



(TERM LOAN: R19 900 000,00)

LOAN AGREEMENT

entered into between

NEDBANK LIMITED

(Registration Number 1951/000009/06)

and

GEORGE MUNICIPALITY

LOAN ID 1143

NEDBANK

www.nedbank.co.za

A Member of the  **OLDMUTUAL** Group

Nedbank Ltd Reg No 1951/000009/06. Authorised financial services and registered credit provider (NCRCP16).

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1. DEFINITIONS AND INTERPRETATION

1.1. In this Agreement unless clearly inconsistent with or otherwise indicated by the context the following expressions shall bear the meanings ascribed to them hereunder and cognate expressions shall bear corresponding meanings -

1.1.1. "**Accounting Officer**" will have the meaning given to it in the MFMA;

1.1.2. "**Advance Date**" means 28 June 2018;

1.1.3. "**Agreement**" means the agreement set out in this document;

1.1.4. "**Applicable Laws**" means and includes common or customary law and any constitution, decree, judgement, legislation, order, ordinance, statute, treaty or other legislative measure applicable to any of the Parties and includes any present or future directive, regulation, guideline, practice, concession, instruction, request or requirement issued by any national, regional or local government or any governmental, administrative, fiscal, judicial or government owned body, department, agency, public or regulatory authority, corporation or commission, court or tribunal or any person having jurisdiction within the Republic of South Africa, whether or not government owned or controlled and howsoever constituted;

1.1.5. "**Amortising Schedule**" means the amortisation schedule contained in schedule 1, indicating the repayment amounts, consisting of Capital and interest, payable in bi-annual instalments in arrears on the respective Interest and Capital Payment Dates, in terms of this Agreement, to be provided on the Interest Rate Quotation Date;

1.1.6. "**Basic Municipal Service**" will have the meaning given to it in the MFMA;

1.1.7. "**Banks Act**" means the Banks Act 94 of 1990;

1.1.8. "**Base Rate**" means Nedbank's internal funding rate from time to time;

Base Rate	7.78% (Seven Point Seven Eight Percent)
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The said Base Rate is indicative and will be fixed on Advance Date.

1.1.9. "**Basis Point**" means 1/100 (One Hundredth) of 1 (One) percentage point;

1.1.10. "**Borrower**" means George Municipality;

1.1.11. "**Borrower Account**" means the Borrower's bank account as advised to Nedbank in writing by the Borrower;

1.1.12. "**Breakage Costs**" means the aggregate of all loss, premiums, penalties, fees, costs, charges, expenses and disbursements incurred or suffered by Nedbank or successful claims made against Nedbank in closing out, settling or unwinding any hedging arrangements, including, *inter alia*, any loan, swap, forward interest rate agreement, foreign exchange contract or other financial instrument relating directly or indirectly to the financing in terms of the Agreement;

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- 1.1.13. **"Breakage Gains"** means the aggregate of all gains, premiums, penalties, fees, costs, charges, expenses and disbursements saved by Nedbank in closing out, settling or unwinding any hedging arrangements, including, *inter alia*, any loan, swap, forward interest rate agreement, foreign exchange contract or other financial instrument relating directly or indirectly to the financing of the Loan;
- 1.1.14. **"Business Day"** means any day other than a Saturday, Sunday or an official public holiday in the Republic of South Africa;
- 1.1.15. **"Capital"** means an amount of R19 900 000,00 (Nineteen Million Nine Hundred Thousand Rand);
- 1.1.16. **"Capital Budget"** shall have the meaning ascribed to it in the MFMA , as approved in terms of Section 5, 16, 17, 19 and 24;
- 1.1.17. **"Capital Outstanding"** means that portion of the Capital that is at any time outstanding, reduced in accordance with any repayment thereof made in terms of this Agreement;
- 1.1.18. **"Capital Projects"** means the Borrowers capital projects for the 2017 / 2018 financial year (which commences on 01 July 2017 to 30 June 2018, as contemplated in the Capital Budget);
- 1.1.19. **"Capital Project Assets"** means the assets that will be acquired by the Borrower as identified in the Capital Project;
- 1.1.20. **"Capital Repayments"** means the bi-annually repayments of the Capital Outstanding as per the Amortising Schedule;
- 1.1.21. **"Commitment Fees"** means a fee (Sixty basis points until further notice) to be calculated on the average quarterly unutilised portion of the loan and payable quarterly in arrears;
- 1.1.22. **"Companies Act"** means the Companies Act, 71 of 2008;
- 1.1.23. **"Conditions Precedent"** means the conditions precedent described in clause 2;
- 1.1.24. **"Confidential Information"** shall have the meaning set out in clause 26;
- 1.1.25. **"Default Rate"** means the applicable Interest Rate plus 300 (Three Hundred) Basis Points per annum expressed as a NACS rate;
- 1.1.26. **"Dispose"** means to sell, transfer, cede, assign, lease, alienate, donate, renounce, surrender, waive, relinquish, exchange or otherwise dispose of;
- 1.1.27. **"Encumbrance"** means any mortgage, pledge, hypothecation, lien, lease, option restriction, right of first refusal, right of pre-emption, right of retention, right of set-off, right of consolidation or merger (excluding any right of set-off, consolidation or merger arising in favour of Nedbank by operation of law) third party right or interest, assignment, title extension, trust arrangement, cession, security interest or any kind or any other encumbrance or any other type of preferential arrangement having the effect of creating a security interest or right of retention;
- 1.1.28. **"Event of Default"** means any of the events described in clause 16;
- 1.1.29. **"Final Repayment Date"** means 2 January 2023 as stipulated in the Amortising Schedule;
- 1.1.30. **"GRAP"** means Generally Recognised Accounting Practice;



- 1.1.31. **"Indebtedness"** shall be construed as widely as possible so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent and shall include, without limitation –
- 1.1.31.1. monies borrowed or raised;
- 1.1.31.2. the outstanding principal amount of any bond, note, loan stock, debenture or similar instrument;
- 1.1.31.3. any amount raised pursuant to any issue of shares which are expressed to be redeemable; and
- 1.1.31.4. deferred payments for assets or services acquired;
- 1.1.32. **"Integrated Development Plan"** will have the meaning given to it in Chapter 5 of the Local Government: Municipal Systems Act No 32 of 2000;
- 1.1.33. **"Interest Rate"** means an all-in percentage fixed rate equal to 9.65% (Nine Point Six Five Percent);
- 1.1.34. **"Interest Rate Quotation Date"** means the day on which Nedbank advises the Borrower of the Interest Rate applicable to the Loan;
- 1.1.35. **"Interest Period"** means –
- 1.1.35.1. the period commencing on the Advance Date and ending on the first Repayment Date thereafter;
- 1.1.35.2. each period after the period described in clause 1.1.35.1 commencing on the previous Repayment Date and ending on the next Repayment Date, inclusive of the final Interest Period commencing on the last Repayment Date and ending on the Final Repayment Date;
- 1.1.36. **"JIBAR"** means, on any applicable date and in respect of the relevant period described in this Agreement –
- 1.1.36.1. the arithmetic mean (rounded, if necessary, to the nearest 3rd (Third) decimal place) of the mid-market rates for Rand deposits for the relevant period as they appear on the Reuters display page designated as "SAFEY" (or such other page as may replace such page on such service) at or about 11:00am Johannesburg time on such date; or
- 1.1.36.2. if no such service is available, "JIBAR" shall mean the arithmetic mean (rounded, if necessary, to the third decimal place and excluding (to the extent applicable) the 2 (Two) highest rates and the 2 (Two) lowest rates) of the mid-market deposit rates, as supplied to Nedbank and confirmed by Nedbank to the Borrower in reasonably sufficient detail, quoted by the JIBAR Reference Banks in the ordinary course of business in the Johannesburg interbank market at or about 11:00am (Johannesburg time) on such date for Rand deposits for the relevant period, provided that if any of the JIBAR Reference Banks shall be unable or otherwise fail to supply such rate by 11:00am (Johannesburg time) on the required date, JIBAR for the relevant period shall be determined, on the basis of the quotation(s) of the remaining JIBAR Reference Bank(s), on the same basis, to the extent possible, as set out above;
- 1.1.37. **"JIBAR Reference Banks"** means the principal Johannesburg offices of the banks that quote deposit rates to the South African Futures Exchange from time to time, it being recorded that as at the

