

Execution Version

TERM LOAN AGREEMENT

by and between

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

and

BITOU MUNICIPALITY

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APPENDIX

ANNEXURE A

DRAW DOWN NOTICE

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1 PARTIES

1.1 The parties to this agreement are –

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

1.1.2 Bitou Municipality.

2 DEFINITIONS

2.1 In this agreement, unless clearly inconsistent with or otherwise indicated by the context –

2.1.1 “**Agreement**” means this agreement, together with all appendices hereto and letters and notices given in terms hereof from time to time, all read together;

2.1.2 “**the Bank**” means The Standard Bank of South Africa Limited (Registration Number 1962/000738/06), acting through its Personal and Business Banking Division, a public company duly incorporated with limited liability according to the company laws of the Republic of South Africa;

2.1.3 “**the Borrower**” means Bitou Municipality a municipality incorporated according to the municipal laws of the Republic of South Africa;

2.1.4 “**Business Day**” means a day other than a Saturday, Sunday or proclaimed public holiday in the Republic of South Africa;

2.1.5 “**Calendar Month**” means a full calendar month in any year that is, January, February, March, April, May, June, July, August, September, October, November and December;

2.1.6 “**Early Reduction**” means any payment made by the Borrower in advance and in addition to the instalments set out in 8.1 of this Agreement, as part payment of the Loan Facility;

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- 2.1.7 **“Indebtedness”** means the total balance outstanding on the Loan Facility plus any interest, fees and costs in respect of the Loan Facility which are owed by the Borrower to the Bank from time to time;
- 2.1.8 **“the Loan Facility”** means the long term loan facility referred to in this Agreement (which is in the form of a medium term loan, a lending product of the Personal and Business Banking Division of the Bank);
- 2.1.9 **“Material Adverse Effect”** means a change in the circumstances existing as at the Signature Date which in the reasonable opinion of the Bank may have a material adverse effect on:
- 2.1.9.1 the assets, operation, property or financial condition of the Borrower;
- 2.1.9.2 the ability of the Borrower to perform its obligations in terms of the Loan Facility; or
- 2.1.9.3 the validity or enforceability of one or more of the agreements under which the Loan Facility is availed and the collateral provided to the Bank or the rights or remedies of the Bank thereunder;
- 2.1.10 **“MFMA”** means the Local Government: Municipal Finance Management Act 56 of 2003 and Regulations;
- 2.1.11 **“Parties”** means the Bank and the Borrower and **“Party”** means any one of them as the context may indicate;
- 2.1.12 **“Prime Rate”** means the publicly quoted variable base rate of interest per annum ruling from time to time (as certified by any manager or divisional director of the Bank, whose appointment it shall not be necessary to prove) at which the Bank lends on overdraft; and
- 2.1.13 **“Signature Date”** means the date of signature of this Agreement by the Party signing last in time.

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

3 LOAN FACILITY

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

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4 RANKING OF LOAN FACILITY

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

5 LOAN AMOUNT

5.1 The aggregate amount to be advanced to the Borrower under the Loan Facility is R 16,580,000 (sixteen million five hundred and eighty thousand rand) ("the Loan Amount").

5.2 The amount of the Borrower's indebtedness to the Bank under the Loan Facility shall not at any one time exceed the Loan Amount. To the extent that a draw down under the Loan Facility would cause the Loan Amount to be exceeded, the Borrower shall not be entitled make such a draw down.

6 AVAILMENT AND PURPOSE

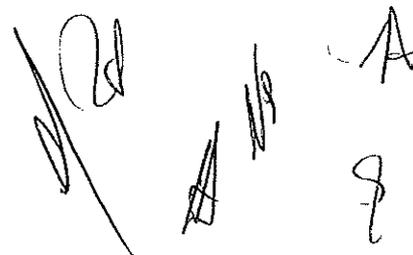
6.1 The Loan Facility may be utilised upon fulfilment and/or waiver of the conditions precedent referred to in 11 below, provided that no draw downs may be made by the Borrower under the Loan Facility 3 (three) months after the date set out in 11 below. The Borrower shall be obliged to give the Bank prior written notice of a requested draw down by not later than 11:00 am at least 3 (three) Business Days before the proposed date of draw down in the form of Annexure "A" hereto.

6.2 The Loan Facility shall be utilised to fund the Borrower's municipal projects in line with the Borrower's capital expenditure budget for the Borrower's 2010/2011 financial year.

6.3 The Bank shall not, however, be under any obligation to verify or monitor that the Borrower will utilise the Loan Facility for the aforesaid purpose.

7 INTEREST

7.1 The Loan Facility shall bear interest at a fixed rate of 11.26% (eleven point two six percent) per annum.

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7.2 The interest payable by the Borrower is calculated on a daily basis on the outstanding balance and is calculated on a 365-day year, irrespective of whether it is a leap year.

7.3 The interest payable by the Borrower is charged bi-annually in arrears and will be paid by the Borrower in terms of clause 8.1 below.

