

## **TERM LOAN AGREEMENT**

by and between

**THE STANDARD BANK OF SOUTH AFRICA LIMITED,  
ACTING THROUGH ITS PERSONAL AND BUSINESS  
BANKING DIVISION**

and

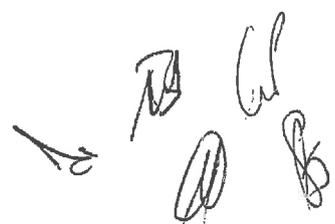
**DRAKENSTEIN MUNICIPALITY**



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**APPENDIX**

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**ANNEXURE A**

**DRAW DOWN NOTICE**

*Handwritten initials and signatures:*  
ZM  
CP  
  
  


## 1 PARTIES

- 1.1 The Parties to this Agreement are –
- 1.1.1 The Standard Bank of South Africa Limited, acting through its Personal and Business Banking Division; and
- 1.1.2 Drakenstein Municipality.

## 2 DEFINITIONS

- 2.1 In this Agreement, unless clearly inconsistent with or otherwise indicated by the context –
- 2.1.1 “**Agreement**” means this agreement, together with all appendices hereto and letters and notices given in terms hereof from time to time, all read together;
- 2.1.2 “**the Bank**” means The Standard Bank of South Africa Limited (Registration Number 1962/000738/06), acting through its Personal and Business Banking Division, a public company duly incorporated with limited liability according to the company laws of the Republic of South Africa;
- 2.1.3 “**the Borrower**” means the Drakenstein Municipality a municipality incorporated according to the municipal laws of the Republic of South Africa;
- 2.1.4 “**Borrower’s Loan Facility account**” means the Borrower’s loan facility account to be opened in the books of the Paarl branch of the Bank;
- 2.1.5 “**Business Day**” means a day other than a Saturday, Sunday or proclaimed public holiday in the Republic of South Africa;
- 2.1.6 “**Calendar Month**” means a full calendar month in any year that is, January, February, March, April, May, June, July, August, September, October, November and December;



- 2.1.7            **“Early Reduction”** means any payment made by the Borrower in advance and in addition to the instalment set out in 8.1 of this Agreement, as part payment of the Loan Facility;
- 2.1.8            **“Indebtedness”** means the total balance outstanding on the Loan Facility plus any interest, fees and costs in respect of the Loan Facility which are owed by the Borrower to the Bank from time to time;
- 2.1.9            **“the Loan Facility”** means the long term loan facility referred to in this Agreement (which is in the form of a medium term loan, a lending product of the Personal and Business Banking Division of the Bank);
- 2.1.10          **“Material Adverse Effect”** means a change in the circumstances existing as at the Signature Date which in the reasonable opinion of the Bank may have a material adverse effect on:
- 2.1.10.1            the assets, operation, property or financial condition of the Borrower;
- 2.1.10.2            the ability of the Borrower to perform its obligations in terms of the Facility; or
- 2.1.10.3            the validity or enforceability of one of more of the agreements under which the facilities are availed and the collateral provided to the Bank or the rights or remedies of the Bank thereunder;
- 2.1.11          **“MFMA”** means the Local Government: Municipal Finance Management Act 56 of 2003 and Regulations;
- 2.1.12          **“Parties”** means the Bank and the Borrower and **“Party”** means any one of them as the context may indicate; and
- 2.1.13          **“Signature Date”** means the date of signature of this Agreement by the party signing last in time.
- 2.2            Any reference in this Agreement to legislation or subordinate legislation is to such legislation or subordinate legislation at the date of signature hereof and as amended and/or re-enacted from time to time.



- 2.3 Words importing the singular shall include the plural, and *vice versa*, words importing the masculine gender shall include the feminine and neuter genders, and *vice versa*, and words importing natural persons shall include legal persons, and *vice versa*.
- 2.4 The head notes to the clauses to this Agreement are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.
- 2.5 If any provision in the definition clause is a substantive provision conferring rights or imposing obligations on a party, then notwithstanding that such provision is contained in this clause, effect shall be given thereto as if such provision were a substantive provision in the body of the Agreement.
- 2.6 When any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day.
- 2.7 Any reference in this Agreement which requires that the Bank exercise its discretion in respect of any matter stated herein shall mean that the exercise thereof shall be as determined by the Bank in its reasonable discretion.
- 2.8 The terms and conditions of this Agreement having been negotiated by the Parties, no provision herein shall be construed against or interpreted to the disadvantage of any Party by reason of such Party having or being deemed to have structured, drafted or introduced such provision.

### 3 LOAN FACILITY

The Bank is agreeable to granting the Borrower the Loan Facility, upon and subject to the terms and conditions hereinafter set out.

### 4 RANKING OF LOAN FACILITY

The Loan Facility comprises senior debt and ranks first in terms of servicing, repayment and collateral rights.



## 5 LOAN AMOUNT

- 5.1 The maximum amount to be advanced to the Borrower under the Loan Facility is R 29,810,729 (twenty nine million eight hundred and ten thousand seven hundred and twenty nine rand) (**"the Loan Amount"**).
- 5.2 The amount of the Borrower's Indebtedness to the Bank under the Loan Facility shall not at any one time exceed the Loan Amount. To the extent that a draw down under the Loan Facility would cause the Loan Amount to be exceeded, the Borrower shall not be entitled make such a draw down.

