE AND CONFIRMATION**

3.1 The Sale Property will be SOLD WITH RESERVE, to the highest BIDDER but subject to confirmation by the SELLER, which confirmation may be given or refused by the SELLER without furnishing reasons therefor. This document constitutes an Offer to Purchase by the PURCHASER, and the PURCHASER is unconditionally and irrevocably bound to this Offer for 30 (Thirty) calendar days the calculation of which excludes the date of signature hereof by the PURCHASER and the Offer is open for acceptance by the SELLER at any time during this period. The onus will rest upon the PURCHASER to establish whether his bid was confirmed, or not.

3.2 The SELLER reserves the right to extend the confirmation period within reason.

3.3 If this contract is not confirmed, it shall be regarded as null and void and be of no force and effect, and all payments made by the PURCHASER, including commission, will be refunded without delay.

3.4 After the auction there will be a 7 (Seven) day period that the AUCTIONEER may continue to market the Property in the normal cause of business as he may deem fit. He may receive and take in higher Offers from prospective PURCHASERS. Any higher offer should be made to the AUCTIONEER, subject to the same terms and conditions as the Offer to Purchase on the auction. After acceptance of the highest offer so received the original bidder at the auction shall have the right to equal such offer, which offer will be preferment to any other offers.

3.5 The AUCTIONEER shall advise the PURCHASER of the highest accepted offer as contemplated above. The PURCHASER shall have the option to, within 24 (twenty-four) hours after being so notified (excluding weekends and public holidays), increase his offer in writing in terms of the agreement to an amount equal to the Purchase Price of such higher accepted offer. If the PURCHASER elects to exercise this right, the PURCHASER shall amend his original Offer to Purchase or complete and sign a new Offer to Purchase reflecting such higher offer and shall supplement the deposit and AUCTIONEER'S commission required by Paragraph 11 (eleven) below accordingly.

3.6 **The sale is subject to the Master of the High Court endorsing the Power of Attorney to transfer the property in terms of Section 42 of the Administration of the Estates Act 66 of 1965. In the event of this agreement requiring the consent of the Master of the High Court in terms of any law or consent of the Local Authority/Municipality to pass transfer, then this agreement is subject to such consent being obtained in writing as soon as possible and in the normal course of the conveyancing process.**

3.7 The AUCTIONEER or his agent is entitled to bid up to the reserve price on behalf of the SELLER but shall not be entitled to make a bid equal to or exceeding the reserve price.

4. **DISPUTES**

4.1 In the event of a dispute arising regarding a bid made, the AUCTIONEER, will have the discretion to put the Sale Property up for auction again and his decision will be final. Should the AUCTIONEER and/or the SELLER commit any error in respect of the sale of the Sale Property, such error shall not be binding upon the parties and shall be rectified.

4.2 Should the PURCHASER fail to conclude the transaction in all facets, the AUCTIONEER will be entitled to resell the Sale Property by auction or private treaty.

4.3 Should the AUCTIONEER have any reason to believe that a BIDDER is not able to pay the deposit or the purchase price, he is entitled to refuse a bid from such a BIDDER or accept it provisionally, until he is satisfied that the BIDDER can pay the aforesaid amount. Should a bid be rejected under these circumstances, the Sale Property can immediately be put up for auction again.

5. **SIGNATURE**

5.1 The PURCHASER shall sign this Offer when called upon to do so by the AUCTIONEER.

5.2 Should the PURCHASER be married in a community of property or bid on behalf of a third party, he guarantees that the necessary consent and power of attorney to legally bind the PURCHASER has been obtained and that the transaction shall be concluded in all its facets. The said written consent and power of attorney must be submitted on request.

5.3 The person signing this agreement will nevertheless be held personally liable for the fulfillment of all the terms hereof, even though he acts on behalf of a spouse or principal.

5.4 If the person acts without the abovementioned power of attorney, he/she will be held liable for damages suffered by the SELLER. He/she will also be liable for damages suffered by the Auctioneer + commission + advertising costs and any other expenses incurred.