8 REPAYMENT

8.1 The capital and interest amount of the Loan Facility is to be repaid by the Borrower to the Bank over a period of 10 (ten) years in 20 (twenty) equal bi-annual instalments of R 1,415,593,77 (one million four hundred and fifteen thousand five hundred and ninety three rand and seventy seven cents). The first bi-annual instalment shall be due and payable on the 31st of December 2011 thereafter, the succeeding bi-annual instalments shall be due and payable on the 30th of June and the 31st of December of each successive year.

8.2 The Loan Facility shall be repaid in full by the Borrower by no later than close of business on the 30th of June 2021.

8.3 All repayments pursuant to this Loan Facility shall be made by means of electronic fund transfers by the Borrower to the Bank into the Borrower's Loan Facility account. The Bank reserves the right, in its sole discretion, to accept payment made in any other manner.

9 EARLY REPAYMENT

9.1 Early permanent repayment of the Loan Facility in full may be made by the Borrower on not less than 90 (ninety) Business Days written notice (or such shorter notice period as the Bank may agree to in writing) of the Borrower's intention to make such early permanent repayment, subject to the provisions of clause 9.3 below.

9.2 In the event of an early permanent repayment as contemplated in 9.1 above, the Borrower shall be liable for all breakage costs the Bank may incur and/or sustain as a result thereof, being all costs, losses and/or reduced receipts which the Bank may sustain and/or incur in relation to the termination or modification of any

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arrangements the Bank may have made on account of or in respect of funds borrowed, contracted for or utilized to fund any amount payable or advanced under the Loan Facility.

- 9.3 Early Reductions of the Borrower's Indebtedness under the Loan Facility in multiples of R100,000 (one hundred thousand rand) may be made by the Borrower on not less than 30 (thirty) Business Days written notice (or such shorter notice period as the Bank may agree to in writing) of the Borrower's intention to make any such Early Reduction. Only one Early Reduction may be made in any Calendar Month.
- 9.4 If the Borrower makes an Early Reduction of the Loan Facility, unless the instalments are rescheduled by agreement in writing between the Parties, this will not affect the Borrower's obligations to pay the instalments as set out in 8.1 above.
- 9.5 If no rescheduling arising from an Early Reduction is agreed to in terms of 9.4 above, the Borrower may draw down in part or in full up to the amount of such Early Reduction, provided that:
- 9.5.1 the Borrower provides the Bank with a draw down schedule by not later than 11:00 am at least 3 (three) Business Days before the proposed date of draw down in the form of Annexure "A" hereto;
- 9.5.2 such draw downs are in multiples of R 100,000 (one hundred thousand rand); and
- 9.5.3 only one such draw down may be made in any Calendar Month.
- 9.6 The Bank may, however, upon reasonable written notice to the Borrower, including but not limited to if any event of default set out in 14.1 below withdraw in whole or in part the Borrower's rights in terms of 9.5 above.

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10 EARLY SETTLEMENT

10.1 The Borrower shall incur prepayment penalties should the Borrower settle the Loan Facility in full with funding obtained from an external debt provider other than the Bank. Such prepayment penalty shall be calculated as follows:

10.1.1 5% (five percent) of the capital balance, if repaid within 1 (one) year of the Loan Facility drawdown date;

10.1.2 4% (four percent) of the capital balance, if repaid within 2 (two) years of the Loan Facility drawdown date; and

10.1.3 3% (three percent) of the capital balance, if repaid within 3 (three) years of the Loan Facility drawdown date.

11 CONDITIONS PRECEDENT

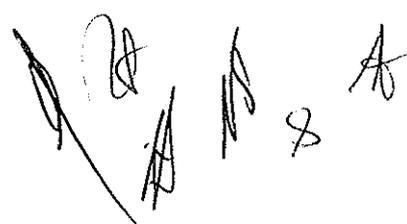
11.1 The granting of the Loan Facility is subject to the fulfilment of the following conditions precedent to the satisfaction of the Bank, which shall be fulfilled by no later than close of business within 3 (three) months of Signature Date:

11.1.1 that the Borrower has furnished the Bank with written confirmation from the accounting officer of the Borrower, in form and substance acceptable to the Bank that the unspent grants that are not covered by cash have been condoned by the national and/or provincial treasury;

11.1.2 that a copy of this Agreement signed by the accounting officer of the Borrower accepting the terms and conditions stipulated herein, is returned to the Bank;

11.1.3 that the Borrower has furnished the Bank with proof to the Bank's satisfaction that the provisions of the MFMA, including all schedules and regulations thereto, as amended, have been complied with in relation to the Loan Facility;

11.1.4 that the Borrower has provided the Bank with a certified copy of the resolution of the Municipal Council in form and substance acceptable to the

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Borrower, signed by the Mayor, approving the Loan Facility and the agreement(s) relating thereto;

11.1.5 that the Borrower has provided the Bank with a legal opinion from the Borrower's attorneys in form and substance acceptable to the Bank, confirming compliance by the Borrower with the provisions of the MFMA, including all schedules and regulations thereto, as amended from time to time and that same is in form and substance acceptable to the Bank;

11.1.6 if applicable, that the Borrower has provided the Bank with a certified copy of the adjustments budget tabled in terms of the MFMA and that the Bank is satisfied as to the manner in which the Loan Facility has been dealt with in such adjustments budget;

