

TATU CITY LIMITED

**DEED OF DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AMENDING
AND RESTATING THE MASTER DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS DATED 30TH JULY 2014**

**WITH RESPECT TO LAND REFERENCE NUMBER 28867/1 IN THE NAME OF
TATU CITY LIMITED**

Drawn by:-

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TATU CITY LIMITED

DEED OF DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

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**REPUBLIC OF KENYA
THE LAND REGISTRATION ACT
THE LAND REGISTRATION (GENERAL) REGULATIONS, 2017**

**DEED OF DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AMENDING
AND RESTATING THE MASTER DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS DATED 30TH JULY 2014 OVER LAND REFERENCE NUMBER 28867/1
BY TATU CITY LIMITED**

Date	
Declarant	TATU CITY LIMITED a limited liability company incorporated in Kenya under the Companies Act, Cap 486 of the Laws of Kenya (now repealed) with Company Registration Number C. 2/2009 and now deemed to be registered under the Companies Act No. 17 of 2015 and of Post Office Box Number 2739-00621, Nairobi (hereinafter referred to as the “ Declarant ” which expression shall include the Declarant’s successors in title and permitted assigns).
Property Owners Association	TATU CITY PROPERTY OWNERS LIMITED a limited liability company incorporated in Kenya in accordance with the Companies Act Number 17 of 2015 as Company Registration Number CPU/2014/152255 and of Post Office Box Number 2739-00621, Nairobi (hereinafter referred to as the “ Property Owners Association ” or “ POA ” which expression shall include the POA’s successors in title and permitted assigns).

WHEREAS:

- A. The Declarant is the registered owner of Nine Six Three Decimal Eight Seven (963.87) hectares or thereabouts of land located in Kiambu County as more particularly described in Schedule A attached hereto and forming part of this Declaration (hereinafter the “**Property**”).
- B. The Declarant has created a world-class mixed-use development on the Property comprising residential developments, retail developments, commercial developments, tourism facilities, industrial developments, social facilities and recreational facilities (hereinafter referred to as “**Tatu City**”).
- C. The Property was declared a Special Economic Zone on 18th May, 2017 pursuant to the provisions of Section 4 (1) of the Special Economic Zones Act Number 16 of 2015 (the “**SEZ Act**”) vide Gazette Notice Number 4892 of 2017 in the Kenya Gazette Vol. CXXI – Number 66 on 22nd May 2017.

- D. Pursuant to the provisions of Section 27 (5) of the SEZ Act, the Declarant was on 7th August, 2017 granted a Developer's License and an Operator's License with power to develop on-site and off-site infrastructure and all other related developments associated with a functional Special Economic Zone.
- E. The Property was declared a Special Planning Area by the National Director of Physical Planning on 30th May, 2019 pursuant to the provisions of Section 23 (1) of the Physical Planning Act (Repealed) vide Gazette Notice Number 4975 of 2019 published in the Kenya Gazette Vol. CXXI – Number 73 of 7th June 2019.
- F. It is the desire and intention of the Declarant to impose upon Tatu City mutually beneficial conditions, standards and covenants (hereinafter referred to as the "**Declaration**") under a general plan of development, maintenance and improvement to provide for the preservation of the values and quality of Tatu City through the development and continual improvement and maintenance of architectural features, common areas and elements. All amendments to this Declaration will be subjected to public participation to ensure that views of the Owners are taken into account.
- G. In 2014 the Declarant incorporated the Property Owners Association (defined below) for the preservation of the values of Tatu City and for purposes of organising all the Owners (defined below) into a cohesive entity for purposes of representation and participation as shall be more particularly prescribed herein.
- H. The membership of the Property Owners Association will be the Declarant and the various Precinct Property Owners Associations (defined below).
- I. The Declarant has appointed the management company known as Tatu City Management Company SEZ Limited (the "**Management Company**") for the purpose of managing the common areas, managing the provision of services within Tatu City, collection of service charge and exercising all other functions assigned to it on behalf of the Declarant.
- J. The Declarant seeks to ensure provision of Utility Services (defined below) to all Tatu City Owners (defined below) in accordance with the standards prescribed under the law in Kenya and having regard to all practical considerations and shall strive to ensure that the Utility Services are provided to all Tatu City Owners as end users in a Financially and Environmentally Sustainable (both terms defined below) manner that ensures that Tatu City is a viable city.
- K. The Declarant intends to provide the Utility Services either through itself or the Tatu City Utility Services Entities (defined below) over which it has Effective Control (defined below) or through Service Delivery Agreements (defined below) to be entered into between the Declarant and Competent Authorities (defined below) or any other entity as the law may direct or in such other manner as the Declarant shall in its sole and absolute discretion determine.

- L. The Declarant will use its best endeavours to ensure that Utility Services shall be provided to all Owners within Tatu City in an equitable and accessible manner that is amongst others conducive to the prudent, economic, efficient and effective use of available resources, and will cause the Utility Services to be regularly reviewed with a view to upgrading, extending and improving their quality standards over time.
- M. Tatu City will be developed in phases and the Property will be divided into Precincts (defined below). Each Precinct will have an association (“**Precinct Property Owners Association**”) that will be responsible for the functions which are exclusive to the Precinct and through which Owners of Parcels (defined below) within the Precinct will nominate a representative to the Property Owners Association as provided herein.
- N. The Declarant has designated the permitted use in relation to each Precinct and each Parcel as indicated in the Tatu City Master Plan (defined below), as well as imposed Development Controls (defined below) and has promulgated the Development Codes to preserve the values and quality of Tatu City.
- O. It is the intention of the Declarant that this Declaration bind and benefit not only the purchasers of the Precincts and Parcels in Tatu City, but also their respective successors in title, heirs and permitted assigns and all end users including lawful visitors, tenants and other occupants and that this Declaration shall enhance and protect the value, desirability and attractiveness of all such Precincts and Parcels to their mutual benefit.
- P. This Declaration supplements the special conditions contained in the Grant (defined below) with respect to the Property.

NOW, THEREFORE, the Declarant hereby declares that, Tatu City is held and shall be held, conveyed hypothecated, encumbered, leased, rented, used, occupied and improved subject to the following covenants, conditions, restrictions, easements, charges and liens, all of which are declared and agreed to be in furtherance of a plan for the development, improvement and sale of the Property and are established and agreed upon for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Property. Pursuant to Sections 56(b) of the Land Act (defined below) all of the conditions, covenants and restrictions contained in this Declaration shall run with the real property and shall be binding on all parties having or acquiring any right, title or interest in the Property including tenants and other occupants thereof and shall inure to the benefit of each owner thereof and shall at all times be incorporated in any documentation relating to Tatu City by reference.

ARTICLE 1: PURPOSE

- 1.1 The purpose of this Declaration is to set out the covenants, conditions and restrictions that are imposed over the Property by the Declarant that will ensure that:
 - 1.1.1 Tatu City is established as a world-class mixed-use development on the outskirts of Nairobi resulting in the creation of a new decentralized development focus area to the North of Nairobi and as a project of strategic national importance which shall contribute to realisation of Kenya’s Vision 2030 by aiding industrialisation, provision of

high quality of life to all its users and aligning its vision with Nairobi's planned creation of decentralized development areas to alleviate congestion in the City of Nairobi;

- 1.1.2 Tatu City is established as a well-planned, well-managed community that is centred on the concept of work-live-play providing a comprehensive mix of land uses to cater for the needs of its residents and lawful visitors;
 - 1.1.2.1 the development by the Developer and Operator of on-site and off-site infrastructure and all other related developments associated with the functional success of Tatu City;
 - 1.1.2.2 the preparation of a harmonized comprehensive **Local Physical and Land Use Development Plan (LPDP)** covering the entire scope of the Property;
 - 1.1.2.3 in consultation with the Ministry of Lands and Physical Planning and other relevant Ministries and Agencies, the developments within Tatu City comply with the Development Controls;
 - 1.1.2.4 in liaison with the Special Economic Zones Authority, ensure a 'One - Stop' shop within Tatu City is established and operationalized to facilitate the objects and purposes envisaged under the provisions of the SEZ Act and Regulations made thereunder;
 - 1.1.2.5 the proper, desirable use and appropriate development and improvement of each Parcel within Tatu City, as determined by the Declarant;
 - 1.1.2.6 the investment of the owner of each Parcel is protected against such improper development and undesirable use of surrounding Parcels that would depreciate the value of the remaining Parcels;
 - 1.1.2.7 the erection of attractive improvements that utilize sustainable and suitable building materials in appropriate locations, thereby preventing haphazard and inharmonious improvements;
 - 1.1.2.8 the provision of Utility Services to all Tatu City Owners is in accordance with the standards prescribed under the law in Kenya and in a Financially and Environmentally Sustainable manner that ensures that Tatu City is a viable city;
 - 1.1.2.9 the restrictions established by the Declarant are observed and to ensure and maintain proper planning and development controls, including but not limited to plot area ratios, build-to lines and setbacks, and height restrictions; require the development of energy and resource efficient buildings compliant with such building standards as may be prescribed in the Tatu City Master Plan, relevant Precinct Plan and relevant Physical Planning Standards from time to time; and such other measures as may be necessary to encourage the overall character and theme established by the Declarant; and

1.1.2.10 high quality of improvements are undertaken on the Property.

ARTICLE 2: LEGAL DESCRIPTION

- 2.1 The Property that is and shall be held, transferred, conveyed by way of a transfer, long-term leases and subleases and occupied subject to this Declaration is located in Kiambu County and comprises all of the Precincts and Parcels within or upon the Property legally described as set forth in Schedule "A" which is attached hereto and incorporated herein by reference.
- 2.2 The Property is a designated Special Economic Zone pursuant to the provisions of Section 4 (1) of the SEZ Act. Further, the Declarant is the holder of a Developer's Licence and Operator's Licence with the statutory obligation to develop, operate and service the Property and other assets within the Property in conformity with SEZ Act and its licences and with power to develop and maintain on-site and off-site infrastructure and all other related developments associated with a functional Special Economic Zone.
- 2.3 The Tatu City Master Plan, annexed as Schedule B hereto is the conceptual layout for the development of Tatu City, which may be modified and amended by the Declarant in its sole and absolute discretion from time to time required to develop Tatu City provided that modifications and amendments to the Tatu City Master Plan will take into account preservation of the Parcels sold to the Owners.

ARTICLE 3: DEFINITIONS

- 3 Unless the context otherwise specifies or requires, the terms defined in this Article 3 shall, as used in this Declaration, have the meanings herein set forth:
- 3.1 "**Affiliate**" means with respect to a party, any company or other legal entity directly or indirectly controlling, controlled by, or under common control with, the respective party and for the purposes of this Declaration means:
- 3.1.1 a body corporate which is a subsidiary of the other or two subsidiaries of the same body corporate; and
- 3.1.2 a company which is a subsidiary of the other or both are subsidiaries of the same body corporate.
- 3.2 "**Architect**" shall mean a person holding a certificate of registration to practice architecture in Kenya under the authority of the Architects and Quantity Surveyors Act, Chapter 525 of the Laws of Kenya;
- 3.3 "**Assessments**" shall mean the annual assessments, fees or charges, which assessments are to be fixed and established by the Declarant and/or the Management Company (as the case may be) and from time to time or otherwise as deemed fit by the Declarant and/or the Management Company in connection with proper management, administration, maintenance, repairs, restoration and upgrade of the Common areas;
- 3.4 "**Beneficiary**" shall mean a chargee under a charge as well as a beneficiary under a deed of trust;

- 3.5 **“Building”** shall include both the main portion of a structure and all projections or extensions thereof, and shall include garages, outside platforms and docks, canopies, porches, outbuildings and any other structure, whether of a temporary or permanent nature and irrespective of the materials used in the erection thereof, erected or used for or in connection with the accommodation or convenience of human beings or animals; the manufacture, processing, storage, display or sale of any goods; the rendering of any service; the destruction or treatment of refuse or other waste materials; the cultivation or growing of any plant or crop; any wall, swimming bath, swimming pool, reservoir or bridge or any other structure connected therewith; any fuel pump or any tank used in connection therewith; any part of a building; any facilities or system, or part or portion thereof, within or outside but incidental to a building, for the provision of a water supply, drainage, sewerage, stormwater disposal, electricity, gas supply or other similar service in respect of the building;
- 3.6 **“Building Plans”** shall mean detailed architectural layout and floor plans, landscape architecture plans, and any engineering drawings of proposed improvements providing, among such other information as the Development Control Company may from time to time require, detailed layout and floor plans, elevations, specifications and uses; landscape plans and specifications indicating plant species, locations, quantities, landscaped areas and irrigation plans and specifications; specifications for all exterior materials; drawings and specifications relating to all exterior signage; engineering drawings and specifications for civil, electrical, mechanical, structural and wet services; a detailed rational fire design specifications and report. Buildings Plans shall be prepared according to the requirements of, and submitted in the format required by, the Development Control Company and the relevant Competent Authority;
- 3.7 **“Board”** unless stated otherwise shall mean the Board of Directors of the Property Owners Association appointed in accordance with the Memorandum and Articles of the Property Owners Association, and any reference herein to any power, duty, right of approval, or any other right of the Property Owners Association shall be deemed to refer to power, duty, right of approval or other right of the Board and not to the power, duty, right of approval or other right of membership of the Property Owners Association;
- 3.8 **“By-laws”** shall refer to the bylaws established by the Management Company;
- 3.9 **“Common Areas”** shall refer to the green areas, the utility areas, within Tatu City and such other areas as shall be designated in the Tatu City Master Plan for the common use and enjoyment of the members of the Property Owners Association, the Precinct Property Owners Association and/or the lessees, occupiers, invitees, licencees or lawful visitors of Tatu City BUT EXCLUDING Roadways and Stormwater Systems;
- 3.10 **“Common Elements”** shall include all facilities, utilities and other improvements found or located in Common Areas and Natural Open Spaces. For the avoidance of doubt, Common Elements shall exclude Roadways and Stormwater Systems (as hereunder defined);
- 3.11 **“Common Expenses”** shall include all those expenses incurred or to be incurred by the Declarant and the Management Company in the management and operations of the Common Areas and the Common Elements, costs of provision of urban management services, security and landscaping;

