

## MEDIUM TERM LOAN AGREEMENT

by and between

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

and

**GREATER TZANEEN MUNICIPALITY**



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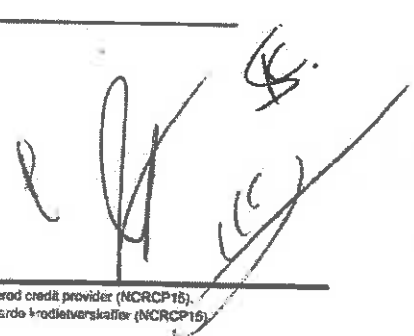
### MEDIUM TERM LOAN AGREEMENT

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#### APPENDIX

#### ANNEXURE A - DRAW DOWN NOTICE



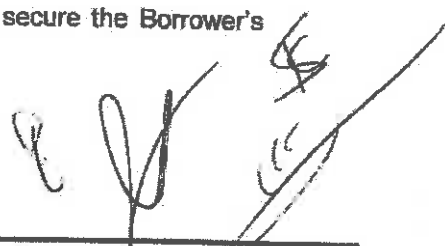
## 1 PARTIES

The parties to this agreement are:–

- 1.1 The Standard Bank of South Africa Limited, acting through its Personal and Business Banking Division; and
- 1.2 Greater Tzaneen 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 “**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 “**Borrower**” means Greater Tzaneen Municipality, a municipality incorporated according to the municipal laws of the Republic of South Africa;
  - 2.1.4 “**Borrower’s Loan Account**” means the Borrower’s loan account to be opened in the books of the Bank in respect of the Loan Facility;
  - 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 “**Collateral**” means any security provided to the Bank to secure the Borrower’s payment and other obligations in terms of this Agreement;



- 2.1.8 "Early Repayment" means any payment made by the Borrower in advance and in addition to the instalments set out in clause 8.1 of this Agreement, as part payment of the Loan Facility;
- 2.1.9 "FAIS" means the Financial Advisory and Intermediary Services Act 37 of 2002 including all schedules and regulations thereto;
- 2.1.10 "FICA" means the Financial Intelligence Centre Act 38 of 2001 including all schedules and regulations thereto;
- 2.1.11 "Group" means the Bank, its affiliates, associates, subsidiaries and divisions together with its holding company and the affiliates, associates, subsidiaries and divisions of its holding company;
- 2.1.12 "Indebtedness" means the total balance outstanding of the capital amount 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;
- 2.1.13 "Loan Facility" means the term loan facility referred to in this Agreement which is in the form of a medium term loan;
- 2.1.14 "Material Adverse Effect" means any event, circumstance or matter or combination of events, circumstances or matters which in the reasonable opinion of the Bank has or may have a material adverse effect on the:-
- 2.1.14.1 the assets, operation, property or financial condition of the Borrower;
- 2.1.14.2 the ability of the Borrower to perform its obligations in terms of the Loan Facility;
- 2.1.14.3 the validity or enforceability of one or more of the agreements under which the Loan Facility is drawn down or availed and the collateral provided to the Bank (if applicable) or the rights or remedies of the Bank thereunder; or
- 2.1.14.4 the whole or any part of the Collateral furnished for the whole or any part of the Indebtedness is judicially attached, or becomes subject to any lien, hypothec or other encumbrance without the Bank's prior written consent;
- 2.1.15 "MFMA" means the Local Government: Municipal Finance Management Act 56 of 2003 including all schedules and regulations thereto;

- 2.1.16 "Parties" means the Bank and the Borrower, and "Party" means any one of them as the context may indicate;
- 2.1.17 "Personal Information" means information relating to an identifiable, natural or juristic person, including but not limited to, information relating to identifying number, telephone number, e-mail address, postal address, physical address, financial information and criminal employment history as well as correspondence sent by the person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence;
- 2.1.18 "Process" means any operation or activity, whether automated or not, concerning Personal Information, including but not limited to collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation, use, dissemination by means of transmission, distribution or making available in any other form, merging, linking, as well as blocking, degradation, erasure or destruction of information and "Processing" shall have a similar meaning; and
- 2.1.19 "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 Signature Date 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 If the due date for performance of any obligation in terms of this Agreement is a day which is not a Business Day then (unless otherwise stipulated) the due date for performance of the relevant obligation shall be the immediately preceding Business Day.
- 2.8 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.
- 2.9 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 has agreed to grant the Borrower the Loan Facility, upon and subject to the terms and conditions hereinafter set out.

### 4 RANKING OF LOAN FACILITY

The Borrower represents, warrants and undertakes that the Loan Facility comprises senior debt and ranks at least equally with all other senior debt in terms of servicing, repayment and collateral rights and the claims of all of the Borrower's other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law.