11.1.7 that the Borrower has provided the Bank with a written disclosure of whether the purpose of the Loan Facility is to fund capital expenditure on property, plant or equipment as contemplated in section 46(1)(a) of the MFMA; and

11.1.8 that the Bank has been provided with the Borrower's:

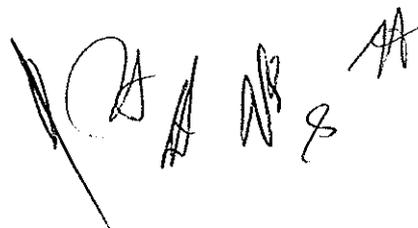
11.1.8.1 audited financial statements for the 3 (three) preceding financial years, together with an indication whether the audit deadline referred to in Section 126 of the MFMA has been met;

11.1.8.2 approved annual budget;

11.1.8.3 the integrated development plan or multi-year business plan referred to in section 87(5)(d) of the MFMA (if applicable); and

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

11.2 The above conditions precedent are inserted for the benefit of the Bank, which may in writing on or before the dates for fulfilment of the conditions set out in 11.1 above, extend the period for fulfilment or waive any of the said conditions precedent in its sole discretion. Unless and until the above conditions precedent



are either waived or fulfilled, the Borrower shall not be entitled to avail of the Loan Facility.

11.3 Notwithstanding any provision to the contrary, if the Bank, in the erroneous belief that all the conditions precedent have been fulfilled or waived (as the case may be), makes any advances or any portion of the Loan Facility (the "Advanced Amount") available to the Borrower and if it subsequently transpires that any one (or more) of the conditions precedent has in fact not been fulfilled or waived (as the case may be):

11.3.1 the terms and conditions of this Agreement shall apply in respect of the amount of the Advanced Amount (subject to clauses 11.3.2 and 11.3.3 below), notwithstanding that the conditions precedent, or any one of them, have not been fulfilled or waived (as the case may be);

11.3.2 the Bank shall be entitled to declare the amount of the Advanced Amount to be immediately due and payable by the Borrower to the Bank; and

11.3.3 the Bank shall not be obliged to make any further advances to the Borrower.

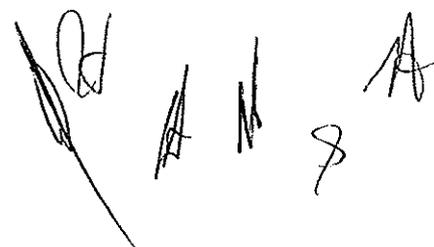
12 POST DRAW DOWN/ONGOING CONDITIONS

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

12.1.1 the Borrower shall:-

12.1.1.1 comply with the MFMA, including all schedules and regulations thereto, as amended from time to time, with relation to the Loan Facility to the satisfaction of the Bank;

12.1.1.2 provide the Bank with information relating to its draft budgets, approved budgets, adjustment budgets as well as the monthly and quarterly reports required in terms of the MFMA within 5 (five) days of such information being due in terms of the MFMA for a particular period;



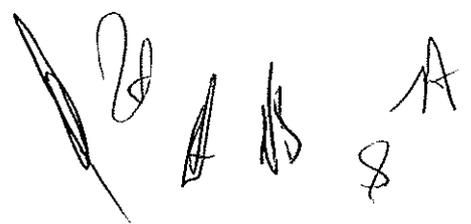
- 12.1.1.3 confirm to the Bank in writing that the terms of any facilities and/or loan agreements, including credit limit, may only be changed by council resolution;
- 12.1.1.4 inform the Bank, as soon as possible after identification of any financial problems facing the Borrower, including any emerging or impending financial problems in terms of the provisions of Section 54 of the MFMA that could reasonably be expected to affect the Borrower's ability to repay any amounts outstanding under the Loan Facility;
- 12.1.2 the Bank reserves the right to reassess and to renegotiate the Loan Facility in the event of there being a change in the management, and/or legislated governance of the local authority or any change in the overall structure of the local authority, and/or the change in the structure of revenue streams (e.g. electricity – introduction of REDS); and
- 12.1.3 the Bank reserves the right to review the Loan Facility prior to expiry of same.
- 12.2 Any reference in this Agreement to a specific requirement under the MFMA (and all schedules and/or regulations thereto) shall not derogate from or exclude the application of any provisions not specifically referred to herein.

13 ONGOING CONDITIONS AND COVENANTS

13.1 Financial Covenants

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

- 13.1.1 Billings to Collections ratio to be maintained at a level that is greater than or equal to 90% (ninety percent);
- 13.1.2 Debt to Revenue ratio to be maintained at a level that is less than or equal to 50% (fifty percent);

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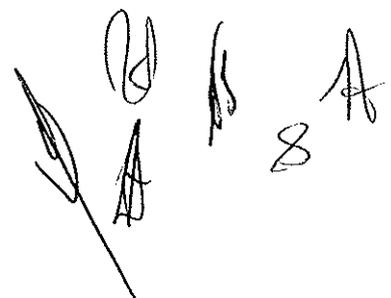
- 13.1.3 Interest Cover ratio to be maintained at a level greater than or equal to 1.0 (one point zero times); and
- 13.1.4 Current assets to exceed current liabilities by more than 1.0 (one point zero times).

