

**MEMORANDUM OF AGREEMENT**

Entered into between:

**CROSS ATLANTIC PROPERTIES 179 (PTY) LTD**

REGISTRATION NUMBER 2009/019049/07

Herein represented by SONJA BARLOW and her being duly authorized

(hereinafter referred to as "the SELLER")

and

**G-COL DEVELOPMENTS CC**

REGISTRATION NUMBER 2011/027802/23

Herein represented by GERHARD WEIDEMAN and him being duly authorised

(hereinafter referred to as "the DEVELOPER")

and

.....

.....

(hereinafter referred to as "the PURCHASER")

**RECORDAL**

**WHEREAS** the SELLER is the registered owner of the undermentioned property

**AND WHEREAS** the PURCHASER wishes to purchase the undermentioned property from the SELLER and engage the services of the DEVELOPER to have a dwelling erected thereon.

**NOW THEREFORE** THE PARTIES AGREE AND CONTRACT WITH ONE ANOTHER AS SET OUT HEREUNDER:

## 1. INTERPRETATION AND PRELIMINARY

- 1.1. The headings of the clauses in this agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this agreement nor any clause hereof. In this agreement, unless a contrary intention clearly appears.
- 1.2. words importing
  - 1.2.1. any one gender include the other gender;
  - 1.2.2. the singular include the plural and vice versa; and
  - 1.2.3. natural persons include created entities (corporate or non-incorporate) and vice versa;
- 1.3. the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely
  - 1.3.1. "THE PROPERTY" means Erf .....Schaap Kraal, in extent ..... together with all improvements thereon
  - 1.3.2. "the PURCHASER" means AS IN THE HEADING
  - 1.3.3. "the SELLER" means AS IN THE HEADING
  - 1.3.4. "The CONVEYANCERS" means VON LIERES COOPER & BARLOW
  - 1.3.5. "The DEVELOPER" means AS IN THE HEADING
  - 1.3.6. "The ESTATE AGENT" means APROPERT CC REGISTRATION NUMBER 2004/095587/23
- 1.4. if any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the agreement;
- 1.5. when any number of days is prescribed in this agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday;
- 1.6. where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
- 1.7. expressions defined in this agreement shall bear the same meanings in schedules or annexures to this agreement which do not themselves contain their own definitions.

- 1.8. Reference to months or years shall be construed as calendar months or years.
- 1.9. a reference to any statutory enactment shall be construed as a reference to that enactment as at the signature date and as amended or re-enacted from time to time.

**2. CONDITIONS APPLICABLE TO THE PROPERTY**

- 2.1. The property is sold, as regards its extent, as set out in the title deed thereof, and the SELLER shall not be liable in respect of any shortfall and shall have no claim in respect of any excess which may be found on re-survey of the property.
- 2.2. The property is sold subject to all the conditions and servitudes mentioned or referred to in the current title deed of the property.

**3. VOETSTOOTS SALE**

The SELLER gives no express or implied warranty whatsoever with respect to the property or any aspect thereof. Moreover the Property is sold 'VOETSTOOTS' as it now is, with any patent or latent defects to which it may be subject.

**4. PURCHASE PRICE**

- 4.1. It is recorded that the Purchaser shall, simultaneously with signature of this Agreement, enter into a building agreement with the Developer.

The PURCHASE PRICE of the property is R.....

The CONTRACT PRICE of the dwelling in terms of the building agreement is R..... which amounts include VAT

- 4.2. The purchase price of the PROPERTY shall be paid as follows:-
  - 4.2.1. A deposit of **R5 000.00 (Five Thousand Rand)** on signature of this agreement and shall be held in trust by the CONVEYANCERS and invested in the name of the PURCHASER, interest to accrue to the PURCHASER until date of registration of transfer. The CONVEYANCERS are hereby irrevocably instructed to invest the deposit in a separate interest bearing trust account in accordance with the provisions of Section 7(2)(A) of the Attorneys act 53/79 (as amended), interest to accrue to the benefit of the PURCHASER; and
  - 4.2.2. The balance of the purchase price to be secured by the PURCHASER, within fourteen (14) days of demand by the CONVEYANCERS, by the delivering of an irrevocable

guarantee for payment of the balance of the purchase price by a bank or other financial institution acceptable to the SELLER and on such terms as may be acceptable to the SELLER. The guarantees shall be subject only to :

