



PEBBLE BEACH

S I B A Y A

PRE-EMPTION
AGREEMENT

UNIT NUMBER

PRE-EMPTION AGREEMENT

Entered into by:

NEW CRUISE INVESTMENTS PROPRIETARY LIMITED

Registration number: **2015/440798/07**

Physical address: **FIRST FLOOR KENILWORTH PARK
202 FELIX DLAMINI ROAD
OVERPORT
KWAZULU NATAL
4091**

Postal address: **P.O. BOX 4969
DURBAN
KWAZULU NATAL
4001**

(hereinafter referred to as the "SELLER" and duly represented herein by **CHARLES THOMPSON** and/or **EBRAHIM PARUK** AND AUTHORISED BY RESOLUTION)

and

Name:

Identity/Registration No.

Marital status*: In / Out of Community of Property

*(if the PURCHASER is an individual)

Physical address:

Postal address:

Contact Details : Home: Business:

Cell No: Fax:

Email:

(hereinafter referred to as the "PURCHASER")

1. SCHEDULE

1.1	Unit Number	:	<input style="width: 100%;" type="text"/>
1.2	Approximate Extent in Square Meters	:	<input style="width: 100%;" type="text"/>
1.3	Purchase Price	:	<input style="width: 100%;" type="text"/>
1.4	Allocated Parking Bays	:	<input style="width: 100%;" type="text"/>
1.5	Pre-Emptive Consideration	:	<input style="width: 100%;" type="text"/>
	1.5.1 Payable by	:	<input style="width: 100%;" type="text"/>
1.6	Sales Executive	:	<input style="width: 100%;" type="text"/>
1.7	Payment Reference Number	:	<input style="width: 100%;" type="text"/>

TERMS AND CONDITIONS

2. DEFINITIONS AND INTERPRETATION

For the purpose of this PRE-EMPTION AGREEMENT, unless the context indicates to the contrary:

- 2.1 **"PRE-EMPTION AGREEMENT"** means this Pre-Emption Agreement;
- 2.2 **"PRE-EMPTIVE CONSIDERATION"** means the amount payable by the PURCHASER to the SELLER in respect of the Pre-Emption Right granted to the PURCHASER by the SELLER in respect of the UNIT;
- 2.3 **"CONTRACT"** means the Contract of Sale (including all annexures thereto) to be entered into between the SELLER and the PURCHASER for the UNIT;
- 2.4 **"DATE OF SIGNATURE"** means the date of signature of this PRE-EMPTION AGREEMENT;
- 2.5 **"PURCHASE PRICE"** means the total purchase price of the UNIT, stipulated in Clause 1.3 of the SCHEDULE and which purchase price shall be brought forward into the CONTRACT to be signed;
- 2.6 **"PURCHASER"** means the purchaser in terms of this PRE-EMPTION AGREEMENT;
- 2.7 **"RIGHT OF PRE-EMPTION"** means the right to purchase the UNIT at the stipulated Purchase Price which is exercisable by the PURCHASER;
- 2.8 **"UNIT"** means the UNIT described in clause 1.1 of the SCHEDULE;
- 2.9 clause headings are inserted purely for convenience and shall not be relevant in interpreting the contents of the clauses to which they relate;
- 2.10 words importing a gender shall include all genders and the singular shall include the plural and vice versa;

- 2.11 if the PURCHASER consists of more than one person, such persons shall be jointly and severally liable in solidum for all their obligations in terms of this PRE-EMPTION AGREEMENT (*i.e. any such person may be called on to fulfill the obligations of the PURCHASER in terms of this Contract of Sale*);
- 2.12 if a PURCHASER signs on behalf of a trust, company or close corporation, he/she warrants that they are duly authorised to enter into this PRE-EMPTION AGREEMENT and the person so signing shall be jointly and severally liable in solidum for all their obligations in terms of this PRE-EMPTION AGREEMENT;
- 2.13 any reference to a natural person shall include the legal person and/or an association of persons and vice versa;
- 2.14 if a number is reflected in numerals and words, the words shall prevail in the event of any conflict between the two;
- 2.15 where a number of days are prescribed, they shall consist of all days (*i.e. including Saturday, Sunday and Public Holidays*) and shall exclude the first day and include the last day.
- 2.16 a fully executed facsimile/scanned and emailed copy of this PRE-EMPTION AGREEMENT shall be accepted as an original and this PRE-EMPTION AGREEMENT may be signed in counterparts and will be effective as such, each of which will be deemed an original and all of which together shall constitute one and the same PRE-EMPTION as at the date of signature of the party last signing one of the counterparts;
- 2.17 this PRE-EMPTION AGREEMENT shall be binding on and enforceable by the administrators, trustees, successors in title in office, assigns or liquidators of the parties as fully and effectually as if they had signed this PRE-EMPTION AGREEMENT in the first instance and reference to any party shall be deemed to include such party's administrators, trustees, successors in title in office, assigns or liquidators, as the case may be.