13.2 **Notification of event of default**

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

14 **EVENTS OF DEFAULT**

- 14.1 If any of the following default events, each of which shall be severable and distinct from the others, shall occur, namely:
 - 14.1.1 should the Borrower fail to make payment by due date of any amount due in terms of the Loan Facility or any other facilities that the Bank has accorded the Borrower or may offer to the Borrower; and/or
 - 14.1.2 should the Borrower breach any term or condition of this Agreement or any other facility the Bank may grant to the Borrower or any other facility between the Borrower and Standard Bank Group Limited or any other subsidiary or associate company of the Bank and the Borrower fails to remedy the breach within 7 (seven) days of receiving written notice to do so; and/or
 - 14.1.3 should any, representation, warranty or undertaking made (or deemed to have been made) in connection with this Agreement or any documentation supplied by the Borrower be, in the Bank's opinion, materially incorrect; and/or
 - 14.1.4 if the Borrower is liquidated whether provisionally or finally, and whether voluntarily or compulsorily, or is placed under judicial management, or is wound up; and/or

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- 14.1.5 if the Borrower meets the conditions for a mandatory provincial intervention (as contemplated in Section 139 and 140 of the MFMA); and/or
- 14.1.6 if an event occurs that adversely affects the validity or enforceability of the Agreement; and/or
- 14.1.7 if an attachment, execution or other legal process is levied, enforced, issued or sued out on or against any assets of the Borrower or any unsatisfied judgement or order, including failure to pay a final judgement or court order, except insofar as reasonable court process is underway for the Borrower's indebtedness to the Bank, and is not discharged or stayed within 30 (thirty) days of service by the relevant officer of the court of such attachment, execution or other legal process; and/or
- 14.1.8 should a writ of execution issued by any competent court attaching any assets belonging to either the Borrower remain unsatisfied for more than 7 (seven) days after the date on which it is issued; and/or
- 14.1.9 if the Loan Facility is not budgeted for in the Borrower's budget in any particular year; and/or
- 14.1.10 if at any time there is a change in the demarcation of the geographic area falling within the jurisdiction of the Borrower as at the Signature Date; and/or
- 14.1.11 if the payment of all amounts under the Loan Facility is not retrospectively approved by means of an adjustments budget within a specified period; and/or
- 14.1.12 if at any time after the Signature Date, there is any change in (including but not limited to repeal of legislation) or addition to, the legislation to which the Borrower is subject and which in the reasonable opinion of the Bank could be expected to adversely affect the ability of the Borrower to comply with any of its obligations hereunder; and/or
- 14.1.13 a change envisaged in clause 17.12 below takes place; and/or

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- 14.1.14 the Borrower defaults in the due payment or due performance of any amount payable or obligation to be performed under any agreement, which amount or which obligation the Bank considers to be material in its reasonable opinion; and/or

- 14.1.15 any material Indebtedness or obligation for monies borrowed constituting indebtedness of the Borrower shall become due and payable prior to its specified maturity by reason of default, or shall not be paid when due; and/or

- 14.1.16 the Borrower defaults in the due and punctual performance under any other agreement including any other loan/credit facility between the Borrower and the Bank and (if such default is capable of being remedied) same has not been remedied to the satisfaction of the Bank within 14 (fourteen) days' from the date of any written notice given by the Bank to the Borrower to remedy the default; and/or

- 14.1.17 the Borrower's auditors in any financial statements of the Borrower published after the date of the last set of audited financial statements furnished to the Bank or if none have been so furnished, after the Signature Date, materially qualifies that annual statement in any respect, or inserts a note in the supporting documents to that financial statement relating to any material irregularity; and/or

- 14.1.18 there is a material deterioration in the Borrower's financial position;

"material deterioration" shall mean material deterioration in the Bank's reasonable opinion; and/or

- 14.1.19 should the Bank become aware, at any time, of a fact or circumstance (whether same was present at or before the time of acceptance of this Agreement by the Borrower or arose thereafter), which in its reasonable opinion has, or could in the future have, an adverse effect on the Borrower's ability to perform any of its obligations to the Bank in terms of this Agreement, or prejudice the Bank's position with respect to the Loan Facility in any other way; and/or

