

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

**CASE NUMBER:- 3700/2017**

In the matter between:

**NEDBANK LIMITED**

**(previously known as NEDCOR BANK LIMITED)**

Plaintiff

and

**WESTERMAN THOMAS HENDRIK**

(Identity Number: 800605 5044 084)

First Defendant

**WESTERMAN SHANEI NEL**

(Identity Number: 871210 0094 087)

Second Defendant

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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”) will be put up for auction on the **13 APRIL 2021** at **11H00**, consist of:

**REMAINING EXTENT OF ERF 77 KELVIN TOWNSHIP, REGISTRATION DIVISION  
I.R., GAUTENG PROVINCE, LOCAL AUTHORITY: CITY OF JOHANNESBURG  
MUNICIPALITY,**

**MEASURING: 2039 (TWO ONE THREE NINE) SQUARE METERS**

**HELD BY DEED OF TRANSFER NO. T33615/2013, SUBJECT TO THE CONDITIONS THEREIN CONTAINED;**

**PROPERTY ZONED: Residential**

Also known as: 9 LOUISE WAY, KELVIN, 2090.

The following information is furnished in respect of the improvements, though in this respect, **nothing is guaranteed:**

**IMPROVEMENTS:** Semi double storey brick and plaster tile roof dwelling located on a pan handle stand: 3 Bedrooms, 2 bathrooms, 1 study, 1 water closet, kitchen, 3 living rooms, 2 garages, storeroom, entrance hall and staff quarters with swimming Pool. (particulars not guaranteed):.

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

- 1.1. The sale is conducted in accordance with the provisions of Rule 46 of the Uniform Rules of the High Court and all other applicable law.
2. **MANNER OF SALE**
  - 2.1. The property shall be sold by the Sheriff of The High Court, **SHERIFF HALFWAY HOUSE - ALEXANDRA at 614 JAMES CRESCENT, HALFWAY HOUSE on 13 APRIL 2021 at 11H00** to the highest bidder, **without reserve set by court.**
  - 2.2. If the sale is subject to a reserve price then should the highest bid be less than the reserve price, the highest bid will be provisionally accepted subject to the purchaser complying with clauses 3.1, 4.1 and 5.1; and confirmation by the court. Should the sale not be confirmed by the court all amounts paid by the highest will be refunded.

- 2.3. The sale shall be for rands, and no bid for less than one thousand rands shall be accepted.
- 2.4. The execution creditor shall be entitled to cancel the sale at any state before the auction has commenced.
- 2.5. If any dispute arises about any bid the property may again be put up for auction.
- 2.6. If the sheriff makes any mistake in selling, such mistake shall not be binding on any of the parties, but may be rectified.
- 2.7. If the sheriff suspects that a bidder is unable to pay either the deposit or the balance of the purchase price referred to in clause 4, the sheriff may refuse to accept the bid of such bidder. All bids will be accepted provisionally until the bidder satisfies the sheriff that such bidder is able to pay the deposit and the sheriff's commission.
- 2.8. On refusal of a bid under circumstances referred to in clause 2.7, the property may immediately be put up for auction again.

### 3. **SIGNING AND CAPACITY**

- 3.1 The purchaser shall, as soon as possible after the sale and immediately on being requested by the sheriff, sing these conditions of sale.
- 3.2 If the purchaser purchases in a representative capacity, the purchaser shall disclose the name of the principal or person on whose behalf the property is being purchased.
- 3.3 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 of anywhere else.

#### **4. PAYMENT OF PURCHASE PRICE**

- 4.1 The purchaser shall pay to the sheriff a deposit of 10% of the purchase price in cash, by bank guaranteed cheque or by way of an electronic funds transfer, immediately on the fall of the hammer or in any customary manner, and provide proof thereof to the satisfaction of the sheriff.
- 4.2 The deposit will be deposited immediately by the sheriff into a trust account held in terms of Section 22 of the Sheriffs Act 90 of 1986.
- 4.3 The balance shall be paid against transfer and shall be secured by a guarantee issued by a financial institution approved by the execution creditor or its attorney, and shall be furnished to the sheriff within 21 days after date of sale or after the date of confirmation of the sale by the court. Should the purchaser fail to furnish the sheriff with a bank guarantee or fail to pay the balance of the purchase price to the sheriff within the stipulated time period, the sheriff may in his/her sole discretion grant the purchaser a 5 day extension within which to provide required bank guarantee or make such payment.
- 4.4 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 not be required to make any deposit nor furnish a guarantee as provided for in terms of 4.1 and 4.3.

