

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

1 PARTIES

1.1 The parties to this agreement are -

1.1.1 **THE SWELLENDAM MUNICIPALITY**, with its registered address and main place of business at 49 Voortrek Street, Swellendam, 6740, and herein represented by Anneleen Vorster ("**the Municipality**"), ID 7003050027082, in her capacity as Municipal Manager the Municipality; and

1.1.2 **RAUBEX BUILDING (PTY) LTD** (Registration Number: 1976/003683/07), with its registered address and main place of business at 85 Neptune Avenue, Crowthorne, Midrand, 1685 and herein represented by BJ Badenhorst ("**Raubex**"), in his capacity as a director of **Raubex**,

(hereinafter collectively referred to as the "**Parties**", and each, a "**Party**").

1.2 The Parties agree as set out below.

2 INTRODUCTION

2.1 The Parties have discussed and will be discussing ("**Discussions**") certain matters regarding their respective businesses, the purpose of which is to identify potential business relationship (collectively the "**Proposed Transaction**").

2.2 In order to pursue the Proposed Transaction, the Parties may disclose to each other certain Confidential Information (as defined below) for purposes of evaluating, considering, structuring and/or negotiating the Proposed Transaction ("**Permitted Purpose**").

2.3 Accordingly, in order to protect the relevant proprietary interests of the Parties pertaining to the Confidential Information (as defined below), the Parties agree to commit to the mutual confidentiality undertakings set out in this Agreement.

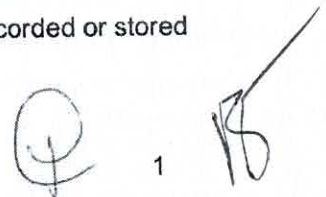
3 THE CONFIDENTIAL INFORMATION

3.1 For the purpose of this Agreement:

3.1.1 "**Agreement**" means this confidentiality and non-disclosure agreement;

3.1.2 "**Confidential Information**" means all information as set out in **Schedule 1** to this Agreement and disclosed between the Parties (or their advisors), that may reasonably be regarded as confidential, being information not in the public domain, whether such information is oral or written, recorded or stored

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by electronic, magnetic, electro-magnetic or other form or process, or otherwise in a machine readable form, translated from the original form, recompiled, made into a compilation, wholly or partially copied, modified, updated or otherwise altered, originated or obtained by, or coming into the possession, custody, control or knowledge of either Party,

3.1.3 but does not include information which –

3.1.3.1 is or hereafter becomes part of the public domain, otherwise than as a result of a breach or default of either Party or of a representative of such Party in breach;

3.1.3.2 can be shown to have been lawfully in the possession of a Party prior to its disclosure and is not subject to an existing agreement between the parties;



3.1.3.3 is acquired by a Party independently from a third party who lawfully acquired such information without restriction and who had not previously obtained the information directly or indirectly under a confidentiality obligation from the disclosing Party; or

3.1.3.4 is disclosed or released by a Party to satisfy an order of a court of competent jurisdiction or to otherwise comply with the provisions of any law or regulation in force at the time or the requirements of any recognised stock exchange; provided that, in these circumstances, such Party shall advise the disclosing Party by written notice prior to (where legally permissible) any such disclosure, where at all possible, and advise the disclosing Party to take whatever steps it deems necessary to protect its interests in this regard and provided further that such Party will afford the disclosing Party reasonable opportunity, if possible, to intervene in the proceedings, and disclose only that portion of the information which it is legally required to so disclose; and such Party will use its reasonable endeavours to protect the confidentiality of such information to the widest extent lawfully possible in the circumstances (and the Party shall co-operate with the disclosing Party if the disclosing Party elects to contest any such disclosure).

4 DISCLOSURE OF CONFIDENTIAL INFORMATION

4.1 The Parties acknowledge that the Confidential Information is proprietary, and is a valuable, special and/or unique asset belonging to each Party.