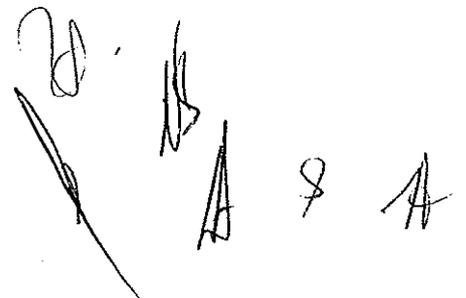
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- 14.1.20 at any time, the amount outstanding under the Loan Facility exceeds the Loan Amount as stated in clause 5 above; and/or
- 14.1.21 the Borrower, is unable to pay its debts, suspends or threatens to suspend payment of all or a material part of (or of a particular type of) its indebtedness to any other creditors, commences negotiations or takes any other step with the view to the deferral, rescheduling or other re-adjustment of all of (or all of a particular type of) its indebtedness to creditors (or of any part of such indebtedness which it will or might otherwise be unable to pay when due), proposes or makes a general assignment or an arrangement or composition with or for the benefit of its creditors or a moratorium is agreed or declared in respect of or affecting all or a part of the indebtedness of the Borrower; and/or
- 14.1.22 the occurrence of an event that has a Material Adverse Effect on the, operations, performance, assets or prospects and financial conditions of the Borrower; and/or
- 14.1.23 the occurrence of an event that has an adverse effect on the Borrower's ability to perform any of its obligations to the Bank in terms of this Loan Facility, or prejudice the Bank's position with respect to the Loan Facility in any other way; and/or
- 14.1.24 the Borrower generally does or omits to do anything which may cause the Bank to suffer any loss or damage, including any reputational loss or damage; and/or
- 14.1.25 should the Borrower sell any of its assets outside the ordinary course of business; or
- 14.1.26 should the Borrower advance credit to any third parties outside the course of business; and/or
- 14.1.27 the Bank become aware, at any time, of a fact or circumstance (whether same was present at or before the time of acceptance of the Loan Facility

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by the Borrower or arose thereafter), which causes the Bank to know or suspect that:

- 14.1.27.1 the Borrower's account is being used fraudulently, negligently, for illegal or terrorist activities, or for any purpose that does not comply with the law; or
- 14.1.27.2 the Borrower is involved in any illegal or terrorist activities.
- 14.2 The Bank, may without prejudice to any other rights hereunder or at law, at any time after the happening of an event of default, by written notice to the Borrower:
 - 14.2.1 decline any request by the Borrower to draw down any further monies under the Loan Facility or terminate the Loan Facility forthwith; and/or
 - 14.2.2 require on demand payment of all the Indebtedness which is then outstanding and whether or not it is then due for payment, and upon any such demand all that Indebtedness shall immediately become due and payable; and
 - 14.2.3 require on demand payment of all breakage costs that the Bank may have incurred or sustained, being all costs, losses and/or reduced receipts which the Bank may have sustained or incurred in relation to the termination or modification of any arrangements the Bank may have made on account of or in respect of funds borrowed, contracted for or utilized to fund any amount payable or advanced under the Loan Facility.
- 14.3 The Bank's rights under this clause shall not be exhaustive but shall be in addition to and without prejudice to any other rights which it may have under this Agreement or the law.
- 14.4 If any of the events specified in 14.1 above become applicable an event of default shall be deemed to have taken place for the purposes of this Agreement thereby entitling the Bank to avail itself of the remedies specified in 14.2 above.

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15 REPRESENTATIONS AND WARRANTIES

15.1 The Borrower represents and warrants to the Bank that as at the Signature Date and on the date of each draw down under the Loan Facility:

15.1.1 it is authorised to enter into this Agreement;

15.1.2 it has complied with all the provisions of the MFMA in relation to the Loan Facility, and undertakes that it will continue to do so for the currency of the Loan Facility;

15.1.3 the Loan Facility constitutes and will continue to constitute valid and binding obligations of the Borrower;

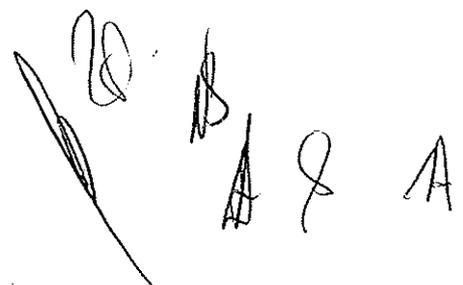
15.1.4 its annual budget as well as its approved annual budget contains all of the information referred to in section 17 of the MFMA;

15.1.5 the Loan Facility has been provided for in an approved budget, is properly approved by council meeting and that payment of the amount of Loan Facility will not result in the total amount of the budget being exceeded. These requirements will be met in future as well;

15.1.6 that the persons who negotiated the Agreement on behalf the Borrower, as well as the person who signed the Agreement on behalf of the Borrower, have made diligent investigations in order to ascertain all relevant information and that all such information has been disclosed to the Bank, in writing;

15.1.7 it will not utilise savings with regards to an unrelated expenditure in a budget to defray any excess expenditure that may be required for satisfying a claim under this Agreement;

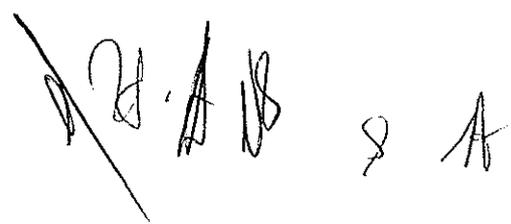
15.1.8 there are no circumstances resulting in a Material Adverse Effect on the financial condition, operations or assets of the Borrower, presently pending or threatened, and in the reasonably exercised opinion of the Borrower no such circumstances are likely to arise;

