

**IN THE HIGH COURT OF SOUTH AFRICA**  
**(GAUTENG DIVISION, PRETORIA)**

**CASE NUMBER: 36344/2019**

In the matter between:

**NEDBANK LIMITED**

**EXECUTION CREDITOR**

and

**CARITAS LERATO SETSUBI**

**JUDGMENT DEBTOR**

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**CONDITIONS OF SALE IN EXECUTION  
OF IMMOVABLE PROPERTY**

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**DESCRIPTION OF PROPERTY AND PARTICULARS OF SALE**

The immovable property (hereinafter referred to as the “property”) which will be put up for auction on the **24TH** day of **NOVEMBER 2020** at **11H00**, consists of:

**CERTAIN: A UNIT CONSISTING OF -**

- (A) SECTION NO. 145 AS SHOWN AND MORE FULLY DESCRIBED ON SECTIONAL PLAN NO. SS785/2005 IN THE SCHEME KNOWN AS COUNTRY VIEW IN RESPECT OF THE LAND AND BUILDING OR BUILDINGS SITUATE AT COUNTRY VIEW EXTENSION 13 TOWNSHIP, LOCAL AUTHORITY: CITY OF JOHANNESBURG OF WHICH SECTION THE FLOOR AREA, ACCORDING TO THE SAID SECTIONAL PLAN, IS 101 (ONE HUNDRED AND ONE) SQUARE METRES IN EXTENT; AND**
- (B) AN UNDIVIDED SHARE IN THE COMMON PROPERTY IN THE SCHEME APPORTIONED TO THE SAID SECTION IN ACCORDANCE WITH THE PARTICIPATION QUOTA AS ENDORSED ON THE SAID SECTIONAL PLAN.**

**HELD BY DEED OF TRANSFER NO. ST22207/2008**

**SITUATED AT: SECTION NO. 145 (DOOR NO. 145) COUNTRY VIEW,  
SONNEBLOM ROAD, COUNTRY VIEW EXTENSION 13, MIDRAND, GAUTENG**

**MAGISTERIAL DISTRICT: JOHANNESBURG NORTH**

**ZONING: RESIDENTIAL**

**IMPROVEMENTS: (Not Guaranteed)**

**TOP FLOOR UNIT IN SECURITY COMPLEX CONSISTING OF 2 BEDROOMS, 2  
BATHROOMS, LOUNGE, KITCHEN, 1 LOCKUP GARAGE**

**THE SALE SHALL BE CONDUCTED ON THE FOLLOWING CONDITIONS:-**

**1. THE SALE**

- 1.1. The sale is conducted in accordance with the provisions of Rule 46 and Rule 46A of the Uniform Rules of Court, as amended, as well as the provisions of the Consumer Protection Act 68 of 2008, the Regulations promulgated thereunder and all other applicable law. These provisions may be viewed at [www.acts.co.za](http://www.acts.co.za) (the Act) and [www.info.gov.za](http://www.info.gov.za) (the Regulations).
- 1.2. This sale is subject to Section 129 (3) and (4) of the National Credit Act 34 of 2005. The Judgment Debtor is entitled to reinstate the credit agreement that formed the subject to of the legal action under the aforementioned case number, as well as this sale in execution, at any time prior to the transfer of the property to the purchaser has taken place by paying the full arrears outstanding on the account. In the event of the account being reinstated this sale and execution shall be capable of being set aside. The purchaser hereby accepts all risks involved in purchasing the property and hereby indemnifies the credit provider against any and all losses by which incurred therein.
- 1.3. The headings to the clauses are for the purposes of convenience and reference only, and shall not be used in the interpretation of, nor modify, nor amplify the conditions of this sale nor any clause. In these

conditions, unless a contrary intention clearly appears, words importing any one gender shall include the other two genders, the singular includes the plural and *vice versa*, and natural persons include juristic persons, quasi-juristic persons and *vice versa*.

- 1.4. These conditions of sale contain the entire conditions of sale and no variation thereof shall be of any force and effect unless reduced to writing and signed by the Purchaser and the Sheriff.
- 1.5. No indulgence shown by the Sheriff and/or the Execution Creditor or failure to exercise any rights in terms hereof shall constitute a waiver or novation nor prevent the Sheriff and/or the Execution Creditor from insisting on strict compliance by the Purchaser with the terms hereof.
- 1.6. The property shall be sold by the Sheriff of **HALFWAY HOUSE-ALEXANDRA (the "Sheriff")** at **614 JAMES CRESCENT, HALFWAY HOUSE** to the highest bidder subject to a reserve price of **R400 000.00**.

