Under embargo until 18 February 2016

Attachment to the presentation to the municipal executive dated 16 February, 2016

Chapter 5 of the consultation document:
Draft 2016 policies for granting perpetual ground leases (leaseholds)

Draft 2016 policies for granting +ground leases (leaseholds)

Article 1 Definitions

In this policy the following definitions shall apply:

a. lump sum buy off:
a one-time amount to be paid in lieu of all future ground rent payments that are not due yet;

b. special conditions:
the provisions that apply in addition to, alongside or in derogation from the general conditions to be declared applicable to the leasehold right and that will be included in the leasehold deed together with these general conditions;

c. ground rent:
the amount due to the municipality by the leaseholder, whether or not periodically, as compensation for the leasehold right;

d. ground rent percentage:
the percentage used to calculate the ground rent. This percentage shall be periodically established and announced by the municipality;

e. leasehold deed:
the notarial deed whereby the leasehold right is created. In the leasehold deed the rights and obligations attaching to the leasehold right shall be recorded;

f. leasehold land value:
the value of the parcel determined on the basis of the purpose included in the leasehold deed, the permitted use and the maximum permitted floor area of the parcel on which the ground rent calculation is based. This does not cover the value of any buildings situated on the parcel;

g. leasehold right:
the leasehold right *in rem* ("*zakelijk recht van erfpacht*") as set out in the leasehold deed (as well as the undivided share therein);

h. immovable property:
the land with any buildings situated or to be built in/on that land, or the apartment right;

i. public registers:
the public registers in which the Dutch Land Registry Office and Public Registers (Cadastre) records rights *in rem*, amongst other matters;

j. buildings:
development/construction, works and trees, plants and shrubs;

k. parcel:
the immovable property in respect of which a leasehold is or will be granted;

l. release of leasehold land:
the first time that a parcel is released in leasehold;

m. floor area:
the floor area of the building(s), calculated in accordance with standard sheet NEN 2580. For residences, this shall be expressed as the usable area (UA) and for other purposes as gross floor area (GSA).

Article 2 Offer to grant a perpetual leasehold

2. The grant of a leasehold shall be preceded by a written offer. This offer may be a binding part of a comprehensive area agreement.

3. The offer shall state, as a minimum:
   a. the area of the parcel , the Land Registry designation and, to the extent that it is known, the local designation;
   b. the structure of the division that will apply if apartment rights are being granted which have been formed by the municipality. Whether this is the case will be determined on the basis of the implementation policies adopted for that purpose by the municipality;
   c. the structure of the grant of the leasehold that will apply if more than one leasehold right is established based on the leasehold agreement to be concluded. The structure of the grant of the leasehold shall be determined by mutual agreement, with due observance of the implementation policies adopted for that purpose by the municipality;
   d. a reference to the general conditions for perpetual leaseholds that apply to the leasehold right;
   e. the special conditions that apply to the leasehold right, which shall at any rate include provisions on:
      1° the acceptance of the parcel;
      2° the purpose, the permitted use and the maximum permitted floor area;
      3° the date on which, or the period within which, the building(s) must be completed;
      4° a ban on granting a full or partial sublease for the parcel;
      5° a ban on:
         - dividing the leasehold right by transfer or assignment and/or
         - dividing the leasehold right into apartment rights and/or
         - terminating the leasehold;
      6° the power of the municipality to initiate the evacuation of the parcel by virtue of the process-server's copy of the leasehold deed, if the municipality has terminated the leasehold due to failure to pay, default or for reasons of general interest;
   f. the financial conditions, including:
      1° the leasehold land value agreed on by the parties;
      2° the amount of the ground rent with the accompanying ground rent percentage;
      3° the amount of the lump sum if the leaseholder should opt to pay the ground rent in advance at the time the leasehold right is created;
   g. the planned effective date of the leasehold right;
   h. the period within which the offer is valid;
   i. the period within which the financial conditions referred to under paragraph 2f shall apply. The municipality shall be authorised to amend the financial and any other conditions, if this period has expired without the leasehold right having been created or without the prospective leaseholder having obtained the economic ownership of the

leasehold right. If this can be attributed to the municipality, it shall not make use of that authority;

j. the period within which the leaseholder must start the construction work. If the construction work has not started within this period, the municipality shall be authorised to:
   1° amend the financial and any other conditions, or
   2° to dissolve the leasehold agreement,
   as long as the leasehold right has not been created;

k. the obligation on the part of the prospective leaseholder to pay a deposit to the municipality. This amount shall be paid by the leaseholder after the acceptance of the offer. The leaseholder must pay the deposit by way of security that he will perform his obligations under the leasehold agreement;

l. a possibility to do the following with regard to the parcel against the payment of a compensation:
   1° to reserve the parcel on the conditions set out in the offer, and
   2° to prolong the reservation after the expiry of a period included in the offer;

m. an integrity clause allowing the municipality to do the following:
   1° suspend the implementation of the leasehold agreement, or
   2° dissolve the leasehold agreement in whole or in part, or
   3° terminate the leasehold agreement;

n. where appropriate, a reservation of administrative approval. This reservation shall lapse with the resolution mentioned in article 3 of the present policies.

4. The municipality shall add a drawing to its offer, which must show the location and boundaries of the parcel or of the site to which the parcel relates. The corner points of the boundaries must also be stated in this drawing with their coordinates. The Land Registry Office and Public Registers (Cadastre) will measure the parcel on the basis of this drawing. The outcome of that measurement shall replace the above-mentioned drawing.

Article 2 Acceptance of the offer and decision to grant the leasehold

1. The municipality shall not take a decision to grant a leasehold until after the prospective leaseholder:
   a. has accepted the offer in writing, and
   b. has performed his obligations recorded in the leasehold offer, to the extent that they relate to the phase until the creation of the leasehold right or the economic acquisition of the leasehold right.

2. If the offer is a binding part, in the form of a model leasehold confirmation of a more comprehensive area agreement, no separate decision to grant the leasehold shall be required, as in that case the leasehold agreement will already have been formed when the area agreement was concluded. In that case, the municipality shall create the leasehold right as soon as the prospective leaseholder has performed all his obligations under the area agreement. The following shall serve as the basis for the creation:
   a. the leasehold confirmation to the prospective leaseholder, which forms the elaboration of the model leasehold confirmation;
   b. the building plan developed by the prospective leaseholder, and
   c. the structure of the grant of the leasehold agreed with him.

3. If the offer is a binding part, in the form a model leasehold offer, of an option agreement, no separate decision to grant the leasehold shall be required. The leasehold agreement shall in that case be created, if the prospective leaseholder makes use of his option by accepting the leasehold offer unconditionally.
   As soon as the prospective leaseholder has performed his obligations under the option agreement, the municipality shall create this leasehold offer on the basis of:
   a. the model leasehold offer;
   b. the building plan developed by the prospective leaseholder, and
   c. the structure of the grant of the leasehold agreed with him.