5.5 Should the PURCHASER be a company, close corporation, or trust, the person signing this agreement on behalf of such PURCHASER, by his signature hereto interposes and binds himself as surety for and co-principal debtor with the PURCHASER for the due and proper discharge of all its obligations arising from this agreement.

6. **TAXES AND LEVIES**

6.1 The Seller shall be liable for payment of all arrear duties, levies, and taxes up until the date of registration. The PURCHASER will be responsible for rates, taxes, and all duties from the date of occupation until the date of registration should this date be before the date of registration.

7. **CONVEYANCER**

7.1 The SELLER shall appoint a conveyancer to affect the transfer, and the PURCHASER will be responsible for payment of all costs of transfer, which costs shall be payable upon demand.

CONVEYANCER: _____

8. **VALUE-ADDED TAX / TRANSFER DUTIES**

8.1 The PURCHASER shall upon demand be liable for payment of VAT which is not included in the purchase price or transfer duties, whichever is applicable. The seller and auctioneer make no guarantees regarding the VAT status of the property, and it remains the responsibility of the purchaser to verify the seller's VAT status.

9. **VOETSTOOTS**

9.1 The Sale Property is sold "Voetstoots", and neither the AUCTIONEER nor the SELLER gives any guarantee as to the extent, patent or latent defects, the nature, quality or legality of improvements, or the legality of any activities practiced thereon, and will not be held liable for any damages arising from same. The SELLER gives no guarantees regarding the Sale Property and the bid shall be proof that the PURCHASER has acquainted himself with the conditions, servitudes, current or forthcoming land claims, legal or illegal occupants, and/or expropriation applicable to the Property and evidenced in the existing title deed of the specific property.

9.2 The AUCTIONEER and/or SELLER is not obliged to point out any beacons or boundaries, and any description or information, whether by way of advertising, brochures, or verbal communication is done in good faith and the PURCHASER acknowledges that he was not induced into this agreement by any explicit or implied representations, warranties, statements made, or information given by any person.

9.3 It is agreed by the PURCHASER that neither the SELLER nor the AUCTIONEER purport to be experts with regard to defects in immovable property, and consequently that their failure to specifically point out a specific defect cannot be seen as any form of misrepresentation.

9.4 The PURCHASER acknowledges that the subject Property sold herewith is not a newly constructed dwelling and that the condition of the Property may not be the same as that of such newly constructed building. Consequently, certain patent and latent defects may have developed, particularly but not limited to the condition of the roof and roof trusses, ceilings, electrical-, plumbing-, and sewerage reticulation, walls, windows, and skylight fittings, floors, fixtures and fittings, gates, pool and pond electrical components, garden installations, and all other similar appurtenances.

9.5 BIDDERS should refrain from either bidding at the auction or making an offer for the Sale Property if they have not familiarised themselves with all of the clauses of this Conditions of Sale and the condition and status of the Property and Sale Property, and neither the SELLER nor the AUCTIONEER accepts any liability towards the PURCHASER in this regard.

10. **PURCHASE PRICE AND MEANS OF PAYMENT**

10.1 The purchase price of the Sale Property is:

R _____
(_____)

and is payable as follows:

10.2 10% (TEN PERCENT) of the full purchase price is a deposit (which will become non-refundable on acceptance of this offer) to the AUCTIONEER, by way of electronic transfer on the date of signing hereof by the PURCHASER or as requested by the AUCTIONEER. The SELLER and the PURCHASER authorize the AUCTIONEER, upon acceptance of this offer by the SELLER, to pay the remainder of the deposit after deduction of the expenses, and fees, into the conveyancer's trust account for the benefit of the SELLER.

10.3 The PURCHASER shall be liable for payment of interest calculated at 1% per month on the balance of the purchase price from the date of possession and/or occupation (whichever occurs first) to the date of registration of transfer which interest shall be deemed as occupational rent. The SELLER may demand that interest be paid monthly in advance, should the PURCHASER and SELLER agree to occupation before registration.