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Signature Date the JIBAR Reference Banks are Standard Bank of South Africa Limited, First National Bank of Southern Africa Limited, Absa Bank Limited and Investec Bank Limited;

- 1.1.38. "Loan" means the term loan in an amount equal to the Capital which is made available by Nedbank to the Borrower in terms of this Agreement;
- 1.1.39. "Margin" means 1.87% (One Point Eight Seven Percent) per annum expressed as an NACS rate;
- 1.1.40. "Market Disruption Event" means an event or circumstance specified as such in clause 10.
- 1.1.41. "Market Disruption Premium" means the difference between the Nedbank Liquidity Premium on the Interest Rate Quotation Date and the Nedbank Liquidity Premium on the Advance Date;
- 1.1.42. "Material Adverse Change" means an event, circumstance or matter or combination of events, circumstances or matters, including but not limited to:
- 1.1.42.1. Serious Financial Problems
- The criteria for determining serious financial problems shall be those stipulated in section 138 of the MFMA, singularly or in combination occurs or the criteria for determining serious or persistent material breach of financial commitments occurs as contemplated in section 140 of the MFMA.
- 1.1.42.2. Provincial Intervention
- It is necessary for a provincial intervention in terms of section 136 of the MFMA, whether it is a discretionary intervention (section 137) or a mandatory provincial intervention (section 139).
- 1.1.42.3. Financial Recovery Plan
- A financial recovery plan, as contemplated in Chapter 13 of the MFMA, is in relation to the Borrower.
- 1.1.42.4. Stay of Legal Proceedings
- If the Borrower applies for an order to stay legal proceedings and/or for extraordinary relief, as contemplated in Chapter 13 of the MFMA.
- which has or, in the reasonable opinion of Nedbank, will have or would be likely to have a material adverse effect on –
- 1.1.42.5. the business, operations, property, assets, condition (financial or otherwise) or prospects of the Borrower; or
- 1.1.42.6. the ability of the Borrower to conduct its business in the normal, regular and ordinary course; or
- 1.1.42.7. the ability of the Borrower to perform its obligations under this Agreement; or
- 1.1.42.8. the legality, validity or enforceability of this Agreement;
- without derogating from the foregoing, "Material Adverse Change" will also include any significant change in the MFMA and/or other Applicable Laws;
- 1.1.43. "Mayor" will have the meaning given to it in the MFMA;



- 1.1.44. **"MFMA"** means the Local Government Municipal Finance Management Act, No. 56 of 2003;
- 1.1.45. **"NACS"** means nominal, annual, compounded bi-annually in arrears on the first day of the month immediately following the calendar period in which the interest has accrued;
- 1.1.46. **"Nedbank"** means Nedbank Limited, (registration number 1951/000009/06), a company registered and incorporated in accordance with the Companies Act and registered as and conducting the business of a bank in terms of the Banks Act;
- 1.1.47. **"Nedbank Liquidity Premium"** means, at 9h00 on a specified date, the difference between the 1 (One) year NCD rate as quoted on the Reuters NEDMM screen, as a nacq (nominal annual compounded quarterly) rate and the 1 (One) year swap rate as quoted on the Reuters NDIRS screen, as a nacq (nominal annual compounded quarterly).
- 1.1.48. **"Outstanding Capital"** means the balance of the Capital from time to time as it is reduced in terms of clauses 11 and 12;
- 1.1.49. **"Outstandings"** means at any given time, and from time to time, the aggregate of –
- 1.1.49.1. the Outstanding Capital;
- 1.1.49.2. any other amounts due from time to time under this Agreement which have not been paid; and
- 1.1.49.3. any unpaid interest accrued or capitalised on the amounts described in clauses 1.1.49.1 and 1.1.48.2 in terms of this Agreement;
- 1.1.50. **"Parties"** means Nedbank and the Borrower;
- 1.1.51. **"Permitted Encumbrances"** means any encumbrance which is existing prior to the advance date of the Agreement and which has been disclosed to Nedbank prior to the advance date or provided for in the audited annual financial statements of the Borrower;
- 1.1.52. **"Permitted Indebtedness"** means –
- 1.1.52.1. indebtedness accruing from capital and operational expenditure, incurred in implementation of approved budgets of the Borrower; and
- 1.1.52.2. indebtedness which complies in all respects with the provisions of the MFMA and other Applicable Laws;
- 1.1.53. **"Potential Event of Default"** means any event which may become (with the passage of time, the giving of notice, the making of a determination hereunder or any combination thereof) an Event of Default;
- 1.1.54. **"Prepayment Date"** shall have the meaning set out in clause 12.1.2;
- 1.1.55. **"Repayment Dates"** means, with the exception of the Final Repayment Date, the date on which the Borrower has the obligation to make payment of Capital plus interest as specified in the Amortising Schedule, provided that where such dates fall on a date which is not a Business Day, the relevant Repayment Date shall be the immediately preceding Business Day;
- 1.1.56. **"Signature Date"** means the date on which this Agreement is signed by the Party signing last in time;



- 1.1.57. "Taxes" means any tax, charge, impost, duty, deduction, withholding, fee or levy of any kind whatsoever (or any amount payable on account of or as security for any of the foregoing) levied, imposed, collected, withheld or assessed, or which may after the Signature Date become levied, imposed, collected, withheld or assessed by any central, provincial or local government body or other organ of state on any other person, whether under the Income Tax Act, 58 1962 or any other present or future legislation, including any interest, additions, fines, surcharges or other penalties imposed by the applicable body in respect thereof, and "Tax" shall have a corresponding meaning;
- 1.1.58. "Term" means the period of 5 (Five) years commencing on the Advance Date and terminating on the Final Repayment Date or such earlier date on which this Agreement is otherwise terminated in accordance with its terms;
- 1.1.59. "Unpaid Sum" means any sum due and payable but unpaid by the Borrower under this Agreement;
- 1.1.60. "VAT" means value added tax levied in terms of the Value Added Tax Act 89 of 1991; and
- 1.1.61. "Warranties" shall have the meaning set out in clause 14.
- 1.2. any reference to a statute or statutory provision includes a reference to that statute or statutory provision as amended, extended or re-enacted and to any regulation, order, instrument or subordinate legislation under such statute or statutory provision;
- 1.3. any reference to any other agreement, document or instrument shall be to that agreement, document or instrument as amended, varied, novated or replaced from time to time;
- 1.4. words and expressions defined in any clause shall, notwithstanding that they are not defined in clause 1.1, bear the meanings assigned to such words and expressions in such clause wherever they are used in this Agreement;
- 1.4.1. when any number of days is prescribed, such number shall be calculated inclusively of the first and exclusively of the last day;
- 1.4.2. any reference to days (other than a reference to Business Days), months or years shall be a reference to calendar days, months or years, as the case may be;
- 1.4.3. where any act is to be performed on a day which is not a Business Day, such act shall be performed on the next Business Day save for Repayment Dates;
- 1.5. words importing the singular shall include the plural and vice versa;
- 1.6. words referring to one gender shall include a reference to the other genders;
- 1.7. any reference to a person shall include a reference to an individual, a firm, a body corporate, a trust, an unincorporated association, government or a partnership and that person's legal representatives and successors;
- 1.8. if any provision in clause 1.1 is a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to that provision as if it were a substantive provision in the body of this Agreement;
- 1.9. clause headings have been inserted for convenience only and shall not be taken into account in its interpretation;



- 1.10. the rule of construction that a contract or any term thereof shall be interpreted against the party responsible for the drafting of or preparation of that contract or term, shall not apply; and
- 1.11. the use of the word "including" followed by a specific example shall not be construed as limiting the meaning of the general wording preceding it.

2. CONDITIONS PRECEDENT

The operation of the finance documents and the granting of the Loan shall be subject to the fulfilment of the following Conditions Precedent as well as such other Conditions Precedent that are customary for transactions of this nature, or as the parties may agree to the circumstance (all of which Conditions Precedent shall be fully described in the Finance Documents):

- 2.1. Written confirmation and proof of compliance by the Borrower with the requirements of the Municipal Finance Management Act (No 56 of 2003) and all other legislation in so far as it relates to the Loan;
- 2.2. Conclusion of a loan agreement to the satisfaction of Nedbank and the Borrower;
- 2.3. A certified copy of a resolution of the Municipal Council signed by the Mayor approving and confirming the maximum level of funding and tenor thereof and the execution and implementation of the transaction contemplated in the loan agreement and authorising the Accounting Officer, on its behalf, to sign the loan agreement and all documents and notices to be signed by it under or in connection with the loan agreement;
- 2.4. A specimen of the signature of each person authorised by the resolution referred to in paragraph 2.3 above.

