



SITE NUMBER:

PRE-EMPTION AGREEMENT

SALT ROCK CITY – LIFESTYLE VILLAGE

PRE-EMPTION AGREEMENT

Entered into by:

NEW SALT ROCK CITY PROPRIETARY LIMITED

Registration number: **2007/005000/07**

Physical address: **1 NEW SALT ROCK ROAD
SALT ROCK**

Postal address: **POSTNET SUITE 257
PRIVATE BAG X0001
BALLITO
4420**

(hereinafter referred to as the "SELLER" and duly represented herein by **SCHALK THEUNISSEN** 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 Property Description : **Proposed Portion** **of Erf 1470 Salt Rock (being a portion of the parent property described as Erf 987 and Erf 989 Salta Rock). Also known as Site No.** **and as set out in the Layout plan as Annexure "D" hereto**
- 1.2 Approximate Extent in Square Meters :
- 1.3 Total Purchase Price of the Property :
- 1.4 Pre-Emptive Consideration :
- 1.4.1 Payable by : **DATE OF SIGNATURE HEREOF**
- 1.5 Sales Executive :
- 1.6 Payment Reference Number : **SRC + SITE NUMBER + NAME OF PURCHASER**
- *1.7 House Type Selected (as per Annexure D2) :
- *1.8 Build Cost (as per Annexure D2) :
- *delete if not applicable

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 PROPERTY;
- 2.3 **'CONTRACT'** means the Contract of Sale (including all annexures thereto) to be entered into between the SELLER and the PURCHASER for the PROPERTY;
- 2.4 **"DATE OF SIGNATURE"** means the date of signature of this PRE-EMPTION AGREEMENT;
- 2.5 **"DATE OF TRANSFER"** means the date of registration of transfer of the PROPERTY into the name of the PURCHASER in the Deeds Registry in Pietermaritzburg;
- 2.6 **"PROPERTY"** means the PROPERTY described in clause 1.1 of the SCHEDULE, the final boundaries, beacons and situation to be determined by the SELLER'S Land Surveyors who shall determine same, acting as experts, on the basis

that the said subdivision shall correspond as nearly as reasonably possible to the area shown on the Layout Plan which plan the PURCHASER acknowledges having had sight of;

- 2.7 **“PURCHASE PRICE”** means the total purchase price of the PROPERTY, stipulated in Clause 1.3 of the SCHEDULE and which purchase price shall be brought forward into the CONTRACT to be signed;
- 2.8 **“PURCHASER”** means the purchaser in terms of this PRE-EMPTION AGREEMENT;
- 2.9 **“RIGHT OF PRE-EMPTION”** means the right to purchase the PROPERTY at the stipulated Purchase Price which is exercisable by the PURCHASER;
- 2.10 **“BUILDING AGREEMENT”** means the Plot and Plan Building Agreement entered into between the PURCHASER and the SELLER to be signed simultaneously with the CONTRACT (if applicable);
- 2.11 clause headings are inserted purely for convenience and shall not be relevant in interpreting the contents of the clauses to which they relate;
- 2.12 words importing a gender shall include all genders and the singular shall include the plural and vice versa;
- 2.13 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*);
- 2.14 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;
- 2.15 any reference to a natural person shall include the legal person and/or an association of persons and vice versa;
- 2.16 if a number is reflected in numerals and words, the words shall prevail in the event of any conflict between the two;
- 2.17 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.
- 2.18 a fully executed 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;
- 2.19 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.
- 2.20 It is recorded that the Property is at present an Unregistered-Subdivision and as such the following disclosure is made as contemplated in relevant legislation:
- 2.20.1 The Seller has not complied with the conditions of approval imposed by the Local authority in so far as they are applicable to the property.
- 2.20.2 The Property is not yet registrable as contemplated in Section 1 of the Alienation of Land Act, 1981.

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 PROPERTY, 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 PROPERTY 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 PROPERTY 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 until **7 DAYS FROM DELIVERY OF THE CONTRACT** 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:

- 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 1.4 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: SRC + SITE 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 In the event of the PURCHASER failing to fulfil its obligations in terms of this PRE-EMPTION AGREEMENT within the stipulated time periods, then this will be deemed as a refusal by the PURCHASER to exercise its right of pre-emption and clause 4.4 below will apply.

