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Umuziwabantu Municipality – Administration of Immovable Property Policy

KZN214

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ADMINISTRATION OF IMMOVABLE PROPERTY POLICY

1. Definitions

In this policy, a word or expression to which a meaning has been assigned in the Local Government: Municipal Finance Management Act, 2003 (MFMA) has the same meaning as in the Act, any reference to the male gender includes the female and neuter genders, and, unless the context indicates otherwise.

“Accounting Officer” means the municipal manager appointed by the Council in terms of section 82 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998) and includes any person acting in such position and any person to whom the municipal manager has delegated a power, function or duty in terms of this policy in respect of such a delegated power, function or duty, as the case may be;

“basic municipal service” means the amount or level of any municipal service that is necessary to ensure an acceptable and reasonable quality of life and which, if not provided, would endanger public health or safety or the environment and, for purposes of this policy, same includes but is not restricted to electricity, refuse collection, sanitation, local roads, stormwater drainage, fire and water services;

“bid adjudication committee” means a bid adjudication committee appointed by the accounting officer in terms of the Supply Chain Management Policy of the Council;

“capital asset” for purposes of this policy means immovable property such as land and the buildings on land and any reference to a “capital asset” or “immovable capital asset” in this policy shall mean **“immovable property”** or **“property”** owned or under the control of the municipality;

“Chief Financial Officer” means the employee designated as such by the accounting officer and includes any person acting in such position and to whom the Chief Financial Officer has delegated a power, function or duty in terms of this policy in respect of such a delegated power, function or duty, as the case may be;

“community value” means the extent of benefit or gain generated in favour of the municipality when resources, input, processes or policies are combined to improve the lives of individuals or society as a whole;

“the Constitution” means the Constitution of the Republic of South Africa, 1996;

“cost” means the amount of cash or cash equivalents paid or the fair market value of the other consideration given by a person to acquire an asset at the time of its acquisition or construction;

“Council” or **“municipal council”** means the Council of Umuziwabantu municipality and includes any duly authorised political structure, political office bearer or staff member of the municipality; **“MFMA”** means the Local Government: Municipal Finance Management Act, 2003 (Act No.

56 of 2003) and includes its regulations, where applicable;

“municipality” means the Umuziwabantu municipality and includes the Council;

“National Treasury”s Guidelines” means the official guidelines on supply chain management issued by the Minister responsible for finance in terms of section 168 of the MFMA; **“notice boards”** means the official notice boards at the municipal offices and libraries of the municipality;

“the Ordinance” means the Municipal Ordinance, 1974 (Ordinance No. 20 of 1974);

“public facilities” means facilities provided for the use and enjoyment by the local community at large and not by a single member or a group of members thereof regardless of whether or not such facilities are provided by the municipality;

“the Regulations” means the Municipal Asset Transfer Regulations contained in Government Notice R. 878 of 22 August 2008;

“social care” means social care services provided by registered welfare, charitable and non-profitable organisations and amateur sporting, cultural or recreational organisations;

“Structures Act” means the Municipal Structures Act, 1998 (Act No. 117 of 1998); **“Supply Chain Management Policy”** means the Supply Chain Management Policy adopted by the Council in terms of section 111 of the Finance Management Act; **“Systems Act”** means the Municipal Systems Act, 2000 (Act No. 32 of 2000).

“SPLUMA” means the Spatial Planning and Land Use Management Act, Act 16 of 2013.

“Immovable Asset” means any immovable asset acquired or owned by government, excluding any right contemplated in the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);

“capital asset” means - (a) any immovable asset such as land, property or buildings, but also includes movable capital assets such as renting out of machinery

2. Application of the Policy

This policy applies to:

- (a) the transfer and disposal of immovable assets by the municipality, and
- (b) the granting by the municipality of rights to use, control or manage immovable assets.

3. Introduction

WHEREAS in terms of section 151(3) of the Constitution and section 4(1)(a) of the Systems Act, the municipality has the right to govern, on its own initiative, the local government affairs of its community, subject to national and provincial legislation.

AND WHEREAS the municipality has executive and legislative authority in respect of, and has the right to administer the matters referred to in sections 156(1) and 229 of the Constitution, sections 8(1) and 11(1) of the Systems Act and section 83(1) of the Structures Act.

AND WHEREAS, except for those matters excluded by legislation in terms of section

160(1)(a) of the Constitution and section 59(1)(a) of the Systems Act, the Council makes decisions concerning the exercise of all the powers and the performance of all the functions of the municipality;

AND WHEREAS in terms of section 156(5) of the Constitution and section 8(2) of the Systems Act, the municipality has the right to do anything reasonably necessary for, or incidental to, the effective performance of its functions and the exercise of its powers;

AND WHEREAS in terms of section 4(2)(a) of the Systems Act, the Council, within the municipality's financial and administrative capacity and having regard to practical Umuziwabantu municipality – Administration of Immovable Property Policy considerations, has the duty to use the resources of the municipality in the best interests of the local community; and

AND WHEREAS there is a need to provide a policy framework for the management of the municipality's immovable property; to establish criteria for determining various categories of immovable property in order to regulate the use, sale and lease thereof and to establish criteria within which property transactions may be regulated.

