



**LOAN AGREEMENT**

entered into between

**NEDBANK LIMITED**  
(Registration Number 1951/000009/06)

and

**CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY**

**NEDBANK**  
CORPORATE

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**APPENDIX 1**      AMORTISATION SCHEDULE

**APPENDIX 2**      FORM OF DRAWDOWN NOTICE

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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**" means, in relation to the Loan, an advance made by Nedbank to the Borrower;

1.1.3. "**Advance Date**" means, during the Availability Period, the date on which the relevant Advance is made following the Fulfilment Date;

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

1.1.5. "**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 (including the "International Convergence of Capital Measures and Capital Standards, a revised framework" published by the Basel Committee on banking supervision in 2004 as well as the Basel III Accord) 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;

1.1.6. "**Amortisation Schedule**" means the amortisation schedule contained in Appendix 1 attached hereto, indicating the repayment amounts, consisting of Capital and interest, payable in equal semi-annual instalments on the respective Interest and Capital Payment Dates in terms of this Agreement, provided that the amortisation schedule is indicative and is subject to change from time to time as provided for in this Agreement and the amount of each payment shall be adjusted accordingly;

1.1.7. "**Availability Period**" means the period from and including the Fulfilment Date up to and including 28 June 2012;

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

1.1.9. "**Basel III Accord**" means, together, "*Basel III: A global regulatory framework for more resilient banks and banking systems*" and "*Basel III: International framework for liquidity risk measurement, standards and monitoring*" both published by the Basel Committee on Banking Supervision on 16 December 2010;

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



- 1.1.25. "Final Repayment Date" means the 10<sup>th</sup> (tenth) anniversary of the first Advance;
- 1.1.26. "Fulfilment Date" means the date on which the last condition precedents as set out in clause 2 ( Condition Precedent) are fulfilled;
- 1.1.27. "GAMAP" means Generally Accepted Municipal Accounting Practice;
- 1.1.28. "GRAP" means Generally Recognised Accounting Practice;
- 1.1.29. "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 –
- 1.1.29.1. monies borrowed or raised;
- 1.1.29.2. the outstanding principal amount of any bond, note, loan stock, debenture or similar instrument;
- 1.1.29.3. any amount raised pursuant to any issue of shares which are expressed to be redeemable; and
- 1.1.29.4. deferred payments for assets or services acquired;
- 1.1.30. "Integrated Development Plan" will have the meaning given to it in the MFMA;
- 1.1.31. "Interest Rate" means 9.31% (nine point three one percent) nacs;
- 1.1.32. "Interest Rate Quotation Date" means the day on which Nedbank advises the Borrower of the Interest Rate applicable to the Loan;
- 1.1.33. "Interest Rate Swap" means a contractual agreement entered into between two counterparties under which each agrees to make periodic interest payments to the other for an agreed period of time based upon a notional amount of principal. A notional amount of principal is required in order to compute the actual cash amounts that will be periodically exchanged. As expressed in this Agreement, interest rate swap relates to Nedbank exchanging a fixed interest rate for a floating interest rate;
- 1.1.34. "Interest Rate Swap Curve" means the market-determined graphic line chart that shows interest rates at a specific point for all securities having equal risk, but different maturity dates. In South Africa, the data points used to derive the Interest Rate Swap Curve represent the yields on South African government securities with differing maturity values. The Interest Rate Swap Curve in South Africa is applicable to Interest Rate Swaps with a range from R50 000 000.00 (fifty million Rand) to R100 000 000.00 (one hundred million Rand) with a redemption profile such that interest is serviced over the predetermined term of the security with full capital redemption at the end of this term;

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- 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;
- 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 3<sup>rd</sup> (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 11:00 am 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 signature date the JIBAR Reference Banks are Nedbank Limited, 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 facility in amounts which, in aggregate do not exceed the Capital, and which are made available by Nedbank to the Borrower in terms of this Agreement;
- 1.1.39. "Material Adverse Change" means an event, circumstance or matter or combination of events, circumstances or matters which has or, in the reasonable opinion of Nedbank, will have or would be likely to have a material adverse effect on –
- 1.1.39.1. the ability of the Borrower to conduct its business in the normal, regular and ordinary course; or



- 1.1.39.2. the ability of the Borrower to perform its obligations under this Agreement; or
- 1.1.39.3. 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 which has a direct impact on the repayment of the Loan;