## 6 AVAILMENT AND PURPOSE

- 6.1 The Loan Facility may be utilised upon fulfilment and/or waiver of the conditions precedent referred to in 10 below, provided that no draw downs may be made by the Borrower under the Loan Facility 3 (three) months after the Signature Date. The Borrower shall be obliged to give the Bank prior written notice of a requested draw down by not later than 11:00 am at least 2 (two) Business Days before the proposed date of draw down in the form of **Annexure "A"** hereto;
- 6.2 The Loan Facility shall be utilised to fund the Borrower's capital expenditure projects contemplated in Section 46(1)(a) of the MFMA.

## 7 INTEREST

- 7.1 The Loan Facility shall bear interest at a fixed rate of 10.25% (ten point two five percent) per annum.
- 7.2 The interest payable by the Borrower is calculated on a daily basis on the outstanding balance and is calculated on a 365-day year, irrespective of whether it is a leap year.
- 7.3 The interest payable by the Borrower shall be charged bi-annually in arrears and will be debited to the Borrower's Loan Facility account on a date convenient to the Bank.



**8 REPAYMENT**

- 8.1 The capital amount of the Loan Facility is to be repaid by the Borrower to the Bank over 7 (seven) years in 14 (fourteen) equal bi-annual instalments.
- 8.2 The Borrower's monthly capital instalment plus the interest as referred to in clause 8.1 above shall together comprise the Borrower's bi-annual repayment. The first bi-annual repayment shall be due on 31 December 2010 and shall thereafter be payable on 30 June 2011 and 31 December 2011 of each and every succeeding year.
- 8.3 All repayments pursuant to this Loan Facility shall be made:-
- 8.3.1 in terms of the amortisation schedule to be prepared by the Bank upon receipt of the draw down notice referred to in clause 6.1 above;
- 8.3.2 in permanent reduction of the Loan Facility; and
- 8.3.3 by means of debit order authorisation in terms of 16.2 below. The Bank reserves the right, in its sole discretion, to accept payment made other than by debit order.

**9 EARLY REPAYMENT**

- 9.1 Early permanent repayment of the Loan Facility in full may be made by the Borrower on not less than 90 (ninety) days' written notice (or such shorter notice period as the Bank may agree to in writing) of the Borrower's intention to make such early permanent repayment, subject to the provisions of clause 9.3 below.
- 9.2 In the event of an early permanent repayment as contemplated in 9.1 above, the Borrower shall be liable for all breakage costs the Bank may incur and/or sustain as a result thereof, being all costs, losses and/or reduced receipts which the Bank may sustain and/or incur in relation to the termination or modification of any arrangements the Bank may have made on account of or in respect of funds borrowed, contracted for or utilized to fund any amount payable or advanced under the Loan Facility.



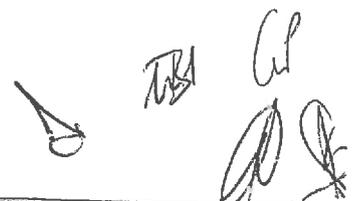
- 9.3 Early Reductions of the Borrower's Indebtedness under the Loan Facility in multiples of R 100,000 (one hundred thousand rand) may be made by the Borrower on not less than 30 (thirty) days' written notice (or such shorter notice period as the Bank may agree to in writing) of the Borrower's intention to make any such Early Reduction. Only one Early Reduction may be made in any Calendar Month.
- 9.4 If the Borrower makes an Early Reduction of the Loan Facility, unless the instalments are rescheduled by agreement in writing between the Parties, this will not affect the Borrower's obligations to pay the instalment as set out in 8.1 above.
- 9.5 If no rescheduling arising from an Early Reduction is agreed to in terms of 9.4 above, the Borrower may draw down in part or in full up to the amount of such Early Reduction, provided that:
- 9.5.1 the Borrower provides the Bank with a draw down schedule by not later than 11:00 am at least 2 (two) Business Days before the proposed date of draw down in the form of Annexure "A" hereto;
- 9.5.2 such draw downs are in multiples of R 100,000 (one hundred thousand rand); and
- 9.5.3 only one such draw down may be made in any Calendar Month.
- 9.6 The Bank may, however, upon reasonable written notice to the Borrower, including but not limited to if any event of default set out in 13.1 below withdraw in whole or in part the Borrower's rights in terms of 9.5 above.