NOW THEREFORE the Council adopts the following policy framework:

4. General Principles

The municipality may, except where otherwise provided by law, any title deed condition, the conditions under which the land concerned was acquired or the conditions of approval of the township in which it is situated:

- (1) alienate or let or permit to be built upon, occupied, enclosed or cultivated, any immovable property owned by or under the exclusive control of the municipality;
- (2) grant a servitude, way leave, right of encroachment or other rights in land of which it is the owner.

5. Contractual restrictions

The municipality may:

- (1) enter into a contract which will impose financial obligations on the municipality beyond a financial year, but if such contract will impose financial obligations on the municipality beyond the three years included in its annual budget for the financial year concerned, it may only do so in accordance with the provisions of section 33 of the MFMA; and
- (2) enter into a public-private partnership agreement, but only in accordance with the provisions of section 120 of the MFMA and the Municipal Public-Private Partnership Regulations contained in Government Notice R. 309 of 1 April 2005.

6. Transfer and disposal of immovable capital assets

(1) The municipality may transfer ownership or otherwise dispose of immovable property only after:

(a) a public participation process has been conducted to facilitate the determinations the Council must make in terms of sections 14(2)(a) and (b) of the MFMA in the case of the disposal of any capital asset with a total value exceeding five percent of the total value of the immovable assets of the municipality in the financial year concerned; and

(b) the Council has, after due consideration of the factors referred to in paragraph 18, in terms of sections 14(2)(a) and (b) of the MFMA:

(i) decided on reasonable grounds that the capital asset concerned is not needed for the provision of a minimum level of basic municipal services;

(ii) considered the fair market value of such asset and the economic and community value to be received in exchange for same; and

(iii) as a consequence, approved in principle that the relevant capital asset may be transferred or disposed of.

(2) The public participation process referred to in subparagraph (1)(a) may only be authorised by the Council upon receipt of a request by the accounting officer for such authorisation. A request to the Council for the required authorisation must be accompanied by an information statement stating-

(i) the valuation of the capital asset to be transferred or disposed of and the method of valuation used to determine that valuation;

(ii) the reasons for the proposal to transfer or dispose of the capital asset concerned;

(iii) any expected benefits to the municipality that may result from the transfer or disposal of such asset;

(iv) any expected proceeds to be received by the municipality from the transfer or disposal of such asset; and

(v) any expected gain or loss that will be realised or incurred by the municipality arising from such transfer or disposal.

(3) Approval in terms of subparagraph (1)(b) may be given by the Council subject to such conditions as it may deem necessary, including:

(i) the manner in which such capital asset is to be sold or disposed of with due regard to the applicable provisions of the supply chain management policy;

(ii) the determination of an upset floor price or minimum compensation for the capital asset concerned;

(iii) whether or not the asset concerned may be transferred or disposed of for less than its fair market value but only after the following criteria have been taken into account:

(a) the interests of the State and the local community;

- (b) the strategic and economic interests of the municipality including the long-term effect of the decision on the municipality;
- (c) the constitutional rights and legal interests of all affected parties;
- (d) whether or not the interests of the parties to the transfer should carry more weight than the interest of the local community and how the individual interest is weighed against the collective interest; and
- (e) whether or not the local community would be better served if the capital asset concerned is transferred at less than its fair market value, as opposed to a transfer of such asset at fair market value; and

(iv) the framework within which direct negotiations for the transfer or disposal of the relevant capital asset must be conducted with another person, if such transfer or disposal is subject to direct negotiations.

(4) The municipality may not, in terms of section 14(1) of the MFMA, transfer ownership as a result of a sale or other transaction or otherwise permanently dispose of immovable property needed to provide the minimum level of basic municipal services.

(5) A decision by the Council that a specific immovable property is not needed to provide the minimum level of basic municipal services, may not be reversed by the Council after that asset has been sold, transferred or otherwise disposed of.

(6) Any transfer of ownership of immovable property in terms of this policy must be fair, equitable, transparent, competitive and consistent with the supply chain management policy adopted by the Council.

(7) The Council is not obliged to consider an unsolicited bid (i.e. a proposal received outside the normal bidding process and by private treaty) for the purchase or disposal of municipal immovable property.

(8) Only the Council may consider and approve an unsolicited bid at a meeting open to the public and may only do so in accordance with the applicable provisions of its supply chain management policy which are contained in Annexure A hereto.

7. Advertising of proposals

(1) With the exception of the transactions referred to in paragraphs 41 and 42 of this policy and where otherwise expressly provided, the Council shall not act in terms of paragraph 6 (1)(b), regardless of the value of the immovable property to be disposed of, unless the accounting officer has, in terms of section 21 A of the Systems Act read with section 124(2) of the Ordinance, advertised the Council's intention so to act by causing a notice to that effect to be:

- (a) affixed to the public notice boards of the municipality;
- (b) published in a newspaper that is circulated within the area of the municipality;
- (c) published on the official website of the municipality; and

- (d) in such notice, called upon any person who wishes to object to the exercise of any such intention, to lodge his comments, objection or representations in respect of such intention in writing with the accounting officer within a period of not less than thirty days from the date of the publication of the aforesaid notice; and
- (e) considered the objections (if any) lodged in response to the aforesaid notice.