- 4.2 The Parties shall not, during or up to termination of this Agreement, disclose the Confidential Information or any part thereof, to any person or entity, not a party to this Agreement, for any reason or purpose whatsoever, without the prior written consent of the Party who made the disclosure. Where such consent is given, the receiving Party shall enter into a confidentiality and non-disclosure agreement with such third party and provide the disclosing Party with a signed copy of such agreement within 5 (five) business days from the receiving Party disclosing the Confidential Information or part thereof to such third party.
- 4.3 It is further agreed, without limiting the provisions of 4.2 above, that each Party shall take the necessary steps to ensure that all its officers, employees, agents and advisors acting on its behalf or engaged in the consideration, evaluation and negotiation of the Proposed Transaction, are aware of the provisions of this Agreement and shall ensure compliance with this Agreement.
- 4.4 Neither Party shall, either directly or indirectly, utilise, employ, exploit or in any other manner whatsoever use the Confidential Information, or part thereof, other than for the Permitted Purpose, unless authorised, in writing, by the disclosing Party, or for the purpose of competing in any way with the disclosing Party.
- 4.5 If it is uncertain whether any Confidential Information is to be treated as confidential, the Parties shall treat such Confidential Information as confidential until written clearance is obtained from a Party concerned.
- 4.6 For purposes of this Agreement and where the context may require, a reference to a Party shall encompass any direct or indirect "**holding company**", "**subsidiary**", "**external company**", "**associated company**" and/or any other company forming part of a "**group of companies**" (as these terms are defined in the Companies Act, 71 of 2008, as amended or replaced from time to time) of any Party which is, in any way, involved in the Proposed Transaction. Accordingly, all references in this Agreement to a Party shall be deemed to include a reference to any such direct or indirect holding company, subsidiary, external company, associated company or group company. The undertakings given by the Parties in terms of this Agreement shall, where applicable, be deemed to have been imposed as a *stipulatio alteri* for the benefit of any such subsidiary or holding company, which benefit may be accepted by it at any time. To the extent that any Confidential Information is disclosed to any subsidiary or holding company the Party concerned shall ensure that such subsidiary or holding company shall bind itself to the provisions of this Agreement.

 
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- 4.7 The Parties agree that all intellectual property, which subsists in the Confidential Information, including rights to improvements and developments, shall belong to the Party disclosing same and remains its exclusive property.

5 TITLE

All the Confidential Information disclosed by the Parties to each other is acknowledged to be the property of the Party disclosing same and the disclosure of the Confidential Information shall not be deemed to confer any rights in and to the Confidential Information on the Party receiving confidential information. Accordingly, any Party disclosing confidential information shall retain all rights, title and interest in and to the Confidential Information.

6 RESTRICTIONS ON DISCLOSURE AND USE OF THE CONFIDENTIAL INFORMATION

- 6.1 The Parties shall disclose the Confidential Information to its officers, advisors and/or employees on a strictly need to know basis for the Permitted Purpose only.

- 6.2 In the case of written consent being given by a disclosing Party in terms of 4.2 above, and confidentiality and non-disclosure agreements be entered into by the Party concerned with any third party, the Party receiving same shall ensure that all officers, advisors and/or employees of any third party to whom the Confidential Information or part thereof is or has been disclosed, are aware of the provisions of this Agreement and shall ensure compliance with this Agreement.

7 STANDARD OF CARE

- 7.1 The Parties agree that it shall protect the Confidential Information using not less than the same standard of care that each Party applies to its own proprietary, secret or confidential information and that the Confidential Information shall be stored and handled in such a way as to prevent unauthorised disclosure or access. In no event shall the Parties exercise less than reasonable care.

- 7.2 Reasonable care to protect the Confidential Information shall include but not be limited to security at the Parties' facilities, limiting access to a need to know basis, employee confidentiality agreements, employee identification and education as to the need for security and confidentiality.

8 RETURN OF CONFIDENTIAL INFORMATION

- 8.1 Any Party who disclosed Confidential Information may request, in writing, at any time that the Confidential Information or any part thereof, which has been reduced to material form by any of the parties and any copies thereof, be returned to the

disclosing Party concerned, with written statement to the effect that upon such return it has not knowingly retained in its possession or under its control, either directly or indirectly, part of the Confidential Information or copies thereof. The Party who received such aforementioned confidential information shall comply with any such request within 5 (five) business days of receipt of such request.