## 10 CONDITIONS PRECEDENT

- 10.1 The granting of the Loan Facility is subject to the fulfilment of the following conditions precedent to the satisfaction of the Bank, which shall be fulfilled by no later than close of business on 30 July 2010:
- 10.1.1 that a copy of this Agreement signed by the accounting officer accepting the terms and conditions stipulated herein, is returned to the Bank;



- 10.1.2 that the Borrower has furnished the Bank with proof to the Bank's satisfaction that the provisions of the MFMA, including all schedules and regulations thereto, as amended, have been complied with in relation to the Loan Facility referred to herein;
- 10.1.3 that the Borrower and all applicable entities have undergone the Bank's Know Your Customer ("KYC") process pursuant to the provisions of the Financial Intelligence Centre Act No. 38 of 2001 ("FICA");
- 10.1.4 that the Borrower has provided the Bank with a certified copy of the resolution of the Municipal Council, signed by the Mayor, approving the Loan Facility and this Agreement;
- 10.1.5 if applicable and to the extent required by the Bank, that the Borrower has provided the Bank with a certified copy of the adjustments budget tabled in terms of the MFMA and that the Bank is satisfied as to the manner in which the Loan Facility has been dealt with in such adjustment budget;
- 10.1.6 that the Borrower has provided the Bank with a written report, which shall be in form and substance acceptable to the Bank, confirming/detailing the impact of any pending/potential litigation on the Borrower's financials;
- 10.1.7 that the Borrower has provided the Bank with the following, which shall be in form and substance acceptable to the Bank,:
- 10.1.7.1 audited financial statements for the preceding 3 (three) financial years, together with an indication whether the audit deadline referred to in Section 126 of the MFMA has been met;
- 10.1.7.2 approved annual budget;
- 10.1.7.3 the integrated development plan or multi-year business plan referred to in section 87(5)(d) of the MFMA (if applicable);
- 10.1.7.4 the information statement to be made/made available to the public setting out all material terms and conditions relating to the Loan Facility; and



- 10.1.7.5 repayment schedules pertaining to its existing short-term and long-term debt.
- 10.2 The above conditions precedent are inserted for the benefit of the Bank, which may in writing on or before the dates for fulfilment of the conditions set out in 10.1 above, extend the period for fulfilment or waive any of the said conditions precedent in its sole discretion. Unless and until the above conditions precedent are either waived or fulfilled, the Borrower shall not be entitled to avail of the Loan Facility.
- 10.3 Notwithstanding any provision to the contrary, if the Bank, in the erroneous belief that all the conditions precedent have been fulfilled or waived (as the case may be), makes any advances or any portion of the Loan Facility (the "**Advanced Amount**") available to the Borrower and if it subsequently transpires that any one (or more) of the conditions precedent has in fact not been fulfilled or waived (as the case may be):
- 10.3.1 the terms and conditions of this agreement shall apply in respect of the amount of the Advanced Amount (subject to clauses 10.3.2 and 10.3.3 below), notwithstanding that the conditions precedent, or any one of them, have not been fulfilled or waived (as the case may be);
- 10.3.2 the Bank shall be entitled to declare the amount of the Advanced Amount to be immediately due and payable by the Borrower to the Bank; and
- 10.3.3 the Bank shall not be obliged to make any further advances to the Borrower.

## 11 POST AVAILMENT CONDITIONS

While the Loan Facility remains available or any amount or commitment remains outstanding to the Bank the following conditions shall apply:-

- 11.1 the Borrower shall:



- 11.1.1 comply with the MFMA, including all schedules and regulations thereto, as amended from time to time, with relation to the Loan Facility to the satisfaction of the Bank;
- 11.1.2 provide the Bank with information relating to its draft budgets, approved budgets, adjustment budgets as well as a copy of the quarterly report required in terms of Section 52(d) of the MFMA within 30 (thirty) days of such information being due in terms of the MFMA for a particular period;
- 11.1.3 the Borrower hereby undertakes to that it will advise the Bank immediately upon becoming aware of the occurrence of an event of default or of any circumstances that could potentially result in an event of default as contemplated in clause 13 below;
- 11.1.4 keep the Bank advised of any material developments in any pending litigation; and
- 11.1.5 inform the Bank, as soon as possible after identification of any financial problems facing the municipality, including any emerging or impending financial problems in terms of the provisions of Section 54 of the MFMA that could reasonably be expected to affect the Borrower's ability to repay any amounts outstanding under the Loan Facility.
- 11.2 The Bank reserves the right to reassess and to renegotiate the Loan Facility in the event of there being a change in the management, and/or legislated governance of the local authority or any change in the overall structure of the local authority, and/or the change in the structure of revenue streams (e.g. electricity – introduction of REDS).
- 11.3 Any reference in this Agreement to a specific requirement under the MFMA (and all schedules and/or regulations thereto) shall not derogate from or exclude the application of any provisions not specifically referred to herein.

## 12 FINANCIAL COVENANTS

The Borrower undertakes that at all times during the currency of the Loan Facility it shall maintain the following financial covenants,:-



12.1 **Net debt to revenue ratio:** to be maintained at a level that is less than or equal to 40% (forty percent), "revenue" includes billings and all other income and grants received by or accruing to the customer and the phrase "Net debt" shall mean the aggregate of moneys borrowed (both long and short term); and

12.2 **Billings to collections rate:** to be maintained at a level that is greater than or equal to 90% (ninety percent). (for purposes of this clause, "collections" shall mean the amount received by the Borrower from its debtors "billings" shall mean the aggregate amount in respect accounts rendered by the Borrower for assessment rates, services and consumption charges and other regulated municipal imposts and levies).