- 1.1.40. "**Mayor**" will have the meaning given to it in the MFMA;
- 1.1.41. "**MFMA**" means the Local Government Municipal Finance Management Act, No. 56 of 2003;
- 1.1.42. "**nacs**" means nominal, annual, compounded semi-annually in arrears on the first day of the month immediately following the calendar in which the interest has accrued;
- 1.1.43. "**nacm**" means nominal, annual, compounded monthly in arrears on the first day of the month immediately following the calendar in which the interest has accrued;
- 1.1.44. "**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;
- 1.1.45. "**Outstanding Capital**" means the balance of the Capital from time to time, and as reduced in terms of clauses 7 and 8;
- 1.1.46. "**Outstandings**" means at any given time, and from time to time, the aggregate of –
  - 1.1.46.1. the Outstanding Capital;
  - 1.1.46.2. any other amounts due from time to time under this Agreement which have not been paid; and
  - 1.1.46.3. any unpaid interest accrued or capitalised on the amounts described in clauses 1.1.46.1 and 1.1.46.2 in terms of this Agreement;
- 1.1.47. "**Parties**" means Nedbank and the Borrower, and "**Party**" shall mean either of them as the context requires;
- 1.1.48. "**Permitted Indebtedness**" means –
  - 1.1.48.1. indebtedness which is approved in the Integrated Development Plan; and
  - 1.1.48.2. indebtedness which complies in all respects with the provisions of the MFMA and other Applicable Laws;



- 1.1.49. **"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;
- 1.1.50. **"Prepayment Date"** shall have the meaning set out in clause 8.1.2;
- 1.1.51. **"Repayment Dates"** means, with the exception of the Final Repayment Date, the date on which the Borrower makes payment of Capital plus interest as specified in the Amortisation 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;
- 1.1.52. **"Signature Date"** means the date on which this Agreement is signed by the Party signing last in time;
- 1.1.53. **"Suspensive Conditions"** means the suspensive conditions described in clause 2;
- 1.1.54. **"Swap Offer Rate"** means the market-determined rate for an Interest Rate Swap based on the Interest Rate Swap Curve but adjusted for both the value and the amortising profile of the Interest Rate Swap as these parameters differ from the value and the amortising profile to which the Interest Rate Swap Curve is applicable as determined by Nedbank's Treasury Division and fixed as at the Advance Date, but which, as at 11h00 on 28 June 2012, is 8.05% (eight point zero five percent) nacs;
- 1.1.55. **"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;
- 1.1.56. **"Term"** means the period commencing from the first Advance and terminating on the Final Repayment Date or such earlier date on which this Agreement is otherwise terminated in accordance with its terms;
- 1.1.57. **"VAT"** means value added tax levied in terms of the Value Added Tax Act 89 of 1991; and
- 1.1.58. **"Warranties"** shall have the meaning set out in clause 10.
- 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;

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- 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;
- 1.5 when any number of days is prescribed, such number shall be calculated inclusively of the first and exclusively of the last day;
- 1.6 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;
- 1.7 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;
- 1.8 words importing the singular shall include the plural and vice versa;
- 1.9 words referring to one gender shall include a reference to the other genders;
- 1.10 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;
- 1.11 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;
- 1.12 clause headings have been inserted for convenience only and shall not be taken into account in its interpretation;
- 1.13 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
- 1.14 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. SUSPENSIVE CONDITIONS

- 2.1. The rights and obligations of the Parties under this Agreement (other than those set out in this clause 2, and clauses 14 and 17 to 22, which shall be of immediate force and effect) are subject to and conditional upon the fulfilment of the following suspensive conditions on or before 26 June 2012 ("**Fulfilment Date**") or such later date as may be determined in terms of clause 2.3 –

- 2.1.1. written confirmation by the Borrower that no Event of Default or Potential Event of Default or Material Adverse Change shall have occurred or is occurring;



- 2.1.2. Nedbank has been provided with a certified copy of a resolution of the Municipal Council, signed by the Mayor approving the Transaction contemplated by this Agreement and authorising the Accounting Officer, on its behalf, to sign this Agreement and all documents and notices to be signed by it under or in connection with this Agreement;
  - 2.1.3. receipt by Nedbank of a specimen of the signature of each person authorised by the resolution referred to in clause 2.1.2;
  - 2.1.4. written confirmation by the Borrower that it has complied with the requirements of the MFMA and all other Applicable Laws in so far as it relates to the Loan;
  - 2.1.5. Execution of necessary legal documentation relating to the funding by all parties; and
  - 2.1.6. the Borrower having complied with all requests for information made by Nedbank in terms of the Financial Intelligence Centre Act, No. 38 of 2001, the Prevention of Organised Crime Act, No 121 of 1988, the Banks Act and any other money laundering legislation applicable at the time such requests are made.
- 2.2. The Parties shall use their best endeavours to procure the fulfilment of the Suspensive Conditions.
  - 2.3. The Suspensive Conditions are stipulated to be for the benefit of Nedbank, which shall, by written notice to the Borrower to that effect given by not later than the Fulfilment Date, be entitled to waive some or all of the Suspensive Conditions and/or to extend the date by which some or all of the Suspensive Conditions are to be fulfilled.
  - 2.4. If any of the Suspensive Conditions are not fulfilled (and fulfilment thereof is not waived or extended in terms of clause 2.3) on or before the Fulfilment Date, this Agreement will terminate and be of no further force or effect and, to the extent that this Agreement may have been partially implemented, the Parties shall be restored as nearly as may be possible to the positions in which they would have been had this Agreement not been entered into and neither Party shall have any claim against the other Party as a result of the failure of the Suspensive Conditions, save for such claim as may arise out of a breach of this clause 2 or under any clause which remains in force and effect.