10.4 The balance of the purchase price shall be paid or secured through a guarantee from an approved financial institution and acceptable to the SELLER at their sole discretion, within 30 (Thirty) days from the date of confirmation, payable upon registration of transfer.

10.5 The PURCHASER shall be responsible for the payment of Bank costs and all transfer-related costs.

11. **AUCTIONEER'S COMMISSION**

11.1 The parties hereby agree that the AUCTIONEER is the effective cause of this transaction and that it is entitled to the AUCTIONEER'S commission at confirmation of this sale which shall be paid by the SELLER.

11.2 The SELLER will be liable for AUCTIONEER'S commission of 5% (Five Percent) Plus VAT of the purchase price (exclusive of VAT), which is included in the purchase price. All parties agree that no commission or premium will be charged to the purchaser by the Auctioneer.

11.3 Notwithstanding anything to the contrary the party responsible for non-compliance of this agreement will be responsible for immediate payment of the total AUCTIONEER'S commission and expenses incurred.

12. **EFFECTIVE DATE**

12.1 The effective date shall be the date on which the PURCHASER has satisfied the SELLER that he has complied with all the terms and conditions of this agreement.

13. **POSSESSION, OCCUPATION, OWNERSHIP, AND INSURANCE**

13.1 Occupation of the property will be given to and taken by the PURCHASER subject to any existing lease agreements, leasing, tenancy, or legal or illegal occupation upon the date of registration of the transfer of the Sale Property (or as agreed upon in writing between the parties), from which date the sole risk, profit or loss of the Sale Property shall rest upon the PURCHASER.

13.2 Until the date of registration of the transfer of the Property, ownership shall vest in the SELLER, and the PURCHASER shall not have the right to sell, sublet, encumber, alienate, or pledge the Sale Property or any part thereof in any manner.

13.3 The PURCHASER shall be obliged to comprehensively ensure the Sale Property as from the date of possession and/or occupation (whichever occurs first) failing which, the SELLER may insure it at the PURCHASER'S expense.

13.4 The PURCHASER agrees that the SELLER does not make any warranties or representations, whether express or implied, regarding vacant occupation and possession.

13.5 The PURCHASER acknowledges that this agreement is not concluded as a result of direct marketing practices by the SELLER.

14. **NON-COMPLIANCE AND / OR BREACH**

14.1 Should the BIDDER fail to, or refuse to sign the conditions of sale, or to pay the deposit / commission or purchase price on request of the AUCTIONEER as described above, the Sale Property can, at the AUCTIONEER'S discretion, be sold de novo by an auction or private treaty, at the BIDDER'S risk, who will be held responsible for any shortages and/or costs and/or damages which might ensue from his non-compliance. Any price increase will be to the benefit of the SELLER.

14.2 Should the PURCHASER breach any term or condition of this agreement and neglect to comply with a written notice by fax or by hand or by prepaid registered post or by way of electronic mail from the SELLER or AUCTIONEER or the SELLER'S conveyancer to rectify such breach within 7 (SEVEN) days of the date of delivery thereof, the SELLER will be entitled to, without prejudice to any other rights:

14.2.1 Demand specific performance of the agreement with or without damages; OR

14.2.2 Cancel the agreement, take possession of the Property, evict all occupants from the Property, and claim damages which will include any damages or costs involved in the resale of the Property, either by public auction or private treaty.

14.3 In the event of cancellation of this agreement due to non-compliance of the PURCHASER, the PURCHASER shall forfeit all monies paid, including deposit and/or commission paid in terms of this agreement to the SELLER and/or the AUCTIONEER as liquidated damages.

14.4 The PURCHASER gives an irrevocable right to the SELLER to, in the event of lawful cancellation of this agreement, sign documents on behalf of the PURCHASER which might be required to reinstate any property(ies), license, and/or leases into the name of the SELLER or any other person's name.