8.2 As an alternative to the return of the Confidential Information as envisaged in 8.1, the receiving Party shall (either of its own accord or at the request of the disclosing Party) destroy the Confidential Information or part thereof, and copies, which have been reduced to material form, and supply a written statement to the effect that all the Confidential Information or parts and copies thereof have been destroyed within 5 (five) business days of receipt of such request.

8.3 The words "**material form**" shall mean any printed form, computer readable form, coded form, electronic form, or the like from which the Confidential Information or part thereof can be reproduced or derived.

9 EXCLUDED INFORMATION

9.1 The obligations pursuant to this Agreement shall not apply to the Confidential Information if -

9.1.1 a Party can show by way of written record that the Confidential Information was in the possession of the Party, prior to disclosure thereof;

9.1.2 the Confidential Information is or becomes publicly known, otherwise than as a consequence of a breach of this Agreement or of any action of the Party concerned;

9.1.3 it can be proved that the Confidential Information has been rightfully received by the applicable Party from a third party without a breach of a duty or obligation of confidentiality of which the third party or the disclosing Party was aware;

9.1.4 the Confidential Information was independently developed by a Party, or third party as proven by its written records; or

9.1.5 the Confidential Information is disclosed by a Party to satisfy a legal demand by a competent court of law or governmental body, provided however that in such circumstances, the Party concerned shall advise the Party who made the disclosure prior to such mandatory disclosure, as far as it is reasonably possible, so that the Party who disclosed the Confidential Information has an opportunity to defend, limit or protect itself against such production or disclosure. The Party concerned shall disclose only that portion of the

Confidential Information which is legally required to be disclosed and shall exercise its reasonable efforts to obtain a protective order or other reliable assurance that confidential treatment will be accorded to any part of the Confidential Information required to be disclosed.

9.2 In any dispute in terms of 9.1, the onus of proof shall be on the Party who received Confidential Information.

10 GENERAL

10.1 This Agreement supersedes all prior Agreements, whether oral or in writing, and constitutes the entire agreement between the Parties, with respect to the subject matter of this Agreement.

10.2 No warranty, waiver, term or condition not contained herein shall bind the Parties, and this Agreement shall not be amended, cancelled or novated, otherwise than in writing and signed by the Parties.

10.3 The failure to enforce or to require the performance at any time of any of the provisions of this Agreement shall not be construed to be a waiver of such provision and shall not affect either the validity of this Agreement or any part hereof or the right of any Party thereafter to enforce each and every provision in accordance with the terms of this Agreement.

10.4 The headings of paragraphs are used for convenience only and shall not affect the meaning or construction of the contents of this Agreement.

10.5 Nothing in this Agreement shall be construed to create any form of relationship between any of the Parties, including, but not limited to, by way of agency, partnership or distributorship. None of the Parties may represent the other or bind the other or act in any way as if with the authority of any other Party to this Agreement.

10.6 No furnishing of Confidential Information and no obligation hereunder shall obligate either Party to enter into any further agreement or negotiation with the other, or to refrain from entering into an agreement or negotiation with any other Party which does not breach any of its obligations under this Agreement.

10.7 The law governing this Agreement shall be the law of the Republic of South Africa and this Agreement shall be construed and interpreted in accordance with the substantive law of the Republic of South Africa, and the Agreement will be subject to the non-exclusive jurisdiction of the High Court of South Africa (Western Cape Division).

11 BREACH

11.1 Should the receiving Party commit a breach of any provision of this Agreement and fail to remedy such breach within 10 (ten) business days from the date of written notice from the divulging Party calling upon it to do so, the divulging Party shall have the right either:

11.1.1 to cancel this Agreement; or

11.1.2 to take whatever action may be necessary to enforce its rights under this Agreement, and

in either event to claim such direct loss or damages as it may have suffered as a result of such breach of contract.

