SERVICE LEVEL MANAGEMENT AGREEMENT

between

THE BODY CORPORATE OF SIXTYONE ON SHEPHERD SECTIONAL TITLE SCHEME NO. SS ___________

(hereinafter referred to as “the Body Corporate”)

and

LUMIC PROPERTY CONSULTANTS SA PTY LTD
Registration number 2013/033933/07

(hereinafter referred to as “Lumic”)
PREAMBLE

A WHEREAS in terms of Section 46 of the Regulations of the Sectional Titles Act 95 of 1986 a managing agent is to be appointed by the Body Corporate in terms of a written agreement.

B AND WHEREAS the parties hereto wish to record the agreement between them and regulate the terms and conditions thereof in writing.

1 INTERPRETATION

Subject to the Sectional Titles Act No 95 of 1986, as amended and the regulations framed in terms thereof, unless the context indicates a contrary intention, expressions or phrases denoting:

1.1 Any particular gender shall include all other genders;

1.2 A natural person shall include an artificial person and vice versa;

1.3 The singular shall include the plural and vice versa.

2. DEFINITIONS

2.1 “the parties” shall mean the Body Corporate and Lumic collectively;

2.2 “the mandate” shall mean the execution by Lumic of those duties, obligations and skills and the application of expertise to effectively, lawfully and efficiently control, manage and administer the affairs of the Body Corporate as more fully set out in clause 5 hereto;

2.3 “the Trustees” shall mean the Trustees of the Body Corporate as constituted in terms of the Act and Rules of the Body Corporate;

2.4 “the term” shall mean the period referred to in clause 4 below;
2.5 “the Act” shall mean the Sectional Titles Act no 95 of 1986 and any regulation and amendments thereto;

2.6 “the Rules” shall mean the Body Corporate Rules and Annexures as filed with the Registrar of Deeds;

2.7 “the services” shall mean the services provided by Lumic in the execution of its mandate;

2.8 “the Management fee” shall mean the monthly fee set down in clause 6 below.

3 APPOINTMENT

3.1 Subject to the further terms and conditions of this agreement the Body Corporate hereby appoints Lumic as the managing agent to control, manage, and administer the Body Corporate and Lumic accepts the appointment;

3.2 Lumic shall be solely responsible for the provision and execution of the services and mandate. In this respect Lumic shall be entitled to act independently but subject to any reasonable instruction as may be given to it by the Body Corporate or it’s Trustees from time to time provided it acts in accordance with the Act and the Rules of the Body Corporate.

4 COMMENCEMENT AND TERM

4.1 Notwithstanding the date of signature hereof, this agreement shall be deemed to have commenced on the 1st day of __________ 20__ (the commencement date).
4.2 The duration of this agreement shall be for a twelve (12) month period from the commencement date, such agreement will automatically be renewed from year to year unless either party gives written notice to the other party of not less than two (2) calendar monthly before the expiry of twelve (12) month period. This notice is to comply with Management Rule 27 and be given by way of an ordinary resolution taken at a general meeting of all owners or by way of a trustees’ resolution.

4.2.1 In the event of the Body Corporate terminating this agreement contrary to the below and the above, the parties agree that Lumic shall be entitled to withhold, as a genuine pre-estimate of damages, an amount equal to the management fee for the number of months outstanding in the relevant twelve (12) month period.

4.3 The Body Corporate may cancel this agreement, which cancellation shall take effect on the last calendar day of the month, following the month in which cancellation took place, without notice in the following circumstances:

4.3.1 should Lumic breach any of the provisions of this agreement or if it is guilty of conduct which at common law would justify the termination of a contract between master and servant;

4.3.1.1 the provisions of 4.2.1. notwithstanding, Lumic shall have no claim whatsoever against the Body Corporate or any of the owners as a result of such cancellation;

4.3.2 Lumic’s appointment may be revoked under the following circumstances:-

4.3.2.1 in the event that Lumic is placed under judicial management, provisional or final liquidation;