The final implementation of the funding transaction is subject to legal documentation being signed by all parties.

3. SPECIFIC CONDITIONS

The Loan shall be governed by a loan agreement negotiated to the mutual satisfaction of the Borrower and Nedbank and shall incorporate customary provisions, including, *inter alia*:

- 3.1. No Default or Event of Default has occurred and is continuing;
- 3.2. All consents, licenses, permits, registrations or declarations required to be obtained or made in order to render the loan agreement legal, valid, binding and enforceable have been made or obtained;
- 3.3. The aggregate of the loan amount will be disbursed in full, at the inception of the loan agreement. The Borrower has the option to invest any unutilised portion of the Loan with Nedbank, and utilise the funds if and when required. No terms pertaining to the separate drawdowns of the loan amount will be allowed;
- 3.4. Other conditions as Nedbank may deem necessary resulting from the ongoing negotiations regarding the transaction;
- 3.5. Cross Default clause;
- 3.6. Compliance by the Borrower with applicable public sector legislation, including the MFMA and any other regulation as required;
- 3.7. Prepayment clause: Any prepayment shall be made together with accrued interest on the amount prepaid, a prepayment penalty in addition to any Breakage Costs. The Borrower shall be entitled to prepay the whole

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or any part of the outstanding through a refinancing from other loans subject to the payment of a prepayment penalty of:

- 3.7.1. 2% (Two Percent) of the amount prepaid if the repayment is made within 12 (Twelve) months from the Advance Date; and
- 3.7.2. 1% (One Percent) of the amount prepaid if the repayment is made on a date which falls within the period which is more than 12 (Twelve) months from the Advance Date but less than the full tenure of the Loan;
- 3.8. Representations and warranties standard for financing of this type which shall include (without limitation):
 - 3.8.1. status, power and authority warranties;
 - 3.8.2. warranty in respect of the purpose of Loan;
 - 3.8.3. compliance with applicable public sector legislation;
 - 3.8.4. warranty to the effect that no Encumbrance exists in respect of the Capital Project Assets required for Permitted Encumbrances;
 - 3.8.5. warranty to the effect that all indebtedness of the Borrower shall constitute Permitted Indebtedness;
 - 3.8.6. warranty to the effect that no steps have been taken to bring about any provincial intervention in relation to the Borrower as contemplated in Chapter 13 of the MFMA;
 - 3.8.7. warranty to the effect that no financial recovery plan as contemplated in Chapter 13 of the MFMA is being prepared by the Borrower;
 - 3.8.8. the Borrower warrants that the claims of Nedbank under the finance documents shall rank *pari passu* with the claims of its other unsecured and unsubordinated creditors, save those whose claims are preferred solely by insolvency, liquidation or other similar laws of general application;
- 3.9. Undertakings standard for financing of this type, to include (without limitation) an undertaking in respect of its financial statements, compliance with the applicable public sector legislation, Integrated Development Plan, notification of Defaults, authorisations, disposal and acquisition of assets;
- 3.10. Events of Default standard for financing of this type which will include (without limitation) failure to pay any amount due on due date, the breach of any material obligation under the Loan, cessation of delivery of minimum level of Basic Municipal Services and Material Adverse Change;
- 3.11. Legal costs and expenses to be for the own account of each of the Borrower and Nedbank;
- 3.12. The Borrower undertakes to incur long-term debt in accordance with the provisions of the MFMA. The Borrower further undertakes to ensure that such long term debt is raised in accordance with the resolutions of the Municipal Council, signed by the Mayor, and that such resolutions will be furnished to Nedbank prior to drawdown;
- 3.13. Events of Default standard for financing of this type, including but not limited to, any significant change in the MFMA and other legislation, which would directly impact on the repayment of the Loan and the breach of any obligation under the facilities;

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- 3.14. While the funds drawn down by the Borrower in terms of this Agreement are to be used solely for the purpose of funding the Borrower's capital expenditure programme, Nedbank's recourse in terms of this Loan is to be to the Borrower and is in no way limited by the success or progress of the Integrated Development Plan;
- 3.15. Should the Auditor-General raise a going concern issue with regards to this Municipality, the repayment of the outstanding capital and accrued interest will be accelerated.

4. PURPOSE

The Loan shall be used by the Borrower to finance its Capital Projects for the 2017 / 2018 financial year. Without prejudice to the foregoing obligations of the Borrower, Nedbank shall be entitled but shall not be obliged to ascertain whether or not the Borrower has applied the Loan for the aforesaid purposes.

5. ADVANCE

- 5.1. Nedbank, relying upon each of the representations, undertakings and Warranties included in this Agreement, hereby agrees to lend and advance to the Borrower, which agrees to borrow, an amount equal to the Capital.
- 5.2. On the Advance Date, Nedbank shall advance the Capital to the Borrower by paying to the credit of the Borrower Account an amount equal to R19 900 000,00 (Nineteen Million Nine Hundred Thousand Rand).
- 5.3. The payment by Nedbank of this amount as aforesaid shall discharge the obligation of Nedbank to make the advance described in clause 5.1.
- 5.4. Against payment by Nedbank of the Capital in terms of clause 5.2 Nedbank shall be deemed to have advanced the entire Loan to the Borrower.
- 5.5. The aggregate of the Capital will be disbursed in full on the Advance Date. No terms pertaining to the separate drawdowns of the Capital will be allowed.

6. INTEREST

- 6.1. Interest shall be calculated on the Outstandings at the Interest Rate during each Interest Period in accordance with clause 6.2.
- 6.2. Interest shall accrue daily, on the basis of actual days elapsed and a 365 (Three Hundred and Sixty Five) day year, irrespective of whether such year is a leap year or not.
- 6.3. Interest shall be due and payable by the Borrower to Nedbank on each Repayment Date and the Final Repayment Date.
- 6.4. Interest shall be calculated and levied on a NACS basis.

7. FEES

Nedbank shall be entitled to charge a commitment fee at the rate advised to the Borrower from time to time. The commitment fee shall be calculated on the average quarterly unutilised portion of the term loan and payable quarterly in arrears. Such fee shall be immediately payable by the Borrower on receipt by the Borrower from Nedbank of an invoice in respect thereof. The commitment fee which shall prevail from the signature date shall be 60 (Sixty) basis points until further notice by Nedbank in respect thereof.

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8. DEFAULT INTEREST RATE

If the Borrower does not remedy any breach of the terms and conditions of the finance documents within a period of 20 (Twenty) business days after having been notified in writing by Nedbank, an additional 300 (Three Hundred) basis points NACS will be charged to the All-in Margin of the Loan, until such breach has been remedied.

9. INCREASED COSTS

The Borrower will reimburse Nedbank in respect of any and all material increased costs, including reserve requirements, statutory and costs attributable to the implementation or application of or compliance with "International Convergence of Capital Measure and Capital Standards, a Revised Framework" published by the Basel Committee on Banking Supervision in June 2004 in the form existing hereof ("Basel II") or any other law or regulation which implements Basel II (whether such implementation, application or compliance is by Government, Regulator or Nedbank but excluding any increases as would ordinarily be excluded) incurred by it in making, maintaining or funding its obligations under the Loan arising by reason of a change in law or regulations, or the interpretation thereof, or compliance with any central bank or similar request occurring after the Effective Date, provided that Nedbank shall do its best to avoid any such increased costs.

10. MARKET DISRUPTION

10.1. A Market Disruption Event will occur if:

10.1.1. At or about noon on the quotation day for the relevant Interest Period the screen rate is not available and none or only one of the reference banks supplies a rate to determine JIBAR for the relevant Interest Period; or

10.1.2. Before close of business on the quotation day for the relevant Interest Period, Nedbank notifies the Borrower that the cost to it of obtaining matching deposits in the market would be in excess of JIBAR.