### 13 EVENTS OF DEFAULT

13.1 If any of the following default events, each of which shall be severable and distinct from the others, shall occur, namely:

13.1.1 should the Borrower fail to make payment by due date of any amount due in terms of the Loan Facility or any other facilities that the Bank has accorded the Borrower or may offer to the Borrower; or

13.1.2 should the Borrower breach any term or condition of this Agreement or any other facility the Bank may grant to the Borrower or any other facility between the Borrower and Standard Bank Group Limited or any other subsidiary or associate company of the Bank and the Borrower fails to remedy the breach within 7 (seven) days of receiving written notice to do so; or

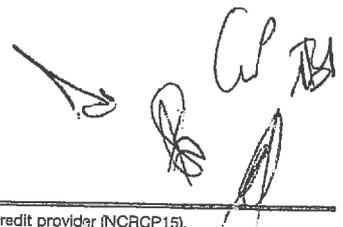
13.1.3 should any, representation, warranty or undertaking made (or deemed to have been made) in connection with this Agreement or any documentation supplied by the Borrower be, in the Bank's opinion, materially incorrect; or

13.1.4 is liquidated whether provisionally or finally, and whether voluntarily or compulsorily, or is placed under judicial management, or is wound up; or

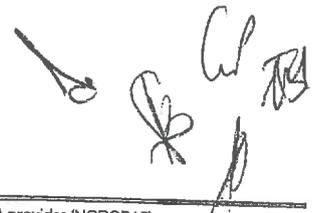
13.1.5 if the Borrower meets the conditions for a mandatory provincial intervention (as contemplated in Section 139 and 140 of the MFMA); or



- 13.1.6 if an event occurs that adversely affects the validity or enforceability of the Agreement; or
- 13.1.7 if an attachment, execution or other legal process is levied, enforced, issued or sued out on or against any assets of the Borrower or any unsatisfied judgement or order, including failure to pay a final judgement or court order, except insofar as reasonable court process is underway for the Borrower's indebtedness to the Bank, and is not discharged or stayed within 30 (thirty) days of service by the relevant officer of the court of such attachment, execution or other legal process; or
- 13.1.8 should a writ of execution issued by any competent court attaching any assets belonging to either the Borrower remain unsatisfied for more than 7 (seven) days after the date on which it is issued; or
- 13.1.9 if the Loan Facility is not budgeted for in the Borrower's budget in any particular year; or
- 13.1.10 if at any time there is a change in the demarcation of the geographic area falling within the jurisdiction of the Borrower as at the date of signature of the Agreement; or
- 13.1.11 if the payment of all amounts under the Loan Facility is not retrospectively approved by means of an adjustments budget within a specified period; or
- 13.1.12 if at any time after the date of signature hereof by the Borrower there is any change in (including but not limited to repeal of legislation) or addition to, the legislation to which the Borrower is subject and which in the reasonable opinion of the Bank could be expected to adversely affect the ability of the Borrower to comply with any of its obligations hereunder; or
- 13.1.13 a change envisaged in clause 16.11 below takes place; or
- 13.1.14 the Borrower defaults in the due payment or due performance of any amount payable or obligation to be performed under any agreement, which



- amount or which obligation the Bank considers to be material in its reasonable opinion; or
- 13.1.15 any material Indebtedness or obligation for monies borrowed constituting Indebtedness of the Borrower shall become due and payable prior to its specified maturity by reason of default, or shall not be paid when due; or
- 13.1.16 the Borrower defaults in the due and punctual performance under any other agreement including any other loan/credit facility between the Borrower and the Bank and (if such default is capable of being remedied) same has not been remedied to the satisfaction of the Bank within 14 (fourteen) days' from the date of any written notice given by the Bank to the Borrower to remedy the default; or
- 13.1.17 the Auditor General in any financial statements of the Borrower published after the date of the last set of audited financial statements furnished to the Bank or if none have been so furnished, after the Signature Date, materially qualifies that annual statement in any respect, or inserts a note in the supporting documents to that financial statement relating to any material irregularity; or
- 13.1.18 there is a material deterioration in the Borrower's financial position;
- "material deterioration" shall mean material deterioration in the Bank's reasonable opinion; or
- 13.1.19 should the Bank become aware, at any time, of a fact or circumstance (whether same was present at or before the time of acceptance of this Agreement by the Borrower or arose thereafter), which in its reasonable opinion has, or could in the future have, an adverse effect on the Borrower's ability to perform any of its obligations to the Bank in terms of this Agreement, or prejudice the Bank's position with respect to the Loan Facility in any other way; or
- 13.1.20 at any time, the amount outstanding under the Loan Facility exceeds the Loan Amount as stated in clause 5 above; or