4.3.2.2 in the event that Lumic or one of its directors is convicted of an offence involving fraud or dishonesty;

4.3.2.3 where the Body Corporate passes a special resolution revoking this agreement. However, this shall not deprive Lumic of its rights to claim damages for breach of contract.
Mandate and Services

5.1 Without derogating from its general obligations to control, manage and administer the Body Corporate in accordance with the mandate, the duties and services of Lumic will include inter alia:-

5.1.1 Attend to the collection of monthly levies and other funds owing to the Body Corporate and the depositing thereof into a Trust account in terms of Section 32(3) of the Estate Agents Act, 1976 (Act 112 of 1976), and Section 42 of the Sectional Titles Act.

Should the Body Corporate wish to operate its own bank account, a resolution must be passed absolving Lumic from any responsibility regarding the non-reimbursement of missing funds due to the fact that the Estate Agency Affairs Board will only cover and reimburse monies held in a Trust account.

5.1.2 Instruct attorneys to institute legal proceedings in the name of the Body Corporate for the recovery of arrear levies and other funds owing to the Body Corporate at a cost for handover and instruct attorneys to take further action in the legal process which is necessary to recover arrear levies;

5.1.3 Pursue arrear levies not paid by the 7th of the month and charge for the administration thereof in accordance with the applicable law currently prevailing.

5.1.4 Check and pay all expenses incurred in the administration of the Body Corporate, once authorised by the Trustees;

5.1.5 Arrange for meter readings;

5.1.6 Operate a separate trust account for the Body Corporate into which Body Corporate funds will be paid;

5.1.7 Attend to the compilation and circulation of general circulars, notices, agenda’s, proxies and nomination forms for general meetings of owners as well as correspondence requested by the
Body Corporate. Copies of all correspondence sent on behalf of the Body Corporate will be forwarded to the Chairperson;

5.1.8 Write to all members (owners) informing them of methods of payments and Lumic’s procedures in respect of their levies and Rules of the Body Corporate;

5.1.9 Attend to the payment of salaries, wages, PAYE, UIF, WCA, Skills Development Levies and other charges in respect of Body Corporate Staff;

5.1.10 Attend to the arrangement and placement of insurance for the building in terms of Section 29 of the Sectional Titles Act, 95 of 1986;

5.1.11 Assist with all insurance claims and queries in conjunction with the Body Corporate’s appointed insurance brokers in respect of clause 5.1.10 above and keep adequate records thereof;

5.1.12 Assist and advise the Trustees in preparing the annual budget for presentation to the Body Corporate at the annual general meeting (AGM);

5.1.13 Assist the Trustees in arranging the AGM;

5.1.14 Attend four Trustee meetings annually and the AGM as part of the Management fee. Additional meetings shall be agreed and charged at an hourly rate commensurate with market rates applicable at the time, together with travelling costs charged at the rates recommended by the Automobile Association of South Africa;

5.1.15 Supply the chairperson and the designated financial trustee with monthly reports on income and expenditure;

5.1.16 Ensure that all disbursements are supported by proper and adequate documentation;
5.1.17 Ensure all instructions pertaining to disbursements or transfers from the operating trust account to secure saving or investment account(s) are done by way of Trustees Resolution(s).

5.1.18 Have adequate authorisation for and ensure that disbursements are only for the maintenance of the common property and not for individual services. Accounts for extraordinary expenses will only be paid once the consent of the Trustees has been obtained;

5.1.19 Assist the Trustees with the annual audit;

5.1.20 Assist the Trustees in enforcing the conduct and management Rules as well as assistance in the filing of the Rules in the Deeds Office if amended;

5.1.21 Storing of all documentation with regards to minutes, sectional plans, accounts, legal information, minute books, attendance registers, quotes, rules, insurance contracts, and all other information and files as required by the Act;

5.1.22 The Body Corporate shall provide Lumic with all books, documents and records required by Lumic to enable it to properly perform its functions in terms of this agreement.

5.2 It is recorded that Lumic acts at all times in a representative capacity and therefore does not take on the fiduciary duties of the Trustees of the Body Corporate.

