



**“ANNEXURE C”**

**BUILDING CONTRACT**

MADE AND ENTERED INTO BY AND BETWEEN:

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(Full names, Surname & ID Number

(Hereinafter referred to as “The Purchaser”)

(Address) \_\_\_\_\_

(Cell) \_\_\_\_\_

(Email) \_\_\_\_\_

AND

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(Full names, Surname & ID Number

(Hereinafter referred to as “The Purchaser”)

(Address) \_\_\_\_\_

(Cell) \_\_\_\_\_

(Email) \_\_\_\_\_

AND

**KRUSAN CONSTRUCTION CC**

**Registration No: 2011/002603/23**

(Hereinafter referred to as “The Contractor”)

**3 Dove Street, Atlasville, Boksburg, 1456**

(Represented herein by Sandra Kruger, in her capacities as Managing Member or person  
duly authorised by power of attorney, and by a resolution.

(Cell) 072 536 8899 Managing Member (Cell) 072 313 8152 Builder Peet Kruger

(Email) [Sandra@krusanconstruction.co.za](mailto:Sandra@krusanconstruction.co.za) & (Email: Office) [Karin@krusanconstruction.co.za](mailto:Karin@krusanconstruction.co.za)

## PREAMBLE

The Purchaser/Purchasers has entered into an agreement of sale with the Developer as per Land Contract, for the purchase of erf \_\_\_\_\_ **Auret Lifestyle Estate Nortonpark ext 15, Benoni.** This agreement forms an indivisible part of the agreement of sale (building contract with Krusan Construction CC) to which it is annexed as Annexure "B". **At no given time may the purchaser cancel this building contract with Krusan Construction and use another building contractor.**

The parties hereby agree that the Contractor will erect a cluster unit for the purchaser on the property, on the following terms:

### 1. **DEFINITIONS**

In this agreement, unless inconsistent with the context the words and phrases herein defined shall bear the meanings respectively herein assigned to them namely:

#### 1.1 **PROPERTY**

Erf: \_\_\_\_\_ **of Norton Park Ext 15.**

House type \_\_\_\_\_

#### 1.2 **BUILDING CONTRACT PRICE R \_\_\_\_\_** inclusive of VAT.

1.2.1 The contract price shall be valid for a period of 3 (three) months, where after the price shall be subject to increase in accordance with building material price increases.

1.2.2 In the event of there being a price increase in respect of labour or material, after the signing of this agreement and prior to the completion of the works, then and in such event 50% (FIFTY PER CENTUM) of such increases shall be borne by the Contractor and the other 50% (FIFTY PER CENTUM) shall be borne by the Owner. A certificate by the Contractor's auditor regarding such increased cost shall be "prime facie" proof thereof.

#### 1.2.3 **COMBINED CONTRACT PRICE R \_\_\_\_\_ (land plus building)** inclusive of VAT.

1.2.3.1 The Purchaser/Purchasers Is about to obtain a loan amount of R \_\_\_\_\_  
(amount in words \_\_\_\_\_)  
\_\_\_\_\_ from a mortgage bond (hereinafter referred to as "the Mortgage Bond") over the Property or present a guarantee for the full amount to finance the erection of a dwelling thereon within 30 days from signing this contract.

#### 1.3 **ESTIMATE OCCUPATION DATE: \_\_\_\_\_.**

This date may be delayed or effected by act's of God eg. Rain or unexpected delays from Council beyond our control. Including but not limited to these conditions.

#### 1.4 **PLANS, SPECIFICATIONS AND SCHEDULE OF FINISHES**

The plans and schedule of finishes with PC allowances for the dwelling to be erected by the Contractor for the Purchaser is annexed hereto as annexure "E" and signed by the parties.

## **1.5 DWELLING**

The building / home to be erected in accordance with the provisions of this agreement.