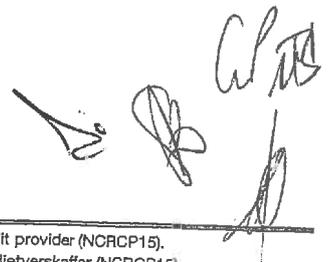
- 13.1.21 the Borrower, is unable to pay its debts, suspends or threatens to suspend payment of all or a material part of (or of a particular type of) its indebtedness to any other creditors, commences negotiations or takes any other step with the view to the deferral, rescheduling or other re-adjustment of all of (or all of a particular type of) its indebtedness to creditors (or of any part of such indebtedness which it will or might otherwise be unable to pay when due), proposes or makes a general assignment or an arrangement or composition with or for the benefit of its creditors or a moratorium is agreed or declared in respect of or affecting all or a part of the indebtedness of the Borrower; or
- 13.1.22 a Material Adverse Effect on the operations, performance, assets or prospects and financial conditions of the Borrower; or
- 13.1.23 an adverse effect on the Borrower's ability to perform any of its obligations to the Bank in terms of this Loan Facility, or prejudice the Bank's position with respect to the Loan Facility in any other way; or
- 13.1.24 the Borrower generally does or omits to do anything which may cause the Bank to suffer any loss or damage, including any reputational loss or damage; or
- 13.1.25 the Bank become aware, at any time, of a fact or circumstance (whether same was present at or before the time of acceptance of the Loan Facility by the Borrower or arose thereafter), which causes the Bank to know or suspect that:
- 13.1.25.1 the Borrower's account is being used fraudulently, negligently, for illegal or terrorist activities, or for any purpose that does not comply with the law; or
- 13.1.25.2 the Borrower is involved in any illegal or terrorist activities; or
- 13.2 The Bank, may without prejudice to any other rights hereunder or at law, at any time after the happening of an event of default, by written notice to the Borrower:



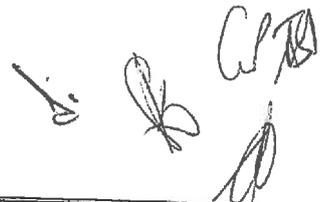
- 13.2.1 decline any request by the Borrower to draw down any further monies under the Loan Facility or terminate the Loan Facility forthwith; and/or
- 13.2.2 require on demand payment of all the Borrower's Indebtedness under the Loan Facility which is then outstanding and whether or not it is then due for payment, and upon any such demand all that Indebtedness shall immediately become due and payable; and
- 13.2.3 require on demand payment of all breakage costs the Bank may have incurred or sustained, being all costs, losses and/or reduced receipts which the Bank may have sustained or incurred in relation to the termination or modification of any arrangements the Bank may have made on account of or in respect of funds borrowed, contracted for or utilized to fund any amount payable or advanced under the Loan Facility.
- 13.3 The Bank's rights under this clause shall not be exhaustive but shall be in addition to and without prejudice to any other rights which it may have under this Agreement or the law.
- 13.4 If any of the events specified in 13.1 above become applicable an event of default shall be deemed to have taken place for the purposes of this Agreement thereby entitling the Bank to avail itself of the remedies specified in 14.2 above.

#### 14 REPRESENTATIONS AND WARRANTIES

- 14.1 The Borrower represents and warrants to the Bank that, as at the date of signing the original agreement, on the date of each draw down under the Loan Facility and as at the Signature Date of this Agreement:
- 14.1.1 it is authorised to enter into this Agreement;
- 14.1.2 it has complied with all the provisions of the MFMA in relation to the Loan Facility referred to in this Agreement, and undertakes that it will continue to do so for the currency of the Loan Facility;
- 14.1.3 the Loan Facility constitutes and will continue to constitute valid and binding obligations of the Borrower;



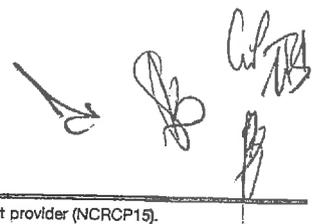
- 14.1.4 its annual budget as well as its approved annual budget contains all of the information referred to in section 17 of the MFMA;
- 14.1.5 the Loan Facility has been provided for in an approved budget, are properly approved by council meeting and that payment of the amount of Loan Facility will not result in the total amount of the budget being exceeded. These requirements will be met in future as well;
- 14.1.6 that the persons who negotiated the Agreement on behalf the Borrower, as well as the person who signed the Agreement on behalf of the Borrower, have made diligent investigations in order to ascertain all relevant information and that all such information has been disclosed to the Bank, in writing;
- 14.1.7 it will not utilise savings with regards to an unrelated expenditure in a budget to defray any excess expenditure that may be required for satisfying a claim under a loan agreement;
- 14.1.8 it will not utilise savings with regards to an unrelated expenditure in a budget to defray any excess expenditure that may be required for satisfying a claim under a loan agreement;
- 14.1.9 there are no circumstances resulting in a Material Adverse Effect on the financial condition, operations or assets of the Borrower, presently pending or threatened, and in the reasonably exercised opinion of the Borrower no such circumstances are likely to arise;
- 14.1.10 the Borrower is not in breach of any law applicable to the Borrower, nor in breach of any material contract by which the Borrower is bound, and/or to which the Borrower is a party, and in the reasonably exercised opinion of the Borrower, no such breach is likely to occur and/or arise;
- 14.1.11 that the Loan Facility will only be utilised for the purpose of capital expenditure;