## 2. MANNER OF SALE

- 2.1. The sale shall be for South African Rands, and no bid for less than R1000.00 (one thousand rand) shall be accepted.
- 2.2. The Execution Creditor shall be entitled to cancel the sale at any stage before the auction has commenced.
- 2.3. If any dispute arises about any bid, the property may immediately again be put up for auction.
- 2.4. If the Sheriff makes any mistake in selling, such mistake shall not be binding on any of the parties, but may be rectified immediately.
- 2.5. If the Sheriff suspects that a bidder is unable to pay either the deposit or the balance of the purchase price, the Sheriff may refuse to accept the bid of such bidder, or accept it provisionally until the bidder satisfies the

Sheriff that such bidder is able to pay the deposit and the balance of the purchase price.

- 2.6. On the refusal of a bid under circumstances referred to in clause 2.5 above, the property may immediately be put up for auction again.

### **3. OBLIGATIONS AND LIABILITIES OF PURCHASER AFTER AUCTION**

- 3.1. The Purchaser shall, as soon as possible after the sale and immediately on being requested by the Sheriff, sign these conditions of sale.
- 3.2. If the Purchaser purchases in a representative capacity:
- 3.2.1 the Purchaser shall disclose the name of the principal or person on whose behalf the property is being purchased;
  - 3.2.2 the principal's address as furnished by the Purchaser shall be the address as chosen by the principal as his/her/its address for the service of all forms, notices and documents in respect of any legal proceedings which may be instituted by virtue hereof (*domicilium citandi et executandi*);
  - 3.2.3 the Purchaser shall supply and attach hereto marked as Annexure "A" a power of attorney/mandate, acceptable to the Sheriff and the Execution Creditor or his/her/its attorney; and
  - 3.2.3 if the principal is not in existence at the time of the auction the Purchaser shall be deemed to be the contracting party.
- 3.3. In the event a sale is concluded on behalf of a Company, Close Corporation or a Trust (whether formed or to be formed), or on behalf of another natural person, then the natural person signing these conditions of sale shall be deemed to have bound himself/herself/themselves as surety(ies) and co-principal debtor(s) for all the obligations of the Purchaser (and, if applicable, jointly and severally with any other persons signing these conditions of sale on

behalf of the Purchaser), such surety(ies) hereby renouncing the benefits of excussion and division, no value received and errors in calculation, the effect of which he/she/they acknowledge(s) himself/herself/themselves to be aware.

- 3.4. The Purchaser shall not be entitled to nominate a third party to obtain transfer of the property in his/her/its stead. This clause may not be overruled by adding the words "*or nominee*" or similar wording to the signature of the Purchaser or anywhere else.
- 3.5. If the Purchaser is married in community of property such Purchaser shall furnish the Sheriff with the written consent of the other spouse, as required in terms of Section 15(1)(g) of the Matrimonial Property Act 88 of 1984, within 48 (forty eight) hours of the signature of the conditions of sale.
- 3.6. If the Purchaser is married according to Muslim rights, married in terms of customary law in a monogamous marriage, or married in terms of customary law as from 15 November 2000 such Purchaser shall furnish the Sheriff with the written consent of the other spouse, within 48 (forty eight) hours of the signature of the conditions of sale.
- 3.7. The Purchaser shall, on demand, sign all necessary transfer and ancillary documents with the transferring conveyancer.

#### **4. CONDITIONS OF PAYMENT**

- 4.1. The Purchaser shall pay to the Sheriff, a deposit of 10 (ten) per cent of the purchase price on the day of the sale.
- 4.2. Payment of the deposit shall be made in cash, by way of bank guaranteed cheque or an electronic transfer, provided that satisfactory proof of payment is furnished to the Sheriff.