(2) If the Council has, in terms of paragraph 6 (2) authorised the conduct of a public participation process for the proposed transfer or disposal of any immovable asset with a total value exceeding five percent of the total value of the immovable assets of the municipality in the financial year concerned, the accounting officer must, at least 60 days before the meeting of the Council at which the determinations referred to in paragraph 6 (1)(b) are to be considered:

(a) in accordance with section 21A of the Municipal Systems Act:

- (i) make public the proposal to transfer or dispose of the relevant immovable asset together with the information statement referred to in paragraph 6 (2); and
 - (ii) invite the local community and other interested persons to submit to the municipality comments or representations in respect of the proposed transfer or disposal of such asset; and
- (c) Solicit the views and recommendations of the National and Provincial Treasuries in the matter.

8. Alienation of property to another municipality or organ of state

Subject to sections 20 and 21 of the Regulations, paragraphs 6, 7(1) and 7(2) of this policy do not apply in respect of the transfer of immovable property to another municipality or to a national or provincial organ of state.

This paragraph shall be read in conjunction with paragraph 46.

9. Sale or lease at less than market value

The economic and community value to be received in exchange for an immovable property asset shall be taken into consideration in accordance with section 14 (2)(b) of the MFMA:

(1) In the case of sales to registered social care organisations / institutions which shall take place by private treaty. The purchase price of such immovable property shall be fixed at a minimum of 25 % of the fair market value except in cases where the Council, after taking into account the factors referred to in paragraph 6(3) and the said economic and community value, decides otherwise. Such sales shall be subject to:

- (a) the submission of proof regarding the registration status of the social care organisation or institution concerned;

- (b) the social care organisation or institution concerned providing the municipality with a valid authorising resolution;
- (c) the social care organisation or institution concerned being financially capable of developing the immovable property disposed of in accordance with any proposal accepted by the Council and within the stipulated time period;
- (d) a reversionary clause in favour of the municipality being inserted in the agreement of sale and registered in the title deed of such property upon its transfer to transferee;
- (e) a successful application to the National Treasury for a departure in terms of section 170 of the MFMA.

(2) In the event of there being more than one social care organisation or institution interested in acquiring the same immovable property for a specific use, such property shall be disposed of by way of public tender subject to an upset price equal to 25% of the fair market value thereof and provided further that the requirements of subparagraph (1)(a) to (e) shall be applicable to such sale.

(3) In the case of immovable properties referred to in the Housing Act, 1997 (Act No. 107 of 1997), or any ensuing Act, in which case such properties shall be sold/let as provided for in that Act.

10. Alienation or lease by public competition

Alienation or leasing of immovable assets must be effected by means of public competition, except in the instances referred to in paragraphs 9 and 41 to 51 of this policy.

For the purposes of this policy, public competition shall mean the disposal or lease of immovable assets by means of public auction, public tender or by the **calling for development proposals** in accordance with pre-determined conceptual proposals and conditions.

Where immovable property is alienated or leased for a specific type of development project, including a business project, and the specific type of development which the municipality is prepared to allow is of importance, the municipality may call for development proposals, which may include a monetary offer. In such a case, the price offered for the immovable property by the developer will only form part of the total package.

The municipality's right to adjudicate tenders in the manner set out in this paragraph must be fully described in the bid documentation as a condition of tender. The municipality's reasons for the acceptance of a particular development proposal shall be fully recorded in the minutes of the Bid Adjudication Committee.

11. Sale or lease at less than fair market value

The municipality, as a general principle and except for those cases mentioned in paragraph 9 of this policy and subject to the proviso mentioned below, shall not:

- (a) let immovable property at a rental lower than the rental determined in accordance with paragraph 12 below, as may be applicable;
- (b) sell, alienate or dispose of immovable property or grant a servitude or alienate a right in immovable property in an amount lower than the amount determined in accordance with paragraph 12 below, as may be applicable;
- (c) exchange immovable property for other property if the amount at which the other property has been valued is lower than the amount at which the immovable property which the municipality wishes to exchange, has been valued in accordance with paragraph 12 below, as may be applicable provided that, in cases when the public interest or the plight of the poor demands otherwise, and after taking into account the provisions of section 13 (2) of the Regulations and subject to a successful application for a departure to the National Treasury in terms of section 170 of the MFMA, such property may be let, sold, exchanged or be encumbered with a servitude or right in return for compensation below the market related value which value shall be determined by resolution of the Council which resolution shall also contain the reasons for such action.

12. Determination of upset price and

The upset price for property to be disposed of or leased by way of a competitive process will be determined in such a way that it corresponds with a fair market value and must include the recoverable development costs such as municipal services, advertising and survey costs. The fair market value or the rental amount of property shall be determined by an independent professional valuer or professional associated valuer registered in terms of the Property Valuers Profession Act, 2000 (Act 47 of 2000), or any ensuing Act at the cost of the purchaser or lessee, as the case may be.

