

AGREEMENT OF DISPOSAL BY FREEHOLD

MADE AND ENTERED INTO BY AND BETWEEN:

CASTLEHILL TRADING CC

Registration No: 2011/027237/23

(Hereinafter referred to as "The Seller")

Represented herein by Zaid Joosub, in his capacities as Manager,
being duly authorized by a resolution.

Email: zaidjoosub@mweb.co.za

AND

ID Number: _____

Address: _____

(Hereinafter referred to as "The Purchaser")

Tel No: _____

(Email:) _____

AND

(if married in Community of Property)

ID Number: _____

Address: _____

(Hereinafter referred to as "The Purchaser")

Tel No: _____

(Email:) _____

PREAMBLE

- A. The Seller is the registered owner of Norton Park ext 15, on which property the **Auret Lifestyle Estate** Development is being developed and the Seller has the right to dispose of stands in the free hold development to the Purchaser.
- B. The Purchaser wishes to acquire the property, with separate building agreement.
- C. Accordingly, the parties set out below the terms and conditions subject to which the Purchaser acquires the property from the Seller.

AGREEMENT

1. DEFINITIONS

In this agreement, unless the context clearly indicates an intention to the contrary, the following words and phrases shall have the meanings assigned to them.

- 1.1 “**Seller**” means CASTLEHILL TRADING CC, Registration No: 2011/027237/23 (also interchangeably referred to herein as “the Developer”), with domicilium address at office 13, New Road Office Park, 5 New Road, Midrand ;
- 1.2 “**Purchaser**” means the Purchaser described as such on the first and page of this agreement.
- 1.3 “**Property**” means the proposed erf number, (169 to 226) _____, situated at Norton Park ext 15, about to be proclaimed, measuring approximately **_square meters**, such property being indicated on the Surveyor General plan annexed hereto as Annexure “A”;
- 1.4 “**Purchase price**” means the purchase price payable by the Purchaser to the Seller for the property being the sum of **R550 000.00 (land price only)**, with a no interest bearing refundable deposit of **R10 000.00** being payable by the Purchaser, within 2 working days from signature of this agreement.
- 1.5 “**Guarantee**” means the guarantee by a bank or building society acceptable to the Seller, in a form acceptable to the Seller, expressed to be irrevocable and undertaking to pay the sum of R_____ to the Seller against transfer of the property into the name of the Purchaser, such guarantee to be provided within a period of 30 **(thirty) days** after the date of signature of this agreement by the last party signing;

- 1.6 “**Additional costs**” means those additional costs for which the Purchaser may be liable in terms of this agreement, including the costs as further set out in Annexure “B”.
- 1.7 “**Transferring attorneys**” means ROSCHER INC, 011 468 3825, Roscherinc.co.za;
- 1.8 “**Occupation date**” means date when Krusan Construction takes possession over the property to erect the dwelling also means the date of registration of transfer.
- 1.9 “**Building agreement**” means the building agreement, entered into between the Purchaser and **KRUSAN CONSTRUCTION CC REGISTRATION NR 2011/002603/23** and annexed hereto as Annexure “C”, for the erection of a residential dwelling on the freehold erf, hereinbefore mentioned. **The parties specifically agree that this agreement and Annexure “C” hereto forms one indivisible agreement, this agreement will become null and void, at the election of the Seller, if the building agreement is not entered into between the parties within a reasonable time after signing of the Agreement of disposal by freehold. The 3rd party may not terminate contract with Krusan Construction CC and enter into another contract with a different builder at any given time.**
- 1.10 “**Local authority**” means the Municipality of Ekurhuleni;
- 1.11 “**Practical Completion**” shall mean the state of completion where, in the opinion of the architect, completion of the works has substantially been reached and can effectively be used for the purposes intended.
- 1.12 “**Architect**” shall mean **LN Design**
- 1.13 Words signifying the singular shall include the plural and words importing one gender shall include the others and vice versa.
- 1.14 The preamble and clause headings in this agreement shall not be taken into account in construing the contents hereof.

2. DISPOSAL OF THE PROPERTY

- 2.1 It is hereby agreed that the Purchaser hereby acquires the property from the Seller by freehold transfer.
- 2.2 The purchase price has been calculated inclusive of Value-Added Tax at 15%. Should the Value-Added Tax payable in respect of the purchase price increase beyond 15% the Purchaser shall be liable to forthwith pay to the Seller the amount of such increase.

