

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

Case Number: 2023-049469

In the matter between:

LIDDESDALE BODY CORPORATE

APPLICANT

(SS NO: 174/1983)

and

THAPEDI MOSES MOHLABANE

FIRST RESPONDENT

(ID: 691223 5343 084)

NTHEPA JOHANNA MOHLABANE

SECOND RESPONDENT

(ID: 711120 0676 086)

CITY OF JOHANNESBURG

THIRD RESPONDENT

METROPOLITAN MUNICIPALITY

CONDITIONS OF SALE IN EXECUTION OF IMMOVABLE PROPERTY

DESCRIPTION OF PROPERTY AND PARTICULARS OF SALE

The property which, on the 30th of April 2024 at the Sheriff Halfway House-Alexandra be put up to auction at 11:00 **with reserve**, at the Sheriff's office at 614 James Crescent, Halfway House, consist of;

A unit consisting of:

- a. UNIT 17, in the scheme known as SS LIDDESDALE, WITH SCHEME NUMBER 174/1983, under Title Deed ST 110684/2001, which is better known as UNIT 17 LIDDESDALE BODY CORPORATE, 14 GIBSON DRIVE WEST, BUCCLEUCH in the City of Johannesburg Metropolitan Municipality of which section the floor area, according to the sectional plan 144 (One Hundred and Forty-Four square meters) sqm. in extent; and
- b. An undivided share in the common property in the scheme appointed to the said section accordance with the participation quota as enclosed on the said sectional plan.
- c. Which property is held and owned by the Execution Debtors in terms of the Deed transfer number ST 110684/2001 situated at 17 LIDDESDALE BODY CORPORATE, 14 GIBSON DRIVE WEST, BUCCLEUCH.

THE SALE SHALL BE SUBJECT TO THE FOLLOWING CONDITIONS

1 THE SALE

- 1.1 The sale will be conducted in accordance with the provisions of Rule 46 of the Uniform Rules of the High Court, as amended, as well as the provisions of the Customer Protection Act, no. 68 of 2008, the Regulations promulgated thereunder and the “Rules of Auction” where applicable. These provisions may be viewed at www.acts.co.za (the Act) and www.info.gov.za (the Regulations).
- 1.2 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 clauses. In these conditions, unless a contrary intention clearly appears, word importing anyone gender shall include the other two gender, the singular includes the plural and vice versa. Any reference to days shall mean business days.

1.3 The property shall be sold by the sheriff to the highest bidder subject to such reverse price, if any, as may be stipulated by a preferent creditor or local authority in terms of the Court Rule 46(5)(a).

2 MANNER OF SALE

2.1 The sale shall be for South African Rand and no bid less than **R 600 000.00 (Six Hundred Thousand Rand)** in value above the preceding bid will be accepted.

2.2 The execution creditor shall be entitled to cancel the sale at any stage before the auction has commenced. The execution creditor shall be entitled to bid at the auction.

2.3 If any disputes arise about any bid, the property may, at the discretion of the sheriff, immediately again be put up for auction.

2.4 If the sheriff makes a mistake in selling, such mistake shall not be binding on any of the parties but shall be rectified immediately.

2.5 If the sheriff suspect that a bidder is unable to pay either the deposit or the balance of the purchase price, he may refuse to accept the bid of such bidder, or accept it provisionally, until the bidder shall have satisfied him that he is in a position to pay both such amounts. On the refusal of a bid under such circumstances, the property may immediately again be put up for auction.

2.6 The purchaser shall pay a refundable registration fee of **R 50 000.00 (fifty thousand rand)** via EFT immediately before the auction.

3. OBLIGATIONS OF PURCHASER AFTER AUCTION

- 3.1 The purchaser shall, as soon as possible after the Sheriff announces the completion of the sale by the fall of hammer, or in any other customary manner, immediately on being requested by the sheriff sign these conditions of sale.
- 3.2 If the purchaser has bought as an agent for a principal, then the sale will also be subject to the following condition:
- 3.2.1 The principal's address as furnished by the purchaser shall be the address as chosen by the principal as he/her address for service of all forms, notices and documents in respect of any legal proceedings which may be instituted by virtue hereof (*domicillium citandi et executandi*).
- 3.2.2 If the principal is not existence at the time of the auction the purchaser shall be the contracting party.
- 3.3 In the event of the purchaser being a company, Close Corporation or a Trust, a Trustee/Trustees, or any person acting 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 excision and division, no value received and error in calculation, the effect of which he/she/they acknowledge 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 Hours of the signature of the conditions of sale.
- 3.6 The purchaser shall on demand sign all necessary transfer and ancillary documents with the transferring attorneys.

