

ANNEXURE 1
MANAGEMENT RULES

PART 1

INTRODUCTORY

1 PRELIMINARY

- 1.1 The Management Rules for the scheme known as the Rubik are as prescribed in terms of section 10(2)(a) of the Sectional Titles Schemes Management Act, 2011 (Act No. 8 of 2011) (the "STSM Act") (save as have been amended and/or extended by the Developer as indicated herein) in accordance with Annexure 2 of the regulations to the STSM Act.

2 INTERPRETATION

- 2.1 In the interpretation of these rules, unless the context indicates otherwise -
- 2.1.1 "adjudicator" means an adjudicator acting in terms of the Community Schemes Ombud Service Act, 2011 (Act No. 9 of 2011);
- 2.1.2 "administrator" means an administrator appointed in terms of section 16 of the Act;
- 2.1.3 "auditor" means a person accredited to perform an audit in terms of the Auditing Professions Act, 2005 (Act No. 26 of 2005);
- 2.1.4 "commercial area" means the common property utilised only by the commercial owners including but not limited to any common facility serving only the commercial owners;
- 2.1.5 "commercial component" means parts of the buildings in the Scheme comprising commercial units as indicated on the architectural and finally on the Sectional Title Plan;
- 2.1.6 "commercial members" means the owners of the commercial components;
- 2.1.7 "commercial sections" means the commercial goods and service provider sections and its exclusive use areas;
- 2.1.8 "commercial trustees" means the trustees appointed by the commercial owners;
- 2.1.9 "Community Schemes Ombud Service" means the service established in terms of the Community Scheme Ombud Service Act, 2011 (Act No. 9 of 2011);
- 2.1.10 "components" means the residential component, the retail component and the commercial component collectively, and "component" means any one of them;
- 2.1.11 "contribution quota" means 100% percent in respect of the residential owners, 100% percent in respect of the retail owners and 100% percent in respect of the commercial owners;
- 2.1.12 "estimated cost", for the purposes of rule 22, means the estimated cost to maintain, repair or replace a major capital item;
- 2.1.13 "exclusive use area" means a part or parts of the common property for the exclusive use by the owner or owners of one or more sections;
- 2.1.14 "executive managing agent" means a managing agent appointed to carry out all the functions and powers of the trustees in terms of rule 28;
- 2.1.15 "expected life", for the purposes of rule 22, means the estimated number of years before it is expected that the cost of maintenance, repair or replacement of a major capital item will be incurred;

- 2.1.16 "future development right" means a right to extend the scheme in terms of section 25 of the Sectional Titles Act;
- 2.1.17 "general expenses" shall mean assessment rates, refuse removal, sewerage costs, labour costs, management and administration fees, audit fees and any costs relating to the scheme generally;
- 2.1.18 "levies" means the contributions due by owners in the scheme in terms of the Act, and includes general levies as well as levies specific to certain sections and/or exclusive use areas, including those levies shared with other owners;
- 2.1.19 "major capital item", for the purposes of rule 22, means wiring, lighting and electrical systems, plumbing, drainage and storm-water systems, heating and cooling systems, any lifts, any carpeting and furnishings, roofing, interior and exterior painting and waterproofing, communication and service supply systems, parking facilities, roadways and paved areas, security systems and facilities and any other community and recreational facilities;
- 2.1.20 "managing agent" means any person who provides scheme management services to a body corporate for reward, whether monetary or otherwise, including any person who is employed to render such services;
- 2.1.21 "member" means a member of the body corporate and consists of commercial members, retail members and residential members;
- 2.1.22 "owners" includes residential owners, retail and commercial owners;
- 2.1.23 "participation quota" means the percentage as shown on the approved Sectional Title Plan;
- 2.1.24 "parking" means an exclusive use area designated to be used as parking in the Scheme;
- 2.1.25 "parking areas" or "parking bays" means all parking and related areas in the Scheme;
- 2.1.26 "parking contribution quota" means the contribution owed by an owner in terms of the number of parking bays owned by such owner within the Scheme, in relation to the total number of parking bays within the Scheme
- 2.1.27 "past contribution", for the purposes of rule 22, means the funds in the reserve fund of the body corporate in respect of the estimated cost;
- 2.1.28 "primary section" means a section designed to be used for human occupation as a residence, office, shop, retailer or for any other type of use allowed in terms of local municipal by-laws;
- 2.1.29 "registered auditor" means a person as defined in terms of the Auditing Professions Act, 2005 (Act No. 26 of 2005);
- 2.1.30 "registered bondholder" means the holder of a mortgage bond of whom the body corporate has been notified in terms of section 13(1)(f) of the Act;
- 2.1.31 "reserve funds" means an amount set aside by the body corporate to meet the unexpected costs that may arise in future, including future cost of maintenance;
- 2.1.32 "residential area" means the common property utilised only by the residential owners including but not limited to any common facility serving only the residential owners;
- 2.1.33 "residential component" means parts of the buildings in the Scheme comprising residential units as indicated on the architectural and finally on the Sectional Title Plan;
- 2.1.34 "residential members" means the owners of the residential components;
- 2.1.35 "residential sections" means the apartment sections and its exclusive use areas;