12 NOTICES AND DOMICILIA

All notices, demands or other communications under this Agreement shall be given or made in writing, and shall be delivered personally, addressed to the Party or Parties to whom they are directed at the address set out at the head of this Agreement or at such other address as may be designated by notice from such Party, which addresses the Parties respectively choose as their *domicilia citandi et executandi* for all purposes of or arising from this Agreement.

13 SEVERABILITY

In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been set herein, and this Agreement shall be carried out as closely as possible to its original terms and intent.

14 PUBLICITY

No announcements of any nature whatsoever will be made by or on behalf of a Party relating to this Agreement or the Permitted Purpose without the prior written consent of the other Party, save for any announcement or other statement required to be made in terms of the provisions of any law, in which event the Party obliged to make such statement will first consult with the other Party to enable them in good faith to attempt to agree the content of such announcement, which (unless agreed) must go no further than is required in terms of such law. This will not apply to a Party wishing to respond to the other Party which has made an announcement of some nature in breach of this 14.

15 NON-CIRCUMVENTION

Each Party receiving Confidential Information (the "**Receiving Party**") further warrants that it will not, at any time circumvent the Party disclosing such Confidential Information (the "**Disclosing Party**") by pursuing or attempting to undertake any transaction or a series of transactions (including transactions by a direct or indirect subsidiary or direct or indirect holding company of such Receiving Party, or a direct or indirect subsidiary of such direct or indirect holding company or a company or external company within the Receiving Party's group of companies) of any kind similar to the Proposed Transaction as specifically disclosed to the Receiving Party, to the exclusion of the Disclosing Party, without the express prior written agreement of the Disclosing Party, which agreement may be withheld in the Disclosing Party's sole discretion.

16 LIMITATION OF LIABILITY AND INDEMNITY

A Party shall be liable for all direct loss or damages another Party may suffer, including attorney and client costs, resulting from a breach of the provisions of this Agreement, specifically any unauthorised disclosure to any third party of any of the Confidential Information as described herein by such Party in breach, its officers, employees and/or agents.

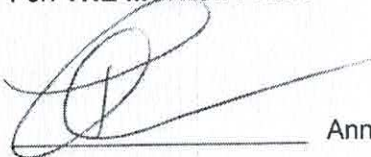
17 COUNTERPARTS

This Agreement may be executed in any number of counterparts and once each Party to the Agreement has signed a counterpart, each such counterpart shall be considered an original and all such counterparts shall constitute one and the same instrument.

[Signature pages to follow]

Signed at Swellendam on 9 May 2023

For: **THE MUNICIPALITY**



Signature Name of signatory Designation of signatory

Anneleen Vorster

Municipal Manager

Signed at Geetvlei on 10th May 2023

For: **RAUBEX**



Signature Name of signatory Designation of signatory

Barend

MD

The information listed herein is an extract of clause 9 from the draft Memorandum of Understanding prepared by the Municipality for purposes of the Proposed Transaction:

"REQUIREMENTS OF THE DEVELOPER

9. *The submission of a full development proposal by 30 April 2023, which must include inter alia the following:*
 - (a) *A written description of the proposed target market and beneficiaries to be targeted.*
 - (b) *A written description of the type, range and standard of residential units proposed to be developed including details of the standard of basic finishes, the approximate building cost per square meter and proposed selling prices per housing unit type exclusive of the serviced land cost component. Sketch plans showing basic designs and housing products proposed to be offered as part of this project, must be included.*
 - (c) *Details of the proposed marketing plan for the development and product, having regard to the proposed target market and the development objectives as set out in the development proposal. The proposed marketing plan must include details as to how the proponent intends to reach the target market and ensure compliance with the criteria set for beneficiaries.*
 - (d) *The project development program and timeframe in respect of the management of the project and development, highlighting key events and processes and having due regard for the fact that the Land Availability Agreement is to be valid until the development is completed and transferred into the owner's name.*
 - (e) *The submission of detailed information on the development demand on municipal services for calculation of the municipal capital contribution levies as well as the contribution towards municipal backbone services."*