6 FINANCIAL AND RELATED MATTERS

6.1 In consideration for the execution of the mandate and services by Lumic, the Body Corporate shall pay Lumic a Management fee of R70.00 (VAT excl.) per unit per month. This amount is to be reviewed annually and unless otherwise agreed between the parties, will be increased by R5 per unit. There is also an accounting fee of R30.00 (VAT excl) to be charged per unit. This will increase once a year by 10%. An initial take-on fee of R nil (VAT excl.) is applied on take on of the information. Ad-hoc Roaming Estate
Management fee to be **R450.00** per hour (VAT excl) and shall commence upon instruction of the Trustees on a needs basis.

6.2 Management fees shall become payable on the 23\textsuperscript{rd} day of each month and will be deducted from the monies collected by virtue of this agreement.

6.3 Upon request by the Trustees, Lumic shall submit to the Trustees details of the levies due and collected by Lumic from the Body Corporate’s members in respect of the period concerned.

6.4 In addition to 6.1 above, Lumic shall be entitled to recover costs and bill fees as per the current industry standards and practices. Lumic may charge the Body Corporate for services requested by the Body Corporate which are not included in this management agreement, at tariffs in accordance with current market rates for the relevant type of service at the time that the service is rendered, or at such higher rate as may be authorised by the Body Corporate in writing. Examples of the kind of additional services offered are contained in “Annexure A” annexed hereto.

6.5 Lumic is specifically authorised to bill the member who is in arrears on his or her levy account with charges in respect of reminders, notices, hand-over fees and other ancillary charges in respect thereof.

6.6 Should Lumic be required to provide any services not contemplated in this agreement, such services will be billed separately.

7. **COSTS AND EXPENSES**

Lumic shall be responsible for the agreed costs and expenses incurred or relating to the execution of the mandate. The following costs shall be for the account of the Body Corporate:-

7.1 The cost of litigation and instituting proceedings for the collection of contributions and subscriptions due to the Body Corporate;

7.2 Any extraordinary expenses agreed by the Body Corporate and incurred as a result of new legislation and or/regulations;
7.3 Any unusual or abnormal expenditure incurred on the instructions of the Body Corporate and/or Trustees;

7.4 Any payment in respect of any consultancy fees for and on behalf of the Body Corporate and/or Trustees;

7.5 The Body Corporate's audit fees;

7.6 Those costs for documentation and postage pertaining to general meetings and AGM;

7.7 Those costs associated with sending correspondence and accounts to members whose domicilium is not that of the unit.

7.8 Where the Body Corporate elects for the bank account not to be held by Lumic, those costs associated in operating said account, be it travelling or otherwise.

7.9 All such other costs and expenses normally for the Body Corporate's account.

8. LIABILITY OF LUMIC

Lumic shall properly execute and give effect to the mandate and services as more specifically set out in clause 5 above. Lumic shall however not be responsible for:

8.1 Unpaid levies, where so required by the Body Corporate, Lumic shall at the Body Corporate’s risk and cost, institute action for the recovery of unpaid levies;

8.2 Non-disclosures or inaccurate information furnished by or on behalf of any member or Trustee;

8.3 Any false, inaccurate or exaggerated claims filed by or in respect of any member or any service provider including any payments made in good faith by Lumic to members of the Body Corporate or service providers relating to fraudulent claims in respect of services rendered or allegedly rendered to the Body Corporate;
8.4 Any agreements entered into by Lumic on behalf of the Body Corporate in good faith and without negligence under express authority of the Trustees.