#### **5. SHERIFF'S COMMISSION**

- 5.1 The purchaser shall immediately on demand pay the sheriff's commission calculated as follows:
  - 5.1.1 6% of the first 100 000.00, and

5.1.2 3.5% of R100 001.00 to R400 000.00, and

5.1.3 1.5% on the balance of the proceeds of the sale,

Subject to a maximum commission of R40 000.00, plus VAT, in total and a minimum of R 3,000, plus VAT, (inclusive in all instance of the sheriff's bank charges and other expenses incurred in paying the proceeds in to his or her trust account).

5.2 In the event of a property being successfully sold at an auction and the commission specified in Condition 5.1 herein before having been subsequently paid to the Auctioneer/Sheriff in consequence thereof, then the Auctioneer/Sheriff shall be entitled to retain such commission irrespective of whether such sale shall thereafter be cancelled, terminated or suspended for whatever reason.

## 6. FURTHER COSTS AND CHARGES

6.1 The purchaser shall be liable for and pay, within 10 days of being requested to do so by the appointed conveyancer, the following:

6.1.1 All amounts due to the municipality servicing the property, in terms of section 118(1) of the Local Government Municipal Systems Act, 2000 (Act No. 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;

6.1.2 Where applicable, all levies due to a body corporate in terms of the Sectional Titles Act. 1986 (Act No. 95 of 1986) or amounts due to a homeowners or other association which renders services to the property;

Outstanding rates & taxes R186,584.62(not guaranteed)

Outstanding levies R0.00(not guaranteed)

6.1.3 And the costs of transfer, including conveyancing fees, transfer duty or VAT, Deeds Office levies and any other amount necessary for the passing of transfer to the purchaser.

6.2 The purchaser notes that the amounts indicated by the sheriff as owing in respect of clause 6.1 are estimates only. Neither the sheriff nor the execution creditor warrant the accuracy of these estimates. The purchaser shall not be able to avoid his/her/its obligations hereunder, nor will the purchaser have any claims against the sheriff or the execution creditor, arising out of the fact that the amounts actually owing in terms of clause 6.1 are greater than the estimated charges as stated by the sheriff. The actual amounts owing in the respect thereof must be paid by the purchaser in terms of clause 6.1.

## 7. FICA AND SIGNING OF TRANSFER DOCUMENTATION

7.1 The purchaser shall within 5 days of being requested to do so by the conveyancer furnish the conveyancer with all information and documents necessary to enable him or her to comply with the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001) and draft all necessary documentation.

7.2 Further, the purchaser shall within 5 days of being requested to do so by the conveyancer sign all necessary documentation in order for the conveyancer to attend to the registration of transfer of the property.

## 8. COMPLIANCE CERTIFICATES

8.1 The purchaser shall at his/her/own cost obtain a valid electrical installations certificate of compliance and test report, in the prescribed form, as required in the Electrical Installation Regulations, 2009 and an electric fence system certificate of compliance in the prescribed form as required in the Electrical Machinery Regulations, 2011 issued in terms of the Occupational Health and Safety Act, 1993. The purchaser agrees that this undertaking relieves the sheriff and 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, 1993. The purchaser accordingly agrees that there is no obligation on the sheriff or execution creditor to furnish the said electrical installations certificate of compliance and test report.

- 8.2 If required, the purchaser shall at his/her/its own cost obtain a valid Entomologist's certificate.
- 8.3 If required, the purchaser shall at his/her/its own cost obtain a valid gas installation and plumbing certificate of compliance and test report.
- 8.4 In the event of the building inspector in the employ of local municipality exercising jurisdiction over the property so sold by public auction, establishing that illegal building structures have been erected on the property and calling for the demolition of such structures and/or the lodgment of deviation plans sanctioning such structures, then the purchaser shall, at his own cost, be encumbered to promptly attend to the necessary in conjunction with the said building inspector so as to effect transfer of the property into his/her name.

## 9. POSSESSION, RISK AND OCCUPATION

- 9.1 The property may be taken possession of after signature of the conditions of sale, payment of the deposit and upon the balance of the purchase price being secured in terms of clause 4.
- 9.2 Should the purchaser receive possession of the property, the purchaser shall be liable for occupational rental at the rate of 1% of the purchase price per month. Pro-rata occupational rental shall be payable by the purchaser on the date of possession and thereafter monthly on or before the 1<sup>st</sup> of each month until date of registration of transfer. The purchaser shall pay the occupational rental on due date into the following Nedbank Home Loan Bond account: **8002055323601, WESTERMAN T H & S N.**

- 9.3 Upon the purchaser taking possession, the property shall be at the risk and profit of the purchaser,
- 9.4 The execution creditor and the sheriff give no warranty that the purchaser shall be able to obtain personal and/or vacant occupation of the property or that the property is unoccupied;

## 10. TRANSFER AND LIABILITY FOR DELAY

- 10.1 The purchaser shall be entitled to obtain transfer within forthwith upon payment of the whole purchase price and compliance with clauses 5 and 6 and, if applicable, clause 9(2), alternatively transfer shall be passed only after purchaser has complied with the provision of clauses, 4, 5 and 6 and, if applicable, clause 9(2).
- 10.2 If the transfer is delayed by the purchaser, due to the purchaser failing to comply with clauses 4, 5 and 6 and, if applicable clause 9(2) within the stipulated time frames, the purchaser shall be liable for interest at the rate of **10,50%** nominal per annum compounded daily, on the purchase price, as from the date of the delay.