## **1.6 COMMENCEMENT DATE**

Shall be the date upon which the contractor has access to the site and shall be the latest of:

1.6.1 the date of possession namely the date of transfer, or

1.6.2. the date of approval of the plans by the local authority, or

1.6.3. the date that all approvals or authorities as may be required for the purpose of the construction of the dwelling have been furnished by the person from which such approval or authority is required, or

1.6.4. the date the Purchaser has paid all amounts due and payable before the work can commence, or

1.6.5. Fourteen (14) days after the date of transfer of the property into the name of the Purchaser should everything be in place as per 1.6.1 to 1.6.4.

## **1.7 DATE OF POSSESSION**

The date upon which the Purchaser is obliged to give the Contractor possession of the site viz-a-viz the date of transfer of the property into the name of the Purchaser.

## **1.8 LIEN**

The contractor's common law right of retention in respect of the dwelling.

## **1.9 COMPLETION DATE**

The completion date will be 8(eight) months after the date of possession or 6(six) months after the commencement date, whichever is the later.

## **1.10 COMPLETION**

The practical completion of the dwelling as hereinafter provided for.

## **1.11 MAINTENANCE PERIOD**

As per NHBRC requirements.

## **1.12 ACCESS TO THE SITE**

The Purchaser shall be permitted access to the site **only by prior appointment** with the Liaison Officer appointed by the Contractor.

### 1.13 **CONTRACT PERIOD**

The expected period in which the dwelling will be built namely 8(eight) months from the date that possession is actually given to the Contractor.

## 2. **BUILDING CONTRACT**

- 2.1 The Purchaser hereby employs the Contractor for the purpose of erecting a dwelling on the property for the building contract price plus the charge for the optional extras as set out in the Annexures hereto.
- 2.2 The Purchaser acknowledges that he is aware that this agreement is entered into between him/her and the Contractor, separately from the Land Sales Agreement, between the Purchaser and the Developer and acknowledges that the two agreements are indivisible and in the event of the Land Sales Agreement being canceled or lapsing for any reason, this agreement, will terminate or lapse and be of no further force and effect.
- 2.3 The purchaser shall not give instructions to ANY subcontractor of Krusan Construction CC during his arranged visit to site. Purchaser shall not interfere with the building works.

## 3. **PAYMENT OF THE BUILDING CONTRACT PRICE**

- 3.1 Without finance:
  - 3.1.1 In the event of the building contract price, not being financed by way of a mortgage bond, the contract price will be payable as follows:
    - 3.1.1.1 100% of Contract price paid into Krusan Construction CC's bank account, prior to build works commence.
  - 3.1.2 Payment shall become due upon the Contractor/Transferring Attorney furnishing the Purchaser with proof of land being transferred into purchaser's name.
  - 3.1.3 The Purchaser shall upon demand by the Contractor provide the Contractor with a guarantee issued by an acceptable financial institution for payment of the amount which will become due to the Contractor in terms hereof, and the Contractor shall be entitled to 100% payment from such Financial Institution on date of registration of the land into purchaser's name
  - 3.1.4 The parties agree that the building price, includes the NHBRC fees, payable by the contractor.

## 4. **ERECTION OF THE DWELLING**

- 4.1 The Contractor shall erect the dwelling on the property in accordance with the plans and schedule of finishes by the completion date. Should there be any discrepancy or conflict between the plans and schedule of finishes or the terms of this agreement, the terms of the schedule of finishes shall prevail over the plan and the plans over the terms of this agreement.
- 4.2 The following annexures are to be annexed to this agreement: House plan and finishing schedule and optional extras schedule.

**5. OCCUPATION**

Occupation of the property shall be given to and taken by the Purchaser on the occupation date provided that should the Contractor be unable for any reason whatsoever to give beneficial occupation to the Purchaser on the above occupational date, and the Contractor has notified the Purchaser at least 30 (thirty) days prior to the initial occupation date thereof, the Purchaser shall take occupation on a date to be determined by the Contractor, which shall not be extended by more than 60 days.