- 3.12 **“Competent Authorities”** means any Government entity whether at the National or County level, having statutory or regulatory competence to promulgate rules and regulations having the force of law touching and concerning Tatu City, the Property and the transactions and matters contemplated in this Declaration and **“Competent Authority”** shall be construed accordingly. For purposes of this Article, **“Governmental Entity”** means any national, state, relevant county authority, relevant county agencies, state corporations and other bodies, (including any sub-division, court, administrative agency, commission or other authority thereof) exercising any regulatory, taxing, importing or quasi-governmental authority;
- 3.13 **“Conditions of Approval”** shall mean such conditions or requirements that the Development Control Company may impose on the Owner of a Precinct or Parcel in approving Precinct Plans, site development plans, Building Plans, and/or Certificates of Compliance, which may include the grant of easements/servitudes;
- 3.14 **“Declarant”** shall mean **Tatu City Limited** or the assignee to which it specifically assigns its rights as Declarant;
- 3.15 **“Declarant’s Appointee”** means the Declarant’s Affiliates, third parties appointed by the Declarant or the Declarant’s Affiliates such as, without limitation, its servants, agents, independent contractors and the like and the Declarant’s Appointee shall be construed accordingly;
- 3.16 **“Declaration”** shall mean this declaration of covenants, conditions and restrictions as it may from time to time be amended or supplemented;
- 3.17 **“Deed of Trust”** shall mean a charge as well as a deed of trust;
- 3.18 **“Developer and Operator”** means Tatu City Limited;
- 3.19 **“Development Codes”** means any and all of the following either individually or collectively (as amended from time to time):
- 3.19.1 this Declaration;
 - 3.19.2 the Tatu City Master Plan;
 - 3.19.3 the duly approved Tatu City Structure Plan;
 - 3.19.4 the Leases over each Parcel or Precinct;
 - 3.19.5 the Environmental Management Plan (hereinafter defined);
 - 3.19.6 the Internal Environmental Standards (hereinafter defined);
 - 3.19.7 the Physical Planning Standards;
 - 3.19.8 the articles of association of the Umbrella POA;

- 3.19.9 the articles of association of each Precinct Property Owners Association;
 - 3.19.10 the Restrictions;
 - 3.19.11 the Rules and Regulations;
 - 3.19.12 the By-Laws; and
 - 3.19.13 the Tatu City Signage and Way-finding Policy.
- 3.20 **“Development Controls”** means the permitted use in relation to any part of the Property and each parcel as well as such other controls on Development that the Declarant, the Development Control Company or the Declarant’s Appointee may impose through, without limitation the Development Codes and all matters expressly set out therein, and which shall be enforced by the Declarant, the Development Control Company or the Declarant’s Appointee PROVIDED THAT the Development Controls shall not interfere with the permitted use of the Property;
- 3.21 **“Development Control Company”** means a limited liability company incorporated in the Republic of Kenya under Companies Act Number 17 of 2015 as company registration number PVT-PJUYY6Q and of Post Office Box Number 2739-00621, Nairobi, Kenya;
- 3.22 **“Development Program”** means a detailed programme of works to be undertaken in respect of each Owner’s Development which shall be submitted to the Development Control Company in accordance with this Master Declaration;
- 3.23 **“Engineer”** shall mean a person holding a certificate of registration to practice structural, mechanical and/or civil engineering in Kenya under the authority of the **Engineers Act, Number 3 of 2012**;
- 3.24 **“Environmental Management Plan”** shall mean, in relation to Tatu City:
- 3.24.1 the Strategic Environmental Assessment Report (SEA Report) as approved by NEMA; and
 - 3.24.2 the Environmental Impact Assessment Approval Guidelines (EIA Approval Guidelines) as approved by NEMA;
- WHICH shall be applicable to the fullest extent possible, to all environmental management in relation to any construction and/or Development within Tatu City;
- 3.25 **“Environmentally Sustainable”**, means undertaking the permitted use in relation to any part of the Property and each parcel in a manner aimed at ensuring that:
- 3.25.1 the risk of harm to the environment and to human health and safety is minimised to the extent reasonably possible under the circumstances;
 - 3.25.2 the potential benefits to the environment and to human health and safety are maximised to the extent reasonably possible under the circumstances; and

- 3.25.3 legislation and any such other policies intended to protect the environment and human health and safety is complied with.
- 3.26 **“Financially Sustainable”** in relation to the provision of a Utility Service, means the provision of a Utility Service in a manner aimed at ensuring that the financing of that Utility Service is sufficient to develop, operate, maintain, repair and replace the physical assets used in the provision of the Utility Service;
- 3.27 **“Grant”** shall mean the title in respect of Land Reference Number 28867/1 registered in the Land Titles Registry at Nairobi as Number I.R. 137858;
- 3.28 **“Gross Buildable Area”** or **“GBA”** shall mean the total sum square metres of the area covered by the buildings at the floor level of each storey at each parcel, provided that roofs (unless they include a loft or similar occupiable space); eaves, sunscreens and other architectural features; uncovered internal courtyards and light wells; public arcades connecting public spaces; and uncovered areas for parking and loading; are excluded from the calculation of gross building area;
- 3.29 **“Hazardous Material”** shall mean any chemical, waste, gas, medicine, drug, plant, animal or microorganism which is likely to be injurious to human health or the environment and any other material declared as such under the Environmental Management and Coordination Act , Chapter 287 of the Laws of Kenya (as may be amended from time to time);
- 3.30 **“Improvements”** shall mean buildings, outbuildings, underground installations, gradings, slope and drainage alterations, earth works, roads, driveways, parking areas, fences, screening walls and barriers, retaining walls, stairs, decks, windbreaks, landscaping, plantings, planted trees and shrubs, signage, poles signs, lighting, loading areas, and all other man-made changes to the natural configuration and vegetation of the Property, whether above or below the land surface;
- 3.31 **“Infrastructure Levy”** shall mean the amount payable to the Declarant comprising of the proportionate amount of the Service Charge payable by an Owner in respect of any emergency, anticipated and planned Assessments and cost of maintaining, repairing, amending, altering, rebuilding, renewing and reinstating of the following infrastructure within the Property, which amount may be amended or revised by the Declarant from time to time and which shall be paid into the Sinking Fund to be maintained by the Declarant:
- 3.31.1 Roadways and Stormwater Systems (defined below);
- 3.31.2 street lighting;
- 3.31.3 dams and reservoirs; and
- 3.31.4 Natural Open Spaces (defined below).
- 3.32 **“Internal Environmental Standards”** shall mean the internal environmental standards and policies as may be published by the Declarant from time to time;

- 3.33 **“Management Company”** shall mean Tatu City Management Company SEZ Limited a company appointed by the Declarant;
- 3.34 **“Member”** shall mean and refer to the Declarant, members of the Property Owners Association and their permitted successors and assigns and members of the Precinct Property Owners Association and their permitted successors and assigns or their personal representatives as the case may be. “Member” shall exclude from its meaning and reference any municipality or governmental agency as an owner which holds title to any public rights-of-way in the Property;
- 3.35 **“Natural Open Space”** shall mean the network of rivers, riparian buffer zones, parks, conservation areas and ecological corridors provided for in the Tatu City Master Plan;
- 3.36 **“Natural Resources”** shall mean natural assets occurring in nature within the confines of the Project that can be used for economic production or consumption and shall expressly exclude all natural resources categorised under Article 62 (f) and (g) of the Constitution of Kenya;
- 3.37 **“Occupant”** shall mean a lessee or licensee of an Owner, or any other person or entity other than the Owner, in lawful possession and/or occupation of a Premises and/or Parcel with the permission of the Owner;
- 3.38 **“Owner”** shall mean and refer to the registered owner, whether one or more persons or entities, of a leasehold interest to any of the Precincts or Parcels being a part of the Property described in Schedule A attached hereto, but excluding those having such interest merely as security for the performance of an obligation, provided, however, that the purchaser at a foreclosure sale or trustee’s sale shall be deemed an Owner;
- 3.39 **“Parcel”** shall mean and refer to any fractional part of the Precinct as subdivided on parcel maps registered from time to time at the relevant Government authority, with the exception of areas dedicated to the public use and shall include houses, apartments, shops, office floors, office suites or any other unit that is developed and sold, leased or sub-leased to an end user on the basis of a lease;
- 3.40 **“Permitted User”** shall mean the use of any portion of the Property as defined by the Declarant in the Tatu City Master Plan, the Precinct Plans and the leases in favour of each of the Owners;
- 3.41 **“Person”** shall mean any individual, firm, corporation, partnership, association, trust or other legal entity or any combination thereof;
- 3.42 **“Physical Planning Standards”** means the development standards and the design guidelines of Tatu City available for perusal at its offices;
- 3.43 **“Planning and Design Review Requirements”** shall mean all the planning and design requirements stipulated in this Declaration, any lease to a Precinct or Parcel, the Physical Planning Standards and any rules, regulations or other standards and guidelines issued by the Declarant, or by the Development Control Company on its behalf (in that order or priority);
- 3.44 **“Precinct”** shall mean and refer to the parcel of land identified by each Precinct Plan registered at the relevant Government authority as a Precinct. There are no preconceived limits as to the

size, number, or shape of said Precinct, which shall be created from the Property described in Schedule "A". The Declarant may enlarge or reduce such Precinct or create new Precincts within such Precinct by the registration of a new or amended Precinct Plan at the relevant Government authority as a Precinct provided that any modifications and amendments to a Precinct Plan will take into account preservation of the Parcels sold to the Owner. The subdividing of any Precinct will not operate to establish any new Precincts unless approved by the Declarant;

- 3.45 **"Precinct Property Owners Association"** or **"PPOA"** shall mean an owners association incorporated as a company limited by shares of which all property Owners within the Precinct shall be Members;
- 3.46 **"Precinct Plans"** shall mean the plan for each defined Precinct which shall, in line with the Tatu City Master Plan, provide sufficient information for the subdivision of the Precinct and the design of public open spaces and individual developments and which shall provide sufficient planning detail within its Physical Planning Standards with regard to uses, plot area ratios, gross buildable area, coverage and height restrictions per plot; the public open space network; vehicular movement network; pedestrian movement network. The Precinct Plan shall be prepared according to the requirements of, and submitted in the format required by, the Declarant in the first instance and thereafter, the Development Control Company and the relevant County Government and/or local authority;
- 3.47 **"Premises"** shall mean developed buildings or portions within a Precinct;
- 3.48 **"Project"** shall refer to all the developments comprising all the infrastructure, amenities, buildings, and all Improvements constructed on the Property in accordance with the Tatu City Master Plan, Precinct Plans, Site Development Plans and Building Plans and subject to this Declaration and which is alternatively referred to as the "Tatu City Development";
- 3.49 **"Property"** shall refer to that real property described in Schedule A hereto;
- 3.50 **"Property Owners Association"** or **"POA"** shall mean an owners association incorporated as a company limited by shares of which all Precinct Property Owners Associations within the Property shall be Members and which shall have the authorities and powers as defined in Article 9;
- 3.51 **"Representative Member"** shall mean and refer to the individual appropriately elected or appointed by the Owners to represent a Precinct Property Owners Association within the Property Owners Association;
- 3.52 **"Restrictions"** means all notices, orders, resolutions, demands, requirements, regulations, agreements, directions or other matters affecting the Property and the Buildings as may be promulgated or made by any Competent Authority or Person whether or not having the force of law;
- 3.53 **"Roadways"** shall mean part of Tatu City that involves the road network (comprising *inter alia*, roads, bridges, foot paths designed and/or improved for ordinary use by vehicular traffic, pedestrians and cyclists) and drainage system owned by the Declarant;

- 3.54 **“Rules and Regulations”** shall mean such rules which shall be issued or promulgated from time to time by the Declarant, the Development Control Company, the Management Company, Tatu City Services Utilities Entities or Tatu Connect SEZ Limited in accordance with the provisions of this Declaration relating to any aspect of Tatu City;
- 3.55 **“Service Charge”** shall include rates, land rent and any other statutory charges payable in respect of the Property, the Common Expenses (herein above defined), the Infrastructure Levy, fines and any other penalties, the provision of all other urban management services including the management fee payable to the Management Company in terms of the relevant service level agreement, and utilities in respect of waste management calculated based on such formula as shall be set by the Declarant or its Affiliate, which formula may be revised by the Declarant or its Appointees and/or Affiliates from time to time in their sole and absolute discretion;
- 3.56 **“Service Charge Account”** means an account established by the Declarant and/or the Management Company solely for the payment the Service Charge;
- 3.57 **“Sinking Fund”** means the fund established by the Declarant into which the Infrastructure Levy shall be deposited for purposes funding emergency, anticipated and future cost of maintaining, repairing, amending, altering, rebuilding, renewing and reinstating infrastructure within the Property. The Sinking Fund shall be a sub-account of the Service Charge Account;
- 3.58 **“Signage System”** shall mean the signage package and outdoor design guidelines approved by the Declarant from time to time;
- 3.59 **“Site Development Plan”** shall mean an architectural plan, landscape architecture plan, and an engineering drawing of proposed Improvements to a given Precinct or Parcel showing, among such other requirements as may be prescribed from time to time by the Development Control Company, building footprints, pedestrian and vehicular access, parking, loading, drainage lines and facilities, sewer lines, water lines, lighting, and landscaping and garden elements, impact on adjacent land uses including public and natural open spaces and the aesthetic relationship of the proposed structures to the site. The Site Development Plan shall be prepared according to the requirements of, and submitted in the format required by, the Development Control Company;
- 3.60 **“Special Planning Area”** means an area declared as such in accordance with section 52(1) of the Physical and Land Use Planning Act, 2019;
- 3.61 **“Stormwater”** means water resulting from natural precipitation or the accumulation thereof and includes groundwater and spring water ordinarily conveyed by the Stormwater System;
- 3.62 **“Stormwater System”** means both the constructed and natural facilities, including roads, streetlights, street signs, culverts, pipes, canals, road crossings, bridges, watercourses and their associated floodplains, whether over or under public or privately owned land, used or required for the management, collection, conveyance, temporary storage, control, monitoring, treatment, use or disposal of Stormwater;
- 3.63 **“Tatu City Master Plan”** shall mean and refer to the overarching design document and which lays out the vision for the entire development, provides the platform for the development and

defines its nature and extent of development controls and as may be amended by the Declarant from time to time and which is annexed herewith as Schedule B;

- 3.64 **“Tatu City Signage and Way-finding Policy”** means a policy setting out the specific signage procedures to be undertaken in Tatu City;
- 3.65 **“Tatu City Structure Plan”** means the general scheme of intended use of the Property as may from time to time be amended by the Declarant;
- 3.66 **“Tatu City”** shall have the meaning ascribed to it under Recital B of this Declaration;
- 3.67 **“Tatu City Power Company SEZ Limited”** means a limited liability company incorporated in the Republic of Kenya pursuant to the provisions of the Companies Act, Chapter 486 of the Laws of Kenya (Repealed) and now deemed to be registered under the Companies Act, No. 17 of 2015 as company number CPR/2010/36459 and of Post Office Box Number 2739-00621, Nairobi, Kenya;
- 3.68 **“Tatu City Water and Sanitation Company SEZ Limited”** a limited liability company incorporated in the Republic of Kenya pursuant to the provisions of the Companies Act, Chapter 486 of the Laws of Kenya (Repealed) and now deemed to be registered under the Companies Act, No. 17 of 2015 as company number CPR/2010/37604 and of Post Office Box Number 2739-00621, Nairobi;
- 3.69 **“Tatu Telecom Company SEZ Limited”** a limited liability company incorporated in the Republic of Kenya pursuant to the provisions of the Companies Act No. 17 of 2015, as company number PVY-XYUPEYL and of Post Office Box Number 2739-00621, Nairobi, Kenya;
- 3.70 **“Tatu City Utilities Services Entities”** means Tatu City Power Company SEZ Limited, Tatu City Water and Sanitation Company SEZ Limited and Tatu Telecom Company SEZ Limited; and
- 3.71 **“Utilities Services”** shall collectively refer to the supply of and establishment, acquisition and maintenance of works for the supply and provision of, through service delivery agreements or such other manner as the Declarant shall in its sole and absolute discretion determine, portable water, sewerage, electricity, light, heat or power and telecommunication services and the installation, maintenance, adjustment, repair, alteration, removal or replacement of apparatus which is or is to be connected thereto and the sale of any fittings, lines and appliances relating thereto in accordance with the provisions of this Declaration and subject to any written laws relating thereto and **“Utility Service”** shall be construed accordingly.