### 5 LOAN AMOUNT

- 5.1 The aggregate amount to be advanced to the Borrower under the Loan Facility is R30,000,000 (thirty million rand) ("Loan Amount").
- 5.2 The amount of the 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 to 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 clause 10 below, provided that draw down must be made by the Borrower under the Loan Facility within 3 (three) months from the date of such fulfilment and/or waiver of the conditions precedent set out in clause 10 below. 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 1 (one) Business Day before the proposed date of draw down in the form of Annexure "A" hereto ("Draw Down Notice").
- 6.2 The Loan Facility shall be utilised to fund the Borrower's capital expenditure projects as contemplated in section 46(1)(a) of the MFMA namely, the acquisition of land for residential purposes, road works, the construction of a power station and electricity supply for the Borrower's 2013/14 financial year.

## 7 INTEREST

- 7.1 The Loan Facility shall bear interest at a fixed rate of 11.90 (eleven point nine zero 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 (three hundred and sixty five) day year, irrespective of whether it is a leap year.
- 7.3 The interest payable by the Borrower shall be:
- 7.3.1 charged bi-annually in arrears and repaid by the Borrower over the Term (as defined in clause 8.1 below) of the Loan Facility in 20 (twenty) bi-annual instalments. The amount of each bi-annual instalment shall be set out in the amortisation schedule referred to in clause 8.3 below; and
- 7.3.2 debited to the Borrower's Loan Account on a date convenient to the Bank.

## 8 REPAYMENT

- 8.1 The term of this Agreement shall be for a period of 10 (ten) years ("Term") from the date of fulfilment in form and substance to the satisfaction of the Bank and/or waiver

by the Bank of the conditions precedent in clause 10 below

8.2 The capital amount of the Loan Facility is to be repaid by the Borrower to the Bank in one bullet payment in the amount of R30,000,000 (thirty million rand) at the end of the Term of the Loan Facility, being the date on which the sinking fund investment policy expires or terminates.

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 and shall be posted to the Borrower by the Bank at the following address:-

Greater Tzaneen Municipality

Civic Centre

36 Agatha Street

Tzaneen

0850

Telephone Number: (015) 307 8000

Telefax Number: 015 307 8049; and

8.3.2 by means of direct electronic funds transfer by the Borrower to the Bank into the Borrower's Loan Account. The Bank reserves the right, in its sole discretion, to accept payment made in any other manner.

## 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 9.2 below

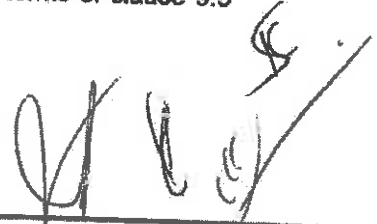
9.2 In the event of an early permanent repayment as contemplated in clause 9.1 above, the Borrower shall be liable for all breakage costs the Bank may incur



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 Indebtedness under the Loan Facility in multiples of R100,000 (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 clause 8.1 above.
- 9.5 If no rescheduling arising from an Early Reduction is agreed to in terms of clause 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 R100,000 (one hundred thousand rand); and
- 9.5.3 Only one such draw down may be made in a 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 clause 14.1 below occurs withdraw in whole or in part the Borrower's rights in terms of clause 9.5 above.

**10 CONDITIONS PRECEDENT**



10.1 The Borrower shall only be entitled to drawdown the Loan Facility if the following conditions precedent are fulfilled in form and substance to the satisfaction of the Bank and/or waived by the Bank, which conditions precedent shall be fulfilled and/or waived by no later than close of business on the 90 (ninetieth) day after the Signature Date:-

10.1.1 that the Borrower has provided the Bank with a copy of this Agreement, signed by the accounting officer of the Borrower and accepting the terms and conditions stipulated herein in accordance with section 46(2)(b) of the MFMA;

10.1.2 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 the agreement(s) relating thereto, in accordance with section 46(2)(a) of the MFMA;

10.1.3 that the Borrower has provided the Bank with a certified copy of the resolution of the Municipal Council, signed by the Mayor, which resolution:

10.1.3.1 authorises the provision of the collateral referred to in clause 11 below in terms of section 48(2)(a);

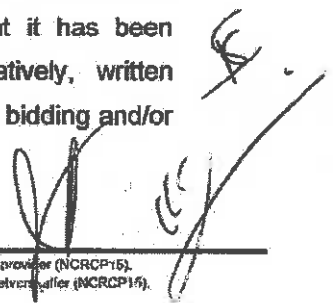
10.1.3.2 determines whether the asset or right with respect to which the Collateral is provided, is necessary for providing the minimum level of basic municipal services; and