10.2. If a Market Disruption Event occurs in relation to a loan for any Interest Period, then the rate of interest on that loan for that Interest Period shall be the percentage rate per annum which is the sum of:

10.2.1. The rate notified to the Borrower by Nedbank as soon as practicable and in any event before interest is due to be paid in respect of that Interest Period, to be that which expresses as a percentage rate per annum the cost to Nedbank of funding its participating in that loan from whatever source it may reasonably select;

10.2.2. Mandatory costs (cost of funds plus liquid asset cost); and

10.2.3. The All-in Margin.

11. CAPITAL REPAYMENTS

11.1. The Outstandings in respect of the Loan shall be repaid by the Borrower to Nedbank, in the amounts and on the Repayment Dates set out in the Amortising Schedule. The Repayment Dates will be bi-annually.

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- 11.2. Once the whole or any part of the Capital has been repaid in accordance with this clause 11, Nedbank will not be obliged to re-advance any such repaid amount.
- 11.3. Notwithstanding the provisions of clause 11.1, the Borrower shall ensure that all Outstandings in respect of the Loan, have been repaid in full by no later than the Final Repayment Date.
- 11.4. Should any payment of the Outstanding Capital or Interest as set out in the Amortising Schedule not be made on a Repayment Date or Final Repayment Date, the Interest Rate shall be amended to the Default Rate, which shall be calculated and levied in the same manner as the Interest Rate until date of payment of any amounts due which have not been paid ("the arrears"). After the arrears have been settled, the Default Rate will be amended to the Interest Rate.

12. PREPAYMENT OR EARLY SETTLEMENT

12.1. Prepayment

- 12.1.1. Subject to the clauses hereunder, the Borrower shall be entitled to prepay any part of the Outstandings not then due for payment.
- 12.1.2. Should the Borrower wish to prepay any part of the Outstandings it shall, not less than 1 (One) month prior to the date on which it wishes to prepay any part of the Outstandings, furnish Nedbank with written notice to that effect and shall specify the date on which any part of the Outstandings shall be prepaid ("**Prepayment Date**") and the amount of its intended prepayment. Once such written notice of prepayment has been issued by the Borrower, it shall be irrevocable and the amount stipulated in such notice shall be due and payable on the Prepayment Date specified therein.
- 12.1.3. No amount shall be deemed to have been prepaid unless and until Nedbank has irrevocably received payment of all amounts due but not paid in terms of this Agreement.
- 12.1.4. No prepayment shall be made in terms hereof unless such amount is at least R1 000 000,00 (One Million Rand) or a multiple thereof.
- 12.1.5. The Borrower shall be entitled to prepay any part of the Outstandings subject to the payment of a prepayment penalty of-
- 12.1.5.1. 2% (Two Percent) of the amount prepaid if the prepayment is made within 12 (Twelve) months from the Advance Date; or
- 12.1.5.2. 1% (One Percent) of the amount prepaid if the prepayment is made on a date which falls within the period which is more than 12 (Twelve) months from the Advance Date but less than the full Term of the Loan.
- 12.1.6. In addition to the prepayment penalty contemplated in clause 12.1.5, the Borrower will be liable for such Breakage Costs as Nedbank may have incurred or will incur as a consequence of such prepayment, whilst Nedbank shall pass on any Breakage Gains to the Borrower. Within 10 (Ten) Business Days of receipt by Nedbank of any notice in terms of clause 12.1.2, Nedbank shall certify in writing to the Borrower the amount of any Breakage Costs, or Breakage Gains, as the case may be, arising in respect of the prepayment so notified.

12.2. Settlement



- 12.2.1. Subject to the clauses hereunder, the Borrower shall be entitled to settle the whole of the Outstandings not then due for payment.
- 12.2.2. Should the Borrower wish to settle the whole of the Outstandings it shall, not less than 1 (One) month prior to the date on which it wishes to settle the whole of the Outstandings, furnish Nedbank with written notice to that effect and shall specify the date on which the whole of the Outstandings shall be settled ("**Settlement Date**"). Once such written notice of settlement has been issued by the Borrower, it shall be irrevocable and the settlement amount in such notice shall be due and payable on the Settlement Date specified therein.
- 12.2.3. No amount shall be deemed to have been settled unless and until Nedbank has irrevocably received payment of all amounts due but not paid in terms of this Agreement.
- 12.2.4. No settlement shall be made in terms hereof unless the settlement amount is at least R1 000 000,00 (One Million Rand) or more.
- 12.2.5. The Borrower shall be entitled to settle the Outstandings subject to the payment of a settlement penalty of-
- 12.2.5.1. 2% (Two percent) of the settlement amount if the settlement is made within 12 (Twelve) months from the Advance Date; or
- 12.2.5.2. 1% (One percent) of the settlement amount if the settlement is made on a date which falls within the period which is more than 12 (Twelve) months from the Advance Date but less than the full Term of the Loan.
- 12.2.6. In addition to the settlement penalty contemplated in clause 12.2.5, the Borrower will be liable for such Breakage Costs as Nedbank may have incurred or will incur as a consequence of such settlement, whilst Nedbank shall pass on any Breakage Gains to the Borrower. Within 10 (Ten) Business Days of receipt by Nedbank of any notice in terms of clause 12.2.2, Nedbank shall certify in writing to the Borrower the amount of any Breakage Costs, or Breakage Gains, as the case may be, arising in respect of the settlement so notified.

13. PAYMENTS

- 13.1. Any payments to be made by the Borrower in terms of this Agreement shall be made before 12h00 on due date to the credit of the following Nedbank account number 1497090318 or in such other manner as Nedbank may timeously notify the Borrower in writing from time to time.
- 13.2. Any payment made by the Borrower under this Agreement shall be made free of exchange or right of deferment, avoidance or set-off and without deduction for or on account of any Tax unless the Borrower is, under law, required to make such payment subject to the deduction or withholding of Tax, in which case the amount payable by the Borrower in respect of which such deduction or withholding is required to be made shall be increased to the extent necessary to ensure that, after the making of the required deduction or withholding, Nedbank receives and retains (free from any liability in respect of such deduction or withholding) a net amount equal to the amount which it would have received and so retained had no such deduction or withholding been required to be made.

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- 13.3. All amounts received in terms of this Agreement shall be appropriated, first to the payment of costs (including Breakage Costs) and any other amounts other than Capital and interest outstanding in terms of this Agreement, then towards the payment of interest (whether interest or default interest) and thereafter in reduction of the Outstanding Capital.
- 13.4. The Borrower's obligation to repay the Outstandings in accordance with this Agreement shall be unconditional (except as otherwise expressly provided herein or prohibited by law) irrespective of any contingency whatsoever including, but not limited to –
- 13.4.1. any right of set-off, counterclaim, recoupment, defence or other right unless and to the extent that the law entitles such right to be exercised;
- 13.4.2. any insolvency, bankruptcy, administration, judicial management, reorganisation, arrangement, readjustment of debt, dissolution, liquidation or similar proceedings by or against Nedbank;
- 13.4.3. any invalidity or unenforceability of any part of this Agreement, or lack of due authorisation of any signatory to this Agreement,
- 13.5. Once the whole or any part of the Outstandings has been repaid or prepaid in terms of this Agreement, Nedbank shall not be obliged to re-advance any such repaid or prepaid amount.
- 13.6. While the funds drawn down by the Borrower in terms of this Agreement are to be used solely for the purpose of funding the Borrower's Capital expenditure programme, Nedbank's recourse in terms of this Loan is to be to the Borrower and is in no way limited by the success or progress of the Integrated Development Plan.

14. REPRESENTATIONS AND WARRANTIES

- 14.1. The Borrower represents and warrants on a continuous basis from the Signature Date for the duration of the Term to Nedbank that –
- 14.1.1. **Status**
- It is a Municipality, as contemplated in section 155 of the Constitution of the Republic of South Africa Act no. 108 of 1996.
- It is compliant with the terms of the Financial Intelligence Centre Act No. 38 of 2001 and to the best of its knowledge, all Applicable Laws.
- The obligations assumed by it in terms of this Agreement are legal and valid obligations binding upon it and enforceable against it in accordance with the terms hereof;
- 14.1.2. **Non-conflict with other Obligations**
- 14.1.2.1. The entry into and performance by it of and the transactions contemplated by this Agreement to which it is a party do not and to the best of its knowledge, will not –
- 14.1.2.1.1. conflict with or result in a breach of any of the terms or provisions of, constitute a default under any agreement, deed, mortgage, bond or other instrument or treaty to which it is a party or which is binding upon it or any of its assets or revenues; and/or

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14.1.2.1.2. does not and to the best of its knowledge, will not conflict with any Applicable Laws, including, without limitation, the MFMA.