### 3. PURPOSE

The Loan shall be used by the Borrower to finance its Capital Projects. 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.

### 4. ADVANCE AND COMMITMENT FEE

- 4.1. 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, amounts which, in aggregate, do not exceed the Capital.



- 4.2. The Borrower shall deliver a Drawdown Notice on or after the Fulfilment Date.
- 4.3. Subject to the provisions of this Agreement, the Advance shall be made to the Borrower upon receipt by Nedbank of a duly completed Drawdown Notice, signed by the Borrower, not later than 10:00 am on the 3<sup>rd</sup> (third) Business Day before the proposed Advance Date provided that such proposed Advance Date is within the Availability Period, and such Drawdown Notice shall be deemed to have been duly received by Nedbank if delivered in accordance with clause 20 (*Domicilium citandi et executandi*).
- 4.4. The Drawdown Notice shall be effective on actual receipt of the same by Nedbank, and once delivered, shall be irrevocable and shall not be regarded as having been duly completed unless the proposed Advance Date is a Business Day and within the Availability Period.
- 4.5. Upon receipt by Nedbank of a Drawdown Notice that complies with all of the requirements of this clause 4, Nedbank shall advance to the Borrower the Advance requested in the Drawdown Notice by paying same to the credit of the Borrower Account. The payment by Nedbank of this amount as aforesaid shall discharge the obligation of the Nedbank to make the advance described in clause 4.1.
- 4.6. Against payment by Nedbank of amounts which, in aggregate, equal the Capital, Nedbank shall be deemed to have advanced the entire Capital to the Borrower.
- 4.7. Any amounts not drawn down during the Availability Period shall not, thereafter, be available for draw down.
- 4.8. A commitment fee of 45 (forty five) Basis Points ("**the Commitment Fee**") shall be payable by the Borrower to the Lender in respect of that portion of the Capital which is available for drawdown following the Fulfilment Date but which remains undrawn during the Availability Period. The Commitment Fee shall be calculated on the average monthly unutilised portion of the Capital and shall be payable by the Borrower quarterly in arrears and within 7 (seven) Business Days following receipt by the Borrower from Nedbank of an invoice in respect thereof.

## 5. INTEREST

- 5.1. Interest shall be calculated on the Outstanding Capital at the Interest Rate during each Interest Period in accordance with clause 5.2 .
- 5.2. 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.
- 5.3. Interest shall be due and payable by the Borrower to Nedbank on each Repayment Date.



6. [INTENTIONALLY NOT USED]

7. CAPITAL REPAYMENTS

- 7.1. The Capital Outstanding 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 Amortisation Schedule.
- 7.2. Once the whole or any part of the Capital has been repaid in accordance with this clause 7, Nedbank will not be obliged to re-advance any such repaid amount.
- 7.3. Notwithstanding the provisions of clause 7.1, 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.
- 7.4. Should any payment of the Outstanding Capital as set out in the Amortisation Schedule not be made on a Repayment Date, the Borrower shall be liable for the additional interest cost calculated on such unpaid amount from its due date until date of actual payment at the Default Rate, which interest shall be paid by the Borrower within 7 (seven) Business Days of demand by Nedbank. Should the Borrower fail to make the necessary payments timeously such that an Event of Default occurs, the Borrower shall be liable for all Outstandings at the Default Rate.

8. PREPAYMENT AND BREAKAGE COST

- 8.1.1. Subject to clauses 8.1.2 and 8.1.3, the Borrower shall be entitled to prepay the whole or any part of the Outstandings not then due for payment.
- 8.1.2. Should the Borrower wish to prepay the whole or any part of the Outstandings it shall, not less than 30 (thirty) calendar days prior to the date on which it wishes to prepay the whole or any part of the Outstandings, furnish Nedbank with written notice to that effect and shall specify the date on which the whole or 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.
- 8.1.3. 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.
- 8.1.4. No prepayment shall be made in terms of this clause 8 unless such amount is at least R100 000 000.00 (one hundred million Rand) or a multiple thereof.
- 8.1.5. The Borrower shall be entitled to prepay the whole or any part of the Outstandings through a refinancing from other loans subject to the payment of a prepayment penalty of-



- 8.1.5.1. 2% (two percent) of the amount prepaid if the prepayment is made within 12 (twelve) months from the Advance Date;
- 8.1.5.2 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 but less than 24 (twenty four) months from the Advance Date;
- 8.1.5.3 0.50% (zero point five zero percent) of the amount prepaid if the prepayment is made on a date which falls within the period which is more than 24 (twenty four) months but less than 60 (sixty) months from the Advance Date;
- 8.1.5.4 0% (zero percent) of the amount prepaid if the prepayment is made on a date which falls after 60 (sixty) months from the Advance Date.
- 8.1.6. If any prepayment of the Outstandings is made on a date which is not a Repayment Date, the Borrower will be liable to Nedbank, in addition to the prepayment penalty contemplated in clause 8.1.5, for such Breakage Costs as Nedbank may have incurred or will incur as a consequence of such prepayment. Within 2 (two) Business Days of receipt by Nedbank of any notice in terms of clause 8.1.2, Nedbank shall certify in writing to the Borrower the amount of any Breakage Costs arising in respect of the prepayment so notified.