- 2.1.36 "residential trustees" means the trustees appointed by the residential owners;
- 2.1.37 "retail area" means the common property utilised only by the retail owners including but not limited to any common facility serving only the retail owners;
- 2.1.38 "retail component" means parts of the buildings in the Scheme comprising retail units as indicated on the architectural and finally on the Sectional Title Plan;
- 2.1.39 "retail members" means the owners of the retail components;
- 2.1.40 "retail sections" means the retail goods and service provider sections and its exclusive use areas;
- 2.1.41 "retail trustee" means the trustee appointed by the retail owners;
- 2.1.42 "Sectional Titles Act" means the Sectional Titles Act, 1986, (Act No. 95 of 1986), as amended;
- 2.1.43 "service address" means the service address of a member or the body corporate in terms of rule 4; and
- 2.1.44 "the Act" means the Sectional Titles Schemes Management Act, 2011 (Act No. 8 of 2011);
- 2.1.45 "trustees" means the residential trustees, retail trustee and commercial trustees collectively, and includes respective alternate trustees.
- 2.1.46 "utility section" means a section which, in terms of local municipality bylaws, is designed to be used as an accessory to a primary section, such as a bathroom, toilet, storeroom, workshop, shed, servant's quarters, parking garage, parking bay or other utility area, not being a primary section;

2.2 In the interpretation of these rules -

- 2.2.1 words and expressions to which a meaning has been assigned in the Act or its regulations, bear those meanings;
 - a) words importing -
 - b) the singular must be interpreted to include the plural, and the plural to include the singular; and
 - c) any one gender must be interpreted to include all other genders; and
 - d) the headings of rules must not be taken into account.

3 AMENDMENT AND BINDING NATURE

- 3.1 The body corporate may substitute, amend, repeal, or add to the management rules subject to and in accordance with the provisions of section 10 of the Act.
- 3.2 Notwithstanding clause 3.1, it is hereby recorded that clause 33 may not be amended without the consent of the necessary authorities at the City of Cape Town.
- 3.3 A member must take all reasonable steps to ensure compliance with the conduct rules in force in terms of section 10(2)(b) of the Act by any tenant or other occupant of any section or exclusive use area, including the member's employees, guests, visitors and family members.

4 SERVICE ADDRESSES

- 4.1 The body corporate must, from time to time, determine the address that is its domicilium citandi et executandi in terms of section 3(1)(o) of the Act; provided that such service address must be -
 - a) the physical address of a section in the scheme;
 - b) the physical address of a duly appointed managing agent or administrator; or
 - c) another physical address within the magisterial district in which the scheme is located.