- 4.2.2.1.** The registration of the property into the name of the PURCHASER;
  - 4.2.2.2.** The release of the property from the operation of any existing bond over same; and
  - 4.2.2.3.** The registration of a bond (if applicable) in favour of the relevant bank or financial institution, or
- 4.3.** Should the PURCHASER elect to pay the balance purchase price or part thereof as opposed to issuing a guarantee then the CONVEYANCERS are hereby irrevocably authorised to invest such amount in a separate interest bearing trust account in accordance with the provisions of Section 78(2)(A) of the Attorneys' Act 53/79 (as amended) interest to accrue for the benefit of the PURCHASER.
- 4.4.** The CONTRACT PRICE of the dwelling shall be paid as stipulated in the Building Agreement.
- 4.5.** All amounts payable by the PURCHASER in terms of this agreement shall be paid to the CONVEYANCERS free of exchange or bank commission, at Cape Town, and without deduction or set-off by means of a cheque drawn by a recognised commercial bank or a bank guaranteed cheque.
- 4.6.** Upon registration of transfer the first R75 000.00 (Seventy Five Thousand Rand) plus VAT of the nett proceeds shall be paid to the SELLER's nominated bank account whereafter the balance shall be paid to the DEVELOPER. The nett proceeds shall mean the selling price, less the outstanding mortgage bond (if any), less cancellation costs and less estate agent's commission.

## **5. SUSPENSIVE CONDITIONS**

### **5.1. MORTGAGE BOND**

- 5.1.1.** This Agreement is subject to the suspensive condition that the PURCHASER'S application for a Mortgage Bond or bonds over the property is approved by a bank, recognized financial institution, for the sum of R..... (.....) or such lesser amount as the PURCHASER may accept.
- 5.1.2.** This suspensive condition shall be deemed to be fulfilled once the confirmation of approval in the form of a written quotation is issued by the financial institution in their standard format and subject to such institution's usual terms and conditions. Such confirmation to be given by no later than twenty one (21) days from signature of this agreement or such extended period as

the parties may agree upon in writing.

- 5.1.3. For the purpose of obtaining the loan required, the PURCHASER/S bind his utmost good faith in pursuing all reasonable sources of Mortgage finance as contemplated in this clause.
- 5.1.4. Should the PURCHASER'S application not be granted timeously by the Grantor, then, in the absence of a prior extension of such period, recorded in writing by the parties, this agreement will be of no further force and effect and all monies paid by the PURCHASER shall be refunded to him.

## **5.2. APPROVAL OF BUILDING PLANS**

- 5.2.1. This Agreement is subject to the suspensive condition that the SELLER and/or the DEVELOPER, obtains from all competent authorities such approvals as may be required for the transfer of the individual erven as set out in this Agreement of Sale and the completion of the dwelling as set out in the building agreement. In the event of the required approvals not being obtained, within 30 (Thirty) business days from signature hereof, the period shall automatically be extended for a further 10 (Ten) business days, whereafter this Agreement shall lapse and be of no further force or effect. Should this Agreement lapse for reasons as aforesaid, the SELLER/DEVELOPER shall refund the PURCHASER any amounts paid on account of the contract price together with interest accrued, and the parties acknowledge that they shall have no further claims against each other arising from this Agreement.

## **6. BROKERAGE CLAUSE**

- 6.1. Brokerage payable on the purchase price of the PROPERTY and the contract price of the DWELLING, shall be payable as agreed in terms of the mandate with the ESTATE AGENT. The commission payable on the purchase price of the PROPERTY shall be deducted as a first charge from the deposit referred to in clause 4.2.1 above upon registration of transfer. Where no deposit is paid, or the deposit is insufficient to meet the brokerage claim, the SELLER hereby instructs the CONVEYANCERS irrevocably and in rem suam to pay the said brokerage plus VAT thereon, as a first charge, to the ESTATE AGENT, upon registration of transfer. The SELLER hereby cedes to the ESTATE AGENT in securitatem debiti such portion of the SELLER's claim against the PURCHASER as constitutes the brokerage plus VAT thereon due to the ESTATE AGENT.
- 6.2. The PURCHASER acknowledges that it has been introduced to the PROPERTY by the ESTATE AGENT and that the ESTATE AGENT is the effective cause of the sale of the PROPERTY and that it has not viewed the PURCHASER through any other estate agent or agency.