## 11. INSURANCE

- 11.1 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; and
- 11.2 Should the purchaser fail to comply with the obligations as set out in clause 11.1 the sheriff may effect the necessary insurance, on behalf of the purchaser, the cost of which insurance shall be for the purchaser's account.

## 12. TITLE DEED, SERVITUDES AND CONDITIONS OF ESTABLISHMENT



12.1 The property is sold as represented by the Title Deeds and diagram or sectional plan and the sheriff is not liable for any deficiency that may be found to exist. The property is sold as it stands (voetstoots) and without warranty or representation and also subject to all servitudes and conditions specified in the Deed of Transfer, including any real rights reserved in favour of a developer or body corporate in terms of Section 25 of the Sectional Titles Act No. 95 of 1986. Notwithstanding anything to the contrary hereinbefore contained, the property is sold free from any title conditions pertaining to the reservation of personal servitudes in favour of third parties and in respect of which servitudes preference has been waived by the holder thereof in favour of the execution creditor.

12.2 The sheriff and the execution creditor shall not be obliged to point out any boundaries, beacons or pegs in respect of the property hereby sold.

12.3 The sheriff and the execution creditor shall not be liable for any deficiency that may be found to exist in the property.

### 13. CONVEYANCER

13.1 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.

13.2 The conveyancer's details are as follows:

13.2.1 Name: Pierre Griffioen

13.2.2 Name of Firm: Van Heerdens Attorneys t/a VHI Attorneys

13.2.3 Tel: 012 111 0121

#### 14. SALE SUBJECT TO EXISTING RIGHTS

14.1 Where the Property is subject to a lease agreement and the sheriff is aware of the existence of such tenancy then:

14.1.1 if that lease was concluded before the execution creditor's mortgage bond was registered, then the property shall be sold subject to such tenancy; or

14.1.2 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 reflect on the Warrant of execution, then the property shall be offered immediately thereafter free of lease.

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

#### 15. JOINT AND SEVERAL LIABILITY

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

#### 16. SURETYSHIP

In the event of the purchaser being a Company, Close Corporation or a Trustee/Trustees, or any person actin in a representative capacity, then the 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 himself/ themselves to be aware.

#### 17. CANCELLATION OF SALE AND EVICTION

- 17.1 If the purchaser fails to carry out any obligation due by the purchaser under these conditions of 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.
- 17.2 In the event of the circumstances in clause 17.1 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.
- 17.3 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.
- 17.4 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) of the Uniform Rules 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.

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 loan agreement that formed the subject to of the legal action under aforementioned case number, prior to sale in execution of the said bonded property. The purchaser hereby accepts all risks involved in purchasing the property and hereby indemnifies the credit provider against any and all losses which incurred therein.

## ADDRESS FOR LEGAL PROCEEDINGS

The purchaser chooses the address set out in Annexure "A" 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*.

Dated at Midrand on the 13<sup>th</sup> April 2021

I certify hereby that today the 13<sup>th</sup> day of April 2021 in my presence the hereinbefore-mentioned property was sold

☐ with lease

☐ without lease

for R \_\_\_\_\_ to \_\_\_\_\_

Sheriff Halfway House\*-Alexandra

I, the undersigned, \_\_\_\_\_, residing at \_\_\_\_\_ in the district of \_\_\_\_\_ do hereby bind myself as the purchaser of the hereinbefore-mentioned property to pay the purchase price and to perform all and singular the conditions mentioned above.

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PURCHASER

If married by way of duly registered Antenuptial Contract in terms of the laws of South Africa, then both spouses are to sign.

**(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 "B")

FULL NAME OF PRINCIPAL AS PER POWER OF ATTORNEY:

PHYSICAL ADDRESS OF PRINCIPAL:

**ANNEXURE "A"****Purchaser's details:**

Full names:.....

Spouse's Full Names: .....

Married/Divorced/Widowed/Single: .....

If married – Date: .....

By Antenuptial Contract / Married in Community of Property

Where married: .....

(husband's *domicilium citandi et executandi* at the time of the marriage)

Identity number: .....

Physical address (*domicilium citandi et executandi*): .....

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Postal address: .....

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Telephone numbers:

Home: .....Work:.....

Telefax (if any) ..... Cell Number:.....

**ANNEXURE "B"**

POWER OF ATTORNEY