- 4.2 The trustees may designate a fax, email or other address as an alternate body corporate service address.
- 4.3 A change of a body corporate service address is effective when written notice of that address is lodged with the Community Schemes Ombud Service in the prescribed form.
- 4.4 The trustees must, when they give the Community Schemes Ombud Service notice of a change of the body corporate service address in terms of section 3(1)(o) of the Act, simultaneously give such written notice to all members and other occupiers of sections and to all registered bondholders.
- 4.5 The service address for any legal process or delivery of any other document to a member is the address of the primary section registered in that member's name; provided that a member is entitled by written notice to the body corporate to change that address for purposes as contemplated in subsections 6(3)(c) and 6(4) of the Act to another physical address, postal address or fax in the Republic of South Africa or to an email address, and that the change in the service address of the member is effective when the body corporate receives notice of such a change.
- 4.6 The service address for any legal process or delivery of any other document to an occupier of a section, who is not a member, is the physical address of that section.

PART 2

5 TRUSTEES

- 5.1 All the members are trustees from the establishment of the body corporate until the end of the first general meeting.
- 5.2 Subject to rules 6.3 and 28.1, if a body corporate consists of less than 4 members who are owners of primary sections, each member or his or her representative recognised by law is considered to be a trustee without election to office.
- 5.3 If a body corporate consists of more than 4 members who are owners of primary sections, they must from time to time determine the number of trustees to be elected in terms of these rules.
- 5.4 The trustees shall be divided into three classes, namely residential, retail and commercial:
- a) two of the trustees shall be residential trustees nominated and appointed by the residential owners;
 - b) one of the trustees shall be a retail trustee nominated and appointed by the retail owners;
 - c) two of the trustees shall be commercial trustees nominated and appointed by the commercial owners.

6 REQUIREMENTS FOR OFFICE AND DISQUALIFICATION

- 6.1 A trustee need not be a member or the legally recognised representative of a member who is a juristic person.
- 6.2 A person who is the managing agent or an employee of the managing agent or the body corporate may not be a trustee unless that person is a member.
- 6.3 A trustee ceases to hold office if that trustee -
- a) by written notice to the body corporate, resigns from office;
 - b) is declared by a court to be of unsound mind;
 - c) is or becomes insolvent and the insolvency results in the sequestration of that trustee's estate;

- d) is convicted, or has been convicted in the Republic or elsewhere, of theft, fraud, forgery, perjury or any other offence involving dishonesty;
- e) is sentenced to imprisonment without the option of a fine;
- f) is removed from an office of trust on account of misconduct in respect of fraud or the misappropriation of money;
- g) is removed from office by ordinary resolution of a general meeting; provided the intention to vote on the proposed removal was specified in the notice convening the meeting;
- h) is or becomes disqualified to hold office as a director of a company in terms of the Companies Act, 2008 (Act No. 71 of 2008); or
- i) fails or refuses to pay the body corporate any amount due by that trustee after a court or adjudicator has given a judgment or order for payment of that amount.

7 NOMINATION, ELECTION AND REPLACEMENT

- 7.1 A residential member may nominate any person for the office of residential trustee, a commercial member may nominate any person for the office of commercial trustee and a retail member may nominate any person for the office of retail trustee,
- 7.2 The nomination of a trustee must be in writing, accompanied by the written consent of the person nominated and delivered to the body corporate service address at least 48 hours before the annual general meeting is due to start.
- 7.3 If an insufficient number of nominations are received in terms of sub-rule 7.2, further nominations may be called for at the annual general meeting with the consent of the persons nominated.
- 7.4 Save for the provisions of rules 5.1 and 5.2 trustees must be elected at the first general meeting of the body corporate and then at each subsequent annual general meeting.
- 7.5 In the event that a trustee ceases to hold office:
- a) If a residential trustee ceases to hold office the remaining residential trustees or the residential members in general meeting may appoint a replacement residential trustee.
 - b) If a commercial trustee ceases to hold office the remaining commercial trustees or the commercial members in general meeting may appoint a replacement commercial trustee.
 - c) If a retail trustee ceases to hold office the retail members in general meeting may appoint a replacement retail trustee.
- 7.6 An elected or replacement trustee holds office until the end of the next annual general meeting and is eligible for re-election, if properly nominated.
- 7.7 The residential trustees may appoint, for a specified period, a person qualified to serve as a residential trustee as a replacement for any residential trustee who is absent or otherwise unable to perform the duties of that office.
- 7.8 The commercial trustees may appoint, for a specified period, a person qualified to serve as a commercial trustee as a replacement for any commercial trustee who is absent or otherwise unable to perform the duties of that office.
- 7.9 The retail trustee may appoint, for a specified period, a person qualified to serve as a retail trustee as a replacement for himself/herself should he/she be absent or otherwise unable to perform the duties of that office.