3 GRANTING OF A RIGHT OF PRE-EMPTION

- 3.1 The SELLER agrees to grant and the PURCHASER agrees to accept a right of Pre-Emption in respect of the UNIT, on the terms and conditions as set out herein.
- 3.2 The Right of Pre-Emption confers on the PURCHASER the right to purchase the UNIT at the Purchase Price stipulated in Clause 1.3 of the SCHEDULE and is exercisable by the PURCHASER in accordance with the procedure set out in Clause 4 below.
- 3.3 The SELLER shall not market or sell the UNIT to any third party while the PURCHASER'S Right of Pre-Emption remains enforceable.

4 PROCEDURE IN PURCHASER EXERCISING RIGHT OF PRE-EMPTION

- 4.1 The PURCHASER'S Right of Pre-Emption shall remain open for acceptance for **14 DAYS FROM DATE OF SIGNATURE HEREOF BY THE PURCHASER** whereafter, if not exercised, the Right of Pre-Emption shall lapse.
- 4.2 Should the PURCHASER elect to exercise its Right of Pre-Emption, it may only do so by both:
- 4.2.1 paying to the Conveyancers, Anthony Whatmore & Company, a deposit equal to 10% (TEN PER CENT) of the Purchase Price stipulated in 1.3 of the SCHEDULE (less the PRE-EMPTIVE CONSIDERATION reflected in 1.5 above) into the following banking account:

Account Holder: ANTHONY WHATMORE & COMPANY INC.
Bank: ABSA BANK
Branch Code: 632 005
Account Type: TRUST ACCOUNT
Account Number: 407 7922 661
Reference: PB + UNIT NUMBER + NAME OF PURCHASER

4.2.2 AND delivering to the SELLER the original CONTRACT duly signed by the PURCHASER together with the proof of payment of the deposit referred to in 4.2.1 above

both by no later than the date and time referred to in 4.1 above.

4.3 Should the PURCHASER comply with the procedure in 4.2 above, the CONTRACT to be signed will constitute the only Agreement in respect of the purchase of the UNIT and this Agreement shall lapse save that in the event that the PURCHASER fails to secure the finance in respect of the balance of the purchase price in terms of the CONTRACT, then in such event, the provisions of clause 6.4 below will apply.

4.4 In the event of the PURCHASER failing to fulfil its obligations in terms of this PRE-EMPTION AGREEMENT within the stipulated time period, then this will be deemed as a refusal by the PURCHASER to exercise its right of pre-emption and this Agreement will automatically lapse and be of no further force or effect.

4.5 Should this Agreement lapse pursuant to the provisions of 4.4 above, then the SELLER shall retain the amount paid in terms of Clause 1.5 of the SCHEDULE together with any interest accrued thereon (and shall be deemed to be a consideration paid by the PURCHASER to the SELLER in respect of the granting of the Right of Pre-Emption) and the SELLER will further be entitled to market, resell or otherwise dispose of the UNIT as the SELLER deems fit without any further notice to the PURCHASER.

4.6 In the event of the SELLER being unable to deliver to the PURCHASER the UNIT in terms of this PRE-EMPTION AGREEMENT, the PRE-EMPTIVE CONSIDERATION paid by the PURCHASER shall be refunded to him/her and the PURCHASER acknowledges there will be no interest payable on this refund.

5 CONSIDERATION PAYABLE

5.1 The PURCHASER shall on DATE OF SIGNATURE HEREOF pay to the SELLER the amount stipulated in 1.5 of the SCHEDULE as payment for the Right of Pre-Emption granted by the SELLER to the PURCHASER.

5.2 The amount shall immediately be paid directly into the banking account as set out in clause 4 of the SCHEDULE.

5.3 Such amount shall be deemed to be a non-refundable PRE-EMPTIVE CONSIDERATION and shall be retained by the SELLER in the event of the PURCHASER failing to fulfil its obligations as per Clause 4 above and the persons holding such PRE-EMPTIVE CONSIDERATION are irrevocably authorised to pay the consideration to the SELLER.

5.4 In the event of the PURCHASER fulfilling all of its obligations in terms of this PRE-EMPTION AGREEMENT and the CONTRACT to be signed, the amount paid in terms of clause 1.5 of this PRE-EMPTION AGREEMENT shall be credited towards the PURCHASE PRICE of the UNIT.