- 6.3.** The PURCHASER records that, subject to the non-fulfillment of any suspensive condition in this Agreement as a consequence of the PURCHASER being in breach hereof, the PURCHASER hereby assumes, without recourse against the SELLER, the SELLER's liability for brokerage, together with VAT thereon, where applicable.

## **7. POSSESSION/ OCCUPATION AND RISK**

Vacant Possession of the property will be given to the PURCHASER on registration of transfer from which date it will be at the sole risk, loss or profit of the PURCHASER and the PURCHASER will from such date be entitled to the rentals (if any) and be liable for all rates, taxes and other charges in respect of the property. If the SELLER has paid any such charge or charges for any period subsequent to the date of possession the PURCHASER will refund to the SELLER the charge or charges so paid and the PURCHASER will likewise be entitled to a refund from the SELLER of the rentals (if any) collected prior to the date of possession in respect of any period subsequent to the date of registration of transfer.

## **8. TRANSFER AND COSTS**

- 8.1.** Transfer of the Property shall be passed by the conveyancers as soon as possible thereafter after fulfillment of all suspensive conditions and receipt of the full purchase price.
- 8.1.1.** The SELLER will be liable to pay all costs and charges incurred to enable registration of transfer of the property into the name of the PURCHASER, including transfer duty, conveyancing fees and the costs of obtaining rates and other clearances.
- 8.1.2.** The PURCHASER will on demand, sign all documents required to be signed by the conveyancers in order that transfer be effected.
- 8.2.** The SELLER hereby irrevocably instructs the Conveyancers to, upon date of registration, deduct the Conveyancing fee in the sum of R5 000.00 (Five Thousand Rand) plus VAT and disbursements, from the purchase price received.
- 8.3.** The DEVELOPER shall, upon demand from the Conveyancers, pay to them the costs necessary in order to obtain the Section 31 Certificate and rates clearance certificate.

## **9. BREACH**

- 9.1.** In the event of the PURCHASER failing to fulfil on due date any of the terms and conditions of this AGREEMENT, the SELLER or its agent shall have the right, after 7 (seven) days' written notice, immediately and without prior notice, either:

- 9.1.1. to cancel the sale by giving written notice to the PURCHASER, in which event the PURCHASER shall forfeit all monies paid to the SELLER or its Agent in terms hereof, subject to applicable legal limitations, without prejudice to the SELLER'S other legal rights and remedies and the right to claim damages.

**OR**

- 9.1.2. to claim immediate payment of the whole of the purchase price and the fulfillment of all the terms and conditions thereof.
- 9.2. In the event of the cancellation of this AGREEMENT the SELLER shall further be immediately entitled to retake occupation of the PROPERTY and to eject any occupier of the PROPERTY who has obtained the right of occupation from the PURCHASER and the PURCHASER will have no right of recourse against the SELLER in respect of any improvements effected by him to the PROPERTY, and the PURCHASER will have no rights of retention.

**10. DOMICILIUM**

- 10.1. The parties choose as their *domicilia citandi et executandi* for all purposes under this agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), the following addresses:
  - 10.1.1. THE SELLER c/o Von Lieres Cooper Barlow and Hangone Attorneys, 6<sup>th</sup> Floor, 71 Loop Street, Cape Town;
  - 10.1.2. THE DEVELOPER c/o Gerd Weideman Architects, 40 Glencoe Road, Higgovale;
  - 10.1.3. THE PURCHASER .....
- 10.2. Any notice or communication required or permitted to be given in terms of this agreement shall be valid and effective only if in writing.
- 10.3. Any party may by notice to any other party change the physical address chosen as its *domicilium citandi et executandi* to another physical address in South Africa, provided that the change shall become effective on the 5<sup>th</sup> business day from the deemed receipt of the notice by the addressee.
- 10.4. Any notice to a party
  - 10.4.1. sent by prepaid registered post (by airmail if appropriate) in a correctly addressed envelope to it at its *domicilium citandi et executandi* shall be deemed to have been received on the 5<sup>th</sup> business day after posting (unless the contrary is proved);

