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By-law Regarding the Management and Administration of Municipal Immovable Property Used for Social Care

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Commences on 3 October 2014 unless otherwise noted

1. Introduction/aim

To regulate the letting (making available/use/control/management) and alienation of immovable property of Matzikama Municipality that is used for providing social care, and to establish application procedures, criteria and conditions for regulating, managing and coordinating the development and facilitation of appropriate private/public partnerships regarding the properties concerned.

2. Definition of terms

- 2.1 General upkeep includes everything that is excluded under "maintenance".
- 2.2 Property refers to the plot or part thereof, the buildings or the infrastructure that is being used and that is provided by the Municipality, and/or the buildings or infrastructure provided by the institution.
- 2.3 Long-term letting refers to continuous letting to the same institution or person for a maximum of 3 (three) years.
- 2.4 Matzikama Municipality refers to the Matzikama Municipality as proclaimed in Provincial Gazette No. 481 of 2000, as amended. Municipality carries the same meaning.
- 2.5 Minimum fair market-related letting value is the amount determined by a registered estate agent or property evaluator, unless the department can determine this amount by referring to similar values obtained during the preceding 18 (eighteen) months or unless the council makes a different decision in this regard.
- 2.6 Minimum fair market-related selling value is the amount determined by the municipal evaluator, unless the department can determine this amount by referring to similar values obtained during the preceding 18 (eighteen) months or unless the council makes a different decision in this regard.
- 2.7 Maintenance refers to the repairing of defects in a building that have developed because of age and/or features that do not function anymore; the term excludes damage to buildings and infrastructure as well as cleaning and painting of buildings.
- 2.8 Privately funded institution(s) refers to institutions that generate the largest part of their income by means of contributions from parents, fund raising, private donations, etc., unless the lease agreement between the parties concerned determines otherwise.
- 2.9 Council refers to the elected members of Matzikama Municipality and/or tender evaluation committees and/or the accounting officer, as determined and defined in relevant legislation.
- 2.10 The right to use, control or manage has the same meaning as set out in the relevant legislation.
- 2.11 Social care refers to services delivered to the community to stimulate training and social development and to provide security and food, as well as services delivered by registered welfare, charity, non-profit, cultural and religious organisations.
- 2.12 State-subsidised institution(s) refers to institutions that obtain the largest part of their income in the form of allocations and allowances from a governmental department.
- 2.13 Relevant legislation refers to the Local Government: Municipal Finance Management Act of 2003, Asset Transfer Regulations of 2008 and the assets management policy and supply chain management policy and relevant by-laws of Matzikama Municipality.

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- 2.14 Exceptional cases is where the Municipality is of the opinion that public competition will not serve a useful purpose or will not be in the interests of the community and the Municipality, where motivation for this opinion agrees with the stipulations set out in relevant legislation and where such opinion does not conflict with any other stipulation of this by-law.

In this by-law, unless the content indicates otherwise, each word or expression to which a meaning has been linked in terms of the relevant legislation carries the meaning of such legislation read together with the content of this document.

3. General principles and management rules

- 3.1 The council may use, profit from, alienate, make available or rent out any immovable property owned by the Municipality or allow it to be built upon, occupied, fenced off or cultivated, unless the Municipality is prevented from doing so by legislation or by the conditions under which the Municipality acquired such immovable property.
- 3.2 The Municipality's immovable property must be inspected at regular intervals to ensure that the terms and conditions of the sale or lease agreement are complied with.
- 3.3 In exceptional cases immovable property may be let by private treaty to existing users who have been using the property concerned for social care with the Municipality's consent for five years or longer.
- 3.4 When a lease agreement with existing lessees regarding municipal immovable property that is used for social care expires, and such lease agreement was an exceptional case, it may be renewed according to the stipulations of the existing conditions of lease.
- 3.5 Immovable property that has been used for social care for 5 (five) years may be sold by private treaty as an exceptional case. In such cases the council must minute in full the reasons why the property will be or was sold by private treaty.
- 3.6 The long-term letting of public open spaces will be subject to the following conditions, and the accompanying costs will be for the account of the prospective lessee:
- (i) approval of closing, application for change in land use, etc. to the Municipality's satisfaction;
 - (ii) re-laying or installation of services as may be required, and
 - (iii) protection or registration of servitudes.

4. Application process and conditions for the right to use, control or manage municipal property for a period shorter than a calendar month

- 4.1 A written application, under the institution's letterhead, that covers or addresses the following matters sufficiently must be submitted for consideration at least 4 (four) weeks before the commencement date:
- the proposed property (plot number or clear site address), proposed period (dates and times), expected number of persons involved, an area with enough parking spaces, water supply point and source (including potable water), approved measures for waste removal and electricity supply (power generator excluded) and proof of payment of the amount approved in the financial budget.
- 4.2 As requested, the period for submission of the required written approval is excluded from the period referred to in 4.1.
- 4.3 Upon completion of a full investigation and if the application is approved, the applicant will be issued with a written communication containing the following conditions, too:
- 4.3.1 The responsibility for providing sufficient services (such as waste removal, water, electricity and ablution facilities) will rest on the applicant. Applicants may arrange for services to be provided against their account with the Municipality, if it is available.