9 ARBITRATION

Subject to clause 14, in the event of any difference, deadlock or dispute arising between the parties in respect of matters arising from the agreement, or any breach hereof or its validity or the legal interpretation to be applied, such dispute shall be dealt with as follows:

9.1 The parties shall try to resolve the dispute by negotiation. This entails that the one party invites the other in writing to meeting in an attempt to resolve the dispute within 7 (seven) days, or such other period that the parties agree to in writing, from the date of the written invitation;

9.2 In the event that the dispute is not resolved by such negotiation, the dispute shall be finally resolved in accordance with the Rules of the Arbitration Foundation of Southern Africa by an arbitrator appointed by the Foundation;

9.3 The decision of the arbitrator shall be final and binding on the parties and shall forthwith be carried into effect. The arbitrator's award may be made an order of any court of competent jurisdiction;

9.4 This clause shall remain effective even if this agreement is terminated, provided the subject matter remains within the ambit of the agreement.

9.5 Notwithstanding the provisions of this clause, the parties may by written agreement waive the obligation to refer a dispute to arbitration where the dispute may be capable of resolution in another appropriate forum.

10. CONFIDENTIALITY

10.1 The parties shall hold all information which is disclosed directly or indirectly to them under this agreement in secret and in confidence using the same standard of care which it uses to protect its most confidential information and shall not disclose to any other party whatsoever any or all other information disclosed to it orally or in written, printed, electronic or magnetic form, except:-
10.1.1 information which at the time of disclosure is the public domain;

10.1.2 information which is at any time in the parties’ possession or knowledge and was not acquired directly or indirectly from the other party;

11. RECORDS AND DOCUMENTS

11.1 Lumic shall keep full and proper books of account and records showing clearly all revenue, expenditure, transactions and proceedings relating to the Body Corporate. Lumic shall allow the Body Corporate or its representative at all reasonable times to enter Lumic's premises for the purpose of inspecting the said books and records and making copies thereof.

11.2 On termination of this agreement, all books, records and documents relating to the Body Corporate shall be returned by Lumic to the Body Corporate. In returning such books, documents and records Lumic shall, if so requested by the Body Corporate and at the cost of the Body Corporate prepare copies either in electronic or printed form of such information as the Body Corporate may reasonably require.

11.3 The above provisions shall not apply to Lumic’s management records, statistics, computer software, models and/or other confidential information which shall remain the sole property of Lumic.

12. GENERAL

All management and administration rendered by Lumic on behalf of the Body Corporate from the commencement date of this agreement up to the provisions of this agreement are hereby ratified by the parties by their signature hereof.

13. FORCE MAJEURE

Neither of the parties shall be responsible nor liable for loss, damage, detention or delay caused by, inter alia, act of God, vis major, Government action, sanctions, strikes or other industrial action, fire, civil or military authority, war (whether declared or not), insurrection, riot, embargoes, lockouts or breakdown of machinery or any other act beyond its
reasonable control. Nor shall they be responsible or liable for any direct or consequential loss due as a result of or arising from the aforesaid.

14. **BREACH**

In the event of a material breach of this agreement by either party hereto and failure of such party to remedy such breach within thirty (30) days after receipt of a written demand by the aggrieved party to effect such remedy, the aggrieved party shall be entitled to either claim specific performance or terminate this agreement forthwith on written notice to such other party. Such termination shall be without prejudice to any right of the aggrieved party to recover, inter alia, any costs, damages or expense arising from or consequent upon such breach provided that any breach arising out of circumstances described in clause 13 above, shall exempt the breaching party from any liability for specific performance or damages arising out of such breach during the continued existence of such circumstances.

15. **AGENCY**

Subject to the prior written consent of the Body Corporate, the Body Corporate hereby authorises and empowers Lumic to act on its behalf, as its agent and in its name, for the purposes of entering into such agreements as Lumic may deem necessary and which would facilitate the provision of the services as set out in this agreement.

16. **ADDRESSES AND NOTICES**

16.1 For the purpose of this agreement, including the giving of notices in terms hereof and the serving of legal process, the parties choose *domicilium citandi et executandi* ("domicilium") as follows:

16.1.1 The Body Corporate:  
________________________  
________________________  
________________________

16.1.2 Lumic: 59 Burger Street  
Suideroord  
Johannesburg  
2190
A party may at any time change its domicilium by notice in writing, provided that the new domicilium is in the Republic of South Africa and consists of, or includes, a physical address at which process can be served.