ARTICLE 4: PROPERTY RIGHTS AND EASEMENT

- 4.1. Subject to the limitations hereinafter provided, every Owner shall have a right and easement of enjoyment in and to the Common Areas and Natural Resources that shall be appurtenant and shall pass with the title to every Parcel.
- 4.2. The Owner's right granted in Article 4.1 shall be subject to and limited by the following:
 - 4.2.1. The right of the Declarant to dedicate or transfer all or any part of the Common Area to any entity for such purposes as are consistent with this Declaration and in the Conditions of Approval.
 - 4.2.2. Limited in that each Owner shall have rights only in those Common Areas for which such Owner shall pay any portion of the Service Charge related thereto and in those Common Areas over which rights are specifically granted to the Owner as specified in such Owner's lease.
 - 4.2.3. Each Owner's responsibility to pay their proportionate share of Service Charge, Fees and other charges hereunder assessed by the Declarant and/or the Management Company against that Owner's Precinct or Parcel.
- 4.3. The Declarant hereby grants, establishes, covenants and agrees that the Property, and each Precinct and Parcel or portion of a Parcel contained therein, and all Owners, Occupants and permittees of the Property, shall be benefited and burdened by:
 - 4.3.1. a non-exclusive, perpetual and reciprocal cross access easement for the non-exclusive right to access any drive aisles required for common access; available on or within any Parcel or Precinct;
 - 4.3.2. a non-exclusive, perpetual and reciprocal cross parking easement for the nonexclusive right to park on or within any designated parking areas or parking spaces located, constructed and available on or within any Parcel provided that this right does not extend to private parking spaces sold or otherwise allocated to specified Parcel Owners;
 - 4.3.3. a non-exclusive, perpetual and reciprocal rights and easements of drainage across stormwater, drainage and retention structures and areas and to connect with, maintain and make use of utility lines, wires, pipes, conduits and cable television lines which may from time to time be in or along the Common Area.
- 4.4. The foregoing easements are subject to the right of the Declarant to,
 - 4.4.1. exclusively manage, control and/or concession the management and control of the Common Elements and all improvements thereon;
 - 4.4.2. grant or to dedicate to any Owner, the Management Company, the Declarant's appointees or Affiliates, concessionaires and/or any government agencies, and to

reserve easements and rights of way in, through, under, over and across the Common Elements for the installation, maintenance and inspection of roads, lines and appurtenances for public or private water, sewer, drainage, cable television, telephone, electricity, internet cables and other utilities, for the completion of Tatu City;

- 4.4.3 vary the same in any lease or sub-lease to the Owners provided that this provision shall be effective from the Effective Date and shall not apply retrospectively unless a similar provision is contained in the lease registered in favour of an Owner;
 - 4.4.4 promulgate rules and regulations for the use and enjoyment thereof; and
 - 4.4.5 decline to approve any transfers of any Parcels and Building Plans thereof and to suspend the enjoyment and voting rights of any Owner for any period during which any assessment for Service Charge or any Fine or other charge or fee hereunder remains unpaid beyond any applicable notice and cure period, or for any period during which any infraction of its published rules and regulations continues.
- 4.5 In the event that an easement is to be created within a Parcel in respect of which a lease has been registered in favour of an Owner, the creation of the easement shall be undertaken in consultation with such Owner as follows:
- 4.5.1 the Declarant will issue ninety (90) days written notice to the Owner setting out the intention to create an easement and calling for a meeting with the Owner;
 - 4.5.2 the notice referred to in 4.5.1 shall be accompanied by explanatory memorandum together with the technical drawings relating to the proposed easement;
 - 4.5.3 the Declarant shall on expiry of the ninety (90) days' notice convene a meeting with the Owner to explain to the Owner the nature and purpose of the easement in relation to Tatu City and the impact of the easement to the Owner's Parcel;
 - 4.5.4 upon agreement between the Declarant and the Owner, the Declarant shall at its cost draw a grant of easement to be executed by the parties, stamped and registered accordingly; and
 - 4.5.5 damage caused as a result of the creation of the easement shall be remedied by the Declarant and at the Declarant's costs.
- 4.6 Notwithstanding the foregoing or anything else contained herein to the contrary, the Declarant shall have and hereby retains the right, but not the obligation (unless such obligation has been made by the Declarant towards any Owner under separate binding contract), to create, install, construct, modify, repair, replace and maintain any part of the infrastructure for Tatu City that may consist of, but not be limited to, curbs, streets, service drives, sidewalks, and other hardscape, landscaping, street trees, street lights, irrigation systems, brick pads, benches, bridges, street furniture, walking paths, parks, trash receptacles, drainage facilities, signage,

utilities, and any apparatuses related thereto, as well as other improvements not necessarily enumerated above.

- 4.7 The Declarant may at its sole and absolute discretion assign such right to the Declarant's appointees or Affiliates. The said improvements may be installed along the roads or within any Precinct, or in the Common Area of Tatu City if deemed necessary or desirable by the Declarant, in its sole and absolute discretion, for the overall functionality or aesthetics of Tatu City. Continued maintenance, repair and replacement of any of the aforementioned infrastructure, improvements or Common Elements, if and once installed, shall be the responsibility of the Declarant and/or the Management Company. Any costs and expenses associated with this right may be reallocated and assessed to all Owners by the Declarant as part of Service Charge. Neither the Declarant, nor the Property Owners Association shall have the right to modify an existing building located on a Parcel without the consent of the Parcel Owner provided that where such building shall have been erected or constructed without the approval of the Development Control Company obtained in accordance with this Declaration or where such construction shall be commenced and proceeded contrary to the approved Building Plans then the Declarant and/or the Development Control Company may at their discretion have the right to apply to the county executive committee member responsible for matters relating to physical and land use planning in Kiambu County to take necessary action.
- 4.8 A way-leave is hereby granted to the Declarant, the Declarant's appointees or Affiliates and to any construction or management company selected by the Declarant to enter in or cross over the Common Areas or to enter or cross over any Parcel (where necessary to access) to create, install, construct, modify, repair, replace and maintain any of the aforementioned forms of infrastructure and/or Common Elements located within any portion of the Property.
- 4.9 The Declarant has the right to exclusively supply all utilities within Tatu City or appoint and/or authorize a third party to supply utilities within Tatu City subject to the payment of the relevant Utility Charges. The Declarant shall have the right to own and/or lease or enter into concession agreements with respect to any Common Area for purposes of construction of infrastructure and supply of any Utility PROVIDED THAT to the extent that the provision of any Utility is subject to obtaining any permit, licence or consent or is subject to the Utility being provided by any governmental agency, then in such circumstances, the obligation of the Declarant to provide the Utility concerned shall be suspended and shall not come into force and effect unless and until the Declarant obtains and maintains such permit, licence or consent or procures the Utility and the Declarant shall not be liable for any loss or damage caused by the lack of the Utility.
- 4.10 Except as expressly provided for under written law, the Declarant reserves the right of admission into Tatu City save for the Parcels sold to the Owners, and as such may forbid or limit the entrance of those persons whose conduct contravenes this Declaration, written law and set down code of conduct and shall to the extent permissible under law or equity take the necessary action to enforce this right.

The right of the Declarant to lease or enter into concession agreements with affiliated companies or third parties with respect to Roadways it being understood and agreed that notwithstanding the fact that the Roadways are leased or concessioned, the Owners shall be required to pay an Infrastructure Levy with respect to the repair and maintenance of the Roadways.

4.11 Specific Easements

4.11.1 Communication and Security Easement

The Property is subject to a general communication and security easement in favour of the Declarant, Declarant's appointees or Affiliates, the Management Company, for the remainder of the term on the title to the Property and which grants them inter alia all such rights as they may require in order to install and maintain electronic surveillance security and data communication systems in Tatu City. The aforesaid easement shall also grant the Declarant, Declarant's appointees or Affiliates, the Management Company the right to lay cables generally, to transmit data through such cables and the right to enter upon the Parcel or Premises to lay and maintain the same. The Declarant confirms that any personal information obtained through the electronic surveillance security and data communication system in Tatu City shall be handled in accordance with the provisions of the Data Protection Act, 2019.

4.11.2 Gas Pipeline Easement

4.11.2.1 The Property is subject to a liquefied petroleum gas pipeline easement in favour of the Declarant, Declarant's appointees or Affiliates, the Management Company, for the remainder of the term on the title to the Property which grants them inter alia all such rights as they may require in order to install and maintain a liquid or gas system of pipes or pipeline for consumption in Tatu City. The aforesaid easement shall also grant the Declarant, Declarant's appointees or Affiliates, the Management Company the right to lay pipe generally, to transport gas through such pipes and the right to enter upon the Parcel or Premises to lay and maintain the same provided that the same shall not have a proven material adverse effect on the Parcel or Premises or the use of the Parcel or Premises.

4.11.2.2 The Declarant acknowledges that as at the Effective Date reticulation of gas has not commenced. Consequently, should the laying of liquefied petroleum gas infrastructure be designed to pass through a Parcel in respect of which a lease has been registered in favour of an Owner, the laying of such infrastructure shall be undertaken in consultation with such Owner and the procedure provided for in Article 4.5 above shall apply with necessary modifications.

ARTICLE 5: RULES AND REGULATIONS

The Declarant, either by itself or through its Affiliates, shall promulgate reasonable Rules and Regulations that will govern the use and enjoyment of the Property in accordance with Section 33(2) (d) of the SEZ Act. The promulgation of Rules and Regulations and any amendments thereto will be subjected to public participation to ensure that views of the Owners are considered.

ARTICLE 6: INTERNAL ENVIROMENTAL STANDARDS

- 6.1 The Declarant shall develop and promulgate Internal Environmental Standards setting out the objectives, principles, commitments, roles, and responsibilities in respect of Environmental Sustainability within Tatu City enforceable by the Declarant either by itself or its Affiliates or through the Management Company or through the Development Control Company. The Internal Environmental Standards will be subjected to public participation to ensure that views of the Owners are considered.
- 6.2 Every Owner shall at all times comply with the Internal Environmental Standards and any Owner, a tenant of the Owner, person, firm or corporation that shall violate the Internal Environmental Standards within Tatu City shall be liable for all costs incurred in remedying such violations, including, but not limited to statutory fees, professional and/or consultancy fees on a full indemnity basis, and court costs and be subject to such fines as may be imposed by the Declarant.
- 6.3 If an Owner, a tenant of the Owner or such other person, firm or corporation within Tatu City breaches or fails to comply with, perform or observe any of the Internal Environmental Standards in any way or form whatsoever, the Declarant shall issue the party in default a forty-eight (48) hours' notice (except in cases of emergency) (the "Notice") to remedy the non-compliance and simultaneously therewith the Declarant will send a copy of the Notice the National Environmental Management Authority .
- 6.4 If upon the issuance of the Notice as prescribed above, the Owner shall not have remedied the breach in the manner stipulated in the Notice, it shall be lawful for the Declarant (without prejudice to any other rights or remedies of the Declarant) at any time thereafter:
 - 6.4.1 to apply to the National Environmental Management Authority to take necessary action against the party in default; or
 - 6.4.2 to enter into and upon the relevant Parcel or any part thereof upon prior written notice of forty eight (48) hours (except in cases of emergency) and remedy the breach at the cost of the Owner ; and
 - 6.4.3 to levy fines and charges assessed at such rate as shall be determined by the Declarant from time to time.