13. Assessment of tender price

In assessing tenders for the purchase or lease of immovable property, the municipality will take cognisance of the total cash value of the packages offered by tenderers, where such packages are clearly permissible in terms of the conditions of tender. In other words, where the actual amounts tendered are roughly similar, but a particular tenderer, for example, also offers to make improvements to the property concerned, the cash value of such improvements (which proposed improvements may not be deviated from), may also be taken into consideration to determine the highest tender amount.

14. Municipal Rates and Service Charges

Municipal Leased and sold properties are not exempted from municipal rates. The lessee shall as a rule be liable for the payment of rates and service charges in respect of the property. In the case of leases to certain social care users at rentals lower than market value the municipality may consider granting a rebate on rates. In the case of small un-surveyed areas of land used for gardening purposes, etc. no rates shall be levied.

15. Non acceptance of the highest bid

Should the municipality consider it desirable not to accept the highest tender or offer or decide to accept a particular development proposal in which the amount tendered is not the highest offer, the reasons for this decision must be fully set out and recorded in the minutes of the Bid Adjudication Committee meeting and, if applicable, the minutes of the appeal body.

The municipality's right not to accept the highest tender or offer or decide to accept a particular development proposal in which the amount tendered is not the highest offer, must be specifically recorded in the bid documentation as a condition of tender.

16. Identical bids

In cases where bids are, according to the findings of the Bid Adjudication Committee, identical and the provisions of paragraphs 14 and 15 are not applicable, the successful tenderer may be determined by the drawing of lots conducted in accordance with the applicable by-laws of the municipality. The municipality's right to do so shall be recorded in the bid documentation as a condition of tender.

17. Inspection of alienated or leased property

Where relevant or obligatory, immovable property sold or let by the municipality may or must be inspected at regular intervals in order to ensure compliance with the terms and conditions of the agreement of sale or lease. Where immovable property is sold subject to a right of reversion in favour of the municipality failing compliance with a development clause, it must be inspected at least 90 days prior to the expiration of the development date contained in such clause and, in the event of non compliance, the accounting officer must take the necessary steps to ensure that ownership of the property concerned reverts to the municipality as soon as possible after the expiration of the development date concerned.

This paragraph must be read in conjunction with paragraph 23 below.

18. Consideration of a proposal to alienate immovable assets

(1) In conformity with section 14(2) of the MFMA, the municipality may transfer ownership or otherwise dispose of a capital asset other than one needed to provide the minimum level of basic municipal services but only after the Council, in a meeting open to the public, has decided on reasonable grounds that the asset is not needed to provide the minimum level of basic municipal services and has considered the fair market value of the asset and the economic and community value to be received in exchange for the asset.

(2) The Council shall also take the following factors into account when considering a proposal to alienate immovable assets:

- (a) whether or not the capital asset may be required for the municipality's own use at a later date;
- (b) the expected loss or gain that is expected to result from the proposed transfer or disposal;
- (c) the extent to which any compensation to be received in respect of the proposed transfer or disposal will result in a significant economic or financial cost or benefit to the municipality;
- (d) the risks and rewards associated with the operation or control of the capital asset that is to be transferred or disposed of in relation to the municipality's interests;
- (e) the effect that the proposed transfer or disposal will have on the credit rating of the municipality, its ability to raise long-term or short-term borrowings in the future and its financial position and cash flow;
- (f) any limitations or conditions attached to the capital asset or the transfer or disposal of the asset, and the consequences of any potential non-compliance with those conditions;
- (g) the estimated cost of the proposed transfer or disposal;
- (h) the transfer of any liabilities and reserve funds associated with the capital asset;
- (i) any comments or representations on the proposed transfer or disposal received from the local community and other interested persons;
- (j) any written views and recommendations on the proposed transfer or disposal by the National Treasury and the relevant provincial treasury;
- (k) the interests of any affected organ of state, the municipality's own strategic, legal and economic interests and the interests of the local community; and
- (l) compliance with the legislative regime applicable to the proposed transfer or disposal.

19. Cognisance of integrated development planning and housing legislation

The Council shall, at all times, when considering the alienation of its immovable assets, take into consideration the municipality's obligation to, as part of its process of integrated development planning, take all reasonable and necessary steps within the framework of national and provincial housing legislation and policy to identify and designate land for housing development in terms of the Housing Act, 1997 (Act No. 107 of 1997).

20. Recoverable costs in case of the alienation of land

All costs pertaining to a sale transaction shall be borne by the purchaser including survey, advertising, valuation, rezoning, legal, relocation and provision of services costs where applicable. The municipality may, however, waive its right to claim such costs when it is to the advantage of the municipality to bear such costs itself. Where necessary, the purchaser shall deposit such costs with the municipality prior to the agreement of sale being signed or immediately after signature of such agreement and as a condition of sale. Alternatively and, particularly in the event of the costs concerned being substantial, the purchaser must provide the municipality with a guarantee that such costs will be paid upon registration of the property concerned into the name of the purchaser.