10.1.3.3 if so, must indicate the manner in which the availability of the asset or right for the provision of that level of basic municipal services will be protected,

in accordance with section 48 of the MFMA;

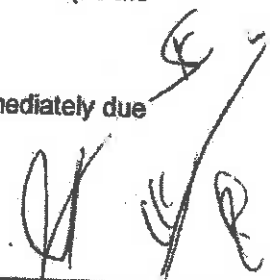
10.1.4 that the Borrower has provided the Bank with a certified copy of the information statement, signed by the Mayor, prepared in terms of section 46(3) of the MFMA in respect of the Loan Facility;

10.1.5 that the Borrower has provided the Bank with a letter of award, in favour of the Bank, in terms of which the Borrower informs the Bank that it has been successful in bidding to provide the Loan Facility, alternatively, written confirmation that the nature of this Agreement does not require a bidding and/or tender process as contemplated by the MFMA;



- 10.1.6 that the Borrower has provided the Bank with a written disclosure of whether the purpose of the Loan Facility is to fund the capital expenditure on property, plant or equipment as contemplated in section 46(1)(a) of the MFMA;
- 10.1.7 that the Borrower has provided the Bank with proof to the Bank's satisfaction that the provisions of MFMA, including all schedules and regulations thereto, as amended, have been complied with in relation to the Loan Facility;
- 10.1.8 that the Borrower has undergone the Bank's Know Your Customer ("KYC") process pursuant to the provisions of FICA;
- 10.1.9 if applicable, 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 adjustments budget;
- 10.1.10 that, in the Bank's opinion, there has been no material deterioration of any nature between the Signature Date and the date draw-down of the Loan Facility by the Borrower;
- 10.1.11 that the Bank has been provided with written confirmation, and it is satisfied that, all assets to be provided to the Bank as Collateral in terms of clause 11 below, are free from any encumbrances, hypothecs, or liens of any nature;
- 10.1.12 that all the Collateral to be furnished in terms of clause 11 below, has been duly and properly furnished (together with supporting resolutions, powers of attorney, authorisations and linking undertakings, where applicable), in form and substance acceptable to the Bank and where necessary, registered in the relevant Deeds Office;
- 10.1.13 if the audited financial statements for the Borrower's 2014 financial year are qualified, that the Borrower has provided the Bank with a copy of the auditor general's assessment of the Borrower's 2014 audited financial statements, addressing the basis of qualified audit report for the Borrower's 2013 financial year end;
- 10.1.14 that the Borrower has provided the Bank with the following, in form and substance acceptable to the Bank:-

- 10.1.14.1 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;
  - 10.1.14.2 approved annual budget;
  - 10.1.14.3 approved capital budget;
  - 10.1.14.4 integrated development plan or multi-year business plan referred to in section 87(5)(d) of the MFMA, if applicable;
  - 10.1.14.5 repayment schedules pertaining to its existing short-term and long-term debt; and
  - 10.1.14.6 audit report.
- 10.2 The conditions precedent set out in clause 10.1 above are inserted for the benefit of the Bank, and the Bank may in writing on or before the dates for fulfilment of the conditions precedent, extend the period for fulfilment or waive any of the conditions precedent in its sole discretion. Unless and until the conditions precedent are either waived or fulfilled, the Borrower shall not be entitled to drawdown on the Loan Facility.
- 10.3 Notwithstanding any provision in this Agreement 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 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 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 COLLATERAL

As Collateral for all of the Borrower's indebtedness to the Bank from time to time, howsoever arising, including but not limited to the Indebtedness, the Bank currently holds and further requires the following Collateral from the Borrower and the Collateral Providers:

### 11.1 In the name of the Borrower:

#### 11.1.1 Currently held:

None.

#### 11.1.2 Required:

A restricted pledge and cession in security of R30,000,000 (thirty million rand) of a sinking fund investment with an opening balance of R11,000,000 (eleven million rand) held in the Borrower's name..

### 11.2 Supporting Collateral:

#### 11.2.1 Currently held:

None.

#### 11.2.2 Required:

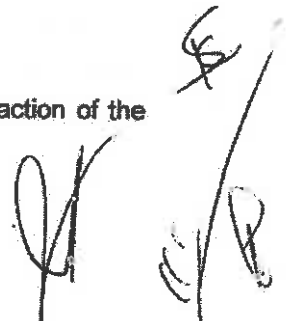
None.