4 CONDITIONS OF PAYMENT

- 4.1 The purchaser shall on completion of the sale, pay a deposit of 10% of purchase price immediately on demand by the sheriff on the date of sale.
- 4.2 Payment shall be made in cash, by bank guaranteed cheque or by way of electronic transfer, provided that satisfactory proof of payment is furnished immediately on demand to the sheriff.
- 4.3 Should the purchaser fail to pay the deposit and the Sheriff's commission on completion of the sale, then the sale shall be null void and the sheriff may immediately put the property up for auction again.
- 4.4 The balance of the purchase price shall be paid to the sheriff against transfer and shall be secured by a bank guarantee, to be approved by the execution creditor's attorney, which shall be furnished to the sheriff within 21 days after the date of sale. Should the purchaser fail to furnish the sheriff with a bank guarantee within 21 days after the date of sale, the sheriff may in his/her sole discretion grant the purchaser a five (5) day extension within which to provide the required bank guarantee. Should the purchaser fail to furnish the sheriff with a bank guarantee, which is approved by the execution creditor's attorney, within the required time, the sale may be cancelled.

- 4.5 The deposit will be deposited immediately by the sheriff into a trust account held in terms of Section 22 of the sheriff's Act 90 of 1986.
- 4.6 If the transfer of the property is not registered within one (1) month after the date of sale, the purchaser shall be liable for payment of interest at the rate of 10% (interest rate as per mortgage loan agreement), Nominal Annual Compounded Daily to the execution creditor and to any other bondholder at the rate due to them, on the respective amounts of the award in the plan of distribution, as from expiration of one (1) month after the sale to date of transfer.
- 4.7 The purchaser shall be responsible for payment of all cost and charges necessary to effect transfer, including but not limited to conveyancing cost, transfer duty of VAT attracted by the sale and the Deeds Registration office levies. The purchaser shall further be responsible for payment within (seven) 7 days after been requested to do so by the appointed conveyancer: -
- 4.7.1 Of all amounts required by the Municipality for the issue of a clearance certificate in terms of section 118(1) of the Local Government Municipal Systems Act no. 32 of 2000 to the effect that all amounts due in connection with immovable property for municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties during the two (2) years preceding the date of application of the certificate have been fully paid; and
- 4.7.2 All levies and contributions due to a Body Corporate in terms of section 37 of the Sectional title Act, no 95 of 1986, as amended by the Sectional Titles Schemes Management Act 8 of 2011, or Homeowners Association.
- 4.7.3 Of all amounts due to the Bond Holder(s), if any;

4.8 The purchaser is hereby informed of the following charges.

4.8.1 Arrear rates and taxed estimated at R;

4.8.2 Arrear charges payable in terms of the Sectional Titles Act, Act 95 of 1996 as amended by the Sectional Titles Schemes Management Act 8 of 2011, estimate at R.....;

4.8.3 Arrears due and owing to the Bond Holder of the Property estimated at R.....;

4.8.4 The sheriff and the purchaser note that the amount set forth in this clause are a reasonable estimate only. Neither the sheriff nor the execution creditor warrants and accuracy of the estimate.

4.8.5 The purchaser shall not be able to avoid its obligations hereunder, nor will it have any claims against the sheriff or the execution creditor, arising out the fact that the arrear rates and taxed and arrear charges payable in terms of the Sectional Titles Act no.95 of 1986 are greater than the estimated chargers set forth herein.

4.8.6 The actual amounts owing in respect of arrear rates and taxes or arrear charges payable in terms of the Sectional Titles Act 95 of 1996 as amended the Sectional Titles Schemes Management Act 8 of 2011 must be paid by the purchaser within seven (7) days after being requested to do so by the attorney attending to the transfer.

4.9 The purchaser shall, immediately on demand by the sheriff, pay the Sheriff's commission as follows:

4.9.1 6% on the first R 100 000.00 (One Hundred Thousand Rand), and

- 4.9.2 3.5% from R 100 001.00 (One Hundred Thousand and One Rand) –
R 400 000.00 (Four Hundred Thousand Rand); and
- 4.9.3 1.5% on the balance of the purchase price;

payable on the date of sale.

(Subject to a minimum of R 3000.00 (Three Thousand Rand) plus VAT and a maximum of R 40 000.00 (Forty Thousand Rand) plus VAT inclusive in all instances of the sheriff's bank charges and other expenses incurred in paying the proceeds into his or her trust account;

- 4.10 If the purchaser pays whole purchase price and complies with conditions 4.1, 4.7, 4.8 and 4.9 (including 4.9.1, 4.9.2 and/or 4.9.3) within 21 days from the date of sale any claim for interest shall lapse, otherwise transfer shall be passed only after the purchaser has complied with the provisions of conditions 4.1, 4.4, 4.7, 4.8 and 4.9 hereof.
- 4.11 In the event that the purchaser being the execution creditor, who is also a customer exempted in terms of section 5(2)(b) from the provisions of the Customer Protection Act, 68 of 2008, the execution creditor shall be required to pay the commission set out in the clause 4.9 without demand within seven (7) days.
- 4.12 Such execution creditor shall not be required to make any deposit nor furnish a guarantee as provided for in terms of 4.1 and 4.4 except insofar as the purchase price may exceed the total amount as set out in the warrant of execution. The difference between the purchase price and the total amount as set out in the warrant of execution, plus interest as provided for in 4.6 is to be paid or secured to the sheriff within twenty-one (21) days from the date sale, without demand. Such execution creditor shall at the date of registration of transfer provided the sheriff with satisfactory proof that the defendant's account has credited accordingly.