14.5 Any notice, demand, or other communication properly addressed by either party at the domicilium in terms hereof for the time being and sent by prepaid registered post shall be deemed to be received by the other party on the 5th business day following the date of posting thereof, and if delivered by hand, shall be deemed to have been received by the party upon delivery at the aforesaid domicilium and if sent by way of electronic mail or fax shall be deemed to have been received by the party on the day it was transmitted.

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14.6 If the SELLER institutes legal action against the PURCHASER due to non-compliance with this agreement, then the PURCHASER will be held liable for all legal costs on the scale as between attorney and own client plus collection commission.

15. **JURISDICTION AND DOMICILIA**

15.1 The parties hereto agree to the jurisdiction of the Lower Court in respect of any lawsuit arising from this agreement, or at the discretion of the SELLER, to the jurisdiction of the High Court of South Africa, Gauteng Division, Pretoria or the High Court of South Africa, Gauteng Local Division, Johannesburg and the parties choose the addresses as indicated herein as their domicilium citandi et executandi (address where they will receive all letters and processes) for delivery of all notices and documents.

16. **SUBMISSION OF CERTIFICATES**

16.1 The PURCHASER confirms that he will, at his own cost, obtain an electrical installation certificate and/or the necessary certificates to the effect that the buildings on the Property are free from timber-destroying insects, gas compliance certificates, or any other certificates of whatsoever nature that may be required to effect transfer.

17. **IMPROVEMENTS**

17.1 Before registration of transfer the PURCHASER will not be entitled to sublet or make any improvements and/or alterations to or on the Property without the written consent of the SELLER. In the event of cancellation of this agreement, for whatever reason, the PURCHASER herewith waives any claim of any nature which he may have for necessary, useful, or luxurious improvements and/or alterations on or to the Property.

18. **FINANCIAL INTELLIGENCE CENTRE ACT ("FICA")**

18.1 It is acknowledged that the conveyancer is designated as an “accountable institution” in terms of FICA.

18.2 Both the SELLER and the PURCHASER agree to comply with all the FICA requirements of the AUCTIONEER and the conveyancer and to supply the AUCTIONEER and the conveyancer with all their respective FICA requirements within 3 (three) days after demand, therefore, is made.

18.3 The SELLER and the PURCHASER acknowledge that FICA prohibits the conveyancer to invest and administer any deposits or any other monies paid in terms of this agreement unless the SELLER and the PURCHASER have provided the documentation and information as required by FICA legislation.

18.4 It is hereby agreed by both the SELLER and the PURCHASER that neither the AUCTIONEER nor the conveyancer shall be liable for any loss or damage suffered by either of them, as a result of either the SELLER or the PURCHASER failing to comply with the provisions of this

19. **MATRIMONIAL PROPERTY ACT**

To the extent that it is necessary, the PURCHASER hereby warrants that all written consents as required by the Matrimonial Property Act, No. 88 of 1984 in respect of this agreement or any matters arising therefrom or in terms thereof have been duly given as required.

20. **AMENDMENTS AND ADDITIONS**

20.1 The terms and conditions contained in this agreement constitute the sole agreement between the parties relating to the Sale Property and no variation or amendment thereto shall be binding unless reduced to writing and signed by the parties hereto.

21. **WAIVER AND CONCESSION:**

21,1 Any waiver or concession made or allowed by the **SELLER** shall not constitute a waiver of his rights in terms of this agreement, and the **SELLER** shall always be entitled to enforce strict compliance hereof.