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- 15.1.9 the Borrower is not in breach of any law applicable to the Borrower, nor in breach of any material contract by which the Borrower is bound, and/or to which the Borrower is a party, and in the reasonably exercised opinion of the Borrower, no such breach is likely to occur and/or arise;
- 15.1.10 the Borrower's acceptance in terms of this Loan Facility has been duly authorised and to the best of its knowledge and belief does not contravene any law or any contractual obligation binding upon it;
- 15.1.11 the Borrower warrants and represents to the Bank that it is in full compliance with all applicable laws, regulations and practices relating to the protection of the environment applicable to in it each jurisdiction in which the Borrower conducts business (its "Environmental Responsibility") and hereby undertakes to continue to do so for so long as the Borrower is indebted to or owes any obligations to the Bank under or in terms of this Agreement;
- 15.1.12 the Loan Facility is not a form of debt renewal or refinancing and the Borrower will ensure that the Loan Facility is not used for this purpose;
- 15.1.13 the Borrower warrants that it is not aware of any circumstances which may prevent full compliance with its Environmental Responsibility in future; and
- 15.1.14 the Borrower hereby indemnifies the Bank against any loss, damage, claims, costs or any other liability, which may arise (because of this or any other banking facility and/or the Bank having an interest in the Borrower's assets) in respect of a breach of, or a failure, by the Borrower to meet its Environmental Responsibility.
- 15.2 The Borrower further represents and warrants to the Bank its acceptance of the terms of this Agreement has been duly authorised and does not contravene any law or any contractual obligation binding upon it.

16 CERTIFICATE OF INDEBTEDNESS

A certificate signed by any manager or divisional director of the Bank (whose authority, qualification or appointment need not be proved) setting out the amount of any

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indebtedness of the Borrower to the Bank in terms hereof, the rates of interest and any other fact, shall, upon its mere presentation, be sufficient proof, unless the contrary is proved, of the Borrower's indebtedness and of such other facts contained therein.

17 GENERAL TERMS

17.1 Financial Statements

The Bank requires the Borrower to furnish it with signed copies of the audited financial statements of the Borrower annually within a period of 180 (one hundred and eighty) days from the date that they are due in terms of the MFMA and any other information as the Bank may reasonably require.

17.2 Matters requiring the Bank's consent

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

17.2.1 become surety, guarantor for or give any indemnity on behalf of any third party whomsoever or render itself liable in any way whatsoever for the debts or engagements of any other party, other than encumbrances as agreed to by the Bank;

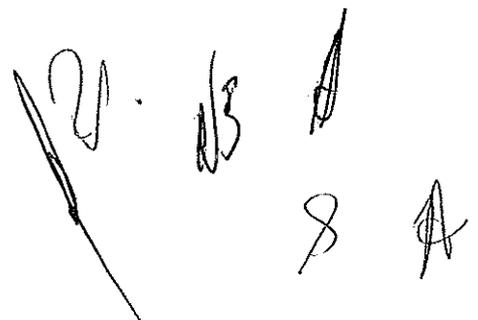
17.2.2 pledge, cede, mortgage, hypothecate or otherwise encumber or further encumber any of its movable or immovable assets to secure any liability of any nature;

17.2.3 sell or otherwise dispose of or attempt to sell or dispose of any of its assets except in the ordinary course of its operations; or

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

17.3 Annual Review

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

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17.3.2 The Loan Facility will be reviewed on 30 June 2012 in light of the following information and thereafter the annual review shall fall the same date in each and every succeeding year:

17.3.2.1 audited annual financial statements;

17.3.2.2 approved annual budget;

17.3.2.3 annual revised integrated development plan; and

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

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

17.4 Legal Charges

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

17.4.2 If in any legal proceedings relating to the enforcement by either Party of its rights in terms of this Agreement, a court awards to any Party, such costs shall be determined and recoverable on the scale as between an attorney and his own client and shall include collection charges, the costs incurred by such Party in endeavouring to enforce such rights prior to the institution of legal proceedings and the costs incurred in connection with the satisfaction or enforcement of any award or judgement awarded in favour of such Party in relation to its rights in terms of and arising out of this Agreement.

17.5 Free of Deduction

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

17.6 Allocation of Payments

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

17.7 Set-off and Realisation

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

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

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

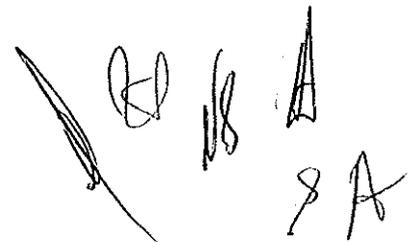
under written notice to the Borrower.

17.8 Renunciation of benefits

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

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

17.8.2 no money has been paid to the Borrower;

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

17.8.4 the Bank made an error in calculating the Borrower's indebtedness to the Bank. The Bank will revise its accounts in respect of the Borrower's indebtedness if they are incorrect.

17.9 **Whole Agreement, Variation of Terms**

17.9.1 The agreement created upon signature of this Agreement by the Borrower and the Bank shall constitute the whole Agreement between the Bank and the Borrower relating to the subject matter hereof.

17.9.2 No addition to, variation, or amendment, or consensual cancellation of any of the terms contained in this Agreement, shall be of any force or effect unless it is recorded in writing and is signed on behalf of the Bank by one of its authorised officials and accepted by the Borrower.