- 14.1.12 the Borrower's acceptance in terms of this Loan Facility has been duly authorised and to the best of its knowledge and belief does not contravene any law or any contractual obligation binding upon it;
- 14.1.13 the Borrower warrants and represents to the Bank that it is in full compliance with all applicable laws, regulations and practices relating to the protection of the environment applicable to in it each jurisdiction in which the Borrower conducts business (its "Environmental Responsibility") and hereby undertakes to continue to do so for so long as the Borrower is indebted to or owes any obligations to the Bank under or in terms of this Agreement;
- 14.1.14 the Borrower warrants that it is not aware of any circumstances which may prevent full compliance with its Environmental Responsibility in future; and
- 14.1.15 the Borrower hereby indemnifies the Bank against any loss, damage, claims, costs or any other liability, which may arise (because of this or any other banking facility and/or the Bank having an interest in the Borrower's assets) in respect of a breach of, or a failure, by the Borrower to meet its Environmental Responsibility.
- 14.2 The Borrower further represents and warrants to the Bank its acceptance of the terms of this Agreement has been duly authorised and does not contravene any law or any contractual obligation binding upon it.

## 15 CERTIFICATE OF INDEBTEDNESS

A certificate signed by any manager or divisional director of the Bank (whose authority, qualification or appointment need not be proved) setting out the amount of any Indebtedness of the Borrower to the Bank in terms hereof, the rates of interest and any other fact, shall, upon its mere presentation, be sufficient proof, unless the contrary is proved, of the Borrower's Indebtedness and of such other facts contained therein.



**16 GENERAL TERMS****16.1 Financial Statements**

The Bank requires the Borrower to furnish it with signed copies of the audited financial statements of the Borrower annually within a period of 120 (one hundred and twenty) days from the date that they are due in terms of the MFMA and any other information as the Bank may reasonably require.

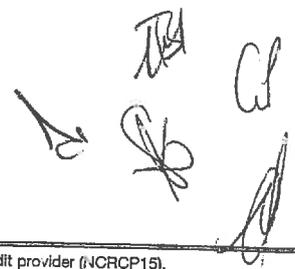
**16.2 Authority to Debit**

The Borrower hereby authorises the Bank (in terms of the debit order form which is enclosed for completion and return) to debit the Borrower's current account number 1498121861 held at Nedbank (branch code 149821) with the amounts due and payable by the Borrower pursuant to the provisions of 7.1 and 8.1 above.

**16.3 Matters requiring the Bank's consent**

The Borrower may not without the Bank's prior written consent, which will not be unreasonably withheld:

- 16.3.1 become surety, guarantor for or give any indemnity on behalf of any third party whomsoever or render itself liable in any way whatsoever for the debts or engagements of any other party, other than encumbrances as agreed to by the Bank such as instalment sale transactions and new assets financed via same;
- 16.3.2 pledge, cede, mortgage, hypothecate or otherwise encumber or further encumber any of its movable or immovable assets to secure any liability of any nature;
- 16.3.3 sell or otherwise dispose of or attempt to sell or dispose of any of its assets except in the ordinary course of its operations;
- 16.3.4 incur any further borrowings, including but not limited to guarantees provided, other than permitted Indebtedness as agreed to by the Bank



such as instalment sale transactions and new assets financed via same. This restriction is to include off-balance sheet commitments; and

16.3.5 advance credit to third parties other than in the ordinary course of its operations.

16.4 **Annual Review**

16.4.1 The Loan Facility is subject to annual review by the Bank.

16.4.2 The Loan Facility will be reviewed on 30 September 2011 in light of the following information and thereafter the annual review shall fall on a date to be advised to the Borrower by the Bank in writing in each and every succeeding year.

16.4.2.1 audited annual financial statements;

16.4.2.2 approved annual budget;

16.4.2.3 annual revised integrated development plan; and

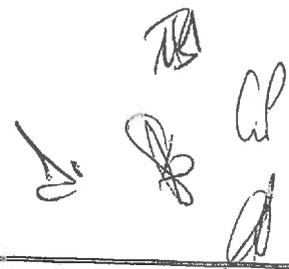
16.4.2.4 repayment schedules pertaining to its existing short-term and long-term debt.

16.4.3 The above information must be given to the Bank before the review date. In the event of a delay in receipt of this information, the Bank reduce or restructure the Loan Facility until such time as such required information has been received and the review undertaken.

16.5 **Legal Charges**

16.5.1 Each Party shall bear its own costs and expenses (including legal fees and expenses) of and incidental to the negotiation, preparation and completion of this Agreement.

16.5.2 All legal costs/fees (on the attorney and own client scale) and other charges and expenses in connection with the Loan Facility including but



not limited to all costs incurred by the Bank in the enforcement of any of its rights hereunder and, the preparation of any documentation relating hereto will be for the account of the Borrower and payable on demand.

**16.6 Free of Deduction**

All amounts paid to the Bank under this Loan Facility shall be made free of deduction or set-off. Should the Borrower be compelled by law to withhold or deduct any taxes or other charges from any amounts payable to the Bank, the amounts payable to the Bank shall be increased to the extent necessary to ensure that the Bank receives the amounts payable, free of such withholding or deduction.