- 4.3. Should the Purchaser fail to pay the deposit and the Sheriff's commission immediately, on demand by the Sheriff, then the sale shall be null and void and the Sheriff must immediately put the property up for auction again.
- 4.4. The balance of the purchase price shall be paid against transfer and shall be secured by a guarantee, issued by a financial institution, approved by the Execution Creditor or his/her/its attorney, and shall be furnished to the Sheriff within 25 (twenty five) days after the date of sale.
- 4.5. The Sheriff shall retain all moneys paid in respect of the purchase price in his/her trust account in terms of Section 22 of the Sheriff's Act 90 of 1986, until transfer has been given to the Purchaser.
- 4.6. The Purchaser shall, immediately on demand by the Sheriff, pay the Sheriff's commission calculated as follows:
- 4.6.1 6% on the first R100 000.00 of the proceeds of the sale, and
- 4.6.2 3.5% on R100 001.00 to R400 000.00, and
- 4.6.3 1.5% on the balance thereof,
- subject to a maximum commission of R40 000.00 in total plus VAT if applicable and a minimum of R3 000.00 plus VAT if applicable.
- 4.7. The Purchaser shall be liable for and pay, within 10 (ten) days of being requested to do so by the appointed conveyancer, the following:
- 4.7.1 All amounts due to the Municipality servicing the property, in terms of the Local Government: Municipal Systems Act 32 of 2000, for municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties that may be due to a municipality; and where applicable,

- 4.7.2 All levies due to a Body Corporate in terms of the Sectional Titles Act 95 of 1986 or amounts due to a Home Owners' Association or other association which renders services to the property; and
  - 4.7.3 The costs of transfer, including conveyancing fees, transfer duty, VAT and any other amount necessary for the passing of transfer to the Purchaser.
- 4.8. The Purchaser is hereby informed of the following charges, which are not guaranteed:
  - 4.8.1 Arrears rates and taxes, estimated at R45,557.88
  - 4.8.2 Arrear levies payable in terms of the Sectional Titles Act 95 of 1986, estimated at R308,885.80 and
  - 4.8.3 Arrear charges payable to the Home Owners' Association or other association, estimated at **NOT APPLICABLE**
- 4.9. The Purchaser shall be entitled to obtain transfer forthwith upon payment of the whole purchase price and compliance with clauses 4.6 and 7, alternatively, transfer shall be passed only after the Purchaser has complied with clauses 1, 2, 4, 6 and 7 hereof.
- 4.10. If the transfer is delayed by the Purchaser, the Purchaser shall be liable for interest at the rate of **10.25%** per annum on the purchase price.
- 4.11. In the event that the Purchaser being the Execution Creditor who is also a consumer exempted in terms of Section 5(2)(b) of the Consumer Protection Act 68 of 2008, the Execution Creditor shall be required to pay the commission set out in clause 6. The Execution Creditor shall not be required to make any deposit nor furnish a guarantee as provided for in terms of clauses 4.1, 4.2 and 4.4, except insofar as the purchase price may exceed the total amount of the Execution Creditor's award in terms of the Sheriff's distribution account. The difference between the

purchase price and the Execution Creditor's award, if any, is to be paid or secured to the Sheriff within 25 (twenty five) days from the date of sale, without demand.

- 4.12. Should the Sheriff for any reason be or become unable to pass transfer to the Purchaser, then in that event, the Purchaser shall have no claim of whatsoever nature against the Sheriff and/or the Execution Creditor.
- 4.13. The Purchaser shall have no claim against the Sheriff, the Execution Creditor or the transferring attorneys (or any person acting on their behalf) arising out of any delay or alleged delay in effecting transfer into the name of the Purchaser or any person nominated by the Purchaser.
- 4.14. Should any dispute arise between the Sheriff and/or the Execution Creditor on the one hand, and the Purchaser on the other, the Purchaser shall not be entitled, on this or any account, to refuse or fail to give effect to any obligation in terms hereof, or to refuse to pay any amount due in terms hereof, nor shall the Purchaser be entitled to apply set off against any amount due by the Purchaser in respect of any amount claimed by the Purchaser.

## **5. COMPLIANCE CERTIFICATES**

- 5.1. The Purchaser shall at his/her/its own cost obtain a valid electrical installations certificate of compliance and test report, in the prescribed format, as provided for in the Electrical Installation Regulations 2009, issued in terms of the Occupational Health and Safety Act 85 of 1993. The Purchaser agrees that this undertaking releases the Sheriff and/or the Execution Creditor from any duty that may be imposed upon either or both of them in terms of Section 10 of the Occupational Health and Safety Act 85 of 1993. The Purchaser accordingly agrees that there is no obligation on the Sheriff and/or Execution Creditor to furnish the said electrical installations certificate of compliance and test report.