5 COMPLIANCE CERTIFICATES

- 5.1 The purchaser shall at his/her 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, 1993. The purchaser agrees that is undertaking relieves the Sheriff and the execution creditor from any duty that may be imposed Upton 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 and the test report.
- 5.2 The purchaser agrees that there is no obligation on the sheriff or the execution creditor or furnish an Entomologist's certificate.
- 5.3 If acceptable, the purchaser shall at his/her/own cost obtain a valid gas installation and plumbing certificate of compliance and test report.

6 RISK AND OCCUPATION

- 6.1 The property shall be at the risk and profit of the purchaser after the fall of the hammer and the signing of the conditions of sale and payment of the initial deposit.
- 6.2 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. Pro-rata occupational rental shall be payable by the purchaser on the date of possession and thereafter monthly on or before the 1st of each month until date of registration of transfer. The purchaser shall pay the occupational rent to the bond holder, on the details provided by the bond holder, alternatively into the Execution Creditor's Attorney's Trust Account for benefit of the bond

holder which bank account details are to be provided upon completion of the sale.

- 6.3 The purchaser shall be liable to keep insured all buildings standing on the property sold for the full value of same from the fall of the hammer and the signing of the conditions of sale and payment of the initial deposit to the date of transfer. Failing which the sheriff may affect the insurance at the purchaser's expenses.
- 6.4 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 and any proceedings to evict the occupier(s) shall be undertaken by the purchaser at his/her/its own cost and expense.
- 6.5 The property is sold as represented by the Title Deeds and diagram 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 favor 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 servitude in favor of third parties and in respect of which servitudes preference has been waived by the holder thereof in favor of the execution creditor.
- 6.6 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.

7 SALE SUBJECT TO EXISTING RIGHTS

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 before 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 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 Writ, then the property shall be offered immediately thereafter free of the lease.
- 7.2 Notwithstanding any of these provisions the purchaser shall be solely responsible for rejecting 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.
- 7.3 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 any of his obligations under these 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; and the purchaser shall be responsible for any loss sustained by reason of his default which loan may, on the application of any aggrieved creditor whose name appears on the Sheriff's distribution summarily on the written report by the sheriff, after such purchaser shall have received notice in

writing that such report will be laid before the judge for such purpose; and if he is already in possession of the property, the sheriff may, on seven (7) days' notice apply to a judge for an order ejecting him or any person claiming to hold under there from.

8.2 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 judgement in terms of rule 43(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 as he been qualified and judgment has been granted in respect thereof.

9 ADDRESS FOR LEGAL PROCEEDINGS

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

10 CONFIRMATION OF THE PURCHASER

The Sheriff and Purchaser confirm that the property is sold:

With lease

Without lease

For an amount of:

.....
.....

Which amount excluded the amounts referred to the clause 4.6 (if applicable) 4.7, 4.8 and 4.9 and accept all further terms and conditions as set out herein, which acceptance is confirmed by his signature below.

11 JOINT AND SEVERAL LIABILITY

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

12 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: Karl Schüler

12.2 Name of Firm: Schüler Heerschop Pienaar Attorneys

12.3 Tel: 011 763 3050

I, the undersigned, Sheriff of _____ hereby certify that today on the ____ day of _____ 2024 as advertised, the aforementioned property was sold for R..... to

SHERIFF

I the undersigned, _____ on this _____ day of _____ 2024 do hereby bind myself as the purchaser of the aforementioned property on the conditions of sale as contained herein.

PURCHASER

If married in community of property, 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 then both spouses are to sign

(and where applicable in terms of these conditions of sale as surety and coprincipal debtor)

(and where applicable on behalf of the below mentioned Principal being duly authorized 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"

Puchaser's details:

1. Full Names.....
2. Spouses Full Names.....
3. Married/divorced/Widowed/Single:.....
4. If married – Date.....
5. Where married.....
By Antenuptail Contract/Married in Community of Property
6. Identity Number.....
7. Physical address(domicillium citandi et executandi at the time of marriage).....
8. Postal address.....
9. Telephone Numbers
Home.....Work.....
Telefax(if any).....Cell number.....

ANNEXURE "B"

POWER OF ATTORNEY