ARTICLE 7: THE DECLARANT

7.1 Powers and Functions

The Declarant, either by itself or through its Affiliates shall have the sole right to exercise the following powers and undertake the following functions:

- 7.1.1 the amendment of the Master Declaration from time to time provided that upon amendment of the Master Declaration, the Declarant shall use its best endeavours to ensure that all Owners are notified of the amendments and their views are taken into account;
- 7.1.2 overseeing the affairs of the Property prior to transfer of the reversionary interest to the POA and exercising executive authority;
- 7.1.3 developing and adopting policies, plans, strategies and programmes and setting targets for delivery of services by the Management Company;
- 7.1.4 formulating and implementing an integrated development plan and controlling land use, land development and zoning;
- 7.1.5 promoting and undertaking infrastructural development and services within the Property;
- 7.1.6 inviting petitions and representations from the POA and PPOA with regard to the administration and management of the affairs within the Property;
- 7.1.7 implementing the recommendations of the POA and PPOA with regard to the administration and management of the affairs within the development;
- 7.1.8 reporting on the decision made in respect of a petition or presentation made by the POA and the PPOA and reasons for such decision;
- 7.1.9 preparing annual budget estimates the relevant components of the Service Charge and ensuring that the books of accounts of the Management Company are properly kept as required by the law and its constitutive documents;
- 7.1.10 approving the budgets of the POA and the PPOA;
- 7.1.11 through the Management Company, suspending the provision of services to such Precinct, Parcels or Premises for any period during which any assessed amounts in respect of such Precinct, Parcel or premises remains unpaid;
- 7.1.12 through the Management Company, enforcing the provisions of this Declaration and any rules made hereunder including the planning and design review requirements and enjoining and/or seeking damages from any owner or occupant for violation of such provisions or rules;

- 7.1.13 through the Management Company, levying and collecting Service Charge, fines and penalties for violations of this Declaration and enforcing payment of such fines and penalties, all in accordance with this Declaration;
- 7.1.14 through the Management Company, ensuring compliance with the provisions of the Master Declaration, the Rules and Regulations, By-laws, Internal Environmental Standards, policies and guidelines promulgated with respect to Tatu City, by all property Owners and occupiers within the Precinct;
- 7.1.15 taking any and all other actions and entering into any and all other agreements as may be necessary or proper for the fulfilment of its obligations hereunder, or for the enforcement of this Declaration;
- 7.1.16 ensuring the maintenance of the Sinking Fund;
- 7.1.17 adjusting the amount collected and using any insurance proceeds to repair damaged or replace lost property; and, if proceeds are insufficient to repair damaged or replace lost property, to assess and charge the Owners in proportionate amounts to cover the deficiency;
- 7.1.18 monitoring the impact and effectiveness of any services, policies, programmes or plans through establishing performance management systems;
- 7.1.19 promoting a safe and healthy environment;
- 7.1.20 together with the Management Company, making By-laws or making recommendations for issues to be included in By-laws and making rules and regulations for the operation of the Common Areas, streetscaping, pedestrian, utility and street maintenance easements as specified herein and to amend them from time to time;
- 7.1.21 entering into contracts, to maintain one or more bank accounts with respect to the Service Charge including a sub-account into which the Infrastructure Levy shall be remitted, and generally, to have all of the powers necessary or incidental to its operation and management;
- 7.1.22 retaining the services of legal and accounting firms or such other service providers as would be required for the discharge of its duties and obligations; and
- 7.1.23 ensuring the creation of the Sinking Fund for purposes of maintenance and repair of infrastructure.

ARTICLE 8: MANAGEMENT COMPANY

8.1 Structure

The Management Company is established as a limited liability company in accordance with the Laws of Kenya.

8.2 Operations

The Management Company's operational structure will be determined in its business plan.

8.3 Appointment, Role and Functions

As long as the Declarant holds ownership interest in any portion of the Property and/or Tatu City, the Declarant shall have the exclusive right and power to employ the Management Company to enforce this Declaration, manage the Common Areas and Services within Tatu City, perform the duties and functions delegated to it by the Declarant and to:

- 8.3.1 exercise on behalf of the Declarant its powers and responsibilities as set out in this entire Declaration;
- 8.3.2 to monitor and enforce the Internal Environmental Standards together with the Environmental Management Plan;
- 8.3.3 to employ independent contractors or such other employees as it may deem necessary and to describe their duties and to set their compensation;
- 8.3.4 provide urban management services in Tatu City in line with the vision for Tatu City and in accordance with the Tatu City urban management business plan in perpetuity which will include:
 - 8.3.4.1 safety and security, including:
 - 8.3.4.1.1 visible street foot patrols and vehicles;
 - 8.3.4.1.2 CCTV and monitoring of public open space and parks; and
 - 8.3.4.1.3 joint operational centres.
 - 8.3.4.2 emergency services including, ambulance rescue, air rescue and fire;
 - 8.3.4.3 disaster management services including:
 - 8.3.4.3.1 disaster management policies and procedures for private space and public space; and
 - 8.3.4.3.2 disaster management planning in the public space.

- 8.3.4.4 refuse and waste removal, including:
 - 8.3.4.4.1 collection and disposal of refuse;
 - 8.3.4.4.2 street cleaning including sweeping, removal of rubble and removal of graffiti; and
 - 8.3.4.4.3 recycling.
- 8.3.4.5 landscaping, including public and private (upon being contracted to do so) open space management and maintenance including grass and tree cutting and nursery management;
- 8.3.4.6 health, safety and environmental management, including:
 - 8.3.4.6.1 health inspectorate dealing with among other things restaurants and pollution; and
 - 8.3.4.6.2 trading and liquor licensing and regulation.
- 8.3.4.7 development, promulgation and enforcement of a traffic code, including and not limited to access control, traffic control and parking management;
- 8.3.4.8 development, promulgation and enforcement of By-laws relating to the Property;
- 8.3.4.9 outdoor advertising and signage including approval control and revenue collection;
- 8.3.4.10 informal sector management including the management of informal trading, public transport and management of passenger service vehicles;
- 8.3.4.11 Geographical Information Systems (GIS), including:
 - 8.3.4.11.1 mapping;
 - 8.3.4.11.2 boundary demarcation;
 - 8.3.4.11.3 road hierarchy;
 - 8.3.4.11.4 service layouts; and
 - 8.3.4.11.5 management of register of rights.
- 8.3.4.12 wetland and conservation area management;
- 8.3.4.13 positioning, place marketing and tourism promotion;

8.3.4.14 financial management, including:

8.3.4.14.1 auditing and monthly management reporting; and

8.3.4.14.2 invoicing, billing and collections.

8.3.4.15 management and administration, including:

8.3.4.15.1 company secretarial and corporate governance for the Property Owners Association and the Management Company; and

8.3.4.15.2 monthly and annual operational and company reporting;

8.3.4.16 asset management;

8.3.4.17 urban monitoring, including:

8.3.4.17.1 management of service level agreements; and

8.3.4.17.2 compliance reporting.

8.3.4.18 stakeholder management, including:

8.3.4.18.1 political interactions with local, county and national governments;

8.3.4.18.2 property owners businesses; and

8.3.4.18.3 residents, workers and visitors.

8.3.4.19 communication, including:

8.3.4.19.1 website maintenance;

8.3.4.19.2 newsletters;

8.3.4.19.3 resident development programmes;

8.3.4.19.4 property owners and tenant database; and

8.3.4.19.5 engaging the brand building and marketing process.

8.3.4.20 operations and management of:

- 8.3.4.20.1 classified roads subject to the required National and County Governments approvals;
- 8.3.4.20.2 other roads and storm water;
- 8.3.4.20.3 road signs, marking and traffic signals;
- 8.3.4.20.4 kerbs and road maintenance;
- 8.3.4.20.5 refuse disposal sites and processes;
- 8.3.4.20.6 pre-paid metering and smart grid services;
- 8.3.4.20.7 vendor service;
- 8.3.4.20.8 maintenance of installations;
- 8.3.4.20.9 financial administration and reporting; and
- 8.3.4.20.10 compliance reporting.

8.3.5 The urban management services listed in Article 8.3.4 to be provided by the Management Company shall be provided to Owners in a progressive and phased manner and no Owner shall be charged for a service not rendered.

8.3.6 If applicable, operate and manage the infrastructure services and utilities on behalf of the Declarant and where such infrastructure services and utilities have been concessioned to third parties to manage the concession agreement and relationship with the concessionaire on behalf of the Declarant.

8.3.7 To manage the billing and revenue collection processes on behalf of the Declarant in respect of the Service Charge including the Infrastructure Levy and in accordance with the business plan and financial model of tariffs, consumption charges, levies and any penalties and fines imposed by the Declarant from time to time.

8.3.8 To enforce the Rules and Regulations and the By-laws promulgated therefrom.

8.3.9 To suspend any Services due to any Owner occurring from the non-payment of the Service Charge (or any part thereof) by any Owner or in the event of breach of any condition of this Declaration or the Owner Parcel lease.

8.4 Service Charge payable by Property Owners

8.4.1 Owners will pay Service Charge quarterly in arrears payable on the last day of the relevant quarter to the Declarant through the Management Company provided that should Service

Charge remain unpaid for a period of Fourteen (14) days from the due date, then the Service Charge due shall attract a penalty interest of three percent (3%) per month until payment in full.

8.5 Allocation and apportionment of payments

8.5.1 Allocation and apportionment of any payments received from the Owners in respect of Service Charge will be implemented in the following manner in respect of any indebtedness on the part of the Owners:

8.5.1.1 first to rates; then to

8.5.1.2 land rent; then to

8.5.1.3 any additional statutory fees that may be levied by any Government authorities; then to

8.5.1.4 any other fees due; then to

8.5.1.5 costs for the provision of urban management services including security; then to

8.5.1.6 charges payable in respect of infrastructure services and utilities in the Common Areas in the following order:

8.5.1.6.1 waste management;

8.5.1.6.2 water and sanitation;

8.5.1.6.3 electricity;

8.5.1.6.4 ICT services;

8.5.1.6.5 gas; then to

8.5.1.7 landscaping; then to

8.5.1.8 any other cost forming part of the Service Charge not specifically referred to in this sub-Article 8.5; then to

8.5.1.9 fines and penalties; then to

8.5.1.10 the Infrastructure Levy.

8.5.2 Service Charge shall be paid into the Service Charge Account.

8.6 Metering

The Management Company and the Utilities Companies may introduce prepaid metering and smart cards to which all payments will be linked.

8.7 Specific fees

The following fees and charges will be payable to the Management Company in respect of specific services rendered:

- 8.7.1 on street parking which will be managed by the Management Company;
- 8.7.2 facilities hire in respect of community facilities and public open spaces for events; and
- 8.7.3 outdoor advertising revenue.

8.8 Road Safety Management

The Management Company shall for and on behalf of the Declarant, implement and enforce a road transport and safety policy or traffic code as shall be promulgated by the Declarant and shall have powers to:

- 8.8.1 Prescribe speed limits;
- 8.8.2 Designate specific transit areas for heavy commercial use vehicle;
- 8.8.3 Levy fines for road policy violations; and
- 8.8.4 Enforce access controls.

ARTICLE 9: PROPERTY OWNERS ASSOCIATION AND PRECINCT PROPERTY OWNERS ASSOCIATIONS

9.1 Structure

The Property Owners Association and the Precinct Owners Associations will be established as non-trading companies and any surplus in the companies will be retained and applied to the management and maintenance of Tatu City.

9.2 Role and functions

The role of the Property Owners Association shall be to provide an avenue for participation and engagement of the Owners in the management and general governance of Tatu City and in doing so, it shall:

- 9.2.1 acquire the reversionary interest in the Property and ensure that upon renewal of the term with respect to the Grant, renew the Leases for the Owners;
- 7.1.24 overseeing the affairs of the Property acquisition of the reversionary interest from the Declarant;

- 9.2.2 promote and sustain the vision of Tatu City as a place which;
 - 9.2.2.1 emphasises a holistic lifestyle;
 - 9.2.2.2 promotes world class environmental responsiveness and sustainability;
 - 9.2.2.3 fosters the concept of secure, integrated live play work environment;
 - 9.2.2.4 facilitates social interaction and creates a sense of community; and
 - 9.2.2.5 delivers world class modern amenities.
- 9.2.3 promote and position Tatu City as a desirable area in which to invest live, work and visit;
- 9.2.4 deliberate and make proposals on the provision of services and on any other matter of concern to the property owners PROVIDED THAT the Declarant shall have veto powers;
- 9.2.5 propose issues for inclusion in policies;
- 9.2.6 inviting petitions and representations from the PPOA with regard to the administration and management of the affairs within the Property upon acquisition of reversionary interest from the Declarant;
- 9.2.7 plan strategies for engagement on matters of concern to Owners and receive representations, including feedback on issues raised by the Owners, from elected and appointed officials;
- 9.2.8 contribute to the decision-making processes of Tatu City by submitting written or oral presentations or complaints from Owners and be informed of decisions affecting the Owners rights;
- 9.2.9 implementing the recommendations of the PPOA with regard to the administration and management of the affairs within the Property upon acquisition of reversionary interest from the Declarant;
- 9.2.10 reporting on the decision made in respect of a petition or presentation made by the PPOA and reasons for such decision;
- 9.2.11 arrange for frequent town hall meetings as well as other avenues for the participation of Owners;

- 9.2.12 ensure compliance with the provisions of this Declaration, the rules and regulations, policies and guidelines promulgated with respect to Tatu City, by all Owners and occupiers;
- 9.2.13 elect or nominate representatives of the POA; and
- 9.2.14 carry out all the powers and authority of the POA as shall be stipulated from time to time in this Declaration or by the Declarant.

9.3 Governance Principles

The affairs of the Property Owners Association and the Precinct Property Owners Association shall be governed by the following principles and the articles of association of the Property Owners Association and the Precinct Property Owners Association shall reflect these principles. In the event of any conflict between the articles of association of the Property Owners Association and the Precinct Property Owners Association and these principles, then the articles of association shall be amended to reflect these principles and the exercise of powers shall be subject to such qualifications, modifications or adaptations.

9.4 Membership

- 9.4.1 The Declarant shall become and remain a member of the Property Owners Association by virtue of the Declarant holding a licence as a developer and operator of the Tatu City Special Economic Zone. The Declarant may cease to be a Member of the Property Owners Association upon completion of Tatu City and at its independent discretion with the tender of notice to the Property Owners Association, thus relieving the Declarant of any liability or obligation to the Property Owners Association. Upon the withdrawal of membership as provided for elsewhere herein, the covenants and restrictions of this Declaration shall no longer apply as to the Declarant; however, this Declaration shall continue to govern and control the Property Owners Association and its Members.
- 9.4.2 Every Precinct Property Owners Association shall in accordance with sub-article 9.4.3 below become and must remain a Member in good standing of the Property Owners Association. In addition to the Declarant, Membership in the Property Owners Association shall be restricted to a member appointed by Owners in a Precinct Property Owners Association ("Representative Members"). The Precinct Property Owners Association incorporated in respect of each of the Precincts shall become and remain members of the Property Owners Association upon the registration of all sub-leases with respect to the Parcels within a Precinct at the Lands Registry provided that if any Owner of a Parcel within a Precinct shall construct units for sale, the Precinct Property Owners Association shall only become and remain a member of the Property Owners Association upon registration of all unit sub-leases.
- 9.4.3 Owners of Parcels and Premises within a Precinct shall become and remain members of their Precinct Owners Association upon the registration of all the end-user sub-lease with respect to each respective Precinct at the Lands Registry. Membership in the Precinct Property Owners Association shall be appurtenant to and

may not be separated from the ownership of a Parcel or Premises. For the avoidance of doubt, the Owner of a Precinct or Parcel within a Precinct shall be entitled to representation and voting rights in the Property Owners Association through an elected or appointed Representative Member elected or appointed through their Precinct Property Owners Association in accordance with the By-laws of the Property Owners Association and the Precinct Property Owners Association.