**16.7 Allocation of Payments**

The Bank will be entitled to allocate any payments received under this Loan Facility to any Indebtedness of the Borrower to the Bank and the Borrower waives any rights it may have to name the debt in respect of which payment is made.

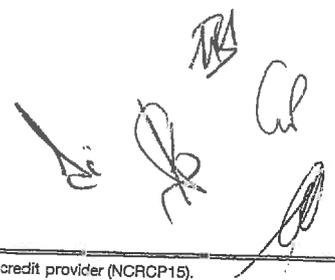
**16.8 Set-off and Realisation**

Should the Borrower be in default as set out in 13.1 above and the Bank exercise its rights in terms of the provisions of 13.2 above, the Bank may in addition to any rights the Bank has:

16.8.1 set-off any credit balances held in any other account which the Borrower has with the Bank that are due and payable, against the Indebtedness; and/or

16.8.2 realise any collateral held by the Bank and use the proceeds in payment of the Indebtedness,

under written notice to the Borrower.



**16.9 Renunciation of benefits**

The Borrower hereby renounces the benefits of the following legal defences to any claim brought by the Bank:

- 16.9.1 the Borrower has received no value for its obligations to the Bank;
- 16.9.2 no money has been paid to the Borrower;
- 16.9.3 there is no underlying cause for the Borrower's obligation to the Bank; and
- 16.9.4 the Bank made an error in calculating the Borrower's Indebtedness to the Bank. The Bank will revise its accounts in respect of the Borrower's Indebtedness if they are incorrect.

**16.10 Whole Agreement, Variation of Terms**

- 16.10.1 The agreement created upon signature of this Agreement by the Borrower and the Bank shall constitute the whole agreement between the Bank and the Borrower relating to the subject matter hereof.
- 16.10.2 No addition to, variation, or amendment, or consensual cancellation of any of the terms contained in this Agreement, shall be of any force or effect unless it is recorded in writing and is signed on behalf of the Bank by one of its authorised officials and accepted by the Borrower.

**16.11 Change in Control of an Entity**

The Borrower must advise the Bank in writing as soon as the Borrower becomes aware of any proposed or actual change in the direct or indirect control and/or management of the Borrower to whom the Facility has been granted.

**16.12 Indemnity**

The Borrower shall be bound by all instructions transmitted by it to the Bank by facsimile transceiver or by means of an e-mail message, and hereby waives any rights it may have or obtain against the Bank arising directly or indirectly from any losses or damages which the Borrower may suffer as a result of the Bank



acting on any purported faxed or e-mailed instruction. The Borrower further indemnifies the Bank in respect of any claims, demands or actions made against the Bank or losses or damages suffered by the Bank as a result of the Bank acting on the said faxed or e-mailed instruction.

**16.13 No Indulgence**

16.13.1 No indulgence shown or extension of time given by the Bank shall operate as an estoppel against the Bank or waiver of any of the Bank's rights unless recorded in writing and signed by the Bank.

16.13.2 The Bank shall not be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the conclusion of any agreement created by acceptance of this Loan Facility and/or whether it was negligent or not.

**16.14 Severability**

Each provision of this Agreement is severable, the one from the other and, if at any time any provision is or becomes or is found to be illegal, invalid, defective or unenforceable for any reason by any competent court, the remaining provisions shall be of full force and effect and shall continue to be of full force and effect.

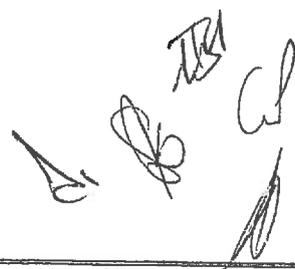
**16.15 Governing Law**

The terms of this Agreement shall be governed by and interpreted in accordance with the laws of the Republic of South Africa.

**16.16 Domicilium and Notices**

16.16.1 The parties choose as their *domicilium citandi et executandi* (address for purpose of legal proceedings) their respective addresses set out below, at which addresses all processes and notices arising out of or in connection with this Agreement, its breach or termination may validly be served upon or delivered to the Parties.

16.16.2 For the purpose of serving legal notices in terms of this Agreement the Parties' *domicilium citandi et executandi* is:



16.16.2.1 as regards the Bank:

**Attention: Abre Boer**

The Standard Bank of South Africa Limited

45 Lady Grey Street

Paarl

7646

Telephone Number: (021) 807 6508

Telefax Number: (021) 872 5291 or 086 626 6078

CC: Group Legal Division

**Attention: Isabel Lawrence**

9<sup>th</sup> Floor, Reception 5

Standard Bank Centre

5 Simmonds Street

Johannesburg, 2001

Telephone Number: (011) 636-2650

Telefax Number: (011) 636-7237

16.16.2.2 as regards the Borrower:

**Attention: The Municipal Manager and Executive Director  
Finance**

Dr Sidima Kabanyane / Cavin Mervin Petersen



Drakenstein Municipality

Civic Centre

Berg River Boulevard

Paarl

7622

Telephone Number: 021 807 4775

Telefax Number: 021 872 3757

or at such other physical address, not being a post office box or *poste restante*, of which the Party concerned may notify the other Party in writing.