## 12 ONGOING CONDITIONS

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

### 12.1 the Borrower shall:-

#### 12.1.1 comply with the MFMA, in relation to the Loan Facility to the satisfaction of the Bank;

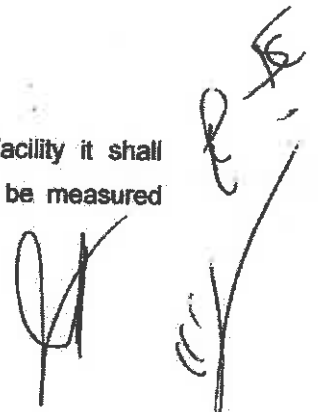


- 12.1.2 provide the Bank with information relating to its draft budgets, approved budgets, adjustment budgets as well as a copy of the monthly and quarterly reports required in terms of the MFMA within 5 (five) days of such information being due in terms of the MFMA for a particular period;
- 12.1.3 inform the Bank, as soon as possible after identification of any financial problems facing the Borrower, 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;
- 12.1.4 confirm that the terms of this Agreement, including the Loan Amount may be changed only by a resolution of the Municipal Council, subject to the provisions of clause 17.10.2 below; and
- 12.2 The Bank reserves the right to reassess and to renegotiate the Loan Facility in the event of there being:-
- 12.2.1 any change in the:-
- 12.2.1.1 management and/or legislated governance of the local authority;
- 12.2.1.2 overall structure of the local authority;
- 12.2.1.3 structure of revenue streams; or
- 12.2.1.4 any deterioration in the Borrower's financial position.
- 12.3 Any reference in this Agreement to a specific requirement under the MFMA shall not derogate from or exclude the application of any provisions not specifically referred to herein.

### 13 ONGOING COVENANTS

#### 13.1 Financial Covenants

The Borrower undertakes that during the currency of the Loan Facility it shall maintain the following financial covenants, which covenants are to be measured against audited financial statements or draft financial statements:-



- 13.1.1 **Debt to revenue ratio** to be maintained at a level that is less than or equal to 50% (fifty percent) of revenue.
- 13.1.2 **Billings to Collections rate** to be maintained at a level that is greater than or equal to 90% (ninety percent).
- 13.1.3 **Interest paid to total costs** to be maintained at a level that is less than or equal to 7.5 (seven point five) times.

### 13.2 **Financial Statements**

The Borrower undertakes that during the currency of the Loan Facility:-

- 13.2.1 It shall provide the Bank with signed copies of its audited financial statements annually within a period of 180 (one hundred and eighty) days from the date that they are due in terms of the MFMA and any other information as the Bank may reasonably require; and
- 13.2.2 the draft audited financial statements as submitted to the Bank shall not differ materially from the signed, audited financial statements of the Borrower for the particular year,

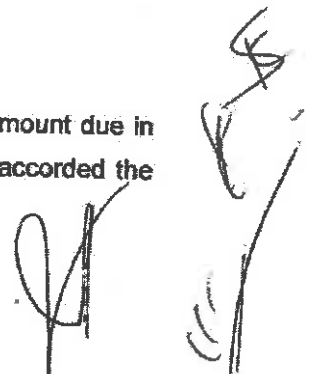
for purposes of this clause "materially" shall mean materially in the Bank's reasonable opinion.

### 13.3 **Notification of event of default**

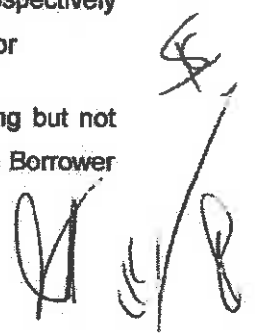
The Borrower hereby undertakes to the Bank that it will advise the Bank immediately upon becoming aware of the occurrence of an event of default or of any circumstances that could potentially result in an event of default as contemplated in clause 14 below.

## 14 **EVENTS OF DEFAULT**

- 14.1 **An event of default will occur:-**
  - 14.1.1 should the Borrower fail to make payment by the 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



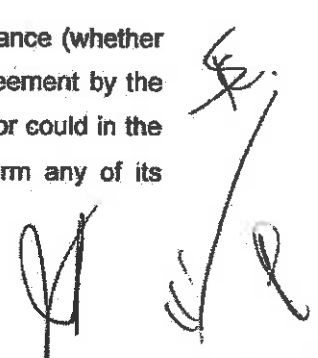
- 14.1.2 should the Borrower breach any term or condition of this Agreement or any other facility that the Bank may grant to the Borrower or any other facility between the Borrower and any member of the Group and the Borrower fails to remedy the breach within 7 (seven) days of receiving written notice to do so; or
- 14.1.3 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
- 14.1.4 if the Borrower meets the conditions for a mandatory provincial intervention (as contemplated in Section 139 and 140 of the MFMA); or
- 14.1.5 if an event occurs that adversely affects the validity or enforceability of this Agreement; or
- 14.1.6 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
- 14.1.7 should a writ of execution issued by any competent court attaching any assets belonging to the Borrower remain unsatisfied for more than 7 (seven) days after the date on which it is issued; or
- 14.1.8 if the Loan Facility is not budgeted for in the Borrower's budget in any particular year; or
- 14.1.9 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 Signature Date; or
- 14.1.10 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
- 14.1.11 if at any time after the Signature Date there is any change in (including but not limited to repeal of legislation) or addition to, the legislation to which the Borrower





