

Post

DEED OF CESSION OF A BANK ACCOUNT

in respect of

HANTAM MUNICIPALITY INFRASTRUCTURE 2007/08

made and entered into by and between

HANTAM MUNICIPALITY (HM)

and

THE DEVELOPMENT BANK OF SOUTHERN AFRICA LIMITED

(Handwritten signatures and initials)



1. DEFINITIONS AND HEADINGS

- 1.1 In this Agreement, unless the contrary appears from the context, the following words have the meanings as stated:-
- 1.1.1 "Account" shall mean, at any time, the monies standing out to the Cedent's credit with the Bank, Branch located in Calvinia, account number 9217855170, branch code 334106;
- 1.1.2 "Bank" shall mean Absa Bank of South Africa;
- 1.1.3 "the Cedent" shall mean Hantam Municipality;
- 1.1.4 "the Cessionary" shall mean the Development Bank of Southern Africa Limited, reconstituted and incorporated in terms of Section 2 of the Development Bank of Southern Africa Act No.13 of 1997;
- 1.1.5 "the Parties" shall mean, collectively, the Cedent and the Cessionary;
- 1.1.6 "the Loan Agreement" shall mean the Agreement concluded by and between the Cedent and the Cessionary on 14 July 2008, in terms of which the Cessionary granted to the Cedent a loan amount of R3 000 000.00;
- 1.1.7 "the/this Agreement" shall mean this Agreement, together with any Annexures hereto.
- 1.2 Any reference to the Cessionary shall include a reference to the Cessionary's successors in title and/or assigns. Any reference to the singular shall include a reference to the plural and vice versa. Any reference to the masculine gender shall include a reference to the feminine, juristic or neuter genders and vice versa.
- 1.3 The clause headings in this Agreement have been inserted for convenience purposes only and shall not be taken into account in the interpretation hereof.

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1.4 This Agreement shall be governed by, construed and interpreted in accordance with, the laws of the Republic of South Africa.

2. RECORDAL

It is hereby recorded that -

2.1 The Cessionary has pursuant to the Loan Agreement undertaken to advance certain sums of money to the Cedent.

2.2 By virtue of the Loan Agreement, the Cedent is indebted and, in the future will become indebted, to the Cessionary.

2.3 The Cessionary requires from the Cedent to furnish security to it for the due and punctual:

2.3.1 repayment to the Cessionary of the aforesaid sums of money;

2.3.2 compliance by the Cedent with its obligations in terms of the Loan Agreement; and

(hereinafter jointly referred to as "the Indebtedness");

2.4 The Parties have agreed that such due compliance be reduced to writing and be contained in this Agreement.

3 SECURITY CESSION

3.1 The Cedent hereby cedes to the Cessionary in *securitatem debiti*, all its right, title and interest in and to the Account as security for the due and punctual compliance by the Cedent of all its obligations to the Cessionary under the Indebtedness.

3.2 The Cessionary, by its signing of this deed of cession at the end hereof, accepts the cession in *securitatem debiti*, subject to the terms and conditions contained herein.

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4 CONTINUING COVERING SECURITY

4.1 This deed of cession constitutes a continuing covering security, given in addition to and not in replacement of any other cession, in favour of the Cessionary despite:

- 4.1.1 any temporary redemption or extinction of the Indebtedness;
- 4.1.2 any amendment or cancellation of any rights which the Cessionary may have against the Cedent;
- 4.1.3 any indulgence or extension of time which the Cessionary may grant to the Cedent in respect of the Indebtedness;
- 4.1.4 the release by the Cessionary, either partially or entirely of any other security.

5 DURATION

The Cession shall endure and be of force and effect until the loan has been fully repaid by the Cedent to the Cessionary or otherwise discharged.