**8.2. BREAKAGE COSTS**

The Borrower undertakes to pay Breakage Costs in the following circumstances -

- 8.2.1. where the Borrower repays the Outstandings otherwise than in terms of the Amortisation Schedule;
- 8.2.2. upon the occurrence of an Event Of Default in accordance with clause 12; and
- 8.2.3. in instances where the Borrower has requested the Nedbank to amend the Repayment Dates.

**9. PAYMENTS**

- 9.1. Any payments to be made by the Borrower in terms of this Agreement shall be made before close of business on due date to the credit of Nedbank account number 1150 000 023 or in such other manner as Nedbank may notify the Borrower in writing from time to time. Should any payment effected by the Borrower to Nedbank not reach the aforesaid Borrower Account on the date when payment is expected to be received by Nedbank, the Borrower shall be liable for any additional interest incurred.
- 9.2. Any payment made by the Borrower under this Agreement shall be made free of exchange or right of deferment, avoidance or set-off (which waiver of rights shall extend to any court action or application by Nedbank in terms of or in connection with this Agreement) 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.

9.3. Subject to clause 22.14, 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 and thereafter in reduction of the Capital.

9.4. 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 –

9.4.1. any right of set-off, counterclaim, recoupment, defence or other right unless and to the extent that the law permits such right to be exercised;

9.4.2. any insolvency, bankruptcy, administration, judicial management, reorganisation, arrangement, readjustment of debt, dissolution or similar proceedings by or against Nedbank;

9.4.3. any invalidity or unenforceability of any part of this Agreement, or lack of due authorisation of any signatory to this Agreement, or other defect in this Agreement; and

9.4.4. any other cases which (but for this provision) would or might have the effect of terminating, discharging or in any way affecting any obligation of the Borrower hereunder.

9.5. 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.

## 10. REPRESENTATIONS AND WARRANTIES

10.1. The Borrower represents and warrants on a continuous basis from the Signature Date for the duration of the Term to Nedbank that –

10.1.1. **Status**

10.1.1.1. It is a Municipality, as contemplated in section 155 of the Constitution of the Republic of South Africa Act no. 108 of 1996.

10.1.1.2. 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;



10.1.2. **Non-conflict with other Obligations**

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 -

10.1.2.1. 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

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

10.1.3. **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.

10.1.4. **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 a resolution by the Borrower's Municipal Council passed at a duly constituted meeting approving the debt agreement.

10.1.5. **No Proceedings pending**

To the best of its knowledge and belief, having made due enquiry, no litigation, arbitration or administrative proceedings are presently current or pending against the Borrower which, if adversely determined, would result in a Material Adverse Change.

10.1.6. **No Misleading Information**

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

10.1.6.2. 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 the Nedbank would have affected Nedbank's decision to advance the Loan.

10.1.7. **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.



10.1.8. **Financial Statements**

Its financial statements will be prepared in accordance with GRAP, GAMAP and in line with the National Treasury guidelines (as updated from time to time) for the 2010/2011 financial year and thereafter.

10.1.9. **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 obligations to Nedbank in terms of this Agreement.

10.1.10. **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.

10.1.11. **Encumbrances**

No Encumbrance exists in respect of the Capital Project Assets, other than those encumbrances permitted in accordance with the MFMA.

10.1.12. **Indebtedness**

All Indebtedness incurred by the Borrower shall constitute Permitted Indebtedness.

10.1.13. **Serious Financial Problems**

No serious financial problems as contemplated in the MFMA and/or persistent material breach of financial commitments, has occurred in relation to the Borrower.

10.1.14. **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.

10.1.15. **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.

10.1.16. **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.





10.1.17. **No Default**

10.1.17.1. 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.

10.1.17.2. 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.

10.2. Each of the warranties and representations ("**Warranties**") given by the Borrower in terms of clause 10.1 shall –

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

10.2.2. be presumed to be material unless the contrary is proved;

10.2.3. 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

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

11. **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-

11.1. **Financial Statements**

The Borrower shall supply to Nedbank:

11.1.1. as soon as the same are available (and in any event by the end of December each year) its unaudited annual consolidated financial statements; and

11.1.2. the audited annual consolidated financial statements as soon as the same are available, but in any event within 8 (eight) months after the end of its financial year; and

11.1.3. 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.



11.2. **Compliance with Applicable Laws**

The Borrower undertakes to comply at all times in full with all Applicable Laws, including, without limitation, the MFMA.

11.3. **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.

11.4. **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.

11.5. **Information : Miscellaneous**

11.5.1. The Borrower shall forthwith inform Nedbank if legal proceedings (including, without limitation, arbitration proceedings) which will or may adversely affect the Borrower's ability to perform or observe its obligations in terms of this Agreement are instituted or threatened against it.

11.5.2. 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.