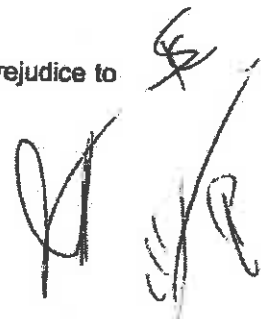
is subject and which in the reasonable opinion of the Bank could be expected to adversely affect the ability of the Borrower to comply with any of its obligations hereunder; or

- 14.1.12 if 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
- 14.1.13 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
- 14.1.14 the Borrower commits a breach of any of the terms and conditions of any Collateral and such breach is not remedied within a period of 14 (fourteen) days' of written notice having been given to the Borrower to do so;
- 14.1.15 the whole or any part of the Collateral furnished for the whole or any part of the Indebtedness is judicially attached, or becomes subject to any lien, hypothec or other encumbrance without the Bank's prior written consent;
- 14.1.16 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 financial statement in any respect, or inserts a note in the supporting documents to that financial statement relating to any material irregularity; or
- 14.1.17 there is a material deterioration in the Borrower's financial position;
- "material deterioration" shall mean a material deterioration in the Bank's reasonable opinion; or
- 14.1.18 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

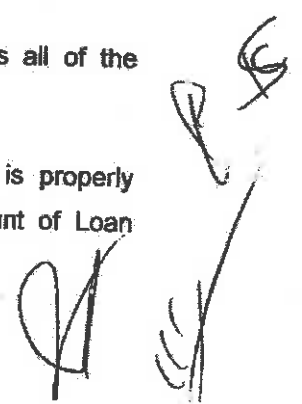
- 14.1.19 at any time, the amount outstanding under the Loan Facility exceeds the Loan Amount as stated in clause 5 above; or
- 14.1.20 the Borrower, is unable to pay its debts, suspends or threatens to suspend payment of all or a material part of (or of a particular type of) its indebtedness to any 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
- 14.1.21 the existence of a Material Adverse Effect on the operations, performance, assets or prospects and financial conditions of the Borrower; or
- 14.1.22 the existence of 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
- 14.1.23 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
- 14.1.24 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:-
- 14.1.24.1 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
- 14.1.24.2 the Borrower is involved in any illegal or terrorist activities.
- 14.2 If an event of default occurs then, in such event, the Bank may, without prejudice to any other rights hereunder or at law, by written notice to the Borrower:-



- 14.2.1 decline any request by the Borrower to draw down any further monies under the Loan Facility or terminate the Loan Facility forthwith; and/or
- 14.2.2 require on demand payment of all the 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/or
- 14.2.3 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.
- 14.3 The Bank's rights under this clause 14 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.

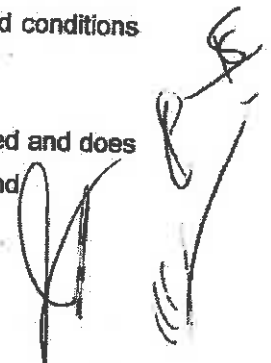
## **15 REPRESENTATIONS, WARRANTIES AND INDEMNITIES**

- 15.1 The Borrower represents and warrants to the Bank that as at the Signature Date and as at the date of each draw down under the Loan Facility:-
- 15.1.1 it is authorised to enter into this Agreement;
- 15.1.2 the Loan Facility constitutes and will continue to constitute legal, valid and binding obligations of the Borrower;
- 15.1.3 it has complied with all the provisions of the MFMA including all regulations thereto 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;
- 15.1.4 its annual budget as well as its approved annual budget contains all of the information referred to in section 17 of the MFMA;
- 15.1.5 the Loan Facility has been provided for in an approved budget, is properly approved by the Municipal Council 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;

- 15.1.6 that the persons who negotiated the Agreement on behalf of 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;
- 15.1.7 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;
- 15.1.8 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;
- 15.1.9 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;
- 15.1.10 it is in full compliance with all applicable laws, regulations and practices relating to the protection of the environment applicable to it in 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;
- 15.1.11 the Loan Facility is not a form of debt renewal or refinancing and the Borrower will ensure that the Loan Facility is not used for this purpose;
- 15.1.12 the terms and conditions applicable to any loans provided by any other long term funders, are not and shall not be more favourable than the terms and conditions applicable to the Loan Facility;
- 15.1.13 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; and



15.1.14 it is not aware of any circumstances which may prevent full compliance with its Environmental Responsibility in future.