Any notice given in connection with this agreement may be delivered by hand; or be sent by prepaid registered post; to the domicilium chosen by the party concerned. Any notice or process delivered on any party in connection with any matter or subject arising out of this agreement or any notice shall be deemed to have been delivered if handed to any responsible person at the domicilium chosen by any party and it shall not be necessary to hand such process or notice to any party personally.

A notice given as set out above shall be presumed to have been duly delivered:

16.4.1 on the date of delivery if delivered by hand;

16.4.2 on the fourth day from the date of posting including the date of posting if posted by pre-paid registered post from within the Republic of South Africa;

16.4.3 on the fourteenth day from the date of posting including the date of posting if posted from outside the Republic of South Africa; and

16.4.4 if sent by fax or email before 16h30 on a business day, be rebuttably presumed to have been received on the date of successful transmission of the fax or email. Any fax or email sent after 16h30 or on a day which is not a business day will rebuttably be presumed to have been received on the following business day.
17. **ENTIRE AGREEMENT**

This agreement constitutes the entire agreement between the parties with regard to the matters dealt with herein and no representations, terms, conditions or warranties express or implied not contained in this agreement shall be binding on the parties.

18. **VARIATION AND CANCELLATION**

No agreement varying, adding to, deleting from or cancelling this agreement, and no waiver whether specifically, implicitly or by conduct of any right to enforce any term of this agreement, shall be effective unless reduced to writing and signed by or on behalf of the parties. It is recorded that there exists no collateral and/or other agreements and that this is the sole agreement entered into by and between the parties.

19. **INDULGENCES**

No indulgence granted by a party shall constitute a waiver of any of that party's rights under this agreement; accordingly, that party shall not be precluded as a consequence of having granted such indulgence, from exercising any rights against the other which may have arisen in the past or which may arise in the future.

20. **DO ALL THINGS NECESSARY**

The parties shall do all things necessary as may be contemplated by this agreement and execute all things necessary to give effect to the provisions hereof.

**THUS DONE AND SIGNED BY THE RESPECTIVE PARTIES AS FOLLOWS:**


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<tr>
<th>TRUSTEE</th>
<th>WITNESS</th>
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<tr>
<td>For and on behalf of BODY CORPORATE</td>
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Place:  
Date:
TRUSTEE
For and on
behalf of BODY CORPORATE

Place:
Date:

LUMIC PROPERTY CONSULTANTS SA PTY LTD
duly authorised

Place:
Date:
ANNEXURE “A”
ADDITIONAL SERVICES OFFERED

The Body Corporate will on invoice reimburse Lumic for the following additional services not included in the agreed Management fee:

- **Accounting Services (if required)**
- **Postage and Stationery, Bank Charges, Photocopies, Faxes**
- **Attending to:**
  - Provisional Tax Returns, Tax Extensions, Objections and Queries
  - Workman’s Compensation Claims
  - Completion and Filing of Statutory Returns
- **Provision of Public Officer Facilities**
- **Consultations:**
  - Principal or Director, Senior Official
  - Take on Developments
  - After Hours Consultations
- **Attendance of additional meetings**
  - Reconvened Annual General Meetings, Special General Meetings, Extended Meetings, Deed Searches;
  - Obtaining of Sectional Title Plans;
  - Filing of Management and/or Conduct Rules and/or obtaining copies thereof from the Deeds office;
  - The supplying and signature of contracts with employees of the Body Corporate.

Ad-hoc tariffs are charged in accordance with clause 6.4 of this agreement (available on request) and current Sectional Title legislation in respect of the following (recoverable from the persons requesting the service, not the Body Corporate):

- **Requests for Documents by Bona Fide third parties:**
  - Reconciliation of Owner’s Accounts for a Period Prior to Take On
  - Clearance Certificates
  - Insurance Certificates / Noting of Bondholder’s Interest
  - Extended Clearance Certificates
  - Tax Certificates
  - Monthly Income and Expenditure Statements and Levy Roll to Non-Trustees.