**10.4.2.** delivered by hand to a responsible person during ordinary business hours at its *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery; or

**10.5.** Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

**11. TAX WARRANTY**

The PURCHASER and SELLER warrant that to the best of their knowledge and belief, their tax obligations have been dutifully discharged and are fully up to date. In the event of either party being advised by SARS and/or the conveyancers, that this may not be the case, such party undertakes to within seven (7) days from date of such advice, rectify the situation as not to cause a delay in the transfer resulting from the above transaction.

**12. SPECIAL CONDITIONS:**

The PURCHASER shall simultaneously with signature of this Agreement, enter into a building agreement with the DEVELOPER.

**13. ACKNOWLEDGEMENTS BY PURCHASER**

I, the PURCHASER confirm that:-

**13.1.** The full extent of my obligations and rights herein have been explained to me.

**13.2.** I have been given an opportunity to make the necessary enquiries in respect of the property and all material aspects relating to this property and sale.

**13.3.** I understand the effect of this Agreement.

**13.4.** I am aware of my right to full disclosure as regards to the property and all aspects thereof.

**13.5.** The sale is not as a result of direct marketing.

**14. WHOLE AGREEMENT, NO AMENDMENT**

**14.1.** This agreement constitutes the whole agreement between the parties relating to the subject matter hereof.

**14.2.** No amendment or consensual cancellation of this agreement or any

provision or term thereof or of any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this agreement and no settlement of any disputes arising under this agreement and no extension of time, waiver or relaxation or suspension of any of the provisions or terms of this agreement or of any agreement, bill of exchange or other document issued pursuant to or in terms of this agreement shall be binding unless recorded in a written document signed by the parties. Any such extension, waiver or relaxation of suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.

- 14.3.** No extension of time or waiver or relaxation of any of the provisions or terms of this agreement or any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this agreement, shall operate as an estoppel against any party in respect of its rights under this agreement, nor shall it operate so as to preclude such party thereafter from exercising its rights strictly in accordance with this agreement.
- 14.4.** No party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/ or whether it was negligent or not.

**15. ACCEPTANCE OF OFFER**

This offer is irrevocable until 17h00 on ..... whereafter it shall automatically lapse and shall become binding immediately on acceptance at any time prior to such date, irrespective of notification of acceptance to the PURCHASER.

DATED AT \_\_\_\_\_ THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2012.

AS WITNESSES:

1

2

\_\_\_\_\_  
SELLER

DATED AT \_\_\_\_\_ THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2012.

AS WITNESSES:

1

2

\_\_\_\_\_  
DEVELOPER

DATED AT \_\_\_\_\_ THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2012.

AS WITNESSES:

1

2

\_\_\_\_\_  
PURCHASER

ACCEPTANCE OF BENEFITS BY AGENT

\_\_\_\_\_  
AGENT

DATE:

**INFORMATION SHEET:**  
THIS IS TO BE COMPLETED IN **FULL**

**SELLER:**

FULL NAMES: .....  
SURNAME: .....  
IDENTITY NUMBER: .....  
PHYSICAL ADDRESS: .....  
POSTAL ADDRESS: .....  
FUTURE ADDRESS: .....  
INCOME TAX REF NUMBER: .....  
TELEPHONE NUMBER (W): .....  
TELEPHONE NUMBER (H): .....  
CELL NUMBER: .....  
FAX NUMBER: .....  
EMAIL ADDRESS: .....  
EXISTING BOND ACC NUMBER: .....  
VON LIERES COOPER & BARLOW TO INSTRUCT FOR ELECTRICAL INSPECTION: YES/ NO

**PURCHASER:**

FULL NAMES: .....  
SURNAME: .....  
IDENTITY NUMBER; .....  
PHYSICAL ADDRESS: .....  
POSTAL ADDRESS: .....  
INCOME TAX REF NUMBER: .....  
TELEPHONE NUMBER (W): .....  
TELEPHONE NUMBER (H): .....  
CELL NUMBER: .....  
FAX NUMBER: .....  
EMAIL ADDRESS: .....