21. Relocation or securing of existing services

Should existing services need to be relocated or secured by means of the registration of a servitude in favour of the municipality as a result of the sale of a immovable asset, all related costs shall be for the account of the purchaser.

22. Consolidation of small areas of land

Small areas of land such as closed roads or portions of public places sold to an adjacent owner in terms of this policy must be consolidated with the existing property of such owner, unless circumstances exist which, in the opinion of the municipality, make such consolidation undesirable.

23. Development clause

Where immovable property is sold for development, a condition must be included in the agreement of sale requiring such development to be completed within two years from date of the transfer of the property concerned into the name of the purchaser. Likewise, a condition must be included in the agreement of sale to provide for the retransfer of such property to the municipality at the cost of the purchaser in the event of the required development not being completed within the stipulated period or such extended period as the municipality may allow.

24. Use of property for purpose for which it was sold

Except with prior written approval of the municipality, alienated immovable property may only be used for the purpose for which it was originally sold and for such other purposes as may be permitted by the town planning scheme/ Planning scheme regulations applicable to the zoning of the property concerned.

25. Payment of assessed rates on alienated immovable property

The agreement of sale must require the purchaser of immovable property to pay the assessed rates thereon from the **date of transfer** which must not be later than 60 days from date that the purchaser is informed of the municipality's decision to alienate the relevant property to him. Such payment is subject to the provisions of the Rates Policy adopted by the Council in terms of the Municipal Property Rates Act No. 6 of 2004.

26. Statutory public open space and road closures

Where reserved public open spaces or roads are sold, the agreement of sale must contain a suspense condition to the effect that such sale is subject to the statutory closure processes being completed.

27. Recovery of costs in the case of a lease

All costs pertaining to a transaction shall be borne by the Lessee, e.g. survey, advertising, valuation, rezoning, relocation or provision of services costs where applicable etc. The municipality may, however, waive its right to claim such costs when it is to its advantage to do so. Where necessary, the Lessee shall deposit such costs with the municipality prior to the Lease being concluded. Alternatively and, particularly in the event of the costs concerned being substantial, the Lessee must provide the municipality with a guarantee that such costs will be paid upon signature of the lease or upon such later date as may be mutually agreed upon between the parties.

28. Purchase or lease of property for municipal purposes

The municipality may:

- (a) purchase or lease immovable property for municipal purposes and may, in furtherance thereof, enter into a contract which will impose financial obligations on the municipality beyond a financial year, but if the contract concerned will impose financial obligations on the municipality beyond the three years covered in the annual budget for that financial year, it may only do so in accordance with the provisions of section 33 of the MFMA; and
- (b) enter into a public-private partnership agreement, but only in accordance with the provisions of section 120 of the MFMA and the applicable provisions of the Municipal Public-Private Partnership Regulations contained in Government Notice R. 309 of 1 April 2005.

29. Stipulations in agreement of lease

An agreement for the lease of immovable property shall be in writing and stipulate the terms and conditions of the lease which shall include provisions relating to:

- (a) the termination of the agreement in the case of non-or underperformance;
- (b) dispute resolution mechanisms to settle disputes between the parties;
- (c) a periodic review of the agreement once every three years in the case of an agreement with a tenure longer than three years;
- (d) any other matters that may be prescribed; and
- (e) the rate of rental escalation contemplated in paragraph 32 of this policy.

30. Sub-lease or cession of leased immovable property

No leased immovable property shall be sub-let and no lease may be ceded or assigned by the Lessee without the prior written approval of the municipality.

31. Substitution of Lessee

An owner of immovable property who leases adjoining municipal property may, with the consent of the municipality, be substituted by his successor in title for the duration of the remaining period of the lease.

32. Rental escalation

Rental, except where decided otherwise by the municipality, shall escalate annually by a percentage fixed in accordance with the prevailing consumer price index (all items) as determined by the Chief Financial Officer.

33. Additional costs to be borne by Lessee

- (a) A Lessee shall, in addition to the rental, be liable for the payment of:
- (i) assessed rates on the property leased to him from the date the lease is concluded provided such property has been valued on the valuation roll or from the date such property has been so valued and provided further that the Council may exempt certain categories of social care providers from the payment of rates or grant such providers rate rebates;
 - (ii) service charges levied by the municipality on the leased property from time to time.
- (b) Unless otherwise agreed by the municipality, all fees, charges, tariffs applicable to the leased property shall be reviewed on an annual basis in conjunction with the preparation of the annual budget.

34. Special conditions applicable to leases in respect of lanes, public open space, road reserves etc.

Leases in respect of lanes, public open spaces, road reserves etc. to be closed shall be subject to the following conditions:

- (a) the closing off/securing by the Lessee of the leased area to the satisfaction of the municipality;
- (b) the Lessee being responsible for the cost of relocation or installation of services where required and for the securing of servitudes; and
- (c) the official closure of the relevant lane, public open space and road in terms of the applicable legislation at the cost of the Lessee.

35. Indemnity by Lessee

A Lessee shall indemnify the municipality against all claims of whatever nature either to himself or any third party arising from the lease and/or his use of the leased immovable property.