9.5 Shareholding in the Property Owners Association

The Property Owners Association shall have two classes of voting membership defined as follows:

9.5.1 Class A

Class A members shall be all Members as defined hereinabove with the exception of the Declarant. Class A Members' shareholding shall be based on the total purchased GBA within their Precinct against the entire Property or on such other equitable and reasonable formula. For the avoidance of doubt the Declarant shall be treated as a Class A member where it has developed a Precinct and entitled to vote in its capacity as a Class A member in addition to its Class B rights.

9.5.2 Class B

The Declarant shall hold Class B shares so that the Declarant does not or is not deemed to have derogated from the Declarant's obligations as the developer and operator of the Tatu City Special Economic Zone and such shareholding shall be based on amongst others on the total GBA of Tatu City less the total purchased GBA. The Declarant's ownership of Class B shares shall entitle the Declarant to veto any and/or all of the decisions of the Property Owners Association as long as the Declarant remains a Class B Member and/or licenced as the developer and operator of the Tatu City Special Economic Zone.

9.6 Proxies

A Representative Member may appoint any other representative or any other person permitted by law or by the By-Laws as his proxy. Any proxy must be in writing and must comply with all requirements imposed by law or by the Property Owners Association's articles of association.

9.7 Voting, Quorum and Notice Requirements

The voting rights, quorum and notice requirements shall be set out in the articles of association of the Property Owners Association and the Precinct Property Owners Association respectively. Each of the Precincts will elect one of their members in good standing to represent the Precinct at the Property Owners Association level.

9.8 Assignability

Any Owner may collaterally assign, as additional security, its voting rights to the beneficiary of a first lien, deed of trust or first charge covering the Parcel or subdivided part thereof owned by an Owner. Any such assignment, however, shall not be effective until written notice thereof is actually received by the Precinct Property Owners Association, together with evidence of said beneficiary's 's entitlement to cast said votes.

9.9 Authority of the Property Owners Association

The Property Owners Association shall have and exercise authority specifically granted to it by the Declarant.

9.10 Powers of the Property Owners Association

The Property Owners Association shall have all the powers of a company limited by shares under the Companies Act Number 17 of 2015, subject only to such limitations upon the exercise of such powers as are expressly set forth in this Declaration and its Memorandum and Articles of Association (in that order of precedence). It shall have the power to do any and all lawful things that may be authorized, required or permitted to be done by the Property Owners Association under this Declaration, the incorporation documents, and the by-laws, and to do and perform any and all acts that may be necessary or proper for or incidental to the exercise of any of the express powers of the Property Owners Association, including, without limitation:

- 9.10.1 To propose reasonable Rules and Regulations for the operation of the Common Areas;
- 9.10.2 To sue or defend in any court, administrative agency or other tribunal on behalf of the Property Owners Association and its members;
- 9.10.3 To recommend the adjustment of the amount collected and use any insurance proceeds to repair damaged or replace lost property; and, if proceeds are insufficient to repair damaged or replace lost property, to assess the Members in proportionate amounts to cover the deficiency;
- 9.10.4 To suspend the voting rights to such Owners of Precincts, Parcels or Premises for any period during which any Assessment in respect of such Parcels remain unpaid; and
- 9.10.5 To take any and all other actions and to enter into any and all other agreements as may be necessary or proper for the fulfilment of its obligations hereunder, for the operational protection of the Property Owners Association or for the enforcement of this Declaration.

9.11 Authority of Precinct Property Owners Associations

The Precinct Property Owners Association shall have and exercise authority specifically granted to it by the Declarant by:

- 9.11.1 Deliberating and making proposals on the provision of services and on any other matter of concern to the property Owners provided that the Declarant shall have veto powers on any such proposal;
- 9.11.2 Proposing issues for inclusion in policies, with respect to Precinct specific matters;
- 9.11.3 Planning strategies for engaging on matters of concern to property Owners within the Precinct and receiving representations, including receiving feedback on issues raised by the property Owners, from elected and appointed officials;
- 9.11.4 Contributing to the decision-making processes of Tatu City by submitting written or oral presentations or complaints to the Declarant or the Management Company and be informed of decisions affecting their rights and their property;
- 9.11.5 Arranging frequent town hall meetings as well as other avenues for the participation of property owners;
- 9.11.6 Preparing annual budget estimates for approval by the Declarant and maintaining its books of accounts as required by the law and its constitutive documents;
- 9.11.7 Ensuring compliance with the provisions of this Declaration, the rules and regulations, policies and guidelines promulgated with respect to Tatu City, by all property Owners and occupiers within the Precinct;
- 9.11.8 Entering into contracts, to maintain one or more bank accounts, and generally, to have all of the powers necessary or incidental to the operation and management of the PPOA;
- 9.11.9 Electing or nominating a representative of the PPOA to the POA;
- 9.11.10 Making the annual report available to each Owner within ninety (90) days after the end of each year;
- 9.11.11 Taking any and all other actions and to enter into any and all other agreements as may be necessary or proper for the fulfilment of its obligations hereunder, for the operational protection of the PPOA;
- 9.11.12 To suspend the voting rights of any member who hasn't paid Service Charge as advised by the Management Company from time to time; and
- 9.11.13 Carrying out all the powers and authority of the PPOA as shall be stipulated from time to time in this Declaration.

ARTICLE 10: TATU CITY UTILITY ENTITIES

- 10.1 The Declarant has established the following Tatu City Utility Services Entities:
- 10.1.1 Tatu City Power Company SEZ Limited which has been established to amongst others, supply light, heat, power and electricity to all property Owners within Tatu City;
 - 10.1.2 Tatu City Water and Sewerage Company SEZ Limited which has been established to amongst others, provide water and sewerage services to all property Owners within Tatu City;
 - 10.1.3 Tatu Telecom Company SEZ Limited which has been established to amongst others, provide information, technology and communication services to all property Owners within Tatu City; and
 - 10.1.4 Tatu Connect SEZ Limited shall be the administrator of the Utilities Services Entities.

ARTICLE 11: COVENANTS AND RESTRICTIONS FOR USE

11.1 Permitted and Conditional Uses

The only uses permitted or conditionally allowed for all Precincts and Parcels within Tatu City shall be those uses specifically allowed for in terms of the Tatu City Master Plan, the Precinct Plan and/or the Property Plan which may be amended by the Declarant at its own sole and absolute discretion.

11.2 Use

- 11.2.1 No Parcel and/or Precinct shall be used except for the Permitted Use as provided under the Tatu City Master Plan. An Owner of a Precinct or Parcel or Premises shall not be entitled to make application to rezone the Precinct or Parcel or Premises or to change its use from that currently specified in the Tatu City Master Plan, the Precinct Plan and/or the Property Plan.
- 11.2.2 Every Owner shall be responsible for compliance with all applicable laws, regulations and directives of Competent Authorities pertaining to use and occupation of the Precinct or Parcel or Premises by the Owner and its employees, contractors, occupiers, invitees, licencees or lawful visitors, including but not limited to laws, regulations and directives pertaining to physical planning, environmental conservation, occupational safety and health, utilities, natural resources and operation of a '*special economic zone*' as such term is defined in the SEZ Act, to the extent that the Property is subject to the provisions of the SEZ Act.

11.3 Rights of Declarant to Facilities

Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for the Declarant to maintain, during the period of the sale of said Parcel, Precinct or Property, upon such portion of the Parcel, Precinct or Property, as Declarant deems necessary, such facilities, as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the sale of said Property, including, but without limitation, a business office, storage area, construction yard, signs, and sales office.

11.4 Roof Spaces

11.4.1 The Declarant shall lease back the unused part of the roof space for the purposes of the installation of solar panels/photovoltaic cells for the production of electricity for the benefit of the occupiers of the building and other occupiers of Tatu City on reasonable terms to be agreed between the Declarant and the Owner.

11.4.2 For the avoidance of doubt, this provision shall be effective from the Effective Date and shall not apply in relation to Parcels for which the permitted use is residential.

11.5 Nuisances

11.5.1 No Owner shall permit any use of his Premises or any building structure thereon for any purposes which shall increase the fire hazard to adjoining Precincts, Parcels or Premises; or for any purpose which constitutes a nuisance or causes the emission of odours or gases objectionable to personnel or injurious to products stored upon adjoining Premises or Premises within the Property; or for any purposes calculated to injure the reputation of said Premises, or neighbouring Parcel or for any purpose or use in violation of any laws. No obnoxious or offensive trade or activity shall be carried on or upon any of the Property in Tatu City, nor shall anything be done thereon which may be or become an annoyance or a nuisance to Tatu City. Written approval by the Declarant of a particular use shall be conclusive evidence of compliance with this restriction insofar as this Declaration controls. For avoidance of doubt, nuisances shall include uncleared bushes.

11.5.2 No Owner shall do or allow to remain upon the Premises anything which may in the opinion of the Declarant (which opinion shall be final and conclusive) or any entity acting on behalf of the Declarant, the Management Company, the Property Owners Association and/or the Precinct Property Owners Association, be or become or cause a nuisance, annoyance, disturbance, inconvenience, injury or damage to the owners of the other Premises in Tatu City, the lessees or visitors or other occupiers of or visitors to Precincts and Parcels within Tatu City.

11.6 Boreholes

Unless otherwise expressly permitted by the Declarant, the Owner shall not drill a borehole on any part of the Property.

ARTICLE 12: PLANNING, DESIGN REVIEW AND CONSTRUCTION REQUIREMENTS

12.1 The Development Control Company

- 12.1.1 Tatu City was declared a Special Planning Area by the National Director of Physical Planning on 30th May, 2019 pursuant to the provisions of Section 23 (1) of the Physical Planning Act (Repealed) in terms of Gazette Notice Number 4975 of 2019 published in the Kenya Gazette Vol. CXXI – No. 73 of 7th June 2019.
- 12.1.2 Consequent to the declaration of the Property as a Special Planning Area, the Declarant has been granted the power to formulate development rights relating to any building, Improvements or other structures to be erected on the Property or any alterations or extensions to be effected to any existing building, Improvements or structures on the Property which shall at all times be erected strictly in accordance with the Development Codes, the design review process as outlined in the development standards and the design guidelines for buildings and other forms of developments as defined under the provisions of section 2 of the Physical and Land Use Planning Act, No. 13 of 2019 consistent with the attendant laws, regulations, standards, and policy guidelines to provide a single reference framework for developers and regulatory agencies with regard to development control processes within applicable to Tatu City as a Special Planning Area and specifically in accordance with building plans which have been submitted to and approved in writing by the Development Control Company.
- 12.1.3 The Declarant has appointed the Development Control Company in order to maintain high standards and with a view to ensuring an attractive and harmonious development within Tatu City and in order to promote and sustain design vision, aesthetic quality of buildings and landscaping and the vision in line with structure and precinct plans. The Owners of the Parcels and/or Precincts within Tatu City shall, at their sole cost and expense, be required to adhere to the Development Codes and any development or Improvements by the Owners of the Parcels shall at all times, comply with the provisions of the Development Codes.
- 12.1.4 In order to achieve the objective of Tatu City of developing a world-class private city and to protect the investments of all stakeholders within Tatu City, including but not limited to all Owners of Parcels or units within Tatu City, and further acknowledging that the construction and development of parcels by all the Owners of Parcels or units within Tatu City is a critical component towards achieving the said objectives, the Declarant has formulated the Development Codes to be adhered to by all Owners of the Parcels within Tatu City.
- 12.1.5 The Declarant has designated the permitted use in relation to each Precinct and each Parcel, as well as imposed Development Controls through, without limitation, the Development Codes and the Grant AND all matters expressly or by implication set out therein shall be enforced by the Development Control Company.
- 12.1.6 No works whatsoever shall commence or be undertaken, including any earth works, alterations, repairs, modifications, renovations or extensions, until such time as the Development Approvals have been obtained.

12.2 Objectives of the Development Control Company

The objectives of the Development Control Company are to:

- 12.2.1 ensure that precinct plans are developed in accordance with the vision for Tatu City and the Tatu City Structure Plan;
- 12.2.2 ensure that the development of any particular site or land parcel within each Precinct is in line with the character of the Tatu City development and constitutes a development of quality;
- 12.2.3 ensure that the development of any particular site or land parcel conforms with the requirements of the precinct plan in which that site is located;
- 12.2.4 endeavour to minimize any negative impact of proposed developments on adjacent sites;
- 12.2.5 monitor the use of GBA on a site and ensure it is in accordance with the terms of the particular precinct plan, overall Tatu City Structure Plan ensuring the maximization of development rights;
- 12.2.6 monitor compliance with design guidelines and controls;
- 12.2.7 monitor compliance with the Internal Environmental Standards and the Environmental Management Plan;
- 12.2.8 coordinate the shared use of vehicle access, parking, loading as well as access to utilities and service facilities between developments;
- 12.2.9 promote synergy in developments and growth of the urban area; and
- 12.2.10 do or take any action to ensure that all developments contribute to the realisation of the vision for Tatu City and maintain the quality and nature of the overall development.

12.3 Role, Functions and Rights of the Development Control Company

- 12.3.1 review, assess and accept concept designs, precinct plans, site development and detailed building plans in compliance with the approved Tatu City Structure Plan and the relevant precinct plan, including but not be limited to developments and building by Owners, outdoor advertising and signage applications in terms of the Tatu City outdoor advertising and signage policy as well as landscaping and the placement of street furniture within the public domain in terms of the urban design guidelines.
- 12.3.2 review, apply and make recommendations in terms of the plans submitted and the existing Development Controls.

- 12.3.3 in liaison with the Special Economic Zones Authority, ensure a 'One - Stop' shop within Tatu City is established and operationalized to facilitate the processing and issuance of development and construction permits and certificates of occupancy as envisaged under the provisions of SEZ Act.
- 12.3.4 appoint independent expert consultants at the cost of the Owner to assist the Development Control Company in undertaking and implementing its mandate under this Article 12.

12.4 Package of Plans

Development control at Tatu City from a planning and development context is based on the “package of plans” approach and contains four key elements namely:

- 12.4.1 Tatu City Structure Plan;
- 12.4.2 Precinct plans (including statement of intent and concept plans);
- 12.4.3 Site development plans (including signage and landscaping plans); and
- 12.4.4 Building plans.