**15.2 Indemnities and Waiver:**

15.2.1 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.

15.2.2 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 CERTIFICATE OF INDEBTEDNESS**

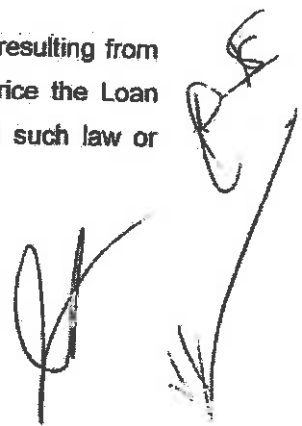
A certificate signed by any manager or divisional director of the Bank (whose authority, qualification or appointment need not be proved) setting out the amount of any indebtedness of the Borrower to the Bank in terms hereof, the rates of interest and any other fact, shall, upon its mere presentation,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

**17 GENERAL TERMS**

**17.1 Repricing**

In the event of a change in any law or regulation, including changes resulting from the Basel II or Basel III Accord, the Bank reserves the right to re-price the Loan Facility to place the Bank in the position it would have been in had such law or regulation not changed.

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

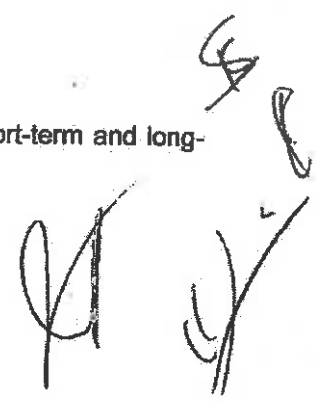


The Borrower may not without the Bank's prior written consent, which will not be unreasonably withheld:-

- 17.2.1 incur further borrowings after the 12<sup>th</sup> (twelfth) month following the Signature Date. For the avoidance of doubt, the Borrower may incur further borrowings without the Bank's prior written consent within 12 (twelve) months of the Signature Date; or
- 17.2.2 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;
- 17.2.3 pledge, cede, mortgage, hypothecate or otherwise encumber or further encumber any of its movable or immovable assets to secure any liability of any nature;
- 17.2.4 sell or otherwise dispose of or attempt to sell or dispose of any of its assets except in the ordinary course of its operations;
- 17.2.5 advance credit to third parties other than in the ordinary course of its operations; or
- 17.2.6 utilise its savings with regards to unrelated expenditure in a budget to defray any excess expenditure that may be required to satisfy a claim under a loan agreement.

### 17.3 Annual Review

- 17.3.1 The Loan Facility is subject to annual review by the Bank on or before 20 March 2016 in light of the following information:-
  - 17.3.1.1 audited annual financial statements;
  - 17.3.1.2 approved annual budget;
  - 17.3.1.3 annual revised integrated development plan; and
  - 17.3.1.4 repayment schedules pertaining to the Borrower's existing short-term and long-term debt.



17.3.2 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 may reduce or restructure the Loan Facility until such time as such required information has been received and the review undertaken.

#### 17.4 Legal Charges

17.4.1 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.

17.4.2 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.

#### 17.5 Free of Deduction

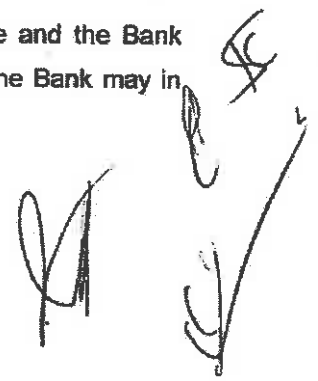
All amounts paid to the Bank under this Loan Facility shall be made free of deduction or set-off. Should the Borrower be compelled by law to withhold or deduct any taxes or other charges from any amounts payable to the Bank, the amounts payable to the Bank shall be increased to the extent necessary to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

#### 17.6 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.

#### 17.7 Set-off and Realisation

Should the Borrower be in default as set out in clause 14.1 above and the Bank exercise its rights in terms of the provisions of clause 14.2 above, the Bank may in addition to any rights the Bank has:-



17.7.1 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

17.7.2 realise any Collateral held by the Bank and use the proceeds in payment of the Indebtedness,

under written notice to the Borrower.