14.1.3. **Power and Authority**

It has taken all necessary action and has complied with Applicable Laws and relevant applicable procedures to authorise, and has obtained all necessary authorisations in respect of its entry into, performance and delivery of this Agreement and the transactions contemplated by this Agreement.

14.1.4. **Long-term debt**

The Borrower undertakes to incur long term debt in accordance with the provisions of the MFMA and such long term debt shall be raised after approval by the Borrower's bid adjudication committee and a resolution by the Borrower's Municipal Council passed at a duly constituted meeting approving the debt agreement.

14.1.5. **No Proceedings pending or threatened**

No litigation, arbitration or administrative proceedings are presently current or pending against the Borrower or, to the knowledge of the Borrower, threatened against it which, if adversely determined, would result in a Material Adverse Change.

14.1.6. **No Misleading Information**

14.1.6.1. All of the information supplied by it in connection with this Agreement is true, complete and accurate in all material respects.

14.1.6.2. It has disclosed to Nedbank any and all material information relating to the Borrower as well as such other information within its personal knowledge which, in the reasonable opinion of Nedbank would have affected Nedbank's decision to advance the Loan.

14.1.6.3. Nedbank can rely on any representation made by any person on behalf of the Borrower that has interacted with Nedbank for the purpose of this Agreement and disclosed information, as being true and correct and has furnished such information with the due authorisation.

14.1.7. **Pari Passu Ranking**

Its payment obligations under this Agreement rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors, except for obligations preferred solely in terms of chapter 13 of the MFMA.

14.1.8. **Assets**

As at the Signature Date and subsequent to such date, it has not sold or otherwise disposed of its assets which disposal may directly or indirectly impact on the Borrower's ability to operate as a going concern, save as are disclosed in writing to Nedbank prior to the Signature Date, or as may be disposed of in the ordinary course of its operations, the nature of which it shall fully disclose to Nedbank.



14.1.9. **Financial Statements**

Its financial statements will be prepared in accordance with GRAP and in line with the National Treasury guidelines (as updated from time to time) for the 2017 / 2018 financial year and thereafter.

14.1.10. **Compliance with Laws**

It has complied in all material respects with all Applicable Laws to the extent that a failure to comply would result in the Borrower not being able to comply with its payment obligations to Nedbank in terms of this Agreement.

14.1.11. **Compliance with MFMA**

Notwithstanding anything to the contrary contained herein, it has complied with the MFMA in respect of the provisions pertaining to the conclusion and enforceability of this Agreement.

14.1.12. **Indebtedness**

All Indebtedness incurred by the Borrower shall constitute Permitted Indebtedness.

14.1.13. **Serious Financial Problems**

As at the Signature Day, none of the factors contained in sections 138 and 140 of the MFMA, indicating serious financial problems and/or persistent material breach of financial commitments, has occurred in relation to the Borrower.

14.1.14. **Provincial Intervention**

As at the Signature Date, no steps have been taken to bring about any provincial intervention whatsoever in relation to the Borrower, whether or not discretionary or mandatory, as contemplated in Chapter 13 of the MFMA.

14.1.15. **Financial Recovery Plan**

As at the Signature Date, no financial recovery plan, as contemplated in Chapter 13 of the MFMA, is being prepared in relation to the Borrower.

14.1.16. **Stay of Legal Proceedings**

As at the Signature Date, the Borrower has not applied for an order to stay legal proceedings and/or for extraordinary relief, as contemplated in Chapter 13 of the MFMA.

14.1.17. **No Default**

14.1.17.1. No Event of Default or Potential Event of Default has occurred and is continuing or might reasonably be expected to result from any utilisation of the Loan.

14.1.17.2. No other event or circumstance is outstanding which constitutes a default under any other agreement or instrument which is binding on it or to which its assets are subject which might result in a Material Adverse Change.



14.1.18. **Withdrawal of Municipal Bank Accounts**

Any withdrawal from the Borrower's bank accounts for the purpose of payment in terms of this Agreement, complies with section 11 of the MFMA in that the official withdrawing the money is duly authorised and that such withdrawal is for an authorised purpose.

14.1.19. **Approved Expenditure**

The expenditure incurred for the payment in terms of this Agreement has been incurred in terms of an approved budget and within the limits of the amounts appropriated for the different votes in an approved budget.

The long term debt is consistent with the Borrower's Capital Budget as stipulated in its annual budget.

14.1.20. **Proceeds of the Agreement**

The proceeds of the Agreement is solely to be spent on Capital Projects that have been approved in compliance with section 19 of the MFMA.

14.1.21. **Maintenance of Systems**

The Accounting Officer has taken all reasonable steps to ensure compliance with subsection 63(2)(a), (b) and (c) (the maintaining of information systems, the correct valuation of the Borrower's assets and liabilities and the maintaining of internal control of assets and liabilities) of the MFMA.

14.1.22. **Encumbrance**

No Encumbrance exists in respect of Capital Project Assets except for permitted Encumbrances.

14.2. Each of the Warranties and representations ("**Warranties**") given by the Borrower in terms of clause 14.1 shall –

14.2.1. *prima facie* be deemed to be a Warranty of fact inducing Nedbank to enter this Agreement;

14.2.2. insofar as any of the Warranties is promissory or relates to a future event, be deemed to have been given as at the due date for the fulfilment of the promise or the happening of the event, as the case may be; and

14.2.3. be a separate Warranty and in no way limited or restricted by reference to or influence from the terms of any other Warranty.

15. **UNDERTAKINGS**

In addition to such other undertakings as the Borrower may have made elsewhere in this Agreement, the Borrower hereby irrevocably agrees and undertakes to Nedbank from Signature Date for so long as any amount is due and payable under this Agreement that it shall-

15.1. **Financial Statements**

The Borrower shall supply to Nedbank:



- 15.1.1. as soon as the same are available (and in any event by the end of October each year) its unaudited annual consolidated financial statements; and
- 15.1.2. the audited annual consolidated financial statements within 6 (Six) months after the end of its financial year; and
- 15.1.3. such material information as Nedbank may from time to time require in respect of the financial condition of the Borrower within 30 (Thirty) calendar days of request being made therefore, or such earlier date as agreed in writing between Nedbank and the Borrower.

15.2. **Compliance with Applicable Laws**

In as far as the Borrower needs to fulfil its obligations in terms of this Agreement, the Borrower undertakes to comply at all times in full with all relevant Applicable Laws, including, without limitation, the MFMA.

15.3. **Proof of Compliance**

Forthwith upon request by Nedbank, the Borrower shall provide Nedbank with such proof as Nedbank may reasonably require indicating compliance by the Borrower with all Applicable Laws, including, without limitation, the MFMA.

15.4. **Capital Budget**

The Borrower shall at all times comply with the Borrower's approved Capital Budget and/or approved adjustment budget as contemplated in section 28 of the MFMA ("Adjustment Budget") and shall provide Nedbank, forthwith after it has become available, with a copy of the Capital Budget and Adjustment Budget as the case may be.

15.5. **Notification of Default**

Forthwith upon becoming aware thereof the Borrower shall inform Nedbank in writing of any occurrence of which it becomes aware which may result in any Event of Default or Potential Event of Default or any Material Adverse Change and will, from time to time, if so requested by Nedbank, confirm to Nedbank in writing that, save as otherwise stated in such confirmation, no such Event of Default or Potential Event of Default or Material Adverse Change has occurred and/or is continuing.

15.6. **Information: Miscellaneous**

- 15.6.1. The Borrower shall forthwith inform Nedbank if legal proceedings which will or may materially and adversely affect the Borrower's ability to perform its obligations in terms of this Agreement (including, without limitation, arbitration proceedings) are instituted or threatened against it.
- 15.6.2. The Borrower shall forthwith upon becoming aware thereof inform Nedbank in writing of any occurrence of which it becomes aware which will or may adversely affect the Borrower's ability to perform or observe its obligations in terms of this Agreement.

15.7. **Authorisations**

The Borrower shall obtain, comply with the terms of and do all that is necessary to maintain in full force and effect all authorisations, approvals, licences and consents required in or by the Applicable Laws and regulations of South Africa to enable it lawfully to enter into and perform its obligations under this Agreement

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and to conduct its business and affairs, including, without limitation any authorisations, approvals and consents required by the MFMA.