8 PAYMENT AND INDEMNITY

- 8.1** The body corporate must reimburse trustees for all disbursements and expenses actually and reasonably incurred by them in carrying out their duties and exercising their powers.
- 8.2** Unless so determined by special resolution, trustees who are members are not entitled to any reward, whether monetary or otherwise, for their services as such.
- 8.3** Trustees who are not members may be rewarded for their services as such; provided that any reward, whether monetary or otherwise, must be approved by a resolution of the body corporate as part of the budget for the scheme's administrative fund.
- 8.4** The body corporate must indemnify a trustee who is not a managing agent against all costs, losses and expenses arising as a result of any official act that is not in breach of the trustee's fiduciary obligations to the body corporate.
- 8.5** The indemnity referred to in sub-rule 8.4 shall only apply to those acts of a trustee done by him in the discharge of his duties as a trustee of the body corporate as a whole and in respect of the discharge of duties specifically allocated to a residential trustee, retail trustee or commercial trustee, as the case may be. In respect of such acts he shall be indemnified mutatis mutandis in accordance with the provisions of sub-rule 8.4 by the class of members which appointed him as trustee and payment shall be made to him out of the funds of the body corporate contributed to the body corporate by that class of members. No amount shall be paid for these purposes out of the funds contributed to the body corporate by the other class of members and in the event of any shortfall in the amount necessary to pay that trustee, the residential trustees, retail trustee or commercial trustees, as the case may be, shall levy a contribution from the class of members which appointed them.

PART 3

TRUSTEE MEETINGS AND DECISIONS

9 GENERAL POWERS AND DUTIES

- 9.1** The trustees must -
- a) meet to carry out the body corporate's business, adjourn and otherwise regulate their meetings as they think fit, subject to the provisions of the Act, these rules and the common law of meetings;
 - b) exercise the body corporate's powers and functions assigned and delegated to them in terms of section 7(1) of the Act in accordance with resolutions taken at general meetings and at meetings of trustees;
 - c) apply the body corporate's funds in accordance with budgets approved by members in general meeting;
 - d) appoint any agent or employee in terms of section 4(a) of the Act in terms of a duly signed written contract; [and]
 - e) compile minutes of each trustee and general meeting in accordance with rule 27.2(a) and distribute these to the persons entitled to notice of the meeting concerned as soon as reasonably possible, but not later than 7 days after the date of the meeting[.];
 - f) the powers and duties of the trustees are hereby allocated and delegated as follows:
 - i. the residential trustees shall have all those powers and duties referred to in these rules as are necessary to discharge the functions in terms of this rule 9, except for those items referred to in sub-rule 9(f)(iv) which are reserved to all the trustees acting together;

- ii. the commercial trustees shall have all those powers and duties referred to in these rules as are necessary to discharge the functions in terms of this rule 9, except for those items referred to in sub-rule 9(f)(iv) which are reserved to all the trustees acting together;
- iii. the retail trustee shall have all those powers and duties referred to in these rules as are necessary to discharge the functions in terms of this rule 9, except for those items referred to in sub-rule 9(f)(iv) which are reserved to all the trustees acting together;
- iv. save to the extent that the residential trustees, retail trustee or the commercial trustees respectively have certain rights and duties in terms of these rules, the powers and duties referred to in these rules shall be reserved to all the trustees acting together.