**17.8 Collateral**

If the value of any Collateral held by the Bank to secure the Indebtedness is no longer adequate, or if in the opinion of the Bank the Borrower's account conduct increases the Bank's risk regarding the Indebtedness or any other amount owing to the Bank by the Borrower in terms of any other agreement, the Bank shall have the right to:

17.8.1 request the Borrower to provide the Bank with additional Collateral to secure repayment of the Indebtedness; and/or

17.8.2 reduce the Loan Amount; and/or

17.8.3 require repayment of all or some of the Loan Amount.

**17.9 Renunciation of benefits**

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

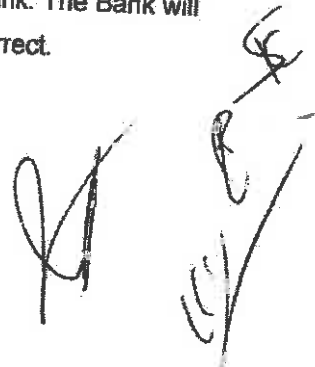
17.9.1 the Borrower has received no value for its obligations to the Bank;

17.9.2 no money has been paid to the Borrower;

17.9.3 there is no underlying cause for the Borrower's obligation to the Bank; and

17.9.4 the Bank made an error in calculating the Indebtedness to the Bank. The Bank will revise its accounts in respect of the Indebtedness if they are incorrect.

**17.10 Whole Agreement, Variation of Terms**





17.10.1 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.

17.10.2 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.

#### 17.11 No Indulgence

17.11.1 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.

17.11.2 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.

#### 17.12 Severability

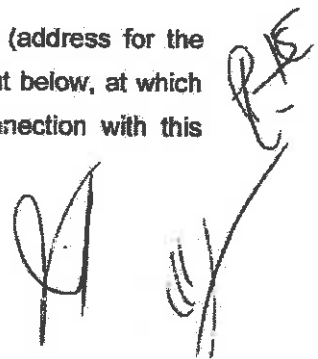
Each provision of this Agreement is severable, the one from the other and, if at any time any provision is or becomes or is found to be illegal, invalid, defective or unenforceable for any reason by any competent court, the remaining provisions shall be of full force and effect and shall continue to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

#### 17.13 Governing Law

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

#### 17.14 Domicilium and Notices

17.14.1 The Parties choose as their *domicilium citandi et executandi* (address for the 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

Handwritten signatures in black ink, including a large stylized signature and a smaller signature with a checkmark.

Agreement, its breach or termination may validly be served upon or delivered to the Parties:

17.14.1.1 as regards the Bank:

Attention: Group Governance / Legal

Standard Bank Centre,

9th Floor, Reception 1, 5 Simmonds Street, Johannesburg, 2001

With a copy to be sent to:

Attention: Polokwane Business Centre : Oostewald van Staden;

50 Schoeman Street, Standard Bank Square, 1st Floor, Polokwane, 0699

Telephone Number: (015) 290 8306; and

17.14.1.2 as regards the Borrower.

Attention: Acting Municipal Manager: Pierre van den Heever;

Civic Centre, 36 Agatha Street, Tzaneen, 0850

Telephone Number: (015) 307 8000 and Telefax Number: 015 307 8049,

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.

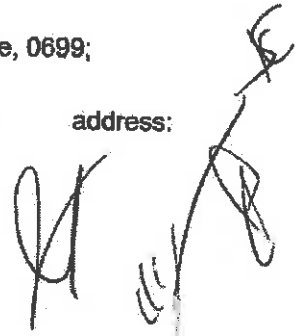
17.14.2 Any other written notices in connection with this Agreement shall be addressed as follows:

17.14.2.1 as regards the Bank:

Attention: Polokwane Business Centre : Oostewald van Staden

50 Schoeman Street, Standard Bank Square, 1st Floor, Polokwane, 0699;

Facsimile: 086 507 9162 and Email address:  
Oostewald.vanStaden@standardbank.co.za; and



17.14.2.2 as regards the Borrower:

Attention: Acting Municipal Manager: Pierre van der Heever

Facsimile: (015) 307 8049 and Email address:  
Pierre vandenheever@tzaneen.gov.za,

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

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

17.14.3.1 if delivered by hand be deemed to have been duly received by the addressee on the date of delivery;

17.14.3.2 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;

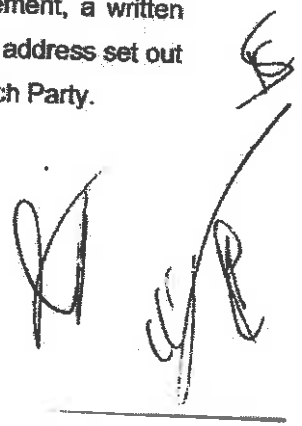
17.14.3.3 if posted by prepaid registered post will be deemed to have been received by the addressee on the 8<sup>th</sup> (eighth) Business Day following the date of such posting; and

17.14.3.4 if transmitted by facsimile be deemed to have been received by the addressee 1 (one) Business Day after despatch;

17.14.3.5 if sent electronically, shall be deemed to have been received on the first Business Day following the successful transmission thereof as evidenced by the electronic confirmation of receipt (unless the contrary is proven). It is recorded, for the avoidance of doubt, that a legal notice sent by a Party shall not be regarded as valid legal notice, if sent electronically in terms of this clause 17.14.