15.8. Disposals

The Borrower shall not, contrary to the provisions of the MFMA and in any event to the detriment of Nedbank, or in contravention of its obligations, whether express or implied herein, dispose of, whether by one or more transactions or series of transactions any of the Capital Project Assets.

15.9. Positive Undertakings

The Borrower undertakes for the duration of the Agreement to do the following:

- 15.9.1. to make provision in its budgets for the payment of its financial obligations in terms of this Agreement, including Capital and interest;
- 15.9.2. to retain revenues, other charges, fees or funds at a level sufficient to meet its financial obligations in terms of the Agreement;
- 15.9.3. to ensure that the Accounting Officer furnishes a copy of a report written to the municipal council (in compliance with section 70 of the MFMA) in respect of impending shortfalls, overspending and overdrafts to Nedbank;
- 15.9.4. to furnish Nedbank by no later than 10 (Ten) working days after the end of each month with a copy of a statement in the prescribed format (as prescribed in section 71 in respect of monthly budget statements) on the state of the Borrower's budget;
- 15.9.5. to furnish Nedbank with a copy of the midyear budget and performance assessment (in compliance with section 72 of the MFMA);
- 15.9.6. to furnish Nedbank with the information that must be placed on the website as referred to in section 21(A) of the Municipal Systems Act within 5 (Five) days after its tabling in the council or on the date on which it must be made public, whichever occurs first as contemplated in section 75 of the MFMA;
- 15.9.7. to furnish Nedbank with an annual report in accordance with Chapter 12 of the MFMA and within 7 (Seven) days after the adoption of the oversight report in respect of aforementioned annual report, furnish Nedbank with same;
- 15.9.8. to notify Nedbank, prior to encumbering any of the Capital Project Assets as security for its creditors, that the Borrower intends to do so.

16. EVENTS OF DEFAULT

16.1. Each of the following events or circumstances is an Event of Default –

16.2. **Non-Payment**



The Borrower fails to pay any amount due by it in terms of this Agreement on the due date for payment therefore, unless the failure to pay is solely due to technical or administrative reasons and the relevant amount is duly paid within 3 (Three) Business Days of its due date.

16.3. Misrepresentation

A representation, warranty, statement made or deemed to be made or repeated, or undertaking given in connection with this Agreement or in any document delivered by or on behalf of the Borrower under or in connection with this Agreement, is or proves to have been incorrect or misleading in any material respect when made or deemed to be made or repeated or given and as a consequence results in a Material Adverse Change.

16.4. Material Adverse Change

Any event (or any series of events) or circumstance occurs (or any existing circumstance continued) which will result in a Material Adverse Change provided that such Material Adverse Change will have or would be likely to have a material adverse effect on the Borrower's ability to perform its obligations under this Agreement.

16.5. Cessation of Delivery of Minimum Level of Basic Municipal Services

The Borrower becomes unable or ceases, for any reason whatsoever, to deliver a minimum level of Basic Municipal Services, or any material part thereof, as contemplated in section 73(1)(c) of the Local Government: Municipal Systems Act, No. 32 of 2000, in an ordinary and regular manner provided that such cessation will have or would be likely to have a material adverse effect on the Borrower's ability to perform its obligations under this Agreement..

16.6. Repudiation

The Borrower repudiates this Agreement or does or causes to be done any act or thing evidencing an intention to repudiate this Agreement.

16.7. Cross Default

Any material Indebtedness or obligation or any loan, debt or guarantee constituting Indebtedness of the Borrower becomes due and payable prior to its specified maturity by reason of default, or is not paid when due, whether or not Nedbank is concerned therewith or any creditor of the Borrower becomes entitled to declare any Indebtedness due and payable prior to its specified maturity.

16.8. Judgements

Any judgement to the value of R500 000 (Five Hundred Thousand Rand) or more, of any court or arbitration awarded against the Borrower, respectively, remains unsatisfied for a period of 10 (Ten) Business Days after it has been granted against the Borrower, respectively, and has not been the subject of an application for rescission or review or appealed against within the period allowed for such rescission, review or appeal, which in each instance is diligently pursued and, in the event of such application, review or appeal being unsuccessful, the Borrower, respectively, fail to make immediate payment thereof.

16.9. Unlawfulness



It be or become unlawful for the Borrower to perform or comply with any or all of their obligations under this Agreement or any of the obligations of the Borrower not be or cease to be legal, valid, binding and enforceable.

16.10. Adverse Determination by the Auditor General

If the Auditor General or its successor after performing its audit on the Borrower raises a going concern issue with regards to the affairs of the Borrower.

16.11. Other Obligations

The Borrower does not comply with any provision of this Agreement (including for the avoidance of doubt, any of the undertakings set out in clause 15 of this Agreement).

In the event the Borrower fails to comply with the undertakings set out in clause 15, and fails to provide a written proposal to Nedbank setting out the remedial action to be taken in respect of such non-compliance within 10 (Ten) Business Days after delivery by Nedbank to the Borrower of a written notice requiring the Borrower to provide such a proposal and in the event that such a proposal is received by Nedbank within the stated period, the Borrower failing to remedy such non-compliance within the period stipulated in the Borrower's written proposal or such other period as may be agreed by the Parties.

16.12. Additional Default Events

It would be an Event of Default if:

- 16.12.1. the municipal council of the Borrower has not approved the annual budget by the start of the budget year or any revenue raising measures necessary to give effect to the budget;
- 16.12.2. the national treasury stop the transfer of funds to the Borrower as contemplated in section 38(1) of the MFMA (funds due to the Borrower as its share of the local government's share or transfer of funds due to the Borrower as an allocation referred to in section 214(1)(c) of the Constitution;
- 16.12.3. the Borrower faces any serious financial problems as contemplated in section 54(2) of the MFMA, in terms of which the Mayor must respond to and initiate steps;
- 16.12.4. the Accounting Officer fails to submit financial statements to the auditor general in accordance with section 126(1) or (2) of the MFMA or if the Mayor fails to table the annual report of the Borrower in accordance with section 127(2).

17. ACCELERATION

On or at any time after the occurrence of an Event of Default, Nedbank shall, in addition to and without prejudice to any rights it may have in terms of this Agreement or in law, including its rights to claim damages, be immediately entitled, without further notice to the Borrower, to –

17.1. cancel the Loan; and/or

17.2. re-price the Loan; and/or



- 17.3. immediately claim and recover from the Borrower –
- 17.3.1.1. the Outstandings; and/or
- 17.3.1.2. Breakage Costs arising on the Event of Default; and/or
- 17.3.1.3. any other charges, costs or expenses incurred by Nedbank and/or payable in terms of this Agreement, including but not limited to arrear payments and any default interest; and/or
- 17.3.2. subject to clause 11.4, levy finance charges calculated in accordance with the Default Rate, if the Borrower does not remedy a breach within 20 (Twenty) days of written notice to do so;
- 17.3.3. enforce compliance with the terms and conditions of all or part this Agreement and claim such damages as Nedbank may have suffered as a result of the Event of Default.

18. INDEMNITIES

- 18.1. Without prejudice to the other remedies of Nedbank under this Agreement and/or in law, the Borrower hereby irrevocably indemnifies and holds Nedbank harmless against any costs, claim, loss, expense (including legal fees on the scale as between attorney and own client) or liability, together with any VAT thereon, which may be suffered or incurred by Nedbank as a result of the occurrence of any Event of Default or the operation of clause 17.
- 18.2. For the purposes of this clause 18, "loss" shall include (but not be limited to) any amounts of Capital, interest, fees, Break Costs or other sums whatsoever paid or payable on account of any funds borrowed by Nedbank in order to enable Nedbank to advance the Loan to the Borrower.
- 18.3. The rights of Nedbank in respect of the indemnities contained in this clause 18 shall continue in full force and effect in favour of Nedbank for a period terminating on the 3rd (Third) anniversary of the last day of the Term.