10 VALIDITY OF ACTIONS

10.1 No document signed on behalf of the body corporate is valid and binding unless it is signed on the authority of a trustee resolution by -

- a) one retail trustee, one residential trustee and one commercial trustee and the managing agent, in the case of a clearance certificate issued by the body corporate in terms of section 15B(3)(i)(aa) of the Sectional Titles Act; and
- b) one retail trustee, one residential trustee and one commercial trustee, in the case of any other document.

10.2 A resolution adopted, or other act performed by the trustees remains valid and effective notwithstanding the later discovery of some defect in the appointment of a trustee or the disqualification of a trustee.

11 CALLING AND ATTENDANCE AT MEETINGS

11.1 A trustee may at any time call a meeting of trustees by giving all other trustees not less than seven days written notice of the time and place of the meeting and by setting out an agenda for the meeting: Provided that -

- a) in cases of urgency a trustee may give such shorter notice as is reasonable in the circumstances; and
- b) notice need not be given to any trustee who is absent from the Republic unless the meeting is one referred to in sub-rule 11.5, but notice must be given to any replacement trustee appointed for that trustee.

11.2 The trustees may by written resolution set the dates of and a standard agenda for their future meetings and delivery of a copy of this resolution is considered adequate notice of all such future meetings.

11.3 Members, registered bondholders, holders of future development rights and the managing agent may attend trustee meetings and may speak on any matter on the agenda, but they are not entitled to propose any motion or to vote; provided that such persons are not entitled to attend those parts of trustee meetings that deal with -

- a) discussions of contraventions of the Act or rules; or
- b) any other matters in respect of which the trustees resolve that the presence of any such persons would unreasonably interfere with the interests of the body corporate or any person's privacy.

- 11.4 If a member, a registered mortgagee or the holder of a future development right in writing requests notice of trustee meetings, the trustees must deliver to that person a copy of a notice of a meeting referred to in sub-rule (1), a resolution referred to in sub-rule (2) and a notice of any adjournment of such a meeting; provided that the body corporate may recover from the person concerned the costs of delivery of such documents.
- 11.5 The trustees may make arrangements for attendance at a trustee meeting by telephone or any other method, if the method -
- a) is accessible to all trustees and other persons entitled to attend the meeting;
 - b) permits all persons participating in the meeting to communicate with each other during the meeting; and
 - c) permits the chairperson to confirm, with reasonable certainty, the identity of the participants.
- 11.6 A person who attends a meeting as provided under sub-rule 11.5 is considered present in person at the meeting.
- 11.7 At all meetings of the trustees, the chairperson shall divide the matters to be dealt with into:
- a) matters reserved for the attention and decision of the retail trustee;
 - b) matters reserved for the attention and decision of the residential trustees;
 - c) matters reserved for the attention and decision of the commercial trustees; and
 - d) matters of general concern for the attention and decision of all trustees including but not limited to matters relating to the parking areas.

12 CHAIRPERSON

- 12.1 If a body corporate consists of only two members, the provisions in these rules in regard to the election and functions of a chairperson do not apply.
- 12.2 From the establishment of the body corporate until the end of the first general meeting, the developer or the developer's nominee is the chairperson of the trustees.
- 12.3 At the commencement of the first meeting of trustees after an annual general meeting at which trustees have been elected and whenever else necessary, the trustees must by majority vote elect a chairperson from among their number.
- 12.4 The chairperson of the trustees holds office as such until the end of the next annual general meeting.
- 12.5 The trustees at a trustees' meeting or the members at a general meeting may remove the chairperson from office if notice of the meeting contains a clear statement of the proposed removal; provided that such removal does not automatically remove the chairperson from the office of trustee.
- 12.6 If a chairperson is removed from office as such or ceases to hold office as a trustee, the remaining trustees must elect a replacement chairperson from among their number who holds office as chairperson for the remainder of the period of office of his or her predecessor and has the same voting rights.
- 12.7 If the elected chairperson vacates the chair during the course of a trustee meeting, is not present or is for any other reason unable or unwilling to preside, the trustees present must choose another chairperson from among their number and that replacement chairperson has all the powers and functions of the chairperson while acting as such.