5.5 It is recorded that the PURCHASER hereby provides an irrevocable authorisation to the CONVEYANCERS authorising them to pay the amount reflected in 1.5 to the SELLER or its nominated agent on signature of this PRE-EMPTION AGREEMENT.

5.6 It is further recorded that the PURCHASER acknowledges that the amount paid in terms of 1.5 is paid as a consideration for the SELLER granting the PURCHASER a right of pre-emption in respect of the UNIT and is payable directly to the SELLER. This PRE-EMPTIVE CONSIDERATION is therefore not invested for the benefit of the PURCHASER and accordingly does not attract interest.

6 PURCHASE PRICE

6.1 The Purchase Price of the UNIT as per Clause 1.3 is inclusive of Value Added Tax (VAT) at the rate of 14%.

6.2 In the event of the PURCHASER exercising its Right of Pre-Emption in terms of this PRE-EMPTION AGREEMENT, the remaining balance of the Purchase Price shall be paid in cash, or secured by way of final mortgage bond approval by a financial institution, or secured by Bank Guarantee acceptable to the SELLER

by no later than **60 DAYS FROM DATE OF SIGNATURE OF THE CONTRACT BY THE PURCHASER** in terms of Clause 4.2 above.

- 6.3 The Purchase Price shall be brought forward from this PRE-EMPTION AGREEMENT into the CONTRACT to be signed by the SELLER and PURCHASER.
- 6.4 Should the PURCHASER fail to secure the full Purchase Price by way of Cash and/or loan from a financial institution within the time period to be stipulated in 6.2 above and in the CONTRACT to be signed, the SELLER shall be entitled to retain the non-refundable PRE-EMPTIVE CONSIDERATION paid in terms of clause 5 above.

7 TERMINATION

- 7.1 The SELLER reserves the right to terminate this PRE-EMPTION AGREEMENT at any time prior to the signature of the CONTRACT by the PURCHASER, on written notice to the PURCHASER, whereupon the SELLER shall refund to the PURCHASER the total consideration paid in full within ten (10) days of the date of such written notice. In this event, any rights or obligations imposed in terms of this Agreement shall terminate and neither party shall have any claim of whatsoever nature pursuant to the termination of this Agreement.
- 7.2 The PURCHASER may at any time elect to terminate this agreement by delivering in writing his/her intention to do so and the PURCHASER acknowledges that in this instance, the non-refundable PRE-EMPTIVE CONSIDERATION, together with any interest accrued thereon, will be retained by the SELLER.

8 NOTICES AND DOMICILIA

- 8.1 The PURCHASER chooses as his domicilium citandi et executandi (the address for delivery of notices and court documents) and as the address at which notices may be delivered to him, the addresses set out in the SCHEDULE.
- 8.2 Any notice to a party:
 - 8.2.1 sent by prepaid registered post (by airmail if appropriate) in a correctly addressed envelope to the party's postal address set out in the SCHEDULE shall be deemed to have been received on the 7th day after posting (unless the contrary is proved); or
 - 8.2.2 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 date of delivery; or
 - 8.2.3 sent by telefax or email to its chosen telefax number or email address shall be deemed to have been received on the date of dispatch (unless the contrary is proved).
- 8.3 Notwithstanding anything to the contrary contained herein, a written notice or communication actually received by the party (including any notice facsimiled or emailed to the PURCHASER) shall be an adequate written notice or communication to it, notwithstanding that it was not sent or delivered to its chosen domicilium citandi et executandi.

9 SOLE CONTRACT

The PURCHASER acknowledges that this PRE-EMPTION AGREEMENT (Including the CONTRACT and any Annexures thereto to be signed) constitutes the entire contract between the SELLER and the PURCHASER and any acts, representations, statements, announcements, warranties, guarantees or conditions not recorded herein shall be of no force or effect whatsoever. The PURCHASER further acknowledges that neither the SELLER or anybody acting on its behalf has made any representations, announcements, statements, or given any warranties inducing this Right of Pre-Emption, save as recorded in this PRE-EMPTION AGREEMENT and the CONTRACT to be signed. Any agreement between the PURCHASER and SELLER to cancel, alter or add to this PRE-EMPTION AGREEMENT shall not be binding on the parties and shall be of no force or effect unless reduced to writing and signed by all parties hereto, or by their agents acting with the relevant authority and on their written instructions.