17.10 **Change in Borrower's Financial Position**

The Bank reserves the right to reassess and renegotiate the Loan Facility if any deterioration in the financial position of the Borrower occurs.

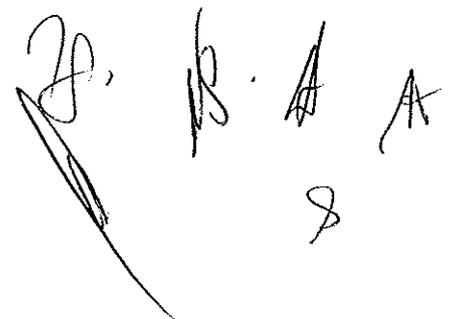
17.11 **Change in Circumstances**

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

17.12 **Change in Control of an Entity**

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

17.13 **Indemnity**

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The Borrower shall be bound by all instructions transmitted by it to the Bank by facsimile transceiver or by means of an e-mail message, and hereby waives any rights it may have or obtain against the Bank arising directly or indirectly from any losses or damages which the Borrower may suffer as a result of the Bank acting on any purported faxed or e-mailed instruction. The Borrower further indemnifies the Bank in respect of any claims, demands or actions made against the Bank or losses or damages suffered by the Bank as a result of the Bank acting on the said faxed or e-mailed instruction.

17.14 No Indulgence

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

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

17.15 Severability

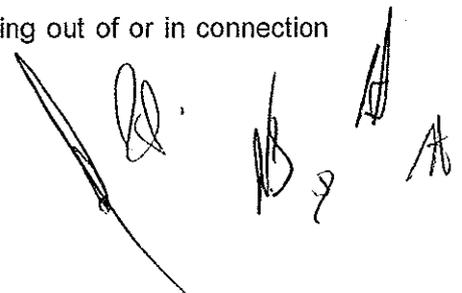
Each provision of this Agreement is severable, the one from the other and, if at any time any provision is or becomes or is found to be illegal, invalid, defective or unenforceable for any reason by any competent court, the remaining provisions shall be of full force and effect and shall continue to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

17.16 Governing Law

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

17.17 Domicillum and Notices

17.17.1 The Parties choose as their *domicilium citandi et executandi* (address for purpose of legal proceedings) their respective addresses set out below, at which addresses all processes and notices arising out of or in connection

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with this Agreement, its breach or termination may validly be served upon or delivered to the Parties.

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

17.17.2.1 as regards the Bank:

Attention: Henk Gregorowski

Standard Bank George Business Centre

Shop C4, St Georges Square

Knysna Road

George

6530

Telephone Number: 044-8013000

Telefax Number: 044-8013023

CC: Group Legal Division

Attention: Director Group Legal

9th Floor, Reception 5

Standard Bank Centre

5 Simmonds Street

Johannesburg, 2001

Telephone Number: (011) 636-2650

Telefax Number: (011) 636-7237

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17.17.2.2 as regards the Borrower:

Attention: Lonwabo Ngoqo

The Municipal Manager

1 Anchor Crescent

Plettenberg Bay

6600

Telephone Number: (044) 501-3000

Telefax Number: (044) 533-6161,

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

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

17.17.3.1 as regards the Bank:

Attention: Henk Gregorowski

PO Box 2

George

6530

Telephone Number: (044) 801-3000

Telefax Number: (044) 801-3032

17.17.3.2 as regards the Borrower:

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Attention: Lonwabo Ngoqo

The Municipal Manager

Private Bag X1002

Plettenberg Bay

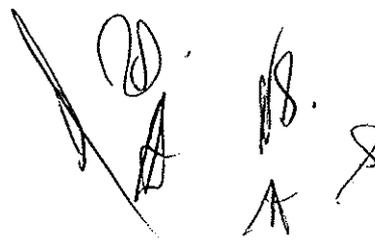
6600

Telephone Number: (044) 501-3000

Telefax Number: (044) 533-6161,

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

- 17.17.4 Any notice given in terms of this Agreement shall be in writing and shall:
- 17.17.4.1 If delivered by hand be deemed to have been duly received by the addressee on the date of delivery.
 - 17.17.4.2 If delivered by a recognised international courier service, be deemed to have been received by the addressee on the 1st (first) Business Day following the date of such delivery by the courier service concerned.
 - 17.17.4.3 If posted by prepaid registered post will be deemed to have been received by the addressee on the 8th (eighth) Business Day following the date of such posting.
 - 17.17.4.4 If transmitted by facsimile be deemed to have been received by the addressee 1 (one) Business Day after despatch.
- 17.17.5 Notwithstanding anything to the contrary contained in this Agreement, a written notice or communication actually received by a Party at its chosen address set out above, shall be an adequate written notice of communication to such Party.



17.18 Counterparts

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

17.19 Cession

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

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

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

17.19.4 Upon a cession, assignment or transfer in accordance with the provisions of clause 17.19.3 above, the Bank shall be entitled to divulge and disclose such information and/or documents relating to the Borrower or any of its subsidiaries, which would otherwise be deemed to be confidential, to the cessionary, assignee or transferee as the Bank may deem necessary.