22. **SPECIAL CONDITIONS**

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THUS, DONE AND SIGNED ON THE DATES AND AT THE PLACES AS STATED BELOW:

PURCHASER

NAME: _____

IDENTITY NUMBER: _____

REGISTRATION NUMBER: _____

POSTAL ADDRESS: _____

_____

PHYSICAL ADDRESS: _____

_____

TELEPHONE NR: _____ (W) _____

_____ (H) _____

E-MAIL ADDRESS: _____

_____ _____

AS WITNESS PURCHASER

_____ _____

DATE PLACE

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MARITAL STATUS OF THE PURCHASER

STATUS: MARRIED | UNMARRIED | DIVORCED
IF MARRIED: IN COMMUNITY | ANTE NUPTIAL CONTRACT

IF MARRIED IN COMMUNITY OF PROPERTY, THEN:

FULL NAME OF SPOUSE: _____

IDENTITY NUMBER: _____

_____ _____
AS WITNESS SPOUSE

_____ _____
DATE PLACE

SURETYSHIP

I/We, the undersigned, do hereby bind myself/ourselves jointly and severally as surety/ties in solidium and co-principal debtor/s with the PURCHASER and the bidder who have signed this Agreement of Sale, for the due performance by the PURCHASER and such bidder, for all his obligations in terms of this Agreement of Sale, and I/we do hereby specifically waive all benefits of the legal exceptions known as beneficia ordinis seu excussionis et divisionis, in other words, the benefit of division and excision, the meaning and effect of which I/we are fully acquainted with.

My/our liability in terms hereof shall not be affected, prejudiced, or vitiated by any concession or accommodation which may be made by the SELLER or his successor in title to the said PURCHASER or bidder, and I/we are not entitled to receive any prior notice in this regard.

Signed at _____ on this _____ day of _____ 20_____.

Signature _____ _____
Surety 1 Surety 2

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Full names and addresses of surety/ties:

Surety 1: _____

_____

_____

Surety 2: _____

_____

_____

Witness 1: _____ Witness 2: _____

SELLER1:

NAME: _____ ID: _____

FIRM: _____

POSTAL ADDRESS: _____

TELEPHONE NR: _____ E-MAIL: _____

_____ _____

AS WITNESS ACCEPTANCE AND COMFIRMATION BY SELLER

_____ _____

DATE PLACE

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MANDATORY DISCLOSURE

The mandatory disclosure referred to in section 67 of the Property Practitioners Act, Act 22 of 2019 shall be in the following

IMMOVABLE PROPERTY CONDITION REPORT WITH THE SALE OF ANY IMMOVABLE PROPERTY

1. **DISCLAIMER**

This condition report concerns the immovable property situated at ERF 8254, 8254 PHAKAMILE ROAD, JOUBERTON EXT 2, NORTH WEST. (the 'Property'). This report does not constitute a guarantee or warranty of any kind by the owner/seller of the Property or by the property practitioners representing that owner/seller in any transaction. This report should, therefore, not be regarded as a substitute for any inspections or warranties that prospective purchasers may wish to obtain before concluding an agreement of sale in respect of the Property.

2. **DEFINITIONS**

In this form -

2.1 "To be aware" means to have actual notice or knowledge of a certain fact or state of affairs; and

2.2 "defect" means any condition, whether latent or patent, that would or could have a significant deleterious or adverse impact on, or affect, the value of the property, that would or could significantly impair or impact upon the health or safety of any future occupants of the property or that, if not repaired, removed or replaced, would or could significantly shorten or adversely affect the expected normal lifespan of the Property.

3. **DISCLOSURE OF INFORMATION**

3.1 The owner/seller of the Property discloses the information hereunder in the full knowledge that, even though this is not to be construed as a warranty, prospective purchasers of the Property may rely on such information when deciding whether, and on what terms, to purchase the Property.

3.2 The owner/seller hereby authorises the appointed property practitioner marketing the Property for sale to provide a copy of this statement and to disclose any information contained in this statement, to any person in connection with any actual or anticipated sale of the Property.

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4. **PROVISION OF ADDITIONAL INFORMATION**

4.1 The OWNER/SELLER represents that to the best of his or her knowledge the responses to the statements in respect of the Property contained herein have been accurately noted as "yes", "no" or "not applicable".