10 BREACH

Should either commit a breach of any of the provisions of this PRE-EMPTION AGREEMENT, then the aggrieved party (party who is not in breach) shall be entitled to give to the defaulting party written notice to remedy the breach. If the defaulting party fails to comply with that notice within 7 (SEVEN) days of receipt thereof, subject to any other provisions of this PRE-EMPTION AGREEMENT to the contrary, the aggrieved party shall be entitled to cancel this PRE-EMPTION AGREEMENT or to claim specific performance, in either event without prejudice to the aggrieved party's right to claim damages. The foregoing is without prejudice to any other rights the aggrieved party may have in terms of this PRE-EMPTION AGREEMENT, common law or statute.

11 GENERAL

- 11.1 The PURCHASER shall not at any time assign its rights and obligations under this agreement to any third party without the prior written consent of the SELLER. Should such consent be obtained then the third party shall sign a further Pre-Emption Agreement and only once this has taken place shall the PURCHASER in terms of this Agreement be released of its obligations. The PURCHASER acknowledges that in this instance, the non-refundable PRE-EMPTIVE CONSIDERATION, together with any interest accrued thereon, will be retained by the SELLER.
- 11.2 if any provision of this CONTRACT is unenforceable for any reason whatever, such provision shall be deemed to be separate and severable from this CONTRACT, without in any way affecting the validity of the remaining provisions of this CONTRACT;
- 11.3 this CONTRACT shall be governed by and construed according to the Laws of the Republic of South Africa;
- 11.4 The PURCHASER acknowledges that all the terms and conditions contained in this PRE-EMPTION AGREEMENT are material and that he/she has had an opportunity to study them and understand them. The PURCHASER further acknowledges that he/she is free to obtain independent legal advice although the representatives of the SELLER have been of assistance in explaining the provisions of this PRE-EMPTION AGREEMENT to him/her and drawing their attention to certain clauses which could impact on the PURCHASER'S rights as a consumer.

12 *CONSUMER PROTECTION ACT NO. 68 of 2008 (*delete if not applicable)

- 12.1 The PURCHASER, who is a juristic person, warrants to the SELLER that it's asset value or annual turnover, at the DATE OF SIGNATURE of this PRE-EMPTION AGREEMENT and the CONTRACT to be signed and the DATE OF TRANSFER, shall equal or exceed the threshold determined by the Minister in terms of Section 6 of the CPA (namely R2 000 000.00 – TWO MILLION RAND) and, as a consequence, the sale of the UNIT to the PURCHASER in terms of this PRE-EMPTION AGREEMENT and the CONTRACT to be signed, is exempt from the provisions of the CPA (save for the provisions of Section 60 and 61 of the CPA).
- 12.2 It is recorded that the aforesaid warranty is material to the SELLER in entering into this PRE-EMPTION AGREEMENT and the CONTRACT to be signed.
- 12.3 The PURCHASER undertakes, within 7 (SEVEN) days of being requested to do so by the SELLER, to furnish the SELLER with its last audited financial accounts, and such other financial information in respect of the PURCHASER as the SELLER may reasonably require, in order to confirm that the PURCHASER'S asset value and/or turnover is as warranted in paragraph 13.1 above.

SIGNED by the PURCHASER at on this day of 201

AS WITNESSES :

1.

PURCHASER

I acknowledge that I am acquainted with and understand the contents of this PRE-EMPTION AGREEMENT

*On behalf of

(insert name of PURCHASER here)

duly authorized by virtue of a Resolution of Directors/Members/Trustees

This portion to be signed by spouse / legal guardian / member / director / trustee in the event of the PURCHASER being a person married in community of property / minor / close corporation / company / trust.

(FULL NAMES)

Of

(FULL ADDRESS AND TELEPHONE NUMBER)

hereby consents to the conclusion of this CONTRACT and guarantees and binds himself/herself as surety and co-principal debtor in solidum with the PURCHASER to the SELLER for the due and punctual fulfillment and discharge of all the conditions and obligation's undertaken by the PURCHASER to the SELLER pursuant to this CONTRACT, under renunciation of the benefits of excussion and division with the meaning and effect of which benefits and the renunciation thereof he/she acknowledges himself/herself to be acquainted. No variation or amendment or novation of the CONTRACT shall prejudice the suretyship obligations hereby undertaken by the undersigned guarantor, the object being that the undersigned guarantor will at all times be liable as surety and co-principal debtor even if this CONTRACT is varied or amended or novated and even if the aforesaid PURCHASER is granted an indulgence by the SELLER.

SIGNED by the SELLER at on this day of 201

AS WITNESSES :

1.

SELLER

Who hereby warrants that (s)he is duly authorised to sign this agreement