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

11.7. **Acquisition of Assets**

The Borrower shall be entitled to acquire such assets as are approved in its approved capital budget and in respect of which all the necessary approvals, as required by the Applicable Laws, including, without limitation, the MFMA, has been obtained



12. **EVENTS OF DEFAULT**

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

12.1. **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 7 (seven) Business Days of its due date.

12.2. **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 is not remedied, if capable of remedy, within 30 (thirty) days of receiving written notice from Nedbank demanding such remedy.

12.3. **Serious Financial Problems**

Serious financial problems as contemplated in the MFMA and/or persistent material breach of financial commitments occur in relation to the Borrower.

12.4. **Provincial Intervention**

Steps are taken to bring about a provincial intervention in relation to the Borrower, whether or not discretionary or mandatory, as contemplated in Chapter 13 of the MFMA.

12.5. **Financial Recovery Plan**

A financial recovery plan, as contemplated in Chapter 13 of the MFMA, is instituted for the Borrower.

12.6. **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.

Handwritten signatures and initials in black ink, including a large signature, a circular stamp with the number '20', and several initials.



12.7. **Disposals**

The Borrower, contrary to the provisions of the MFMA or in contravention of its obligations thereunder, whether express or implied herein, disposes of, whether by one or more transactions or series of transactions any of the Capital Project Assets, other than any Capital Asset Project disposed of with the prior written approval of National Treasury (which written approval the Borrower shall provide to Nedbank upon request).

12.8. **Material Adverse Change**

Any event (or any series of events) or circumstance occurs (or any existing circumstance continued) which Nedbank reasonably believes is likely to result in a Material Adverse Change.

12.9. **Cessation of Delivery of Minimum Level of Basic Municipal Services**

The Borrower ceases unlawfully 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.

12.10. **Repudiation**

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

12.11. **Cross Default**

Any Indebtedness or obligation or any loan, debt or guarantee constituting indebtedness of the Borrower in excess of R100 000 000.00 (one hundred million Rand) is declared by the relevant creditor to have become 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 such indebtedness due and payable prior to its specified maturity other than where a *bona fide* dispute exists in regard thereto and the Borrower has demonstrated to Nedbank's reasonable satisfaction, within 10 (ten) Business Days of such declaration, that steps are being taken to contest the fact that such debt is due and payable.

12.12. **Judgements**

Any judgement(s) 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, fails to make immediate payment thereof, provided that it shall not be an Event of Default if such non-payment is not reasonably likely to result in a Material Adverse Change.

Several handwritten signatures in black ink, including a large signature on the left and several smaller ones on the right.



12.13. **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, or has either withheld an opinion or issued a disclaimer due to the inadequacies in the financial statements or records of the Borrower, or has issued an opinion which identifies a serious financial problem in the Borrower as contemplated in section 138 of the MFMA, and which is reasonably likely to result in a Material Adverse Change.

12.14. **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 11 of this Agreement) 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. It is recorded that Nedbank shall, at the Borrower's request, afford the Borrower reasonable time to follow all its internal processes as may be required to remedy any breach or default.

13. **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, on 4 (four) Business Days written notice to the Borrower, to –

- 13.1. cancel the Loan; and/or
- 13.2. re-price the Loan with agreement by the Borrower; and/or
- 13.3. immediately claim and recover from the Borrower –
  - 13.3.1.1. the Outstandings; and/or
  - 13.3.1.2. Breakage Costs arising on the Event of Default; and/or
  - 13.3.1.3. any other legal costs and 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
- 13.3.2. 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.



14. INDEMNITIES

- 14.1. 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 13.
- 14.2. For the purposes of this clause 14, "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.
- 14.3. The rights of Nedbank in respect of the indemnities contained in this clause 14 shall continue in full force and effect in favour of Nedbank for a period terminating on the 3<sup>rd</sup> (third) anniversary of the last day of the Term.

15. INCREASED COSTS

15.1. Increased Costs

15.1.1. Subject to Clause 15.3 the Borrower shall, within 30 (thirty) Business Days (or such longer period as the Parties may agree in writing) of a demand by Nedbank, pay for the account of Nedbank the amount of any Increased Costs incurred by Nedbank as a result of (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation or (ii) compliance with any law or regulation made after the Signature Date.

15.1.2. In this Agreement **Increased Costs** means:

15.1.2.1. a reduction in the rate of return from the Advance or on Nedbank's overall capital (including, without limitation, as a result of any reduction in the rate of return on capital brought about by more capital being required to be allocated by Nedbank for the Advance;

15.1.2.2. an additional or increased cost; or

15.1.2.3. a reduction of any amount due and payable under the Agreement,

which is incurred or suffered by Nedbank to the extent that it is attributable to Nedbank having entered into the Agreement or funding or performing its obligations under this Agreement. The terms **law** and **regulation** in this paragraph shall include, without limitation, any law or regulation concerning capital adequacy, prudential limits, liquidity, reserve assets or Tax.

15.2. Increased cost claims



15.2.1. Should Nedbank intend to make a claim pursuant to Clause 15.1, it shall notify the Borrower of the event giving rise to the claim.