6 THE CEDENT'S OBLIGATIONS

6.1 The Cedent shall:

- 6.1.1 within 21 days of the 13th (thirteenth) month after the month during which the first disbursement was advanced to the Cedent, deliver to the Cessionary the originals of the documentation evidencing the Account;
- 6.1.2 inform the Bank in writing, within the period referred to in clause 6.1.1, of the cession of the Account and to instruct the Bank that all withdrawals against that Account will be subject to prior written approval of the Cessionary;
- 6.1.3 furnish the Cessionary with a written acknowledgement of receipt of the information by the Bank referred to in clause 6.1.2 above;

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6.1.4 ensure that an amount equal to two months instalments over a period of one year of the loan period, as defined in the Loan Agreement, is deposited into the Account;

6.1.5 furnish to the Cessionary all records, accounts and books in respect of the Account or its representatives access thereto for purposes of inspection, making copies or extracts from it.

6.2 For the purpose of enabling the Cessionary to exercise its rights under this deed of cession, the Cedent hereby irrevocably nominates, constitutes and appoints the Cessionary to be the Cedent's agent with unlimited power to sign all such documents and to do all the acts, matters and things that may be necessary to give due and proper effect to the terms of this cession.

7 WARRANTIES

7.1 The Cedent hereby warrants that it is the legal, exclusive and rightful holder of the Account.

7.2 The Cedent warrants that the Account has not been ceded prior to this deed of cession and that it is lawfully entitled to cede the Account as security, in terms of this deed of cession.

7.3 If the Cedent has, contrary to the warranty in terms of clause 7.2, already ceded the Account to another party, then this deed of cession becomes a cession of the Cedent's reversionary rights in and to the Account. The parties agree that when the Account is released from the prior cession, then the already ceded Account will be regarded as ceded to the Cessionary in terms of this deed of cession.

8 RIGHTS OF USE

8.1 For the duration of this cession and until the due and punctual compliance by the Cedent of all its obligations to the Cessionary under the Indebtedness is extinguished the Cedent shall have no right to:

8.1.1 withdraw amounts from and generally operate the account without the Cessionary's written consent;

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8.1.2 cede the Account to any third party as security.

9 DEFAULT BY THE CEDENT

9.1 In the event of the Cedent breaching any provision of the Indebtedness or this deed of cession, then the Cessionary is entitled, by written notice to the Cedent, and without having to give any reasons therefor, to -

9.1.1 declare this cession to be enforceable, without prejudice to any other rights it may have against the Cedent;

9.1.2 declare the outstanding amounts in the Loan Agreement to be due and payable with immediate effect and invoke any rights it may have in terms of this Agreement and the common law.

10 CERTIFICATE

10.1 The Cedent acknowledges and accepts that a certificate given under the hand of an official of the Cessionary, whose appointment or signature need not be proved, constitutes *prima facie* proof of the extent of the Cedent's liability towards the Cessionary under the Indebtedness and that it is due and payable.

10.2 The Cedent accepts that the certificate in terms of clause 10.1 -

10.2.1 will be valid in any court of law, for purposes of obtaining summary judgement against the Cedent; and

10.2.2 will be sufficient for purposes of provisional summons proceedings against the Cedent.

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11 REMAINING BALANCE

In the event that the amounts that constitute the Account shall exceed the amounts then due and payable to the Cessionary by the Cedent, the Cessionary shall promptly make available to the Cedent the remaining balance.

12 WAIVER

No waiver or release made, at any time, by the Cessionary, of any of its rights hereunder, nor any leniency which may be granted by the Cessionary to the Cedent, or the failure by the Cessionary to enforce any of the undertakings set out in this Agreement, shall, in any way, affect the validity of this Agreement which shall always remain in full force and effect.