36. Leases for development purposes

Where land is leased for development, a condition shall be included in the lease agreement stipulating that such development shall be completed within two years from the date of conclusion of the lease agreement. Likewise, a suspensive condition shall be included in the lease agreement to provide for cancellation thereof in the event of such development not being completed in accordance with the agreement and to the satisfaction of the municipality.

37. Use of leased property

Except with the prior written approval of the municipality, leased immovable property may only be used for the purpose for which it was let provided such purpose is permissible in terms of the zoning of the property concerned.

Where immovable property is leased for residential purposes, only the Lessee and his immediate family and such other persons as may be approved by the municipality in writing, shall occupy such property.

No immovable property leased for residential purposes shall be used by the Lessee for the purpose of trade including the operation of a spaza shop and a tavern thereon.

Where immovable property is leased for residential purposes, the Lessee shall, in addition to the rental for the first month which shall be paid in advance, be required to pay an additional amount equal to one month's rental which amount shall be retained by the municipality as a deposit which may be utilised by it to offset arrear rentals and the cost of repair to the leased property caused by an intentional or negligent act on the part of the Lessee.

This paragraph shall only apply in respect of the lease of residential used immovable property not situated in subsidized housing schemes.

38. Right of inspection of leased property

The municipality shall, at all reasonable times, be entitled to enter and inspect leased immovable property with a view to determining whether or not the conditions of lease have been complied with.

39. Maintenance of leased property

A lessee shall be responsible for maintaining leased immovable property including all improvements thereon and the surrounds thereof to the satisfaction of the municipality.

Upon termination of a lease, the property let shall be returned to the municipality in the same condition prevailing at the date of commencement of the lease, fair wear and tear excepted.

40. Improvements made by Lessee

Improvements made by a Lessee to leased immovable property which the municipality wishes to retain, shall revert, and free of charge, to the municipality once the lease period has terminated and/or in the event of the lease being cancelled due to a breach of its conditions by the Lessee. Alternatively, agreement may be reached to the effect that the Lessee may remove any improvements affected to the leased property by him with his own funds within three months of the termination of the lease agreement, failing which such improvements shall revert to the

municipality free of charge. The Lessee shall be liable for the cost involved in the removal of all improvements effected by him and not required by the municipality. The right of the municipality to acquire improvements effected to leased property by a Lessee shall be fully described in the lease.

41. Extension of lease agreements

Lease agreements for a term up to 3 years entered into under this policy may be extended further for a period determined by the **Accounting Officer** with the provisions of paragraph 7(1) and 7(2) subject, however, to the initial agreement providing for such extension.

Any right or option to extend an existing lease agreement shall be exercised by the Lessee concerned before the lease expires and not after expiration thereof.

42. Short-term and Long-term leases

Immovable property let for **short-term** periods up to 12 months without the option of renewal need not be advertised in terms of paragraph 7(1) and 7(2) in the event of the lessee being the only interested party. The lease shall be subject, inter alia, to the following conditions:

- (a) the rental being market related;
- (b) the Lessee being responsible for the payment of all rates assessed on the leased property as well as for service charges levied in respect of municipal services provided to such property; (c) the Lessee undertaking in writing to compensate the municipality for damages caused to the leased property by him either intentionally or negligently;
- (d) the Lessee maintaining the leased property to the satisfaction of the municipality throughout the tenure of the lease;
- (e) the Lessee using the leased property for the purpose for which it was let; and
- (f) the Lessee indemnifying the municipality against all claims for damages to him or third parties arising out of his occupation of the leased property or from any cause whatsoever.

Long-terms leases (to be removed still)

- 1. for a period of not less than 10 years; or
- 2. for the natural life of the lessee or any other person mentioned in the lease; or

Long term lease agreements shall only be valid against the creditors and/or successors in title of the lessor for a period exceeding 10 years after having been entered into, if the lease agreement has been duly registered against the title deed of the property concerned. Therefore, in cases where a long term lease is registered, the lessee is protected from the date of registration.

Long term leases are subject to relevant Government policies and regulations, read with this policy, and where contradiction and inconsistency arises, regulations shall take precedence.

43. Out of hand sales and leases of previously unsold or unleased immovable property

Whenever a number of comparable immovable properties are offered for sale or lease by public competition (either by public auction or public tender) and there are remaining properties which were unsold or not leased after such public competition process was completed, such remaining properties may be sold, subject to the provisions of paragraph 6.1(b), or leased out of hand by the municipality at the average realised price or rental obtained for the comparable properties sold or leased during the public competition process.

Such price or rental shall be valid for a maximum period of 12 months calculated from the date the former public competition process was completed where after any remaining properties must again be offered for sale or lease by public competition at new market related upset prices or rentals determined in terms of this policy.

44. Out of hand leases to social care organisations/institutions

In the case of the out-of-hand lease of immovable property to registered social care organisations/institutions, the rental shall be determined by the municipality on the basis of **50%** of the market related rental and such rental shall be inclusive of rates which the municipality may levy thereon but not service charges.