- 2.3 The parties hereby confirm that the Purchaser is aware of the fact that the Township register has been opened, but proclamation of the township has not yet been effected, and that the proclamation will only proceed once the suspensive condition contained in 16.1 has been fulfilled.
- 2.4 The Purchaser is aware and hereby agrees to abide by the architectural guidelines as set by the Developer / Seller.
- 2.5 The Purchaser acknowledges that he is aware that this agreement is entered into between him/her and the Developer, separately from the building agreement between the Purchaser and KRUSAN CONSTRUCTION CC but acknowledges that the 2 agreements are indivisible and in the event of the building agreement not being concluded within 72 hours of the signing of this agreement, this contract will lapse and be of no further force and effect.

3. TRANSFER

- 3.1 The Seller shall take whatever steps are necessary to have freehold in respect of the property registered in the name of the Purchaser, such registration to be attended to by the transferring attorneys, and the Seller shall be liable for the costs of such registration.
- 3.2 Transfer of the property into the name of the Purchaser shall take place against payment of the amount referred to in clause 1.4. above by the Purchaser to the Seller for the property.

4. PURCHASE PRICE AND PAYMENT

- 4.1 The Purchaser shall pay the purchase price to the Seller for the property in accordance with 1.4 above.
- 4.2 The Purchaser shall provide the Seller with the guarantee in accordance with 1.5 above.
- 4.3 All payments made in terms of this agreement shall be made by the Purchaser directly to the transferring Attorneys, and all guarantees furnished in terms of this agreement shall be expressed to be payable to the transferring Attorneys.
- 4.4 This agreement is subject to the suspensive condition that the Purchaser obtains the bank loan or provide a guarantee for cash sale in accordance with clause 11, and if applicable, the resolutive condition contained in annexure "E" hereto, being the sale of the Purchaser's existing property.

5. STATUS OF THE PURCHASER

- 5.1 In the event of the Purchaser being a company, close corporation, trust or other body, the person or persons signing on its behalf warrant that they are duly authorised to do so and by their signature hereto bind themselves to the Seller as sureties and co-principal debtors for the obligations of the Purchaser and undertake to sign or procure the signature of any agreement of suretyships or co-principal debtorship or other like agreement required by any lender to which any loan application is made in terms of this contract;

Should the person or persons signing this offer on behalf of the Purchaser be acting as trustees or agents for a company, close corporation, trust or other body to be formed then:

- a) the entity in question shall be formed and/or registered and shall ratify and adopt this agreement in sufficient time to enable any guarantees required in terms of this agreement to be furnished on due date;
- b) should the body not be formed within 90 (ninety days) or the sale not be ratified within the time specified above the signatories shall be deemed to be the Purchaser and will be personally liable for the performance of the Purchaser's obligations in terms of this contract.

6. OCCUPATION

- 6.1 Occupation of the vacant property shall be given to and taken by the Contractor, on the date of registration of transfer.

7. RISK AND BENEFIT

- 7.1 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 outgoing charges levied in respect of the property and charges for consumption of water, electricity and such like charges.
- 7.2 The property is disposed of in terms of this agreement in the condition as it stands, VOETSTOOTS.

8. HOME OWNERS ASSOCIATION/SECURITY GATE/ENTRANCE

- 8.1 The Purchaser undertakes upon request by the Seller and/or the local authority and/or the owner/s of portions shown on the general plan, to grant all such powers of attorneys, sign all such documents and appear at all such places and to contribute to the reasonable costs of the acts therein contemplated and to such terms and conditions as the local authority may have imposed, as and

when required by any of the aforementioned parties, so to do whatsoever may be necessary to give effect towards maintaining the security gate.

- 8.2 The Purchaser acknowledges that he/she is required, upon registration of the property into his/her name to become a member of the Home Owner's Association in respect of the development of which the property forms a part, such Home Owner's Association to be constituted and named by the Seller (in the sole discretion of the Seller) and the Purchaser accordingly agrees to conduct himself in accordance with and shall be bound by the constitution of Articles of Association of such Home Owner's Association.
- 8.3 The Purchaser acknowledges that he is aware of the fact that:
 - 8.3.1 he will be responsible for payment of his pro rata share of all the costs of the Homeowner's Association;
 - 8.3.2 he will be liable, from the date of registration of transfer of property into his name, for payment of all contributions to the fund to be established by the said Home Owner's Association. He shall be liable on occupation, for payment on demand to the Seller of his proportionate share of any amounts disbursed by the Seller in advance, beyond the date of occupation for and in respect of all rates and taxes, local levies, electricity and water accounts, sanitary fees, rubbish removal fees, and any other contributions and shall thereafter make payment direct to the local authority if so required.
 - 8.3.3 The Purchaser undertakes to ensure that any tenant of the Purchaser or other person acquiring right of occupation in respect of the property shall similarly be bound by the provisions thereof insofar as the Home Owner's Association is concerned.