13. SEVERABILITY

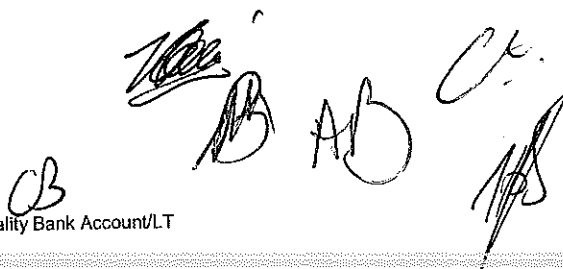
The Parties agree that each paragraph in this Agreement is severable, the one from the other, and if any paragraph is found to be defective or unenforceable, for any reason, by any competent Court, then the remaining paragraphs shall continue to be of full force and effect.

14 DOMICILIA AND NOTICES

14.1 The Parties, hereby, choose as their respective domicilia citandi et executandi, for the effective service of all notices and legal processes arising out of this Agreement, their addresses, from time to time, as in the Loan Agreement.

14.2 The Parties shall be entitled to change their respective domicilia citandi et executandi, from time to time, by giving written notice of an alternative address within the Republic of South Africa (which address shall be a street address to which post is delivered) to the other Party to this Agreement, which notices shall take effect upon receipt of such notice of change by the addressee.

14.3 All notices required to be given in terms of this Agreement shall be in writing, and shall be deemed to be received on the same day, if delivered by hand. Likewise, in the event that any Party communicates with the other by means of telefacsimile





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communication, such communication shall be deemed to be received on the same day as it was transmitted.

15. VARIATION

No variation, modification or waiver of any provision of this Agreement, or consent to any departure therefrom, or consensual cancellation, shall be of any force or effect unless confirmed in writing and signed by the Parties; and, in such event, such variation, modification, waiver, consent or cancellation shall be effective only in the specific instance and for the purpose and to the extent for which same was made or given.

16. COSTS

The Cedent shall be liable to, and shall reimburse, the Cessionary for all costs, including attorney and his own client costs, incurred by the Cessionary in the enforcement of any rights ceded in terms hereof and the Cedent further absolves the Cessionary from any liability for, and holds it harmless against, any loss or damage sustained in, or by reason of, the enforcement of the said rights or the Cessionary's failure or omission to enforce any of the said rights.

17. JURISDICTION



The Parties hereby submit to the non-exclusive jurisdiction of the High Court of South Africa (Witwatersrand Local Division) in respect of any claim arising out of, or in connection with, this Agreement.

18. DISPOSAL OF ASSETS

The Cedent, hereby, undertakes that it shall not dispose of any of its assets in any manner whatsoever other than in the normal course of its business, without first having obtained the consent of the Cessionary, which shall not be unreasonably refused.

19. STAMP DUTY







Any stamp duty payable in respect of this Agreement shall be payable by the Cedent.

CB

 AB
 AB
 ck.




20. GENERAL

- 20.1 The parties hereby acknowledge that this deed of cession constitutes the entire agreement between them and that no other conditions, stipulations, warranties or undertakings whatsoever, have been made by any of the parties, other than as specifically included herein.
- 20.2 No latitude, extension of time or other indulgence which may be given or allowed by either party to the other in respect of any payment provided for in this deed of cession or the performance of any other obligation will, under any circumstances, be construed to be an implied consent by that party or operate as a waiver or a novation of or otherwise affect any of that party's rights in terms of or arising from this agreement, or prevent that party from importing, at any time and without notice, strict and punctual compliance with each and every provision or term hereof.
- 20.3 The parties agree that no variation of, addition to, consensual cancellation or novation of this deed of cession in its entirety or of any term or condition thereof is of any force or effect, unless such amendment or cancellation is reduced to writing and signed by all the parties or their authorised representatives hereto.



SIGNED at Cape Town on the 6th day of February 2009.

AS WITNESSES:

1. [Signature]

[Signature]
FOR AND ON BEHALF OF THE CEDENT,
DULY AUTHORISED THERETO.

2. [Signature]

SIGNED at Midrand on the 11th day of February 2009.

AS WITNESSES:

1. [Signature]

[Signature]
FOR AND ON BEHALF OF THE
CESSIONARY, DULY AUTHORISED
THERETO.

2. [Signature]