12.5 Tatu City Structure Plan

- 12.5.1 The Tatu City Structure Plan is the overarching design document which lays out the framework for development and re-development of Tatu City, the vision for the development and which defines its nature and extent of Development Controls.
- 12.5.2 All precinct plans must be aligned to the Tatu City Structure Plan in terms of the layout design Development Controls and design codes for the public and private realms.
- 12.5.3 The Tatu City Structure Plan contains the following:
 - 12.5.3.1 Tatu City vision;
 - 12.5.3.2 Development concept and guidelines;
 - 12.5.3.3 Planning and design approach; and
 - 12.5.3.4 Overarching design codes.

12.6 Precinct Plan

- 12.6.1 Prior to the submission of a precinct plan a written statement of intent noting the development objectives of the site, the bulk to be realized, the height and coverage to be achieved, an indication of any special design intentions outline, design proposal, concept plan and preliminary sketch plans shall be submitted to the Development Control Company. This will ensure that the process for submission and approval of the precinct plan is not delayed.
- 12.6.2 A precinct developer shall comply with the Tatu City Structure Plan, including the specification for public environment and public open space.
- 12.6.3 The Precinct Plan shall address the following aspects:
 - 12.6.3.1 detailed street, block and plot layout;
 - 12.6.3.2 an interconnected system of public spaces;
 - 12.6.3.3 detailed urban guidelines per street that address the relationship and interface between buildings access, pedestrian movement and the public environment/ public spaces;
 - 12.6.3.4 building typologies;
 - 12.6.3.5 development and building controls per plot; and
 - 12.6.3.6 street furniture and public art in terms of the Tatu City art policy.

12.7 Site Development Plan

- 12.7.1 Every development within Tatu City must prepare a site development plan ("Site Development Plan") which must be submitted for approval in writing by the Development Control Company prior to submission to and approval by the relevant authority;
- 12.7.2 The Site Development Plan shall be subject to guidelines within Tatu City structure and relevant precinct plans;
- 12.7.3 The Site Development Plan shall address the following at a site specific level:
 - 12.7.3.1 design concept plans, sections and level;
 - 12.7.3.2 indicative building evaluations including signage zone;
 - 12.7.3.3 treatment of elevations, materials, colours and textures in indicative form;

- 12.7.3.4 overall bulk, height and site controls (in line with the relevant precinct plan);
- 12.7.3.5 pedestrian and vehicular access and circulation;
- 12.7.3.6 access to buildings, number of parking bays and adherence to lines of no access;
- 12.7.3.7 internal service reticulation and connection points into the external services are to be shown, including any servitudes that may be required such as storm water, sewer, electrical and water;
- 12.7.3.8 details on site storm water attenuation measures;
- 12.7.3.9 landscape design and public/private adjacent neighbourhood and street interface;
- 12.7.3.10 a tree audit provided that no trees shall be removed from the site without a request for removal being submitted to the Development Control Company for its approval. Where trees are removed, replacement trees approved by the Development Control Company shall be planted on that site; and
- 12.7.3.11 location of contractors' camp on site and size as well as details on the planned approach to hoarding of the site.

12.8 Building Plans

- 12.8.1 Every development within Tatu City will be required to submit building plans subject to the guidelines within the Tatu City Structure Plan, Precinct Plan and Site Development Plan as well as national and physical planning regulatory building requirements;
- 12.8.2 The building plan submission checklist shall include the following:
 - 12.8.2.1 detailed design plans and elevations, landscape and signage plans;
 - 12.8.2.2 a schedule of materials, colours and other relevant finishes;
 - 12.8.2.3 a matrix on environmental compliance in accordance with the Internal Environmental Standards;
 - 12.8.2.4 an Environmental Impact Assessment Report issued by NEMA;
 - 12.8.2.5 proof of compliance with health and safety standards including the provisions of Work Injury Benefits Act, 2007, the Occupational Health and Safety Act or such other relevant law;

- 12.8.2.6 alternative energy resources, solar geysers and rain water harvesting systems in line with the Tatu City requirements; and
- 12.8.2.7 proof of membership in good standing of the Precinct Property Owners Association.

12.9 Internal Development Approval Application

- 12.9.1 Every Owner within Tatu City shall not obtain the External Development Approvals without first having obtained the Internal Development Approvals.
- 12.9.2 An application for Internal Development Approval (“Internal Development Approval Application”) shall be submitted by the Owner or the Owner’s Nominee (the “Applicant”), within twelve (12) months from the Lease Registration Date or such other time as the Development Control Company shall determine from time to time.
- 12.9.3 An Internal Development Approval Application shall be made to the Development Control Company in the prescribed form as shall be determined by the Development Control Company and signed and dated by the Applicant.
- 12.9.4 The Applicant shall be required to submit any other information or documents which may be required by the Tatu City Utility Services Entities.
- 12.9.5 The Declarant and the Development Control Company reserve the right to appoint independent expert consultants at the cost of the Applicant if in the Declarant’s and/or the Development Control Company’s view the development is of such a nature as to require a specialised review of the Internal Development Approval Application.
- 12.9.6 The Development Control Company shall have the right to charge a fee in connection with the submission of the Internal Development Approval Application, which fee shall be reviewed by the Development Control Company from time to time.

12.10 Decisions on Internal Development Approval Application

- 12.10.1 When deliberating on any Internal Development Approval Application, the Development Control Company shall, where applicable, consider the following, amongst others:
 - 12.10.1.1 the regulations set out under the Development Control Company’s Articles of Association;
 - 12.10.1.2 the development principles as set out under the Development Codes;
 - 12.10.1.3 compliance with the Environmental Management Plan;
 - 12.10.1.4 compliance with Environmental Standards;

- 12.10.1.5 compliance with the Planning Laws and any other laws relating to planning, land use management and environmental matters; and
- 12.10.1.6 any other factor which in the opinion of the Development Control Company is relevant, including timeframes on undertaking the development of the Parcel.

12.11 Powers of the Development Control Company in Decision Making

- 12.11.1 The Development Control Company while making decisions must:
 - 12.11.1.1 consider and determine all Internal Development Approval Applications lawfully referred or submitted to it;
 - 12.11.1.2 provide written reasons for any decisions taken; and
 - 12.11.1.3 keep a register of all decision notices.
- 12.11.2 The Development Control Company while making decisions may:
 - 12.11.2.1 impose any reasonable conditions including conditions related to the provision of engineering services;
 - 12.11.2.2 conduct an investigation into any matter relevant to an Internal Development Approval Application under its consideration;
 - 12.11.2.3 engage an independent expert consultant at the Applicant's cost where the Development Control Company deems it necessary;
 - 12.11.2.4 request further information from the Applicant; and/or
 - 12.11.2.5 conduct a site inspection of the Property during working hours to confirm *inter alia* compliance with Internal Environmental Standards as well as health and safety requirements.
- 12.11.3 The Development Control Company shall at the respective Owners costs and expense be entitled to oversee and enforce the Owners covenants on development of such Owners property and the Implementation of the Development Controls set out in the Owners lease.

12.12 Decision Notice

- 12.12.1 The Development Control Company shall communicate its decision concerning the Development Approval Application in writing (the "Decision Notice") within reasonable time and shall thereby:
 - 12.12.1.1 approve an Internal Development Approval Application in whole or in part;

- 12.12.1.2 approve an Internal Development Approval Application subject to conditions;
- 12.12.1.3 refuse an Internal Development Approval Application; or
- 12.12.1.4 postpone its decision on an Internal Development Approval Application in order for a site inspection of the Property or other investigations to be conducted; to seek and obtain technical advice or further information requested from the Applicant, provided the decision may not be postponed, in one instance or cumulatively, for a period exceeding sixty (60) days.

12.13 Powers of the Development Control Company

- 12.13.1 For the purpose of ensuring the development of the Property meets the standards and complies with the development vision as expressed in the Tatu City Master Plan, as an area of high standards, and to ensure reasonable compatibility of architectural designs, the Declarant and the Development Control Company shall have the power to generally enforce the Planning and Design Review Requirements and to:
 - 12.13.1.1 control all Improvements as set forth in this Article;
 - 12.13.1.2 inspect on-going works at such times and intervals as shall be determined by the Declarant upon issuance of a notice of forty eight (48) hours to the affected Owner;
 - 12.13.1.3 issue stop orders and/or order the removal of any Improvement or structure where the construction is commenced without the requisite approvals;
 - 12.13.1.4 apply to the county executive committee member responsible for matters relating to physical and land use planning in Kiambu County or the successor of such office from time to time to take necessary action against the Owner in default; and
 - 12.13.1.5 make such exceptions to these covenants, and to waive particular violations, as either shall deem necessary, appropriate, or proper.
- 12.13.2 From time to time, and in its sole discretion, the Development Control Company may amend its development, Precinct planning, design and Physical Planning Standards in any manner consistent with the statement of purpose set forth in Article 1 of this Declaration.
- 12.13.3 Approval of Precinct Plans, Site Development Plans, Building Plans shall be based on, but not limited to compliance with the Tatu City Master Plan and the relevant Precinct Plan (including Physical Planning Standards), adequacy of the dimensions of Improvements, engineering (civil, mechanical, electrical); foundations; storm drainage considerations, conformity and harmony of exterior design of neighbouring

structures, improvements, operations and uses; relating topography, grade and finished ground elevation of the Parcel being improved to that of the neighbouring Parcels and street frontages; and location and orientation of the improvements with respect to adjacent streets, setbacks and the overall design intent of Tatu City.

12.13.4 Landscape treatment not covered by the Tatu City Master Plan shall be provided in accordance with applicable laws and such rules and standards established by the Declarant Association to give unity and direction throughout the diverse areas of the Property.

12.13.5 The decision of the Development Control Company in approving or not approving such any approval application shall be final and binding on the applicant.

12.14 Control of Improvements

12.14.1 No Improvement, or change to any existing Improvement of any type shall be made on any portion of any Precinct or Parcel within Tatu City until the Precinct Plan, Site Development Plan and Building Plan have been approved in writing by the Development Control Company in accordance with the Planning and Design Review Requirements including but not limited to the Tatu City Master Plan, Approved Precinct Plan (if already approved) including Physical Planning Standards, its Rules and Regulations and By-Laws, Internal Environmental Standards, Environmental Management Plan and any policy adopted by the Declarant from time to time.

12.14.2 The Development Control Company shall determine the information required and the review procedure, including the Development Control Company approval periods and appeals procedures and the approval fees.

12.14.3 No construction on any of the Precincts or Parcels shall begin or continue until and unless the Owner and the Owner's Contractor/s have signed a contractor's code of conduct adopted by the Development Control Company from time to time.

12.14.4 If any Improvement or change requiring approval shall be undertaken on any Precinct and/or Parcel, and the said approval has not been obtained from the Development Control Company, or if any Improvement or change which is not in conformance with approved plans and specifications shall be undertaken on any Precinct and/or Parcel, the said Improvement or change shall be deemed to have been undertaken in violation of these covenants; and, upon written notice of the Development Control Company, any such Improvement or change deemed to be in violation shall be removed or altered so as to extinguish such violation. If, thirty (30) days after the notice of such violation, the Owner of such Precinct and/or Parcel in question shall not have taken reasonable steps toward the removal or alteration of the same, the Declarant or its duly authorised representative, shall have the right, to enter the said Precinct and/or Parcel and to take such steps as may be necessary and as available in law or equity to extinguish such violation and fine the Owner, and all costs, the fine, expenses, and legal fees pertaining thereto shall be a binding obligation of the Owner as well as a lien on the Parcel in question. Any lien so registered shall be subordinate to the lien of any existing deed of trust made in good faith and for value.

- 12.14.5 Any agent of the Declarant or the Development Control Company may, at reasonable times and upon issuance of a notice of at least forty eight (48) hours (except in cases of emergency), enter upon and inspect any Parcel and Improvements thereon for the purposes of ascertaining whether the maintenance of such Parcel, and the maintenance, construction or alteration of Improvements thereon, are in compliance with the provisions of these restrictions and the Internal Environmental Standards, and no such persons shall be deemed to have committed a trespass or other wrongful act by such entry or inspection.
- 12.14.6 For the avoidance of doubt a development, Improvement or alteration done without approval of the Development Control Company shall be in violation of the Declaration and liable to be removed under this Article notwithstanding that the plans or designs for the same may have been approved by a local authority or other government planning authority.
- 12.14.7 The Owner shall procure its contractor(s) to issue an undertaking in writing to the Development Control Company before the commencement of construction or related works on the Parcel or Premises, in which the contractor(s) shall undertake to undertake the construction or related works in accordance with the development approvals issued by the Development Control Company and no construction or related works shall commence prior to the issuance of the undertaking.
- 12.14.8 Each Owner shall ensure that construction of the Owner's Improvements shall be undertaken in accordance with the Development Program and shall be completed on or before the third (3rd) anniversary following from the Owner's lease registration date in respect of residential developments and on or before the fourth (4th) anniversary following from the Owner's lease registration date in respect of all other developments, such completion to be evidenced by the issuance of a Certificate of Compliance (defined below) by the Development Control Company. Notwithstanding anything else provided herein, the period of construction as agreed between the parties and recorded in the lease shall take precedence over the period provided herein.
- 12.14.9 In the event that an Owner fails to complete construction of the Owner's Improvements on or before the date contemplated in Article 12.14.8 above, then in such circumstances the Owner shall pay to the Declarant a fine and such fine shall be deemed to form part of the Service Charge. The fine shall be at the rate of one percent (1%) per month of the Owner's Lease Premium and compounded annually for the duration that the Owner does not complete construction of the Owner's Improvements.
- 12.14.10 The Owner shall pay levies with respect to provision of utilities from the date of commencement of the supply.

12.14.11 Article 12.14.8 and 12.14.9 shall be effective from the Effective Date and shall not apply retrospectively unless similar provisions are contained in the lease registered in favour of an Owner.

12.15 Approvals

12.15.1 The Development Control Company shall have the right to disapprove any final construction drawings and specifications because they fail to comply with any criteria or requirement of this Declaration, the Planning and Design Review Requirements, the Tatu City Master Plan, the Precinct Plan, the Physical Planning Standards, environmental protection standards, health and safety standards or the Conditions of Approval of the Development Control Company as amended from time to time.

12.15.2 In any case where the Development Control Company shall disapprove any construction drawings or specifications submitted hereunder or shall approve the same only as modified or upon specified conditions, notice of such disapproval or qualified approval shall be accompanied by a statement of the reasons therefore. In any such case, the Development Control Company, if requested, shall make reasonable efforts to assist and advise the Owner or applicant in the preparation of acceptable construction drawings, specifications and any other submissions required to achieve a satisfactory approval.