15.2.2. Nedbank shall, as soon as practicable after a demand is made to the Borrower, provide a certificate confirming the amount of its Increased Costs.

15.3. **Exceptions**

15.3.1. Clause 15.1 does not apply to the extent any Increased Cost is:

15.3.1.1. attributable to a Tax Deduction required by law to be made by the Borrower;

15.3.1.2. compensated for by a Tax indemnity (or would have been compensated for under a Tax indemnity but was not so compensated solely because any of the below exclusions applied):

15.3.1.2.1. if the Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by Nedbank; or

15.3.1.2.2. to the extent that a loss, liability or cost is compensated for by a tax gross-up;

15.3.1.3. attributable to the wilful breach by Nedbank of any law or regulation.

15.4. For the purpose of this clause -

15.4.1. **Tax** means any tax, levy, impost, duty, or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same); and

15.4.2. **Tax Deduction** means a deduction or withholding for or on account of Tax from a payment under this Agreement.

16. **ILLEGALITY**

16.1. **Nedbank Illegality**

16.1.1. Notwithstanding anything to the contrary, 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, notify the Borrower in writing to that effect.

16.1.2. If Nedbank so requires, the Borrower shall repay all the Outstandings on the next Repayment Date or within 120 (one hundred and twenty) Business Days of receipt by the Borrower of the written notice from Nedbank pursuant to clause 16.1.1,



whichever is the later. If such repayment is made on a date other than a Repayment Date, the Borrower will be liable to Nedbank for such Breakage Costs as Nedbank may have incurred or will incur as a consequence of such repayment.

16.1.3. If Nedbank becomes entitled to give notice pursuant to clause 16.1.1, it will endeavour to avoid the circumstances therein referred to, but nothing in this clause 16.1.3 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.

16.2. **Borrower Illegality**

16.2.1. 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. Notwithstanding anything to the contrary, 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.

16.2.2. The Borrower shall repay all Outstandings on the next Repayment Date or within 120 (one hundred and twenty) Business Days of receipt by the Borrower of the written notice from Nedbank pursuant to clause 16.2.1, whichever is the later. If such repayment is made on a date other than a Repayment Date, the Borrower will be liable to Nedbank for such Breakage Costs as Nedbank may have incurred or will incur as a result of the early termination.

16.2.3. If Nedbank becomes entitled to give notice pursuant to clause 16.2.1, it will endeavour to avoid the circumstances therein referred to, but nothing in this clause 16.2.3 shall oblige it 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.

17. **CERTIFICATE OF INDEBTEDNESS AND OTHER NOTICES**

17.1. 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* evidence of –

17.1.1. the amount of any debt owing by the Borrower to Nedbank (including, without limitation, accrued interest and default interest) in terms of this Agreement;

17.1.2. the due dates of performance in respect of any obligations of the Borrower in terms of this Agreement;

17.1.3. any Interest Rate; or





17.1.4. the fact that the debts are due and owing and have not been paid or otherwise discharged.

17.2. In addition to and in application of the provisions of clause 17.1, 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.

## 18. ASSIGNMENT

18.1. This Agreement shall be binding upon and enure to the benefit of each Party and its or any subsequent successors-in-law.

18.2. 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.

18.3. 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 15. 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).

## 19. 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.

## 20. DOMICILIUM CITANDI ET EXECUTANDI

20.1. 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:

20.1.1. Nedbank

Physical Address: 135 Rivonia Road  
6<sup>th</sup> Floor, Block I  
Sandown  
Sandton  
2196

Current Fax no: 011 294 1333

Attention: The Head: Corporate Banking Credit Risk



20.1.2. the Borrower:

Physical Address: 66 Jorrissen Street  
Jorrissen Place  
Treasury 14 th Floor  
Braamfontein  
Current Fax no: 011 242 1055  
Attention: Khomotso Letsatsi

- 20.2. 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.
- 20.3. 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.
- 20.4. 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.
- 20.5. Notwithstanding anything to the contrary contained in this clause 19, 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.

## 21. COSTS AND EXPENSES

- 21.1. Each Party shall be responsible for its own costs of negotiating, drafting and implementing this Agreement.
- 21.2. The defaulting party shall on demand reimburse the other party 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.

## 22. MISCELLANEOUS

### 22.1. 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.



22.2. **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.

22.3. **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.

22.4. **Duration**

This Agreement shall endure for the Term.

22.5. **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.

22.6. **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 or communicated to the other Party in writing.

22.7. **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.

22.8. **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.

22.9. **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*

*Handwritten signatures and initials, including the number 28.*



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.

22.10. **Applicable Law**

This Agreement is to be interpreted and implemented in accordance with the law of the Republic of South Africa.

22.11. **Jurisdiction**

Each of the Parties irrevocably agrees that the South Gauteng High Court of the Republic of South Africa shall have jurisdiction to hear and determine any suit, action or proceeding, and to settle any disputes, which may arise out of or in connection with this Agreement and, for such purposes, irrevocably submits to the non-exclusive jurisdiction of such court.

22.12. **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.