**6. RISK AND BENEFIT**

The risk in and benefit of the property shall pass to the Purchaser on transfer of the property into the name of the Purchaser, from which date the Purchaser shall be responsible for all consumption charges levied against the property, including but not limited to all rates and taxes and levies and other outgoings levied in respect of the property. Water consumption during the construction period shall be for the builders account, until date of completion of the building.

**7. SUSPENSIVE CONDITIONS**

In the event of the sales contract being cancelled by the Developer as a result of the non-fulfillment of any of the conditions contained in clause 16 of the sales agreement, then this agreement will also automatically lapse and be deemed null and void.

**8. GENERAL PAYMENT PROVISION**

- 8.1 The Purchaser waives all rights to claim set off, which shall not apply or to withhold or defer any payment pending determination of any claim which the Purchaser may have against the Contractor or for any other reason.
- 8.2 Should any amount be due for payment and not be paid on due date or should the Purchaser breach the agreement in any way whatsoever then, and in addition to any other remedies conferred upon the Contractor, the Contractor shall be entitled to:
- 8.2.1 Suspend execution of the works until the payment is made and to recover from the Purchaser interest on all amounts due at the prevailing prime overdraft rate from time to time plus 3%, calculated daily and capitalized monthly in arrears from due date of payment to date of final payment, and/or an extension of time from completion and to recover any increased or additional cost incurred by reason of the suspension, or

- 8.2.2 Cancel this agreement and resume possession of the property and recover from the Purchaser all damages it may have suffered by reason of such default and retain all amounts paid by the Purchaser pending the determination of the actual damage sustained by the Contractor, or
  - 8.2.3 Cancel the agreement and resume possession of the property and retain all amounts paid by the Purchaser in terms of this agreement as rouwkoop or a genuine pre-estimate of damages which amount the parties hereto agree is fair and reasonable in the circumstances, or
  - 8.2.4 Claim specific performance.
- 8.3 The Purchaser shall not be entitled to occupation of the dwelling until such time as all amounts due to the Contractor have been paid or secured to the satisfaction of the Contractor.
- 8.4 In the event of there being a dispute as to whether an item should be included on the completion list, or whether the Contractor has attended to remedy the items on the completion list, the architect will be called upon to decide the question. The architect shall act as an expert and his decision shall be final and not appealable or reviewable by either party. The cost of the arbitration, shall be for the account of the party against whom the ruling is made.

## **9. AGREED VARIATIONS**

- 9.1 The Contractor shall not be obliged to effect any alteration to the works. In the event of the Contractor agreeing to any variation, such variation and the terms relating thereto must be reduced to writing and signed by both parties.
- 9.2 VARIATIONS REQUIRED BY OTHERS: Should the local authority or any other competent authority at any time for any reason, whether before or after the erection of the dwelling, require any variation thereto deviating from the plans, specifications and schedule of finishes or require the siting of the dwelling to be varied from the position shown on the plans which results in an increase in the cost of construction of the dwelling, then:
- 9.2.1 The contract shall not thereby be vitiated.
  - 9.2.2 The Purchaser shall be responsible for any increased costs incurred by the Contractor in complying with such conditions or requirements.
  - 9.2.3 Such increased costs shall in the absence of agreement between the Contractor and the Purchaser be determined by the architect acting in a summary manner which determination shall be final and binding on the Contractor and the Purchaser.
  - 9.2.4 Such variations shall be carried out in accordance with the terms of this contract as amended.

## **10. COMMENCEMENT**

- 10.1 The Purchaser shall be obliged to give the Contractor undisturbed and complete possession of the property on the commencement and shall not require the Contractor to give up possession for as long as any portion of the contract price remains unpaid or the works remain uncompleted.
- 10.2 The Contractor shall be entitled but not obliged, to commence work on the site prior to the arrival of the commencement date but such earlier commencement of the works shall not reduce the time for completion.