12.16 Liability for Violation

Any person, firm or corporation that shall violate Articles 10 and 11 shall be liable for all costs incurred in remedying such violations, including, but not limited to lawyer's fees on a full indemnity basis, and court costs and be subject to such fines as may be imposed by the Development Control Company.

12.17 Appeal

12.17.1 In the event that the Owner is aggrieved by the decision of the Development Control Company, and has either discovered new and important matter or evidence which after exercise of due diligence was not within the knowledge of the Owner at the time of submitting the approval application or the decision was made on account of clerical or arithmetical mistake or error apparent on the face of record or for any other sufficient reason, may, apply in writing for a review of the decision of the Development Control Company without unreasonable delay.

12.17.2 Where it appears to the Development Control Company that there is not sufficient ground for a review, it shall dismiss the request.

12.17.3 Where the Development Control Company is of the opinion that the request for review is merited, it shall grant the same: provided that no request for review shall be granted on the ground of discovery of new matter or evidence which the Owner alleges was not within its knowledge or could not be adduced by it when the Development Control Company made its decision without strict proof of such allegation.

12.18 Design Review Fee

The Development Control Company may charge and collect a reasonable fee for the examination of any plans and specifications submitted for approval pursuant to this Article 12, payable at the time such plans and specifications are so submitted. The amount of such fee shall contain the management costs, the cost of making such examination, including the cost of any professional fees incurred in connection therewith and shall be determined by the Development Control Company.

12.19 Certificate of Compliance

12.19.1 Upon completion or alteration of any Improvement on any Parcel undertaken and completed in accordance with plans and specifications approved by the Development Control Company, and on written request of the Owner of such Parcel, a Certificate of Compliance shall be issued in a form suitable for registration ("Certificate of Compliance"). Preparation and registration of such Certificate of Compliance shall be at the expense of such Owner. Any Certificate of Compliance issued in accordance with the provisions of the paragraph shall be prima facie evidence of the facts therein stated, and as to any purchaser or encumbrancer in good faith and for value, or as to any title insurer, such Certificate of Compliance shall be conclusive evidence that all improvements and/or alterations described therein comply with all requirements of this Declaration.

12.19.2 No Improvement shall be used or occupied without the Owner first having obtained a Certificate of Compliance.

12.20 Vacancies

The Declarant shall have the exclusive right and power at any time and from time to time to create and fill vacancies on the Development Control Company.

12.21 Function

No Improvements shall be constructed, erected, placed, altered, maintained or permitted on any portion of Tatu City until plans and specifications, in such a form and detail and under such submitted procedures as the Development Control Company may deem necessary, or desirable, as amended from time to time, shall have been submitted to and approved in writing by such Development Control Company. The Development Control Company shall have the power to employ professional consultants, if it deems necessary, to assist it in discharging its duties.

12.22 No Construction or Use Prior to Approval

12.22.1 No earthworks or building improvement of any kind shall be commenced, installed, erected, placed, assembled, altered, moved onto, or permitted to remain on any Parcel, nor shall any uses be commenced on any Parcel, unless and until the final construction drawings and specifications for the same (including a description of the

proposed use) have been submitted to, reviewed and approved by the Development Control Company.

12.22.2 No Owner shall apply to any public authority for any construction or building permits for any project, Buildings or Improvements before written approval of the final construction drawings and specifications for said project, Buildings or Improvements have been given by the Development Control Company, unless the Development Control Company has waived this requirement (within its powers to do so) with written notification to such Owner.

12.22.3 No Owner shall apply to any public authority for any certificate of occupation for any project before a Certificate of Compliance has been issued by the Development Control Company.

12.23 Governmental Approval

Approval by the Development Control Company shall be separate from all review and approval procedures by the Competent Authorities. Any material changes made to the final construction drawings and specifications resulting from the requirements of such authority or entity must be resubmitted and reapproved by the Development Control Company.

12.24 Inapplicable to Declarant

This Article 12 shall not apply to the Declarant, its successors and assigns, and the Declarant need not seek or obtain the Development Control Company approval for any Improvement constructed or placed, or landscaping done by the Declarant on any Parcel in Tatu City owned by the Declarant, on Common Areas, or within street rights-of-way designated as a streetscape, pedestrian, utility, and street maintenance easement. Notwithstanding the foregoing, Declarant shall in no way be relieved from any obligations it may have as a Parcel Owner with regard to planning, design and construction under the Tatu City Master Plan or the relevant Precinct Plan.

12.25 Vehicle Parking

Parking spaces shall not be used for permanent or temporary storage of junk vehicles, private vehicles offered for sale, house trailers or public service vehicles. Each Parcel must provide adequate off-street parking, including basement parking where required by the Tatu City Master Plan or approved Precinct Plan. All parking requirements are subject to the requirements of the approved Precinct Plan and the applicable Laws of Kenya and the by-laws of the relevant Competent Authority.

12.26 Loading and Trash Handling Areas

12.26.1 All Owners shall submit a solid waste management strategy together with submission of building plans to the Development Control Company, without which the Development Control Company shall not approve any Improvement plan submission.

12.26.2 The solid waste management strategy shall conform to the requirements of the Environmental Impact Assessment (EIA) for the Precinct and the Improvement

specific EIA, and shall address solid waste management during construction and following use or occupation of the Improvements.

- 12.26.3 The Declarant shall have the right to dispose of waste in accordance with the Declarant's standards including but not limited to disposal requirements as provided under the Environmental Management and Co-ordination Act 1999, approved landfills or through waste-to-energy process, including incinerations.

12.27 Effluent Discharge

- 12.27.1 Prior to discharge of any effluent into the Storm Water Systems the Owner shall obtain the necessary licence from a Competent Authority for discharge of such effluent and submit it to the Development Control Company.
- 12.27.2 Prior to being granted the licence to discharge effluent to the Storm Water System the Owner shall develop and install an appropriate plant for treatment of such effluent in accordance with Building Plans submitted to the Development Control Company.
- 12.27.3 All Owners, save for residential Owners, shall obtain an effluent discharge license annually from the relevant Competent Authority and shall within the first quarter of every year submit to the Development Control Company evidence that the effluent discharge license has been obtained.
- 12.27.4 Owners shall discharge any effluent only into the Storm Water Systems and shall obtain the necessary licence from a Competent Authority for discharge of such effluent and submit it to the Development Control Company in accordance with the conditions set down by the Development Control Company and in their respective Leases.
- 12.27.5 The Development Control Company will be responsible for ensuring compliance with this Article 12.27 including issuance of stop orders and/or imposing penalties for non-compliance as appropriate at such rates as may be determined by the Declarant and or the Development Control Company from time to time.

12.28 Environmental, Occupational, Health and Safety

Every Owner shall at all times undertake to;

- 12.28.1 Comply and procure compliance by third parties appointed by the Owner and without limitation, its servants, agents, independent contractors with the Environmental, Health, and Safety requirements as set out in the applicable law including but not limited to: Environmental Management and Co-ordination Act, CAP 387 of the Laws of Kenya, Public Health Act, CAP 242 of the Laws of Kenya, Occupational Safety and Health Act No.5 of 2007, the Environmental Management Plan and all other written law;

- 12.28.2 At all times ensure that any actual or alleged violation of Environmental, Occupational Health, and Safety requirements set down by the Declarant in accordance with the law, emanating from, including but not limited to, investigatory, remedial or corrective obligations, relating to the Owner shall be rectified at the Owners sole cost and expense;
- 12.28.3 Not to emit pollutants to the environment which would alter physical, thermal, chemical, biological, or radio-active properties of any part of the environment within Tatu City by discharging, emitting, or depositing wastes so as to affect any beneficial use adversely, to cause a condition which is hazardous or potentially hazardous to public health, safety or welfare, or to animals, birds, wildlife, fish or aquatic life, or to plants.
- 12.28.4 Not treat, store, dispose of, arrange for or permit the disposal of, transportation, handling, or release any substance, including without limitation, any Hazardous Material, or own or operate any property or facility (and no such property or facility is contaminated by any such substance) in a manner that would be in breach of the Internal Environmental Standards and that would reasonably be expected to give rise to material liabilities, including any material liability for investigation costs, response costs, remedial costs, corrective action costs, personal injury, property damage, Natural Resources damages or legal or consultant fees and costs, pursuant to all written laws.
- 12.28.5 The Development Control Company will be responsible for ensuring compliance with this Article 12.28 including issuance of stop orders and/or imposing penalties for non-compliance as appropriate.

12.29 Storm Water Management

- 12.29.1 In order to secure that all developments within Tatu City are ecologically sustainable and to promote a safe and healthy environment, the Development Control Company shall regulate activities which may have a detrimental effect on Tatu City and in particular the operation or maintenance of Stormwater Systems and without prejudice to the generality of the foregoing, subject to the written consent of the Development Control Company which consent shall not be unreasonably withheld or delayed and to any conditions which the Development Control Company may impose, the Owner may not within or without the Property:
 - 12.29.1.1 cause, discharge or permit to enter the Stormwater System any solid, liquid, foul-water or gaseous substance; or anything other than Stormwater; or anything which may damage the Stormwater System or interfere with the operation of the Stormwater System or is likely to pollute or contaminate the water in the Stormwater System;
 - 12.29.1.2 obstruct, block or reduce the capacity of the Stormwater System;
 - 12.29.1.3 open a pipe, culvert or canal which forms part of the Stormwater System;

- 12.29.1.4 construct or erect any structure over or in such a position or manner as to destroy, damage, endanger, block or interfere with the Stormwater System or operation thereof;
 - 12.29.1.5 drain, abstract or divert any water directly from the Stormwater System;
 - 12.29.1.6 fill, excavate, shape, landscape, open up or remove the ground above, within, under or immediately next to any part of the Stormwater System;
 - 12.29.1.7 change the design, the use of or modify any feature of the Stormwater System which alone or in combination with other existing activities may cause an increase in flood levels or create a potential flood risk;
 - 12.29.1.8 undertake any activity which alone or in combination with other existing or future activities, may cause an increase in flood levels or create a potential flood risk or may result in a potential to increase soil erosion or which may cause damage to another person's premises or interfere with the existing Stormwater System infrastructure or which will or which in the opinion of the Development Control Company could impair the effective functioning of the Stormwater System;
 - 12.29.1.9 bridge over or enclose any gutter or Stormwater drain which forms part of Declarant's Infrastructure; or
 - 12.29.1.10 remove manhole covers, grids and other equipment which form part of the Stormwater System.
- 12.30 An Owner may not cause or permit any Stormwater within or without the Property to enter the sewage disposal system. If an incident contemplated in Article 12.29 and the sub articles thereof within the Property and the incident is a result of the direct action of the Owner then in such circumstances, the Owner must immediately report the incident to the Development Control Company and at its own cost, take all reasonable measures to contain and minimise the effects of the incident, which measures may include, but are not limited to undertaking of cleaning up operations and where necessary, the rehabilitation of the surrounding environment.
- 12.31 The Development Control Company shall have the power to request an Owner to submit a stormwater management plan which shall be based on a national design method as determined by the Development Control Company, from time to time.

ARTICLE 13: INFRASTRUCTURE LEVY

- 13.1 The Infrastructure Levy shall be expended in respect of periodically recurring services listed below whether recurring at regular or irregular intervals provided that in determining such reasonable provision, the Declarant and/or the Management Company may take professional advice (if it reasonably determines such advice to be necessary) and provided further that:

- 13.1.1 such reasonable provision shall be determined on the assumption that the cost of replacement and/or repair of such items or infrastructure is calculated on such life expectancy as the Declarant and/or the Management Company may reasonably determine and that each year the Owners will be required to pay Infrastructure Levy to cater for the anticipated cost of renewal or replacement to the intent that a fund or funds be accumulated sufficient to cover the cost of renewal or replacement by the end of the anticipated life of such item;
 - 13.1.2 any expenditure by the Declarant and/or the Management Company in respect of the services set out below in connection with the renewal or replacement of an item referred to there shall be met out of the Sinking Fund;
 - 13.1.3 The Declarant shall upon receipt of Service Charge into the Service Charge Account, transfer the Infrastructure Levy into a sub-account designated for such purpose; and
 - 13.1.4 the Declarant shall operate an Infrastructure Levy account for purposes of depositing and managing the Infrastructure Levy provided that Declarant may invest any amounts deposited into the such account in interest earning bank deposits and Government Securities and provided further that any interest and/or other earnings realised from such investments shall be treated as part of the Infrastructure Levy and shall be applied to the cost of maintaining, repairing, amending, altering, rebuilding, renewing and reinstating of the infrastructure within the Property.
- 13.2 The Infrastructure Levy shall cater for the cost of the following:
- 13.2.1 maintaining, repairing, amending, altering, rebuilding, renewing and reinstating:
 - 13.2.1.1 the roads, pavements and sidewalks;
 - 13.2.1.2 street lights and traffic lights;
 - 13.2.1.3 road signage;
 - 13.2.1.4 Stormwater drainage system;
 - 13.2.1.5 and keeping the above infrastructure and services in good and substantial repair, order and condition and renewing and replacing all worn or damaged parts thereof;
 - 13.2.2 maintaining the Natural Open Spaces; and
 - 13.2.3 keeping all equipment, apparatus, fixtures and fittings related thereto in good repair and condition and to have such equipment, apparatus, fixtures and fittings in the Common Areas regularly serviced and (if necessary) repaired and to replace any of the said equipment, apparatus, fixtures and fittings in the event of them being damaged beyond repair or destroyed.
- 13.3 Calculation and payment of the Infrastructure Levy
- 13.3.1 The Declarant shall have the right to review the Infrastructure Levy annually.

- 13.3.2 The Declarant and/or the Management Company shall present the documents listed below for inspection purposes, in respect of the management and maintenance of the infrastructure in respect of which the Infrastructure Levy is payable, during the Annual General Meeting of the Property Owners Company:
- 13.3.3 Audited Financial Statements with respect to the Infrastructure Levy; and
- 13.3.4 Annual Budget for the following year with respect to the Infrastructure Levy. Provided that the annual budget shall not in any way prevent the Declarant and /or the Management Company from spending money for any unanticipated expenditure.