19. CHANGE IN COSTS

- 19.1. If, at any time during the Term, there occurs –
- 19.1.1. any adoption, amendment, variation, replacement or change in interpretation of any of the Applicable Laws or of any authorisation with which commercial banks generally in the Republic of South Africa are required to comply or any change in circumstances occurs or any duties are imposed on such commercial banks at any time after the Signature Date; and/or
- 19.1.2. any directive, requirement, request or guidance (whether or not having the force of law but if not having the force of law, one which applies generally to a class or category of financial institutions and/or financial service companies directly or indirectly) of any central bank or any other fiscal, monetary, regulatory or other authority in the Republic of South Africa; and/or
- 19.1.3. any change in banking practice, as it affects or is applied generally to or by any financial institution directly or indirectly in the Republic of South Africa; and/or
- 19.1.4. a requirement by any statutory or monetary authority in the Republic of South Africa, to –
- 19.1.4.1. pay levies or any other amounts whatsoever or to maintain special deposits or reserve assets, in addition to those paid or maintained or reserved by Nedbank as at the Signature Date; or



- 19.1.4.2. comply with any reserve, cash ratio, special deposit or liquid requirements (or any other similar requirements) in respect of this Agreement in addition to those anticipated by Nedbank at the Signature Date; or
- 19.1.4.3. to pay any Tax; and/or
- 19.1.5. any compliance by Nedbank with any capital adequacy, reserve, cash ratio, special deposit, liquidity or similar requirements of a statutory or monetary authority, howsoever arising in South Africa in respect of this Agreement, including any increase in the amount of the Capital to be allocated by Nedbank to the amount advanced under this Agreement or a change of weighting of the commitment under this Agreement; or
- 19.1.6. any compliance by Nedbank with "International convergence of capital measure and capital standards, a revised framework" published by the Basel Committee on banking supervision in June 2004 in the form existing hereof (Basel II) or any other law or regulation which implements Basel II (whether such implementation, application or compliance is by government, regulator or Nedbank but excluding any increases as would ordinarily be excluded), incurred by it in making, maintaining or funding its obligations under the Agreement arising by reason of a change in law or the interpretation thereof, or compliance with any central bank or similar request occurring after the Interest Rate Quotation Date ; or
- 19.1.7. any other event attributable to a statutory or monetary authority which is beyond control of Nedbank, with the result that –
- 19.1.7.1. Nedbank is subjected to any Tax, duty or other charge in respect of the Loan or a change in the basis of taxation of Nedbank in respect of amounts payable to Nedbank in terms of this Agreement; or
- 19.1.7.2. any reserve, special deposit or similar requirement is imposed against the assets or deposits with or for the account of, or credit extended by Nedbank; or
- 19.1.7.3. any other obligation or condition directly affecting the cost of Nedbank is imposed on Nedbank of maintaining or funding its commitment under this Agreement; or
- 19.1.7.4. the cost to Nedbank of making or maintaining the Loan is increased or any amounts received or receivable by Nedbank under this Agreement are reduced; or
- 19.1.7.5. Nedbank's rate of return on its capital is reduced by reason only of change in the manner in which it is required to allocate capital resources to its obligations under this Agreement; or
- 19.1.7.6. Nedbank is required to make a payment or forego the return on any amount received or receivable by it under this Agreement;
- 19.1.8. And the result of any of the above is to increase the net after Tax cost to Nedbank of maintaining or funding its commitment under this Agreement or reduces the net after Tax return to Nedbank in respect of maintaining or funding its commitment under this Agreement, the Parties shall consult in relation to the manner in which such increased costs or the reduction of the return to Nedbank may be



recovered, to place Nedbank in the same position in which it would have been if such increase or reduction had not taken place.

Nedbank will promptly notify the Borrower of such increased costs or reduction, disclose the event giving rise to such increased costs or reduction and certify the calculation of such amount to the Borrower. The Borrower shall have the right to have such amount verified by the auditors of Nedbank. The Parties will meet to discuss means of reducing the impact of any increased costs or aforesaid reduction on the Borrower.

If no agreement is reached within 10 (Ten) days after receipt of aforesaid notification by the Borrower in respect of any dispute in terms of this clause 19.1, including the amount of aforesaid increased cost or reduction or the means of reducing their impact, either party may request the Executive President of the South African Institute for Chartered Accountants (SAICA) or his nominee to appoint a member of SAICA to resolve the dispute acting as an expert and not as an arbitrator.

"acting as an expert and not an arbitrator" means, in the context of such appointee making a determination in terms hereof, such person doing so on the following basis:

- 19.1.8.1. such person shall investigate the matter or dispute in such manner as he in his sole discretion considers appropriate, provided that each party to the dispute shall have the right to make written representations to such person in relation to the matter or dispute;
 - 19.1.8.2. In carrying out his investigations, such person shall be entitled to consult with any or all of the Parties, or with any other person and to take advice from any third party;
 - 19.1.8.3. such person shall issue his ruling, within 20 (Twenty) days of his appointment or as soon as may be reasonably possible thereafter.
 - 19.1.8.4. the determination of such person shall be final and binding on the Parties;
 - 19.1.8.5. the costs and charges (including but not limited to the attorney and own client costs) of such person shall be borne by that party which, in the sole discretion of such person, is the appropriate party to bear such costs and charges, provided that such person shall be entitled to direct that the costs and charges be borne by all or certain of the Parties, in such ratios as such person may determine.
- 19.2. This clause 19 does not apply to any increased cost arising in terms of clause 19.1 –
- 19.2.1. on account of Tax payable on any income, profits or gains of Nedbank to the extent arising from amendments or changes which affect corporate taxpayers generally; or
 - 19.2.2. resulting from any breach or violation by Nedbank of, or breach by Nedbank of any limits imposed by, any provision of any law, ruling, regulation or practice by any relevant monetary or fiscal authority or court or competent official, arising as a consequence of any action or omission by Nedbank after the introduction of such provision and/or imposition of such limits or after the relevant change in the interpretation thereof has become known to Nedbank and/or generally known amongst banks operating in the Republic of South Africa.



- 19.3. If Nedbank is entitled to any tax benefit by reason of any circumstance in respect of which the Borrower has paid the fee as contemplated in clause 19.1, Nedbank shall pay to the Borrower such amount, limited to the maximum of the fee paid by the Borrower as aforesaid, as will leave Nedbank with the same net after Tax return as it would have received in respect of maintaining or funding its commitment under this Agreement had the tax benefit not been granted. Payment of such sum shall be made within 10 (Ten) Business Days of Nedbank becoming entitled to such tax benefit.
- 19.4. If any of the events or circumstances envisaged in clause 19.1 occur with the result that the net after Tax cost to Nedbank of maintaining or funding its commitment under this Agreement reduces or the net after Tax return to Nedbank in respect of maintaining or funding its commitment under this Agreement increases, then Nedbank shall pay to the Borrower such fee as would be necessary to place Nedbank in the same position in which it would have been if such increase or reduction had not taken place, which fee shall be payable within 10 (Ten) Business Days of receipt by Nedbank of a written demand from the Borrower, and accompanied by the requisite documentation to substantiate the Borrower's entitlement to such fee.

20. ILLEGALITY

20.1. Nedbank Illegality

- 20.1.1. If, at any time, it becomes unlawful, or contrary to any request from or requirement of any fiscal, monetary or other similar authority compliance with which is in accordance with the general practice of persons to whom such request or requirement is intended to apply, for Nedbank to make, fund or allow to remain outstanding all or any of the Outstandings then Nedbank shall, as soon as reasonably practicable after becoming aware of the same, deliver to the Borrower a certificate to that effect and if Nedbank so requires, the Borrower shall on such date as Nedbank shall have specified repay all the Outstandings. The Borrower shall be liable for any Breakage Costs arising as a consequence of such prepayment, which Breakage Costs the Borrower shall be required to pay to Nedbank within 10 (Ten) days of receipt of such certificate.
- 20.1.2. If Nedbank becomes entitled to give notice pursuant to clause 20.1.1, it will endeavour to avoid the circumstances therein referred to, but nothing in this clause 20.1.2 shall oblige Nedbank to incur any costs or expenses or to take or refrain from taking any action where, in its reasonable opinion, to take or refrain from taking (as the case may be) such action would be materially prejudicial to its interests.