## **11. COMPLETION**

- 11.1 The Contractor shall complete the dwelling by the completion date.
- 11.2 The Contractor shall be entitled to a reasonable extension of time of the completion in respect of:
  - 11.2.1 any statutory or customary Contractor's holidays falling within the period between the commencement date and the completion date.
  - 11.2.2 any other fact or circumstances falling reasonable outside the control of the contract, resulting in a delay in the execution of the works including but not limited to:
    - 11.2.2.1 strikes, lockouts and stay aways (whether lawful or unlawful);
    - 11.2.2.2 inclement weather or any other acts of God preventing work;
    - 11.2.2.3 civil commotion, insurrection or riots.
- 11.3 The Contractor shall not be liable to the Purchaser for any damages or penalty of whatsoever nature whether consequential or otherwise as may be suffered by the Purchaser as a result of any delay in the completion of the dwelling for any reason whatsoever in the first 60 days of such delay, thereafter the Contractor shall be liable to pay penalty of R500.00 per day to the Purchaser till completion date. The Purchaser shall not be entitled to cancel this contract as a result of delayed completion.
- 11.4 The completion date shall be the earliest of:
  - 11.4.1 the date on which the financier if applicable, has its final inspection and certifies the dwelling as complete,
  - 11.4.2 the date of the issuing of a valid occupancy certificate by council.
  - 11.4.3 the date agreed upon between the parties,
  - 11.4.4 the date the Purchaser take occupation of the dwelling,
- 11.5 If there is any dispute between the Purchaser and the Contractor as to whether the completion date has arrived such dispute shall be determined by the architect in a summary manner whose decision shall be final and binding upon the Contractor and the Purchaser.

- 11.6 Prior to occupation the Contractor and the Purchaser shall inspect the dwelling. At such inspection a list of items to be attended to before the house is regarded as complete (the completion list) will be drawn up. The Contractor shall remedy and complete the items on the completion list, within 14 days, where after the Purchaser will take occupation.
- 11.7 Notwithstanding anything herein contained should the Contractor complete the work prior to the expiry of the contract period, the Purchaser shall be obliged to pay the full contract price whether or not the Purchaser takes occupation.
- 11.8 Once the contractor commences with construction of the dwelling, with the exception of the December builders holiday period, the contractor shall remain interrupted on site with a meaningful workforce at all times.

## **12. MAINTENANCE**

- 12.1 The Purchaser shall within the maintenance period, notify the Contractor of any material faults or defect in the dwelling arising from defective materials or workmanship.
- 12.2 The Contractor shall within a reasonable time of receiving such notification make good such faults or defects.
- 12.3 As per NHBRC requirements the following warranties are applicable:
- 12.3.1 Within 3 months, to rectify non-compliance or deviation from the terms, plans and specifications of your mutual building agreement.
- 12.3.2 Within 12 months, instruct to repair roof leaks attributable to workmanship, design or materials.
- 12.4 The Contractor shall not be obliged to carry out any repair work during the maintenance period if the Purchaser is at that time in breach of any of its obligations in terms of this agreement until such breach has been remedied.
- 12.5 The provisions set out above relating to the maintenance period describe in full the obligations of the Contractor to the Purchaser for defects of materials or workmanship in the dwelling at the completion date or manifesting themselves after the completion date.
- 12.6 Under no circumstances shall the Contractor be responsible for damage or loss caused by wear and tear, misuse, negligence, abuse, or accident or in respect of or arising from any risk insured against in terms of homeowners insurance policies normally issued by South African insurance companies and the Contractor under no circumstances be liable for any consequential loss or damage.
- 12.7 A certificate by the architect stating that the defect for which the Contractor is liable in terms of this clause 12 has been made good, shall be final and binding on both parties and shall relieve the Contractor from any obligations in respect of such defect.
- 12.8 Should there be any dispute between the Contractor and the Purchaser as to whether any maintenance work has been carried out or has been properly carried out such



dispute shall be determined by the architect in a summary manner and such determination shall be final and binding upon the Contractor and the Purchaser.

12.9 The Purchaser undertakes to give the Contractor or its agents access to the premises to carry out repairs to defects and shall have no claim against the Contractor for damages to or loss of property as a result of having given such access.