4.2 Should the owner/seller have responded to any of the statements with a "yes", the OWNER/SELLER shall be obliged to provide, in the additional information area of this form, a full explanation as to the response to the statement concerned.

5. **STATEMENT CONCERNING THE CONDITION OF THE PROPERTY**

The OWNER/SELLER must complete the below and the Purchaser must Sign as "Prospective Purchaser"

STATEMENT	YES	NO	N/A
I am aware of defects in the roof.			
I am aware of defects in the electrical systems.			
I am aware of defects in any part of the plumbing systems, including any defects pertaining to the swimming pool, if any.			
I am aware of defects in the heating and/or air conditioning systems, including air filters and humidifiers.			
I am aware of defects in the septic system or other sanitary disposal systems.			
I am aware of any defects to the property and/or in the basement or foundations of the property, including cracks, seepage and bulges. Other such defects include but are not limited to, flooding, dampness or wet walls, unsafe concentrations of mould or defects in drain tiling or sump pumps.			
I am aware of any structural defects in the property.			
I am aware of boundary line disputes, encroachments or encumbrances including a joint driveway.			
I am aware that remodelling or refurbishment has affected the structure of the property.			
I am aware that any additions and/or improvements made to and/or any erections made on the property, have been done or were made, only after the required consents, permissions and permits to do so were properly obtained.			
I am aware that a structure on the property has been designated as a historic building.			

Additional information

6. **OWNER/SELLER CERTIFICATION**

The owner/seller hereby certifies that the information provided in this report is, to the best of the owner/seller's knowledge and belief, true and correct as of the date when the owner/seller signs this report.

7. **CERTIFICATION BY PERSON SUPPLYING INFORMATION**

If a person other than the owner/seller of the property provides the required information that person must certify that he/she is duly authorized by the owner/seller to supply the information and that he/she has supplied the correct information on which the owner/seller relied for this report and, in addition, that the information contained herein is, to the best of that person's knowledge and belief, true and correct as at the date on which that person signs this report.

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8. **NOTICE REGARDING ADVICE OR INSPECTIONS**

8.1 Both the owner/seller as well as potential purchasers of the property may wish to obtain professional advice and/or to undertake a professional inspection of the property.

8.2 Under such circumstances adequate provisions must be contained in any agreement of sale to be concluded between the parties on the obtaining of any such professional advice and/or the conducting of required inspections and/or the disclosure of defects and/or the making of required warranties.

9. PURCHASER'S ACKNOWLEDGMENT

9.1 The prospective purchaser acknowledges that he/she has been informed that professional expertise and/or technical skill and knowledge may be required to detect defects in, and non-compliance aspects concerning the property.

9.2 The prospective purchaser acknowledges receipt of a copy of this statement.

Thus, done and signed at _____ on this _____ Day of _____ 20___

_____ _____
Owner/Seller Owner/Seller

_____ _____
Prospective Purchaser Prospective Purchaser

The property practitioner acknowledges receipt of this disclosure form.

_____ _____
Property practitioner Date

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AUCTIONEER

Auction-All (Pty) Ltd
15/547 De Rust, Kameelzynkraal, Welbekend 1517
PO Box 11420, Erasmuskloof, 0048
Telephone: 087 1950 343
Fax: 011 964 1098
E-mail: info@auction-all.com

WITNESS	ON BEHALF OF THE AUCTIONEER (DULY AUTHORISED THERETO)
DATE	PLACE

CALCULATION OF FIRST PAYMENT:

PURCHASE PRICE	
10% Deposit:	
Bidder Registration Deposit:	None

Total Payable to Auction-All Trust Account:

Our Bank Details:
STANDARD BANK
AUCTION ALL (PTY) LTD
ACCOUNT NR: 411 245 872

REFERENCE: **D26214-Your Surname**

NB! PLEASE SEND PROOF OF PAYMENT, COPY OF ID AND PROOF OF RESIDENCE TO: info@auction-all.com