20.2. Borrower Illegality

- 20.2.1. If at any time it is or becomes unlawful for the Borrower to perform or comply with any or all of its obligations hereunder the Borrower shall as soon as reasonably possible notify Nedbank in writing. If the Borrower is unable, within 10 (Ten) days of the aforesaid notice of the performance becoming unlawful, to procure that a replacement Borrower is substituted for it on such terms as may be reasonably acceptable to Nedbank, then Nedbank shall, after the expiry of such 10 (ten) day period be entitled to deliver to the Borrower a notice requiring the Borrower to repay all Outstandings on a date specified in such notice and the Borrower shall on such date as Nedbank shall have specified repay all Outstandings together with any Breakage Costs arising as a result of the early termination.
- 20.2.2. If Nedbank becomes entitled to give notice pursuant to clause 20.2, it will endeavour to avoid the circumstances therein referred to, but nothing in this clause 20.2.2 shall oblige it to incur any costs or

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expenses or to take or refrain from taking any action where, in its reasonable opinion, to take or refrain from taking (as the case may be) such action would be materially prejudicial to its interests.

21. CERTIFICATE OF INDEBTEDNESS AND OTHER NOTICES

- 21.1. A certificate signed or purporting to be signed by a manager or director of Nedbank (whose appointment it shall not be necessary to prove) shall be *prima facie* proof of –
- 21.1.1. the amount of any debt owing by the Borrower to Nedbank (including, without limitation, accrued interest and default interest) in terms of this Agreement;
- 21.1.2. the due dates of performance in respect of any obligations of the Borrower in terms of this Agreement;
- 21.1.3. any Interest Rate; or
- 21.1.4. the fact that the debts are due and owing and have not been paid or otherwise discharged.
- 21.2. In addition to and in application of the provisions of clause 21.1, any schedule, certificate or other document provided by Nedbank in terms of this Agreement shall, if signed by any manager or director of Nedbank, be deemed to be *prima facie* proof of the correctness of its contents.

22. ASSIGNMENT

- 22.1. This Agreement shall be binding upon and enure to the benefit of each Party and its or any subsequent successors-in-title.
- 22.2. The Borrower shall not be entitled to cede, delegate or assign (as the case may be) all or any of its rights, benefits and obligations under this Agreement to any person, without the prior written consent of Nedbank.
- 22.3. Nedbank may, at any time after the Advance Date, sell down all (and not part) of the Outstandings, and assign its corresponding rights and obligations under this Agreement, provided that such transfer will not result in any increased costs to the Borrower in terms of clause 19. Nedbank shall promptly notify the Borrower of any such assignment (including the identity, address and facsimile number for notices and the *domicilium citandi et executandi* of the assignee).

23. RENUNCIATION OF BENEFITS

The Borrower hereby renounces any benefits to which it is entitled in law, including without in any way limiting or affecting the generality of the foregoing the benefits of the legal exceptions "*non numeratae pecuniae*", "*exceptio non causa debiti*", "revision of accounts", "*beneficio ordinis seu excussionis*", splitting of claims and "*de duobus vel pluribus reis debendi*" and declares itself to be fully acquainted with the full meaning and effect of the same.

24. DOMICILIUM CITANDI ET EXECUTANDI

- 24.1. The Parties choose the addresses set out opposite their names below as their *domicilium citandi et executandi* (whether in respect of notices, court processes or any other documents or communications of whatsoever nature) for all purposes of this Agreement:

- 24.1.1. Nedbank

Physical Address: 135 Rivonia Road
Corporate Place Block F



Sandown

Sandton

2196

Current Fax no: 011 2941333

Attention: The General Manager Corporate Credit

24.1.2. the Borrower:

Physical Address: York Street
The Civic Centre (1st Floor)

George, 6530

Current Fax no: 044 873 3776

Attention: The Municipal Manager

- 24.2. Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing. It shall be acceptable to give notice by fax provided that proof of such fax transmission is provided to the Party to whom notice is addressed and physical copies of the notice or communication are delivered to the aforesaid address of the Party to whom such notice is addressed within 3 (Three) Business Days of such fax transmission.
- 24.3. Any Party may by written notice to the other Parties change its chosen address to another physical address, provided that the change shall become effective on the 7th (Seventh) day after delivery of such notice to the addressee.
- 24.4. Any notice to a Party contained in a correctly addressed envelope and delivered by hand to a responsible person during ordinary business hours at its chosen address shall be deemed to have been received, unless the contrary is proved, on the first Business Day after delivery.
- 24.5. Notwithstanding anything to the contrary contained in this clause 24, a written notice or communication actually received by a Party shall be an adequate written notice or communication to it, notwithstanding that it was not sent to or delivered at its chosen address.

25. COSTS AND EXPENSES

- 25.1. Each Party shall be responsible for its own costs of negotiating, drafting and implementing this Agreement.
- 25.2. The Borrower shall on demand reimburse Nedbank for all reasonable costs and expenses (including legal fees on the attorney and client scale) incurred as a result of its unremedied breach of this Agreement.

26. CONFIDENTIAL INFORMATION

The Parties acknowledge that for the duration of this Agreement information will be required and furnished in terms of this Agreement.

The Parties undertake to utilise such information solely for the purpose of the administration of this Agreement. This undertaking will be effective for the duration of this Agreement and will survive the termination of this Agreement. It will be irrespective for what reason the Agreement is terminated.



27. MISCELLANEOUS

27.1. Partial Invalidity

The illegality, invalidity or unenforceability of any provision of this Agreement under the law of any jurisdiction will not affect its legality, validity or enforceability under the law of any other jurisdiction nor the legality, validity or enforceability of any other provision.

27.2. Waivers and Remedies Cumulative

Unless condoned in writing, no failure to exercise, and no delay in exercising on the part of either Party, of any right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof, or the exercise of any other right, power or privilege. No waiver by either Party shall be effective unless it is in writing and duly executed by the Party granting such waiver.

27.3. Entire Contract

This Agreement contains all the express provisions agreed on by the Parties with regard to the subject matter of the Agreement and the Parties waive the right to rely on any alleged express provision not contained in this Agreement.

27.4. Duration

This Agreement shall endure for the Term.

27.5. No Partnership

Nothing in this Agreement shall be deemed to constitute a partnership, or establish a relationship of principal and agent or any other relationship of a similar nature between any of the Parties or, unless expressly provided, entitle either Party to commit or bind the other Party in any manner.

27.6. No Representations

A Party may not rely on any representation or warranty which allegedly induced it to enter into this Agreement, unless the representation or warranty is recorded in this Agreement.

27.7. Variation, Cancellation and Waiver

No contract varying, adding to, deleting from or cancelling this Agreement, and no waiver of any right under this Agreement, shall be effective unless reduced to writing and signed by or on behalf of the Parties.

27.8. Indulgences

The grant of any indulgence by a Party under this Agreement shall not constitute a waiver of any right by the grantor or prevent or adversely affect the exercise by the grantor of any existing or future right of the grantor.

27.9. Severability

Any provision in this Agreement which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this Agreement shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated *pro non scripto* and severed from the balance of this Agreement without



invalidating the remaining provisions of this Agreement or affecting the validity or unenforceability of such provision in any other jurisdiction.

27.10. **Transferability**

Nedbank reserves the right to change its lending office and transfer its rights and obligations under the Loan in whole or in part to third party banks and/or financial institutions at any point during the Term of the Loan, subject to the Borrower's written consent and provided that this does not give rise to any additional costs being incurred by the Borrower.

27.11. **Governing Law and Jurisdiction**

The Loan shall be governed by the Laws of the Republic of South Africa and shall provide for submission by the Borrower to the non-exclusive jurisdiction of the High Court of South Africa.

27.12. **Counterparts**

This Agreement may be executed in any number of counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument.

27.13. **Independent Advice**

The Parties hereby acknowledge and agree that they have been free to secure independent legal and other professional advice (including legal, financial and taxation advice) as to the nature and effect of the provisions of this Agreement and the Security Documents and that they have either taken such independent advice or has dispensed with the necessity of doing so.

Signed at George on this the 28 day of June 2018

As Witnesses:

1. [Signature] 1837150

2. [Signature] 136618

For: Nedbank Limited

[Signature] 135071
Name: ABJ KOTZE
Capacity: SERVICES MANAGER

Name: _____

Capacity: _____

[Handwritten initials]



Signed at George on this the 28 day of June 2018

As Witnesses:

1. [Signature]
183150

2. [Signature]

Leon Edgar Wallace
610 620 5160 087

For: **George Municipality**

[Signature]

Name: LEON BOTHA

Capacity: MUNICIPAL MANAGER

Name: _____

Capacity: _____

[Handwritten signature]
[Handwritten signature]



AMORTISING SCHEDULE

Annexure 'A'

13 2
14 ~~*15*~~
16