### **13. RISK AND INSURANCE**

13.1 Risk in the dwelling shall pass to the Purchaser on the completion date.

13.2 From the date of possession until the completion date, the Contractor shall insure the works and any unfixed materials on site in terms of a contractor's all risk policy.

### **14. OWNERSHIP IN MATERIALS**

All materials brought on site remain the exclusive property of the Contractor until paid for in full or affixed to the works.

### **15. OTHER WORKMEN**

15.1 The Purchaser shall not be entitled to instruct other workmen to carry out any work in, on or about the property or the works or on the dwelling prior to the completion date save with the prior written consent of the Contractor.

15.2 The Purchaser shall be liable for any additional expenses incurred by the Contractor as a result of damages or delays occasioned by the activities of such other persons being on the property at the Purchaser's request whether or not the Contractor has consented thereto.

15.3 The Purchaser acknowledges that construction on other dwellings in the development may continue for a period of time after occupation was taken by the Purchaser and that same may cause disturbances by way of noise, dust, etc.

### **16. FINAL ACCOUNT**

16.1 On the completion date, the Contractor shall present to the Purchaser final accounts specifying:

16.1.1 the contract price.

16.1.2 adding thereto all amounts due in respect of variations.

16.2 The final account shall be paid forthwith prior to the Contractor surrendering its lien.

### **17. SPECIFIC EXCLUSIONS FROM THE CONTRACT**

The contract price does not include:

17.1 Any materials or fittings not specified in the schedule of finishes.

17.2 Deposits and connection fees required by authorities including consumption deposits for water, electricity and Electricity Prepaid Meter.

17.3 Any additional charges in respect of amendments to the standard plan.

17.4 Interim interest on building draws which is payable from the date of registration of the land.

**Bond must be serviced EVERY month after registration.**

## **18. ARBITRATION CLAUSE**

If any dispute or difference shall arise between the Owner(s) or the Bank on it's behalf, and the Contractor, during the progress and before completion of the building operations or after the termination of the employment of the Contractor under this contract, abandonment or breach of the contract, as to the construction of the contract, or as to any other matter or this arising there under, or as to the withholding by the Bank of any draw to which the Contractor claim to be entitled, then an architect, civil engineer, quantity surveyor or any other professional person involved in the building industry appointed by the Bank ("the Arbitrator") shall determine such dispute or difference by written decision given to the Contractor.

## **19. JURISDICTION**

For the purpose of all or any legal proceedings herein the parties hereby consent to the jurisdiction of the Magistrates Court under Section 18 of the Magistrates Court Act of 1944 as amended. Notwithstanding the foregoing, the Contractor shall have the right at the Contractor's sole option and discretion to institute proceedings in any other competent Court which might otherwise have jurisdiction.

## **20. GENERAL**

The Purchaser acknowledges that the development, referred to in the Agreement of Disposal by Freehold, is not complete, that building operations will take place upon adjacent or neighboring subdivisions or erven and that the said building operations may cause the Purchaser certain inconvenience. The Purchaser acknowledges that he shall have no claim either as against the Seller or against the contractor or sub-contractor arising out of such operations. The Purchaser acknowledge that communal area's grass will only be planted as a section or division are FULLY completed.

### **20.1 Site Services**

It is recorded that the Contract Sum is on the basis that waterborne sewerage, water and electrical connections are available at the boundary of the Property. In the event of any of the aforesaid services still having to be provided, the charges of providing or linking up with such services to the boundary shall be for the account of the Landowner.

**Signed** at \_\_\_\_\_ on \_\_\_\_\_ 2018 in the presence of the undersigned witnesses.

**AS WITNESSES:**

1. \_\_\_\_\_

\_\_\_\_\_

For and on behalf of the Purchaser

2. \_\_\_\_\_

**Signed** at \_\_\_\_\_ on \_\_\_\_\_ 2018 in the presence of the undersigned witnesses.

**AS WITNESSES:**

1. \_\_\_\_\_

\_\_\_\_\_

For and on behalf of the Contractor

2. \_\_\_\_\_