9. TRANSFERABILITY/PROCLAMATION/TITLE DEED CONDITIONS

- 9.1 The Purchaser acknowledges having been informed by the Seller that the Township register has been opened in the Pretoria Deeds Office, but the proposed township as per the attached general plan, has not as yet been proclaimed and is therefore not yet transferable into the name of the Purchaser. Should the suspensive condition as set in 16.1 below not be fulfilled then this agreement shall lapse, be null and void and of no force or effect whatsoever. In this event, any amounts paid, together with accrued interest thereon shall be refunded to the Purchaser.
- 9.2. The Purchaser further acknowledges that it/she/he shall have no claim of whatsoever nature or kind against the owner and/or the Seller arising out of the aforementioned and the inability of the Seller to effect transfer as aforesaid.
- 9.3. The parties agree that they are aware that until the property is registrable, any amounts paid by the Purchaser to the Seller, shall be kept in a trust account of the transferring attorneys until date of registration of the property into the name of the Purchaser, such trust account to be an account in terms of Section 78(2A)

of the Attorneys Act, the interest on such account to be for the benefit of the Purchaser.

- 9.4. The Seller shall be entitled to procure that in addition to all other conditions of title and referred to above, the following conditions of title be inserted in the Deed of Transfer in terms of which the Purchaser takes title to the property:
 - 9.4.1 Every owner of the erf or any subdivision thereof or any interest therein shall become and shall remain a member of the Home Owner's Association and be subject to its constitution until he ceases to be an owner as aforesaid. Neither the erf, nor any subdivision thereof or any interest therein shall be transferred to any person who has not bound himself to the satisfaction of such Association to become a member of the Home Owner's Association.
 - 9.4.2 The owner of the erf or any subdivision thereof, or any interest therein, shall not be entitled to transfer the erf or any subdivision thereof or any interest therein without a clearance certificate from the Home Owner's Association that the provisions of the Articles of Association have been complied with.
 - 9.4.3 In the event of the Registrar of Deeds or local authority requiring the amendment of such condition in any manner in order to affect registration of same, the Purchaser hereby agrees to such amendment.
 - 9.4.4 The Purchaser acquires the property subject to all conditions of title applicable thereto and acknowledges that he/she/it is aware of such conditions.

10. BREACH

- 10.1 Should a party to this agreement fail timeously or fully to perform any obligation resting upon it in terms of this agreement or arising out of this agreement (the "defaulting party") then the other party having the right to have the obligation in question performed (the "aggrieved party") shall call upon the defaulting party to remedy its failure within 7 (seven) days after the date on which the defaulting party has been called upon to remedy such failure.
- 10.2 Should the defaulting party fail to remedy its failure within the period stipulated in the notice, the aggrieved party shall be entitled to terminate this agreement forthwith by notice in writing, and without prejudice to any other rights which it may have in law to take action against the defaulting party for the damages it may have suffered as a result. Alternatively, the aggrieved party may, should it so wish, proceed against the defaulting party for specific performance in terms of this agreement. Should the purchaser be the party in breach, any amount or amounts paid on account of the purchase price by the Purchaser to the Seller, shall be forfeited to the Seller as "rouwkoop" or liquidated damages, without prejudice to the Seller's right to claim further damages should it be entitled thereto.

11. APPLICATION FOR FINANCE

Should the Purchaser require a bank loan the following provisions shall apply:

- 11.1 the Purchaser shall forthwith make application to a financier from the list of banks who pre-approved this development.
- 11.2 both the Seller and the agent are each hereby authorized irrevocably and, on the terms, contained in 11.3 they may make such application on the Purchaser's behalf.
- 11.3 The Purchaser agrees to accept that loan from any financier upon terms and conditions stipulated by that financier which shall be at the prevailing rates and terms imposed by the financier at the relevant time;
- 11.4 Should the Purchaser not wish to acquire a bank loan from the list of pre-approved banks, the Purchaser may apply for such loan from a bank of the Purchaser's choice and the Purchaser shall be liable for the cost of bond registration and additional costs associated with the bond registration, such as valuation and documentation fees charged by the Financial institution.

12. DOMICILIUM CITANDI ET EXECUTANDI

- 12.1 The Seller and the Purchaser hereby select as their respective *domicilia citande et executandi* for all purposes under this agreement, including the giving of any notice or demand, the physical addresses or email, set out under their names on the first page of this agreement.
- 12.2 Notice of change of address to another address in the Republic of South Africa may be given by one party to the other.
- 12.3 Every notice to be given by one party to the other in terms of this agreement shall be in writing and shall:
 - 12.3.1 be delivered by hand to the *domicilium citande et executandi* of the other party; or
 - 12.3.2 emailed to the *domicilium citande et executandi* of the other party, in which event the receiving party shall be deemed to have received such notice on the first business day after the email was sent.