22.13. **Time of the Essence**

The time stipulated in this Agreement for all payments payable by the Borrower to Nedbank or any other person and for the performance of the Borrower's other obligations under this Agreement will be of the essence of this Agreement.

22.14. **Appropriation**

Subject to any provisions to the contrary in this Agreement, if any sum paid or recovered in respect of the liabilities of the Borrower under this Agreement is less than the amount then due and payable, Nedbank may apply that sum to amounts due and payable under this Agreement in such proportions and order and generally in such manner as Nedbank may determine.

22.15. **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.

THE NEXT PAGE IS THE SIGNATURE PAGE

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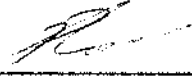
Signed at SANDTON on this the 11th day of JUNE 2012

As Witnesses:

1.   
\_\_\_\_\_

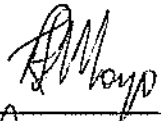
For: Nedbank Limited

2.   
\_\_\_\_\_

  
\_\_\_\_\_

Name: P. MOODLIAR

Capacity: CREDIT EXECUTIVE

  
\_\_\_\_\_

Name: REMO MOYO

Capacity: DIVISIONAL EXECUTIVE


Signed at \_\_\_\_\_ on this the \_\_\_\_\_ day of \_\_\_\_\_ 2012

As Witnesses:

1. \_\_\_\_\_


For: City of Johannesburg Metropolitan Municipality

2. \_\_\_\_\_

  
\_\_\_\_\_

Name: G. DLIMAS

Capacity: ACTING CITY MANAGER

  
NAME : LUNGELWA LONALUSHE  
CAPACITY : ACTING A.D. FINANCE



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**Amortisation Schedule**

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*Handwritten initials and scribbles, including 'HS' and other illegible marks.*



Business day	Preceding
--------------	-----------

Clause 1.51

Ref. No.  
 Client  
 Corporate Banker  
 Loan Amount  
 Base Rate Type  
 Fixed/Floating  
 Entry Date  
 End Date  
 Years  
 Spread  
 Liquids  
 Margin (All In)

R 919,405,000.00  
 6 month JIBAR  
 Fixed  
 15-Jun-12  
 15-Jun-22  
 10.01  
 1.55%  
 0.30%  
 1.85%

Equal Total Payments  
 819,405,000.00

Business Day aligned

DATE	Day of the Week	NO. OF DAYS	RATE	DR4/DOWNS	CONSOLIDATED ENTRIES	CAPITAL REPAYMENT	TOTAL CAPITAL MOVEMENT	INTEREST ACCRUED	INTEREST PAID	TOTAL PAYMENT	CAPITAL BALANCE	TOTAL BALANCE
15-Jun-12	Friday	182	9.31%	919,405,000.00							919,405,000.00	919,405,000.00
14-Dec-12	Friday	182	9.31%		-28,958,649.91	-28,958,649.91	-28,958,649.91	42,681,047.13	-42,681,047.13	-71,639,697.04	890,446,560.09	890,446,560.09
14-Jun-13	Friday	182	9.31%		-30,302,981.84	-30,302,981.84	-30,302,981.84	41,336,715.19	-41,336,715.19	-71,639,697.04	860,143,568.25	860,143,568.25
13-Dec-13	Friday	182	9.31%		-31,709,720.98	-31,709,720.98	-31,709,720.98	39,929,876.06	-39,929,876.06	-71,639,697.04	828,433,047.27	828,433,047.27
13-Jun-14	Friday	182	9.31%		-33,181,764.42	-33,181,764.42	-33,181,764.42	38,457,932.62	-38,457,932.62	-71,639,697.04	795,251,682.85	795,251,682.85
15-Dec-14	Monday	185	9.31%		-34,113,612.64	-34,113,612.64	-34,113,612.64	37,626,084.40	-37,626,084.40	-71,639,697.04	761,438,270.21	761,438,270.21
15-Jun-15	Monday	182	9.31%		-36,305,781.75	-36,305,781.75	-36,305,781.75	35,333,915.28	-35,333,915.28	-71,639,697.04	724,832,488.46	724,832,488.46
15-Dec-15	Tuesday	183	9.31%		-37,808,303.73	-37,808,303.73	-37,808,303.73	33,833,383.30	-33,833,383.30	-71,639,697.04	687,026,184.72	687,026,184.72
15-Jun-16	Wednesday	183	9.31%		-39,571,008.77	-39,571,008.77	-39,571,008.77	32,068,668.27	-32,068,668.27	-71,639,697.04	647,455,179.95	647,455,179.95
15-Dec-16	Thursday	183	9.31%		-41,418,085.89	-41,418,085.89	-41,418,085.89	30,221,811.15	-30,221,811.15	-71,639,697.04	606,037,660.07	606,037,660.07
16-Jun-17	Thursday	182	9.31%		-43,505,960.88	-43,505,960.88	-43,505,960.88	28,133,735.06	-28,133,735.06	-71,639,697.04	562,531,129.09	562,531,129.09
15-Dec-17	Friday	183	9.31%		-45,382,130.89	-45,382,130.89	-45,382,130.89	26,257,568.04	-26,257,568.04	-71,639,697.04	517,148,898.10	517,148,898.10
15-Jun-18	Friday	182	9.31%		-47,632,365.96	-47,632,365.96	-47,632,365.96	24,007,331.65	-24,007,331.65	-71,639,697.04	469,518,632.72	469,518,632.72
14-Dec-18	Friday	182	9.31%		-49,843,577.23	-49,843,577.23	-49,843,577.23	21,796,119.80	-21,796,119.80	-71,639,697.04	419,673,059.48	419,673,059.48
14-Jun-19	Friday	182	9.31%		-52,157,438.89	-52,157,438.89	-52,157,438.89	19,482,258.05	-19,482,258.05	-71,639,697.04	367,515,516.49	367,515,516.49
13-Dec-19	Friday	182	9.31%		-54,578,715.92	-54,578,715.92	-54,578,715.92	17,060,981.12	-17,060,981.12	-71,639,697.04	312,836,560.58	312,836,560.58
15-Jun-20	Monday	188	9.31%		-56,872,933.45	-56,872,933.45	-56,872,933.45	14,766,783.58	-14,766,783.58	-71,639,697.04	256,063,967.12	256,063,967.12
15-Dec-20	Tuesday	183	9.31%		-59,687,262.44	-59,687,262.44	-59,687,262.44	11,952,434.59	-11,952,434.59	-71,639,697.04	198,376,704.68	198,376,704.68
15-Jun-21	Tuesday	182	9.31%		-62,523,406.19	-62,523,406.19	-62,523,406.19	9,116,290.65	-9,116,290.65	-71,639,697.04	133,853,269.49	133,853,269.49
15-Dec-21	Wednesday	183	9.31%		-65,391,755.11	-65,391,755.11	-65,391,755.11	6,247,941.92	-6,247,941.92	-71,639,697.04	68,481,543.38	68,481,543.38
15-Jun-22	Wednesday	182	9.31%		-68,461,543.38	-68,461,543.38	-68,461,543.38	3,178,153.65	-3,178,153.65	-71,639,697.04		