17.14.4 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.

17.15 Counterparts



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

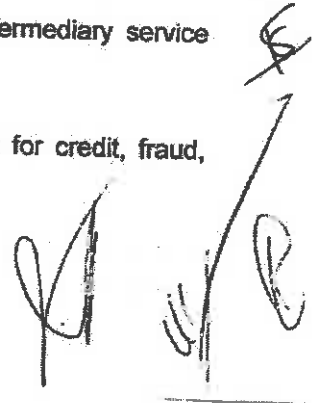
**17.16 Cession**

- 17.16.1 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.
- 17.16.2 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.
- 17.16.3 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.
- 17.16.4 Upon a cession, assignment or transfer in accordance with the provisions of clause 17.16.3 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.

**17.17 Data protection**

The Borrower hereby acknowledges and that agrees that:-

- 17.17.1 the Bank shall be entitled to collect and Process the Borrower's Personal Information to:-
- 17.17.1.1 open, administer and operate the Borrower's accounts;
- 17.17.1.2 provide any combination of services, analysis, advice or intermediary service linked to the Borrower's account;
- 17.17.1.3 monitor and analyse the conduct on the Borrower's account for credit, fraud, compliance and other risk related purposes; and




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- 17.17.1.4 carry out statistical and other analysis to identify potential markets and trends, and to develop new products and services;
- 17.17.2 the Bank shall be entitled to:-
  - 17.17.2.1 Process and further Process the Borrower's Personal Information within the Group for the above purposes; and
  - 17.17.2.2 disclose the Borrower's Personal Information to any person who provides services to the Bank or acts as the Bank's agents or to whom the Bank has transferred or proposes to transfer any of the Bank's rights and duties in respect of the Borrower's accounts. Some of these persons may be located in countries outside of the Republic of South Africa. The Bank will request that such persons who provide services to the Bank agree to the Bank's privacy policies if they require access to any Personal Information to carry out their services;
- 17.17.3 the Bank shall at all times remain responsible for determining the purpose of and means for processing the Borrower's Personal Information;
- 17.17.4 the Bank is required by various laws, including FICA and FAIS, to collect some of the Borrower's Personal Information; and
- 17.17.5 without the Borrower's Personal Information, the Bank may be unable to offer or continue to offer services to the Borrower.

**17.18 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 Tzaneen ON THE 21 DAY OF August 2015

  
Full Names: Elizo Jordan

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: Charmaine du Toit  
ID Number: 711109 0089 085

2. 

Full Names: Karla Spaurer  
ID Number: 7812040049083

SIGNED AT Tzaneen ON THE 21<sup>st</sup> DAY OF August 2015



  
Full Names: Elizo Jordan

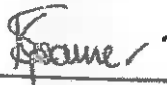
For and on behalf of  
**GREATER TZANEEN MUNICIPALITY**

Who warrants his/her authority hereto

As witnesses:

1. 

Full Names: Charmaine du Toit  
ID Number: 711109 0089 085

2. 

Full Names: Karla Spaurer  
ID Number: 7812040049083

NOTICE OF DRAW DOWN

TO BE TYPED ON THE BORROWER'S LETTERHEAD

Addressed to:-  
The Manager  
The Standard Bank of South Africa Limited  
Attention:

Date:  
Dear Sir

Notice of draw down

1. Greater Tzaneen Municipality ("Borrower") hereby requests draw down of R. 30 000 000 - (..... rand) ("the draw down amount") under the Loan Facility on the Business Day immediately following the Business Day upon which this draw down notice is received by The Standard Bank of South Africa Limited (Registration number: 1962/000738/06) ("Bank"), pursuant to the provisions of clause 6.1 of the loan agreement concluded between the Bank and the Borrower on .....
2. Please credit the draw down amount to the Borrower's account with account number \_\_\_\_\_ in the books of the \_\_\_\_\_ branch of the Bank.

Yours sincerely

  
\_\_\_\_\_  
For: GREATER TZANEEN MUNICIPALITY



Full name of signatory: PIETROUS HENZLER  
Capacity of signatory: ACTING TECHNICAL MANAGER  
Date of authorising resolution: \_\_\_\_\_