16.16.3 Any other written notices (not being legal notices) in connection with this Agreement shall be addressed:

16.16.3.1 as regards the Bank:

**Attention: Abre Boer**

The Standard Bank of South Africa Limited

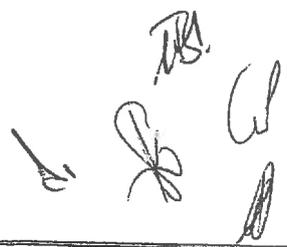
45 Lady Grey Street

Paarl

7646

Telephone Number: (021) 807 6508

Telefax Number: (021) 872 5291 or 086 626 6078



16.16.3.2 as regards the Borrower:

**Attention: The Municipal Manager and Executive Director  
Finance**

Dr Sidima Kabanyane/Cavin Mervin Petersen

Drakenstein Municipality

Bergriver Boulevard

PO Box 12

Paarl

7646

Telephone Number: 021 807 4775

Telefax Number: 021 872 3757

or at such other address of which the Party concerned may notify the other Party in writing.

16.16.4 Any notice given in terms of this Agreement shall be in writing and shall:

16.16.4.1 If delivered by hand be deemed to have been duly received by the addressee on the date of delivery.

16.16.4.2 if delivered by a recognised international courier service, be deemed to have been received by the addressee on the first business day following the date of such delivery by the courier service concerned;

16.16.4.3 If posted by prepaid registered post will be deemed to have been received by the addressee on the 8<sup>th</sup> (eighth) Business Day following the date of such posting.



16.16.4.4 If transmitted by facsimile be deemed to have been received by the addressee 1 (one) Business Day after despatch.

16.16.5 Notwithstanding anything to the contrary contained in this Agreement, a written notice or communication actually received by a party at its chosen address set out above, shall be an adequate written notice of communication to such party.

#### 16.17 Counterparts

This Agreement may be signed by the signatories hereto in counterparts and each signed copy shall together constitute one document.

#### 16.18 Cession

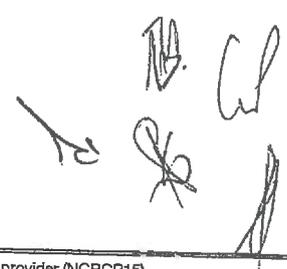
16.18.1 The Borrower shall not be entitled to cede or assign its rights and/or obligations in terms of this Agreement to any party without the prior written consent of the Bank.

16.18.2 The Bank shall, upon written notification to the Borrower, be entitled at any time to cede any or all of its rights and/or delegate any or all of its obligations under or in terms of this Agreement to any party.

16.18.3 To the extent that any cession, assignment or transfer by the Bank of its rights and/or obligations under or in terms of this Agreement to any party results (whether directly or indirectly) in a splitting of claims against the Borrower, the Borrower hereby irrevocably and unconditionally consents to such splitting of claims.

16.18.4 Upon a cession, assignment or transfer in accordance with the provisions of clause 16.18.3 above, the Bank shall be entitled to divulge and disclose such information and/or documents relating to the Borrower or any of its subsidiaries, which would otherwise be deemed to be confidential, to the cessionary, assignee or transferee as the Bank may deem necessary.

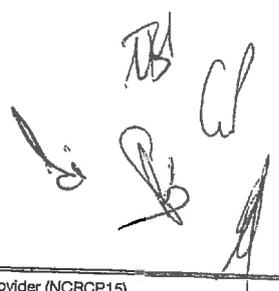
#### 16.19 Disclosure of Information



The Borrower authorises the Bank to furnish Standard Bank Group Limited or any other subsidiary or associate company of Standard Bank Group Limited, and any cessionary or potential cessionary of the Bank's rights in terms hereof, with any information/documentation they may request regarding the Facility or the Borrower.

**16.20 Availability of Funds**

The Bank shall not be liable for any failure to perform its obligations hereunder resulting directly or indirectly from the action or inaction of any government or local authority or any strike, boycott, blockade act of god, civil disturbance or for any other act which is beyond the control of the Bank.



SIGNED AT PAARL ON THE 23 DAY OF JUNE 2010



Full Names: ABILE BEER

For and on behalf of

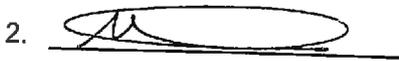
**The Standard Bank of South Africa  
Limited, acting through its Personal and  
Business Banking Division**

Who warrants his/her authority hereto

As witnesses:

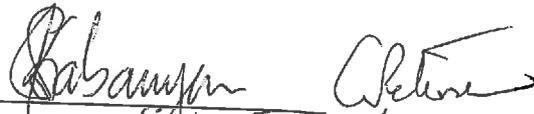
1. 

Full Names: ALEXIA VIOLA

2. 

Full Names: MARCO LEE BOSMAN

SIGNED AT PAARL ON THE 23 DAY OF JUNE 2010



Full Names: SIBINA TERRENCE KABANYANE  
CAVIN MERUIN PETERSEN

For and on behalf of

**Drakenstein Municipality**

Who warrants his/her authority hereto

As witnesses:

1. 

Full Names: ALEXIA VIOLA

2. 

Full Names: MARCO LEE BOSMAN