- 4.4 Should this Agreement lapse pursuant to the provisions of 4.3 above, then the SELLER shall retain the amount paid in terms of Clause 1.4 of the SCHEDULE (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.

- 4.5 In the event of the SELLER being unable to deliver to the PURCHASER the PROPERTY 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 1.4 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, the CONTRACT to be signed, the amount paid in terms of clause 1.4 of this PRE-EMPTION AGREEMENT shall be credited towards the PURCHASE PRICE of the PROPERTY.
- 5.5 It is recorded that the PURCHASER hereby provides an irrevocable authorisation to the CONVEYANCERS authorising them to pay the amount reflected in 1.4 to the SELLER or its nominated agent on written request by the SELLER.
- 5.6 It is further recorded that the PURCHASER acknowledges that the amount paid in terms of 1.4 is paid as a consideration for the SELLER granting the PURCHASER a right of pre-emption in respect of the PROPERTY 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 Total Purchase Price of the PROPERTY as per Clause 1.3 is inclusive of Value Added Tax (VAT) at the rate of 15%. The parties agree that, should there be any change in the rate of Value Added Tax applicable at the time of supply, as determined in accordance with the Value Added Tax Act 89 of 1991, the Total Consideration shall be amended to take into account the adjustment in the Value Added Tax rate
- 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 Total Purchase Price shall be paid in cash or secured by way of a bank guarantee acceptable to the SELLER or by final mortgage bond approval from a financial institution by no later than **30 DAYS FROM DATE OF SIGNATURE OF THE CONTRACT**.
- 6.3 Should the PURCHASER fail to secure the Total Purchase Price by way of Cash, Guarantee 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.
- 6.4 The Purchase Price shall be brought forward from this PRE-EMPTION AGREEMENT into the CONTRACT to be signed by the SELLER and PURCHASER.

7 *BUILDING AGREEMENT

- 7.1 In the event that the PURCHASER has elected to enter into a BUILDING AGREEMENT with a builder to erect a Dwelling Unit on the PROPERTY, such BUILDING AGREEMENT is to be signed by no later than 14 days from the date of delivery of the BUILDING AGREEMENT to the PURCHASER.
- 7.2 Any funds payable in terms of the BUILDING AGREEMENT are to be paid to the SELLER on the terms and conditions of the BUILDING AGREEMENT.
- 7.3 It is specifically recorded that the transfer of the PROPERTY shall not be subject to the PURCHASER'S fulfilment of their obligations in terms of the BUILDING AGREEMENT and the SELLER is entitled to transfer the PROPERTY to the PURCHASER notwithstanding the PURCHASER hasn't fulfilled their obligations in terms of the BUILDING AGREEMENT, provided however the PURCHASER has secured the Total Purchase Price of the PROPERTY as set out in Clause 1.3 of the SCHEDULE.

8 TERMINATION

- 8.1 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.

- 8.2 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 in terms of the provisions of Clause 4.5.1 and 4.5.2 above.

9 NOTICES AND DOMICILIA

- 9.1 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.
- 9.2 Any notice to a party:
- 9.2.1 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
 - 9.2.2 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
 - 9.2.3 sent by email to its chosen email address shall be deemed to have been received on the date of dispatch (unless the contrary is proved).
- 9.3 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.

10 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.

11 BREACH

Should either party 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.

12 GENERAL

- 12.1 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.

- 12.2 if any provision of this PRE-EMPTION AGREEMENT is unenforceable for any reason whatever, such provision shall be deemed to be separate and severable from this PRE-EMPTION AGREEMENT, without in any way affecting the validity of the remaining provisions of this PRE-EMPTION AGREEMENT;
- 12.3 this PRE-EMPTION AGREEMENT shall be governed by and construed according to the Laws of the Republic of South Africa;
- 12.4 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.

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

- 13.1 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 PROPERTY 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).
- 13.2 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.
- 13.3 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.

14 SPECIAL CONDITIONS

SIGNED by the PURCHASER at [] on this [] day of [] 20 []

AS WITNESS:

1. []

[]

PURCHASER(S)

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

*Represented by:

[]

(insert name of Representative here) duly authorized by virtue of a Resolution of Directors/Members/Trustees

*delete if not applicable

SIGNED by the SELLER at [] on this [] day of [] 20 []

AS WITNESS:

1. []

[]

SELLER

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