ARTICLE 14: UTILIZATION OF LOCAL LABOUR

- 14.1 The Declarant is committed to promoting development initiatives within Tatu City aimed at:
 - 14.1.1 ensuring that genuine and operationally linked construction and labour skills are imparted to local communities surrounding Tatu City;
 - 14.1.2 guaranteeing long term employment opportunities to the people forming part of the local communities surrounding Tatu City; and
 - 14.1.3 ensuring equitable sourcing of unskilled and semi-skilled labour force from the community surrounding Tatu City.
- 14.2 Every Owner shall, in good faith, undertake to:
 - 14.2.1 ensure that the contractors and subcontractors undertaking any development on the Parcels or Premises adhere to the aims and objectives set out in Article 14.1 of this Declaration and the sub-articles thereof;
 - 14.2.2 utilise, whenever reasonably possible, at a market related rate, unskilled and semi-skilled labour force from the community surrounding Tatu City; and
 - 14.2.3 employ such local individuals as are trained at the training facilities within Project provided that the costs, remuneration and other terms of employment shall be market related and in accordance with written laws relating thereto.

ARTICLE 15: UTILITY SERVICES

- 15.1 **Provision of Utility Services**
 - 15.1.1 The Declarant is entitled to exclusively provide utilities and other services in Tatu City and to charge fees for such services pursuant to the Special Economic Zones Act, 2015 and the Declarant as a developer and operator of Tatu City has established the Tatu City Utility Services Entities and having regard to all practical considerations will use its best endeavours to ensure that the Tatu City Utility Services Entities provide services to all Tatu City property Owners as end users, in a Financially Sustainable and Environmentally Sustainable manner and to further ensure that Tatu City is a viable city.

- 15.1.2 Subject to any written law relating thereto and grant of requisite licences by the relevant Competent Authorities, the Declarant either by itself or its appointees or affiliates, shall use its best endeavors to undertake the supply of and establish, acquire and maintain works for the supply of Utilities Services within Tatu City; and without prejudice to the generality of the foregoing, the Declarant whether by itself or through its appointees or Affiliates, may sell (including sale against payment by installments) lines, fittings and appliances relating to the Utilities Services to Owners within Tatu City as end users, in accordance with the terms and conditions of regulations to be promulgated by the Declarant.
- 15.1.3 The Owners within Tatu City as end users, shall not be supplied with any Utility Services unless such property owner has applied to be supplied with such Utility Services by the Tatu City Utility Services Entity concerned using the prescribed form and such application has been granted. The Tatu City Utility Services Entities shall not unreasonably withhold or delay the grant of such application.
- 15.1.4 When a Tatu City Utility Services Entity grants or otherwise approves an application for supply of the Utility Services, this shall constitute a binding contract between the relevant Tatu City Utility Services Entity and the property owner within Tatu City, as an end user thereof, and such binding contract shall take effect either on the date (i) referred to or stipulated in the application form or (ii) of the approval.
- 15.1.5 The Owner shall be responsible for taking measures to secure the electricity or water meter and such other fixtures or fittings for provision of any other Utilities Services and shall at all times ensure its visitors, employees or its agents shall not reconnect, attempt to reconnect or cause or permit a reconnection to any Utilities Services where the Tatu City Utility Services Entity concerned has restricted or disconnected such supply, tamper, break or interfere with Tatu City Utility Services Entities' and/or or Tatu City Utilities Services Administrator equipment or unlawfully use or interfere with Utilities Services provided by Tatu City Utility Services Entities or knowingly consume, use or distribute any Utilities Services which has been obtained in an unlawful manner.
- 15.1.6 To the extent that the provision of any Utility Service is subject to the Tatu City Utility Services Entity concerned obtaining any permit, licence or consent from any Competent Authority, then in such circumstances, the obligation of the Declarant to provide the Utility Service concerned shall be suspended and shall not come into force and effect unless and until the Tatu City Utility Services Entity concerned obtains and maintains such permit, licence or consent.
- 15.1.7 The Declarant and/or Tatu City Utility Services Entity shall not be liable for any damage or loss caused by lack of supply of any Utility or the diminution of the provision of the Utility.

ARTICLE 16: GENERAL PROVISIONS

16.1 Duration

This Declaration and the covenants, restrictions, changes, and liens set out herein shall run with and bind the Parcel, Precinct and Property and shall inure to the benefit of and be enforceable by the Property Owners Association, the Management Company and every Owner of any part of Tatu City, including the Declarant and its legal representatives, heirs, successors and assigns, for a term equivalent to the leasehold interest in the Property held by the Declarant and its successors and assigns after which time this Declaration shall automatically be extended for successive periods equivalent to the extension of the lease term of the Property granted by the Government of the Republic of Kenya.

16.2 Termination and Modification

- 16.2.1 The Declarant shall have the sole right and power at all times to terminate or modify this Declaration with respect to any portion of the Property, which the Declarant owns.
- 16.2.2 This Declaration, or any provision hereof, or any covenant, condition, restriction and reservation contained herein, may be terminated, extended, modified or amended, as to the whole of the Property or any portion thereof by the Declarant solely. Any such termination, extension, modification or amendment shall become effective when a proper instrument in writing has been executed, acknowledged and registered in the Lands Registry. **PROVIDED THAT** any extension, modification or amendment to this Declaration will be subjected to public participation to ensure that views of the Owners are considered.

16.3 Conflict

- 16.3.1 In this Declaration, if there shall be any inconsistency or conflict between the provisions of any other document and the provisions of this Declaration, the provisions of this Declaration shall prevail.
- 16.3.2 The Declarant shall not grant any lease with conditions, covenants and restrictions inconsistent with the conditions, covenants and restrictions in this Declaration and in the event that there shall be a conflict between conditions, covenants and restrictions in any lease and this Declaration, the conditions, covenants and restrictions in this Declaration shall prevail.

16.4 Assignment

The Declarant, in its sole and absolute discretion, shall grant its consent to the sale of the Parcel, such consent shall be subject to, inter alia, the Owner paying to the Declarant a sum ("Capital Gains Premium") equivalent to three per cent (3%) of the higher of either the (i) consideration for the sale of the Parcel or (ii) such other consideration or lease premium for which the Owner has agreed with a third party purchaser) for assigning its rights under or over the Parcel at a true open market value and arms-length exclusive of all taxes, with the parties agreeing and acknowledging that the Capital Gains Premium represents the value of the gain on the Parcel that is attributable to the direct effort of the Declarant to enhance the value of the Parcel by taking steps to ensure that Tatu City becomes a world class comprehensive mixed use development and further that the Capital Gains Premium represents a reasonable and genuine pre-estimate of the gain that the Owner shall have received on the Parcel owing to the Owner's direct effort on improving the value of the Parcel **PROVIDED THAT** this provision shall

be effective from the Effective Date and shall not apply retrospectively unless a similar provision is contained in a lease registered in favour of an Owner.

16.5 Waiver or Invalidation

Any waiver or failure to enforce any provision of this Declaration in a particular situation shall not be deemed a waiver or abandonment of such provision as it may apply in any other situation or to the same or similar situation at any other location in the Property or Project. Invalidation by Court adjudication of any provision of this Declaration shall not affect the validity of any other provision, and all other provisions thereof shall remain in full force and effect.

16.6 Notices

Any notice required or permitted herein shall be in writing and emailed, mailed, postage prepaid, by registered mail and shall be directed as follows:

- 16.6.1 if intended for an Owner, to the address of the Parcel, if improved;
- 16.6.2 if the Parcel is not improved, to the address set forth in the Parcel Lease;
- 16.6.3 if none of the foregoing, to the last known address of the Owner;
- 16.6.4 if intended for the Declarant, to the address as set forth herein; and
- 16.6.5 if intended for a Representative Member, to the address on file with the Property Owners Association.

16.7 Constructive Notice and Acceptance

Every person who now or hereinafter owns or acquires any right, title or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to every covenant, condition and restriction contained herein, in the instrument by which such person acquired an interest in such Property or Parcel and such person shall be bound by the terms of this instrument as if that person had in fact subscribed to this instrument.

16.8 Enforcement

Violation or breach of any covenant, condition or restriction herein contained shall give the Declarant and/or the Management Company and/or the Declarant's appointees or Affiliates, in addition to all other remedies, the right to proceed at law or in equity to compel compliance with the terms of this Declaration, and to prevent the violation or breach of any of them, and all of the expenses of such litigation shall be borne by the then Owner or Owners of the subject Precinct or Parcel, provided such proceeding results in a finding that such Owner was in violation of this Declaration. Expenses of litigation shall include reasonable lawyer's fees.

16.9 Liability of Declarant

The Declarant, the Management Company, the Tatu City Utility Services Entities and all members of the Property Owners Association Board are hereby expressly relieved of any liability to any Owner, and to any other party to the extent permitted by law, for any act of omission or commission in connection with performance of their functions as Declarant or such Member, except for wilful misconduct or act of bad faith.

16.10 Severability of Covenants, Conditions and Restrictions

16.10.1. Invalidation of any one or more of the covenants, conditions and restrictions or other provisions herein or hereafter set forth by any Judgment or Court Order shall in no way affect any of the other covenants, conditions and restrictions which shall remain in full force and effect.

16.10.2. Invalidation of this Declaration or any one of the covenants, conditions and restrictions or other provisions herein or hereafter set forth by any Judgment or Court Order shall be addressed as follows:

16.10.2.1 Where the invalidation relates to the entire Declaration, the 2014 Master Declaration (as defined hereinbelow) shall apply without any further step being undertaken by the Declarant; and

16.10.2.2. Where the invalidation relates to any one of the covenants, conditions and restrictions or other provisions herein or hereafter set forth the relevant section of the 2014 Master Declaration shall apply without any further step being undertaken by the Declarant.

16.11 Contract for Property Management

16.11.1 In accordance with the provisions of Article 6, the Declarant will retain the services of the Management Company to undertake the functions specified therein on behalf of the Declarant.

16.11.2 The parties referred to in 16.11.1 above will conclude service level agreements setting out the required service levels, response times, the consequences of failure to perform, and such other standard terms and conditions usually association with service level agreements in their respective areas of responsibility.

16.11.3 The service level agreements shall include a right of termination without cause which may be exercised the Declarant at any time.

16.12 Registration of Plans

By the acceptance of a Lease conveying title to a Precinct or Parcel, the Owner thereof shall be deemed to consent to amendments or modifications of the Tatu City Master Plan or Precinct Plan for purpose of technical corrections, boundary line adjustments, etc. So long as any amendment or modification does not materially reduce the usability of any Owner's Precinct or Parcel and takes into account preservation of Common Areas, Common Elements and Natural Open Spaces, the Declarant may execute any amendment or modification of the Tatu City Master Plan or Precinct Plan as an Owner's attorney in fact.

16.13 Construction by Declarant

The Declarant shall have the right to undertake construction as set out in Article 12.24.

16.14 Disputes

16.14.1 The Declarant shall establish a framework for avoidance, amelioration and resolution of conflict between the Declarant, Property Owners Association, Precinct Properties Owners Associations, its Affiliates and Owners and Occupiers through promulgation of a Grievance Handling Policy (which may be amended from time to time).

16.14.2 The Parties in dispute shall in good faith resolve the dispute in accordance with the provisions of the Grievance Handling Policy.

16.15 Rules

There shall be no violation of any rules which may at any time be adopted by the Property Owners Association and/or the Management Company and/or promulgated among the Members of the Property Owners Association. Such rules must be in writing. The Property Owners Association and/or the Management Company is hereby authorized to adopt such rules and to enforce the same by any enforcement provision hereof or as otherwise permitted by law provided that should there be any conflict between the rules adopted by the Property Owners Association and the Declarant and/or the Management Company the rules made by the Declarant and/or the Management Company shall prevail.

16.16 Inspection

The Declarant and its Affiliates may from time to time at any reasonable hour or hours, enter and inspect any of the affected Precinct or Parcel to ascertain compliance with this Declaration.

16.17 Captions

The captions, section numbers and article numbers appearing in this Declaration are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections or articles nor in any way modify or affect this Declaration.

16.18 Effective Date

This Declaration shall become effective upon its registration in the Land Titles Registry at Nairobi.

16.19 Savings and Transition

16.19.1. This Declaration is a restatement of the Master Declaration of Covenants, Conditions and Restrictions dated 30th July, 2014 registered at the Land Titles Registry on 14th August, 2014 as Number IR.137858/5 (the "2014 Master Declaration").

- 16.19.2. Leases registered in favour of the Owners as at the Effective Date will remain valid but will be subject to this Declaration;
- 16.19.3. Any Internal Development Approval granted in accordance with the provisions of the 2014 Master Declaration shall be deemed to be an Internal Development Approval granted under this Declaration.

IN WITNESS WHEREOF, the Declarant has caused these presents to be executed as required by law on this, the day and year first written above.

SEALED with the COMMON SEAL of)
TATU CITY LIMITED)
in the presence of:)
Director)
Name:)
Signature)
PIN No.)
Director/Secretary)
Name:)
Signature:)
PIN No.)
Advocate)

I an Advocate of the High Court of Kenya
CERTIFY **AND** **VERIFY** that
..... of **TATU CITY LIMITED**
appeared before me and being known to me/being identified by
..... acknowledged the above signature or mark to be
theirs and that they had freely and voluntarily executed this instrument and understood its contents.

.....
Name and Signature of Person Certifying

SEALED with the COMMON SEAL of)
TATU CITY PROPERTY OWNERS LIMITED)
 in the presence of:)
 Director)
)
 Name:)
 Signature)
 PIN No.)
)
 Director/Secretary)
)
 Name:)
 Signature:)
 PIN No.)
)
 Advocate)

Ian Advocate of the High Court of Kenya **CERTIFY**
AND VERIFY that _____ of
TATU CITY PROPERTY OWNERS LIMITED appeared before me and being known to me/being
 identified by acknowledged the above signature or
 mark to be theirs and that they had freely and voluntarily executed this instrument and understood its
 contents.

.....
Name and Signature of Person Certifying

SCHEDULE A

DESCRIPTION OF THE PROPERTY

ALL THAT that piece of land situate in the Kiambu County of the Republic of Kenya containing by measurement Nine Six Three Decimal Eight Seven (963.87) hectares or thereabouts that is to say Land Reference Number 28867 comprised in a Grant dated 24th August, 2012 and registered at the Land Titles Registry in Nairobi as Number I.R. 137858/1 AND HELD by the Declarant for a leasehold interest of 99 years from 1st November, 2008 SUBJECT to the payment of the annual rent of Kshs 4,387,000.00 and to the provisions of the Government Lands Act and to the rules for the time being in force.

SCHEDULE B

TATU CITY MASTERPLAN

SCHEDULE C
THE GAZETTE NOTICES

Drawn by:-

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(Our Ref: MMC02460.M0001-2020-CP2-N)

MMC ASAFO.