45. Out of hand sales or leases in respect of closed streets, lanes, public open spaces and odd lots

Closed streets and lanes, public open spaces and odd lots of land which can be of no practical use to any other person may be sold or leased out of hand to adjoining property owners, provided that:

- (a) written notice of the intended sale or lease must be served on all adjoining, affected property owners and same have no objection against the proposal;
- (b) the selling price/rental must be determined at fair market value;
- (c) the purchaser or lessee, as the case may be, must be responsible for the cost of relocating any or all services in or traversing such streets, lanes, open spaces or land when such relocation is deemed necessary;
- (d) all costs associated with the sale or lease including survey, valuation and advertising costs must be borne by the purchaser or lessee, as the case may be.

46. Out of hand sales and leases to other spheres of government and municipalities

Immovable property may be sold/leased out of hand to other spheres of government and other municipalities. All such immovable property transactions shall be considered at a fair market value basis, except in the following cases:

- (a) where the immovable property concerned was acquired for the development of a less formal township and such township will be transferred to the municipality at a later stage;

- (b) where the immovable property concerned will be used for a project aimed at the social and economic upliftment of a previously disadvantaged group;
- (c) where a deviation from the fair market value principle is permissible in terms of the Regulations.

47. Out of hand sales of immovable property to existing tenants Immovable properties-

May be sold out of hand at fair market value to existing tenants who have leased same for residential purposes for at least five years prior to the date of transfer.

48. Out of hand sale or lease of immovable property in exceptional circumstance

Immovable property may, in circumstances not provided in this policy, be sold/leased out of hand in exceptional cases where the municipality is of the opinion that public competition would not serve a useful purpose or that it is in the interests of the community and the municipality to so sell or lease the property concerned and, provided further, that the full reasons for the Council authorising such out-of-hand sale or lease shall be recorded in the minutes of the Council meeting concerned.

49. Temporary lease of immovable property acquired for public purposes

Immovable property acquired by a municipality for public purposes or in the community's interest, may be leased out of hand at a market related rental to any applicant for temporary use until such time as the property concerned is actually required for development.

50. Lease of dwellings to employees

Dwellings may be leased out of hand to employees of the municipality on condition that rentals are determined in accordance with the applicable policy of the municipality.

51. Sale of municipal houses to employees

Municipal houses may be sold out of hand to employees of the municipality, on condition that a departure has been obtained from National Treasury in terms of section 170 of the MFMA and provided selling prices are market related.

52. Projections, Projecting Structures and Encroachments

The municipality may, subject to such other conditions as it may deem fit

- (a) permit the erection or retention of a veranda, balcony, sign, sign-board or similar structure, device or contrivance which projects or extends into, under or over any public place or public street (hereinafter referred to as a “projection”) provided, inter alia, that:

- (i) the erection or retention of such a projection shall not be permitted on the level of more than one floor;
- (ii) no such projection shall be wholly enclosed to a height of more than 1,5 metres measured from the floor level thereof; and
- (iii) no such projection shall be partially enclosed to a height of more than 1,5 metres measured from the floor level thereof except with the prior written approval of the municipality and subject to such conditions as it may impose; or

(b) permit encroachments on road reserves and public thoroughfares in order to encourage adjoining owners to maintain the road reserves adjoining their properties, provided, inter alia that:

- (i) the planting of trees, shrubs and alien lawn or the erection of seating, statues or other similar objects within 1,5 metres measured from the edge of the tarred or gravel surface of the road, shall not be permissible;
 - (ii) the 1,5 metre area referred to in sub-paragraph (i) may be planted with lawn of a type approved by the municipality subject, however, to the owner concerned allowing the free movement of pedestrians in or across this area at all times;
 - (iii) no such encroachment shall be partially or wholly enclosed or fenced by any means whatsoever, permanently or otherwise, for the exclusive use of the adjacent property owner; and
 - (iv) no encroachment fee shall be charged by the municipality and no formal agreement need be entered into in respect of the encroachment; and
 - (v) the municipality shall have the right of free access to the encroachment area at all times for the inspection, maintenance and repair of any services which may traverse such area or to install such services in which case the municipality shall not be liable for any damage to such area which may arise from such inspection, maintenance, repair or installation; or
- (c) permit encroachments of garden areas onto commonages, public open spaces and conservation areas provided that:

- (i) written applications accompanied by a prescribed fee for such encroachments shall be submitted to the municipality;
- (ii) the accounting officer or his duly authorised nominee shall:
 - (a) cause the said application to be advertised in terms of paragraph 7(1) of this policy;
 - (b) where objections against the said application are received, submit same to the applicant for his comment;
 - (c) obtain the comment of the relevant municipal directorate;
 - (d) submit the application and all relevant documents to the Council for consideration;
 - (e) notify the applicant of the Council's decision and, where applicable furnish, him with a copy of any conditions imposed by the Council with regard to the application; and
 - (f) issue an encroachment permit to the successful applicant in order to give effect to the approval of the application.