17.20 Disclosure of Information

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

17.21 Availability of Funds

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

17.22 Dispute resolution

17.22.1 If a dispute of any nature arises between the Parties, including in regard to the interpretation of, the effect of, the Parties' respective rights or obligations hereunder, a breach of or the termination of this Agreement, then, upon written request of either Party, each of the Parties will appoint a senior representative whose task it will be to meet for the purposes of resolving such dispute. Such representatives will discuss the matter in dispute and negotiate in good faith in an effort to resolve the dispute on amicable terms within 14 (fourteen) days. No formal proceedings may be commenced until the designated representatives conclude in good faith that an amicable resolution of the matter is not likely to occur.

17.22.2 Should the representatives of the Parties be unable to resolve a dispute in accordance with the foregoing, such dispute will be submitted to and decided by a court of competent jurisdiction or, upon agreement between the Parties, by arbitration in terms of this clause 17.22.

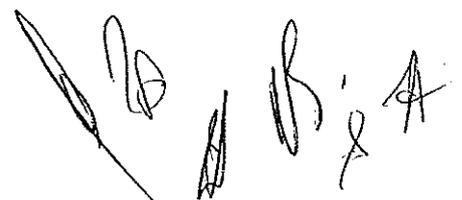
17.22.3 The arbitrator shall be appointed by the Parties and failing agreement shall be nominated by the Chairman for the time being of the Johannesburg Bar Council.

17.22.4 The arbitration shall be held at Johannesburg.

17.22.5 The arbitration shall be held in accordance with the Arbitration Act 42 of 1965.

17.22.6 The arbitrator shall be entitled to:

17.22.6.1 determine and settle the formalities and procedures, which shall be in an informal and summary manner, that is, it shall not be necessary to

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observe or carry out either the usual formalities or procedure or the strict rules of evidence;

17.22.6.2 investigate or cause to be investigated any matter, fact or thing which he considers necessary or desirable in connection with any matter referred to him for decision;

17.22.6.3 decide the matters submitted to him according to what he considers just and equitable in all the circumstances, having regard to the purpose of this Agreement; and

17.22.6.4 make such award, including an award for specific performance, an interdict, damages or a penalty or the costs of arbitration or otherwise as he in his discretion may deem fit and appropriate.

17.22.7 The arbitration shall be held as quickly as possible after it is demanded, with a view to it being completed within 30 (thirty) days after it has been so demanded.

17.22.8 This clause 17.22 is severable from the rest of this Agreement and shall therefore remain in effect even if this Agreement is terminated.

17.22.9 This clause 17.22 shall not preclude any Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.

17.22.10 The Parties hereby consent to the non exclusive jurisdiction of the High Court of South Africa in respect of the proceedings held in terms of this clause 17.22, where applicable, and the above Court shall have jurisdiction to enforce any award made by an arbitrator under this clause 17.22.

SIGNED AT ON THEDAY OF..... 2011



Neisimo S. Mkhize

Full Names:



For and on behalf of

The Standard Bank of South Africa Limited

Who warrants his/her authority hereto

As witnesses:

1. 

Full Names: Jhusi Matyula

Identity Number: 780126 0586 080

2. 

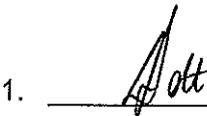
Full Names: Shereen Hendricks

Identity Number: 710203 005086

SIGNED AT ON THE DAY OF 2011


Full Names: Khwabo Myogo
For and on behalf of
Bitou Municipality
Who warrants his/her authority hereto

As witnesses:

1. 

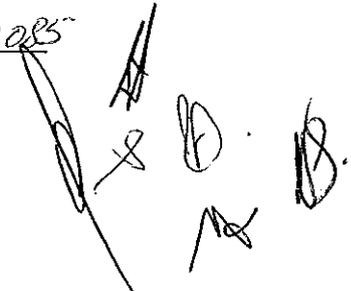
Full Names: DEON BAANTJIE LOTT

Identity Number: 630502 5132082

2. 

Full Names: FELICITY AGIEUS

Identity Number: 5908210172085



ANNEXURE A

NOTICE OF DRAW DOWN

TO BE TYPED ON THE BORROWER'S LETTERHEAD

Addressed to:

The Manager
The Standard Bank of South Africa Limited
Attention:

Date:

Dear Sir

Notice of draw down

Bitou Municipality ("the Borrower") hereby requests draw down of R
(..... rand) ("the draw down amount") under the Loan Facility on the second
Business Day after the Business Day upon which this draw down notice is received by The
Standard Bank of South Africa Limited (Registration number: 1962/000738/06) ("the Bank")
pursuant to the provisions of clause 5.1 and 6.1 of the Loan Agreement concluded between
the Bank and the Borrower on ("the Loan Agreement").

Please credit the draw down amount to the Borrower's current account number 082 599 343
in the books of your Plettenberg Bay branch.

Yours sincerely

For: Bitou Municipality

Full name of signatory: _____

Capacity of signatory: _____

Date of authorising resolution: _____