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- 4.3.2 The applicant must pay the deposit, if required, for the provision of services by the Municipality at least 24 (twenty-four) hours before the commencement of the period concerned. Payment must be done at the Municipality and the receipt supplied to the department concerned. The actual cost of the services used must be paid within 7 (seven) days after the period concerned has expired.
- 4.3.3 The applicant must return the property in its original state on the agreed-upon date.
- 4.3.4 The applicant or institution must indemnify the Municipality against any damages and claims.
- 4.3.5 The applicant undertakes to compensate the Municipality for damages to municipal property, whatever the circumstances leading up to it.
- 4.4 No further consent will be granted for an institution or person to use council property before the conditions set out in the notice of approval for a previous use (occasion) have been fulfilled.

5. General conditions to be included in lease agreements

- 5.1 The maximum lease period is 3 (three) years, with an option to renew the lease for a further period provided that a written application to that effect be considered before the lease period expires.
- 5.2 The rent is payable monthly and will escalate annually according to the formula CPI + 2% and/or as approved in the Municipality's financial budget.
- 5.3 The rent will escalate yearly on 1 July and the increased amount will be stated in an annexure to the existing lease agreement.
- 5.4 In addition to the rent, the lessee will also be responsible for taxes and for service, insurance and security fees unless the lease agreement stipulates otherwise.
- 5.5 Audited financial statements of the lessee, showing their sources of income as well as their profits or losses for the preceding year, must be submitted at the Municipality – initially with the signed lease agreement, and subsequently no later than 1 July until the agreement is terminated.
- 5.6 The lessee may sublet, cede or assign no immovable property without obtaining the Municipality's consent beforehand.
- 5.7 The lessee must indemnify the Municipality against any possible damages and claims arising from the letting or use of the immovable property.
- 5.8 The property may be used only for the purposes for which it is let and according to the zoning scheme regulation, unless written consent for deviation has been obtained beforehand.
- 5.9 Municipal officers have the right to enter the immovable property and inspect it at reasonable hours.
- 5.10 Improvements made by the lessee that the Municipality wants to keep will revert without compensation to the Municipality upon the termination of the lease period, unless the lease agreement stipulates otherwise.
- 5.11 The lessee will be responsible for the general upkeep of the property, and the lessor for maintenance.
- 5.12 Changes to the building and the installation of communications infrastructure, air-conditioning, security lighting, etc. are for the lessee's account and will be regarded as improvements that may be effected only upon receipt of written approval beforehand.
- 5.13 Development must commence within 3 (three) months, or such longer period as agreed upon in writing, from the date on which the lease agreement was signed, otherwise the agreement will be terminated.
- 5.14 A lease agreement must be signed by the lessee (written delegate) within 30 (thirty) days after the Municipality has served it on the social care provider for signing. Should the lessee fail to comply with this request, approval for the letting of the property will lapse.
- 5.15 The responsibility to supply sufficient services (such as waste removal, water, electricity and ablution facilities) will rest on the applicant.

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- 5.16 Municipal property is let in its state as is (voetstoots), and the cost of any upgrading or installation of infrastructure will be for the new lessee's account.

6. General conditions to be included in agreements of sale

- 6.1 The applicant must cover all costs regarding a transaction of sale – which includes legal costs, surveying, closing of public open spaces, obtaining environmental approvals, removing of title restrictions, re-zoning, subdivision, consolidations, advertising, re-laying and/or the installation of services and the registration of plot or servitudes – unless the agreement of sale stipulates otherwise.
- 6.2 No agreement of sale will be drawn up and submitted for signing before the prospective buyer has confirmed in writing that he or she is willing to pay all expenses and the statutory requirements have been fulfilled. A deposit for covering the expenses may also be required upon the signing of the agreement of sale.
- 6.3 A servitude regarding municipal services in favour of the Municipality must be protected by registering such servitude.
- 6.4 A reverting and a building clause must be included in the agreement of sale and the title deed.
- 6.5 Unless advance consent has been obtained, immovable property may be used only for the purposes approved in terms of the zoning scheme regulations.
- 6.6 An agreement of sale must be signed within 30 (thirty) days after an official request from the Municipality; failure to comply with this will result in the expiry of the approval of sale.
- 6.7 Registration of the property must occur within 4 (four) months after the last party signed the agreement of sale, unless otherwise agreed upon consideration of a written motivation from the conveyancers.
- 6.8 A suspensive clause regarding the period within which registration must occur will be contained in all transactions in the sales agreement that are subject to the approval of a re-zoning, subdivision, consolidation, removal of title restriction, closing of public open space, environmental approval, etc.
- 6.9 The immovable property must be sold at the minimum fair market-related selling value, unless the council decides otherwise and the motivation for such decision is minuted.
- 6.10 Immovable property may be sold by private treaty to other spheres of government and other local authorities in accordance with the stipulations of relevant legislation. All such transactions regarding immovable property must be considered with reference to market value, except in cases where immovable property is acquired with the aim to develop a less formal urban area and such urban area has to be conveyed to the Municipality later on, or where the aim of selling the property to the former is specifically to deliver a service in the Matzikama municipal area as set out in the Constitution of South Africa.
- 6.11 Any other conditions as determined by the council.

7. Revocation of by-laws

The stipulations of a pre-existing by-law of this Municipality or any municipal areas that were abolished and have been transformed to this Municipality regarding any aspect stipulated in this by-law are hereby revoked.

8. Short title and effective date

This by-law may be cited as the By-law Regarding the Management and Administration of Municipal Immovable Property Used for Social Care, and will come into effect upon publication in the Provincial Gazette.