- 5.2. The Purchaser agrees that there is no obligation on the Sheriff and/or the Execution Creditor to furnish an Entomologist's certificate.
- 5.3. If applicable, the Purchaser shall at his/her/its own cost obtain a valid gas installation and plumbing certificate of compliance and test report.

## **6. RISK AND OCCUPATION**

- 6.1 The Sheriff may demand that any improvements to the property sold shall be immediately insured by the Purchaser for their full value, proof of insurance given to the Sheriff and such insurance policy kept in force until transfer is registered.
- 6.2 Should the Purchaser fail to comply with the obligations in clause 6.1 above, the Sheriff may effect the necessary insurance, the cost of which insurance shall be for the Purchaser's account.
- 6.3 The property may be taken possession of after signature of the conditions of sale, payment of the deposit in accordance with clauses 1 and 2, and upon the balance of the purchase price being secured in accordance with clause 4.4.
- 6.4 Should the Purchaser, or any person claiming possession through the Purchaser, receive possession of the property prior to registration of transfer, the Purchaser shall be liable for occupational rental at the rate of 1% of the purchase price per month from date of possession to date of transfer.
- 6.5 Upon the Purchaser taking possession, the property shall be at the risk and profit of the Purchaser.
- 6.6 The Sheriff and/or the Execution Creditor give no warranty that the Purchaser shall be able to obtain personal and/or vacant occupation of the property and/or that the property is unoccupied, and any

proceedings to evict the occupier(s) shall be undertaken by the Purchaser at his/her/its own cost and expense.

- 6.7 The property is sold as represented by the Title Deeds and diagram or Sectional Plan, subject to all servitudes, conditions of establishment and conditions specified in the Deed of Transfer, whichever apply to the property and without being limited thereto, including any real rights reserved in favour of a developer or Body Corporate in terms of Section 25 of the Sectional Titles Act 95 of 1986 or Home Owners' Association or other association.
- 6.8 Should the property be subject to the jurisdiction of a home owners' association or similar body of which the property-owners are obliged to be members, the purchaser shall become a member of such association or body and shall be subject to the constitution and rules thereof, the purchaser (to the extent necessary) hereby consenting thereto.
- 6.9 The Sheriff and/or the Execution Creditor shall not be liable for any deficiency that may be found to exist in the property.
- 6.10 The property is sold as it stands "voetstoots" and without any warranty or representation made by the Execution Creditor and/or the Sheriff.
- 6.11 The Sheriff and/or the Execution Creditor shall not be obliged to point out any boundaries, beacons or pegs in respect of the property hereby sold.

## **7. SALE SUBJECT TO EXISTING RIGHTS AND CONFIRMATION OF THE PURCHASER**

Where the Property is subject to a lease agreement the following conditions apply:

- 7.1. Insofar as the property is let to tenants and the Sheriff is aware of the existence of such tenancy then:

7.1.1 if that lease was concluded prior the Execution Creditor's mortgage bond was registered, then the property shall be sold subject to such tenancy;

7.1.2 if the lease was concluded after the Execution Creditor's mortgage bond was registered, the property shall be offered first subject to the lease and if the selling price does not cover the amount owing to the Execution Creditor as reflected on the Warrant of Execution plus interest as per the Writ, then the property shall be offered immediately thereafter free of the lease.

7.2. The Sheriff and Purchaser confirm that the property is sold:

☐ with lease

☐ without lease

for an amount of:

R.....

(.....)

Which amount excludes the amounts referred to in clauses 6, 7, 8 and 10 (if applicable), and accepts all further terms and conditions as set out herein, which acceptance is confirmed by his/her/its signature below.

7.3. Notwithstanding any of these provisions, the Purchaser shall be solely responsible for evicting any person or other occupier claiming occupation, including a tenant, at the Purchaser's cost. No obligation to do so shall vest in the Sheriff and/or the Execution Creditor.

7.4. The property is furthermore sold subject to any lien or liens in respect thereof.

## 8. BREACH OF AGREEMENT

- 8.1. If the Purchaser fails to carry out any obligation due by the Purchaser under the conditions of sale, the sale may be cancelled by a Judge summarily on the report of the Sheriff after due notice to the Purchaser, and the property may again be put up for sale.
- 8.2. In the event of the circumstances in clause 8.1 occurring the Purchaser shall be responsible for any loss sustained by reason of such default, which loss may, on the application of any aggrieved creditor whose name appears on the Sheriff's distribution account, be recovered from the Purchaser under judgment of a Judge pronounced on a written report by the Sheriff, after such Purchaser has been given notice in writing that such report will be laid before the Judge for such purpose.
- 8.3. If the Purchaser is already in possession of the property, the Sheriff may, on notice to affected parties, apply to a Judge for an order evicting the Purchaser or any person claiming to occupy the property through the Purchaser or otherwise occupying the property.
- 8.4. In the event of the sale being cancelled as aforesaid the deposit shall be retained by the Sheriff in trust for such period that is stipulated in the judgment in terms of Rule 46(11) or if no such period is stipulated therein then until such time that the property has been sold to a third party and the Execution Creditor's damages have been quantified and judgment has been granted in respect thereof.