- 1.1.11. "Basis Point" means 1/100 (one hundredth) of 1 (one) percentage point;
- 1.1.12. "Borrower" means City of Johannesburg Metropolitan Municipality;
- 1.1.13. "Borrower Account" means the Borrower's bank account as advised to Nedbank in writing by the Borrower;
- 1.1.14. "Breakage Costs" means the aggregate of all loss, premiums, penalties, fees, costs, charges, expenses and disbursements actually 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, or other financial instrument relating directly or indirectly to the financing of the Loan;
- 1.1.15. "Business Day" means any day other than a Saturday, Sunday or an official public holiday in the Republic of South Africa;
- 1.1.16. "Capital" means an amount R919 405 000.00 (nine hundred and nineteen million four hundred and five thousand Rand);
- 1.1.17. "Capital Budget" shall have the meaning ascribed to it in the MFMA , as approved in terms of Section 5, 16, 17, 19 and 24;
- 1.1.18. "Capital Project" means the Borrower's capital projects for the 2011/2012 financial year (which commences on 1<sup>st</sup> July 2011 to 30<sup>th</sup> June 2012), 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. "Default Rate" means the applicable Interest Rate plus 150 (one hundred and fifty) Basis Points per annum expressed as an nacs rate;
- 1.1.21. "Dispose" means to sell, transfer, cede, assign, lease, alienate, donate, renounce, surrender, waive, relinquish, exchange or otherwise dispose of;
- 1.1.22. "Drawdown Notice" means a notice substantially in the form set out in Appendix 2;
- 1.1.23. "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 of 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;
- 1.1.24. "Event of Default" means any of the events described in clause 12;

Handwritten signatures and initials, including a large signature and the number 5.





**FORM OF DRAWDOWN NOTICE**

(To appear on the Letterhead of the Borrower)

To: Nedbank Limited (acting through its Corporate Banking division)

6<sup>th</sup> floor, 1 Block,

135 Rivonia Road

Sandown

Attention: **[Insert]**

Date:

Dear Sirs,

**LOAN AGREEMENT DATED [INSERT] 2012 (TEN YEAR TENOR): DRAWDOWN NOTICE**

1. We refer to the Loan Agreement dated [insert] 2012, made between us and Nedbank Limited (acting through its Corporate Banking division) (the "Loan Agreement").
2. This is a Drawdown Notice.
3. The terms defined in the Loan Agreement shall have the same meanings where used in this Drawdown Notice.
4. We confirm that no Event of Default or Potential Event of Default or Material Adverse Change has occurred or is occurring.
5. This Drawdown Notice is irrevocable.
6. We hereby give you notice that, pursuant to the Loan Agreement and on [•], we wish to drawdown an amount of [•] ([insert amount in words]) upon the terms and subject to the conditions contained therein.
7. The proceeds of this Loan must be credited to the following bank account:

**[Insert bank account details]**

Yours faithfully,

.....

For and on behalf of the City of Johannesburg Metropolitan Municipality