13. LATITUDE BY EITHER PARTY

No relaxation or indulgence which either party may show to the other party shall in any way prejudice either parties' rights hereunder.

14. JURISDICTION

For the purposes of all or any proceedings hereunder the parties hereby consent to the jurisdiction of the Magistrates' Court having territorial jurisdiction, notwithstanding that such proceedings are otherwise beyond its jurisdiction. This clause shall be deemed to constitute the required written consent conferring jurisdiction upon the said Court pursuant to Section 45 of the Magistrates' Court Act of 1944, or any amendment thereof, provided nevertheless that the Seller shall have the right at its sole option and discretion to institute proceedings in any other competent Court.

15. MISCELLANEOUS

- 15.1 No variation or alteration of this agreement and no waiver by the Seller of any of its rights hereunder shall be of any force or effect unless reduced to writing and signed by the parties.
- 15.2 The Purchaser acknowledges that the township is not fully developed, that building operations will take place upon other erven and that the said building operation may cause the Purchaser certain inconvenience. The Purchaser acknowledges that he shall have no claim either as against the Seller or against the builder arising out of such operations.
- 15.3 Should the Purchaser sign this agreement prior to the Seller, then by his signature hereto, the Purchaser offers to purchase for the price and on the terms and conditions herein contained, and agrees that the offer shall be irrevocable and remain open for acceptance by the Seller for a period of 10 (ten) days, from the date of such signature by the Purchaser, and shall not be capable of being withdrawn by him during the said period.

16. SUSPENSIVE CONDITIONS

- 16.1 Subject to 16.2 hereinafter, the Seller hereby reserves the right to, in his sole discretion elect whether he wishes to resile from this agreement in the event of:

16.1.1 A minimum of not less than 25% of the stands in the development are sold within 6 months from the date of the first sale.

- 16.1.2 The Regulation 82 Certificate for the township not being issued by the local authority within 6 months from the date of sale.

Failing which this agreement shall be deemed to be null and void and neither party shall have any claim against the other save that the Purchaser shall be entitled to a refund of all amounts paid by it in terms of this agreement, subject to the provisions of this agreement.

- 16.2 An automatic extension for a further period of 3 (Three) months, of the time period stipulated in 16.1, will be applicable. The Seller will however be entitled to cancel this agreement without any notice, during the extension period at its sole discretion.

- 16.3 Should the suspensive conditions in 16.1 above not be fulfilled within the time periods contemplated therein or any extension thereof in terms thereof, this agreement shall be deemed null and void *ab infini* and neither party shall have any claim against the other arising herefrom, save that the Purchaser shall be entitled to a refund of any amount paid on account of the purchase price, less the administration fee.
- 17.2 hereby binds himself as surety for and co-principal debtor with the legal entity for the due and punctual performance by the legal entity of its obligations in terms of this agreement, under renunciation of the benefits of excussion and division (with the meaning and effect of which such signatory acknowledges himself to be acquainted)
- 17.3 accepts liability in terms of this agreement in his personal capacity if the legal entity is not formed as per clause 17.1 above.

Signed at _____ **on** _____ 2019 in the presence of the undersigned witnesses.

AS WITNESSES:

1. _____

For and on behalf of the Purchaser

2. _____

Signed at _____ **on** _____ 2019 in the presence of the undersigned witnesses.

AS WITNESSES:

1. _____

For and on behalf of the Seller

2. _____

ANNEXURE “B”**COSTS AND CHARGES**

Portion **_209_** of Erf _____.

Purchaser _____

The undermentioned charges are for the account of and payable by the seller or purchaser as indicated below.

Where payable by the purchaser, no provision has been made, therefore the purchaser undertakes to pay all costs on demand by Seller, or the transferring Attorney.

ITEM**PAYABLE BY**

ARCHITECTURAL / ENGINEERS

Architectural fees, plan drawing and printing costs
(for the standard plan without any additions)

Contractor

Architectural plan approval fees
(for the standard plan without any additions)

Contractor

Engineers Certificate fee (basic)
(for the standard plan without any additions)

Seller

Engineers Certificate fee (any additional earthworks/material/labor)

Contractor

NHBRC enrolment fee

Contractor

ATTORNEYS

Conveyancing and transfer fees

Seller

Bond Registration cost

Purchaser

Bank valuation & inspection fees

Purchaser

TOWN COUNCIL

Water and electrical connection fees

Purchaser

Water and electrical deposit

Purchaser

Water consumption during construction

Contractor

Prepaid Electrical Meter

Purchaser

PURCHASER

ACCEPTED BY SELLER

DATE

DATE