(iii) the approval of the Council in terms of sub-paragraph (ii) shall, inter alia, be subject to the following conditions:

- (a) the planting of trees, shrubs and alien lawn or the erection of seating, statues or other similar objects shall not be permitted in or on the encroachment area;
- (b) no such encroachment shall be partially or wholly enclosed or fenced by any means whatsoever, permanently or otherwise, for the exclusive use of the adjacent property owner; and
- (c) an annual encroachment fee determined by council being paid by the applicant; and (d) the aforesaid fee being annually reviewed by the Council.

53. Lease of land for outdoor seating

The municipality may, on a permit basis, permit the use of municipal land including a pavement adjoining a restaurant, for outdoor seating, subject, inter alia, to the following conditions:

- (i) the payment of an annual fee to the municipality by the proprietor of such restaurant; (ii) the seating being of a temporary nature only and being removed at the end of each business day;
- (iii) the nature, materials and design of the seating being approved by the municipality;
- (iv) the seating being so arranged that the safe movement of pedestrians is not hampered;
- (v) the proprietor of the restaurant indemnifying the Council against all claims of whatsoever nature which may arise as a result of the use of the said municipal land or pavement, as the case may be, for seating purposes.

54. Reduction in extent of public place or Public Street

The municipality may reduce the extent of a public place or public street which is encroached upon by the extent of the encroachment or by such greater extent as may, in its opinion, be desirable.

55. Administrative arrangements

The accounting officer shall supply the Chief Financial Officer with a copy of each agreement of sale or lease concluded by the municipality in respect of the disposal and letting of immovable property.

The accounting officer shall keep such records as may be necessary to ensure that details of all property transactions are readily available to audit purposes and that leases are either terminated or renewed at or prior to expiry date.

It shall be the responsibility of the Chief Financial Officer acting under powers delegated to him by the accounting officer to ensure that the proceeds from the sale of immovable property are collected by or paid to the municipality when due and that all rentals accruing to the municipality are collected in terms of the applicable lease agreements and annually adjusted in terms of escalation or in terms of the applicable provisions of this policy.

56. Policy to be applied in conjunction with the Regulations and National Treasury Guidelines

This policy must be read in conjunction with the Regulations and applicable National Treasury Guidelines and, in the event of conflict, the provisions of the Regulations and such guidelines shall enjoy preference.

57. Policy consideration in respect of unsolicited bids

(1) In accordance with section 113 of the MFMA, there is no obligation on the municipality to consider unsolicited bids received outside a normal bidding process.

(2) The accounting officer may decide in terms of section 113(2) of the MFMA to consider an unsolicited bid only if:

- (a) the product or service offered in terms of the bid is a demonstrably or proven unique innovative concept;
- (b) the product or service will be exceptionally beneficial to the municipality or have exceptional cost advantages;
- (c) the person who made the bid is the sole provider of the product or service;
- (d) the reasons for not pursuing the normal bidding processes are found to be sound by the accounting officer; and
- (e) the information as indicated in sub-paragraphs (a) – (d) above, should be comprehensive and where necessary be supported by expert reports, completely set out in order for the public to make significant (meaningful) comments.

(3) If the accounting officer decides to consider an unsolicited bid that complies with subparagraph (2) above, the decision must be made public in accordance with section 21A of the Municipal Systems Act, together with:

- (a) reasons as to why the bid should not be open to other competitors;
- (b) an explanation of the potential benefits if the unsolicited bid were accepted; and
- (c) an invitation to the public or other potential suppliers to submit their comments within 30 days of the notice.

(4) All written comments received pursuant to subparagraph (3), including any responses from the unsolicited bidder, must be submitted by the accounting officer to the National Treasury and the KwaZulu Natal Provincial Treasury for comment.

(5) The adjudication committee must consider the unsolicited bid and may award the bid or make a recommendation to the accounting officer thereon, depending on its delegations.

(6) A meeting of the adjudication committee to consider an unsolicited bid must be open to the public.

(7) When considering the matter, the adjudication committee must take into account:

- (a) any comments submitted by the public; and
- (b) any written comments and recommendations of the National Treasury or the KwaZulu Natal Provincial Treasury.

(8) If any recommendations of the National Treasury or Provincial Treasury are rejected or not followed, the accounting officer must submit to the Auditor-General, the KwaZulu Natal

Provincial Treasury and the National Treasury the reasons for rejecting or not following those recommendations.

(9) Such submission must be made within seven days after the decision on the award of the unsolicited bid is taken, but no contract committing the municipality to the bid may be entered into or signed within 30 days of the aforementioned submission.

58. Name and commencement of policy

This policy shall be called the „*Administration of Immovable Property Policy*“ and shall come into operation on the first day of the month succeeding its adoption by the Council.

59. Endorsement of the policy

The Administration of Immovable Property policy must be endorsed by Municipal Council after all the pre-requisites have been fulfilled, namely:

- First draft;
- Discussion at MANCO;
- Tabling of the draft document at Planning Portfolio;
- Tabling the draft document to EXCO;
- Notification of the general public and public hearings; and
- Tabling of the final document to Council for approval.

60. Review of the policy

The Administration of Immovable Property Policy must be reviewed on an annual basis in line with the budget and IDP.

(Approved by the Council: _____)