## **9. ADDRESS FOR LEGAL PROCEEDINGS**

The Purchaser chooses the address set out in Annexures "A" and "B" respectively, hereunder as his/her/its address for the service of all forms, notices and documents in respect of any legal proceedings which may be instituted following from this sale or its cancellation (*domicilium citandi et executandi*). In the event of the Purchaser failing to choose a *domicilium citandi et executandi* hereunder, the property which is the subject matter of the sale will be deemed to be the Purchaser's *domicilium citandi et executandi*.

## 10. JOINT AND SEVERAL LIABILITY

In the event of there being more than one Purchaser, they shall be jointly and severally liable in terms hereof.

## 11. TRANSFERRING CONVEYANCER

The Execution Creditor shall appoint the conveyancer to effect transfer of the property to the Purchaser, provided that the Sheriff shall be entitled to appoint a new conveyancer should the conveyancer appointed by the Execution Creditor not proceed timeously or satisfactorily with the transfer. The details of the conveyancer as appointed by the Execution Creditor are as follows:

- 12.1. Name: **MADELEYN KRUGER**
- 12.2. Name of Firm: **VELILE TINTO & ASSOCIATES INC.**
- 12.3. Tel: **(012) 807 3366**
- 12.4. Email: **madeleyn@tintolaw.co.za**

I, the undersigned, Sheriff Halfway House-Alexandea hereby certify that on today the 24<sup>th</sup> day of November 2020 and in my presence, the aforementioned property was sold for R\_\_\_\_\_ to \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

### Sheriff Halfway House-Alexandra

I/We, \_\_\_\_\_, the undersigned, on behalf of \_\_\_\_\_, and residing at \_\_\_\_\_ in the district of \_\_\_\_\_, on this the \_\_\_\_\_ day of \_\_\_\_\_ 2020, do hereby bind myself/ourselves as the

Purchaser(s) of the aforementioned property to pay the purchase price and to perform all conditions contained in this agreement.

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**PURCHASER**

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**SPOUSE**

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**PURCHASER**

(and where applicable in terms of these conditions of sale as surety and co-principal debtor)

(and where applicable on behalf of the below mentioned Principal being duly authorised in terms of a power of attorney/mandate which is attached hereto as Annexure “**A**”)

FULL NAME OF PRINCIPAL AS PER POWER OF ATTORNEY: \_\_\_\_\_

PHYSICAL ADDRESS OF PRINCIPAL: \_\_\_\_\_

**ANNEXURE "A"**

POWER OF ATTORNEY/ MANDATE

## **ANNEXURE "B"**

### **Information for Conveyancer Purchaser 1:**

1. Full names:.....
  2. Spouse's Full Names: .....
  3. Married/Divorced/Widowed/Single: .....
  4. If married – Date: .....
- By Antenuptial Contract / Married in Community of Property
5. Where married: .....
- (husband's *domicilium citandi et executandi* at the time of the marriage)
6. Identity number: .....
  7. Physical address (*domicilium citandi et executandi*): .....
- .....
8. Postal address: .....
- .....
9. Telephone numbers:
- Home: .....Work:.....
- Telefax (if any) ..... Cell Number:.....

## **ANNEXURE "B"**



### Information for Conveyancer Purchaser 2:

1. Full names:.....
  2. Spouse's Full Names: .....
  3. Married/Divorced/Widowed/Single: .....
  4. If married – Date: .....
- By Antenuptial Contract / Married in Community of Property
5. Where married: .....
- (husband's *domicilium citandi et executandi* at the time of the marriage)
6. Identity number: .....
  7. Physical address (*domicilium citandi et executandi*): .....
- .....
8. Postal address: .....
- .....
9. Telephone numbers:
- Home: .....Work:.....
- Telefax (if any) ..... Cell Number:.....