

Post

DEED OF CESSION OF INCOME STREAM

in respect of

HANTAM MUNICIPALITY INFRASTRUCTURE 2007/08

made and entered into by and between

HANTAM MUNICIPALITY (HM)

and

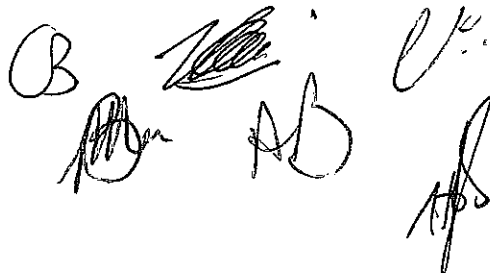
THE DEVELOPMENT BANK OF SOUTHERN AFRICA LIMITED

Handwritten initials and signatures: CB, [Signature], [Signature], [Signature], [Signature]



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 "the Cedent" shall mean the Hantam Municipality;
- 1.1.2 "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;
- 1.1.3 "the Parties" shall mean, collectively, the Cedent and the Cessionary;
- 1.1.4 "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.
- 1.1.5 "the Ceded Subject Matter" shall mean the matter ceded by the Cedent to the Cessionary, as fully enumerated in Annexures A and C.
- 1.1.6 "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.
- 1.4 This Agreement shall be governed by, construed and interpreted in accordance with, the laws of the Republic of South Africa.



2. BACKGROUND

- 2.1 Pursuant to the Loan Agreement, the Cessionary has 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 As security for the due discharge of its indebtedness to the Cessionary, pursuant to the Loan Agreement, the Cedent undertook to Cede certain collateral security for the due compliance, by the Cedent, of all its duties and obligations in terms of the Loan Agreement.
- 2.4 The Parties have agreed that such due compliance be reduced to writing and be contained in this Agreement.

3. AGREEMENT

- 3.1 The Cedent, hereby, cedes, assigns and transfers, in securitatem debiti, to, and in favour of, the Cessionary, all the Cedent's rights, title and interest of the Cedent in and to the Ceded Subject Matter.
- 3.2. The Cedent, hereby, undertakes, within 14 days of signature of this Agreement, to deliver to the Cessionary, the originals of the documentation evidencing the Ceded Subject Matter.
- 3.3 The Ceded Subject Matter is, hereby, ceded together with all benefits of a capital nature arising therefrom or accruing to the holder thereof, from time to time.
- 3.4 The Cedent, hereby, warrants that no other person, other than the Cessionary, has, or shall have, any rights, of whatsoever nature, in respect of the Ceded Subject Matter, nor shall any such other person acquire any such rights during the period of this Agreement.
- 3.5 It is a condition of this Agreement that, in the event of the Cedent failing to effect payment, on due date, of any amount due in terms of the Loan Agreement, or

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committing any other breach of the terms and conditions thereof, then, and in any such event, the Cessionary shall be entitled, in addition to its common law rights as Cessionary, to the following rights and powers:-


- 3.6 to realise the Ceded Subject Matter, or any portion thereof; in such manner, and on such terms as may be necessary in order to procure the discharge of the indebtedness, then outstanding, of the Cedent, as, in the sole and absolute discretion of the Cessionary, may be determined and, in such event, to give transfer and cession thereof to any *bona fide* purchaser thereof;
- 3.6.1 to apply the proceeds of realisation in reduction of the indebtedness due to the Cessionary, and to account to the Cedent for any excess;
- 3.6.2 to sign, on behalf of the Cedent, all such documents and to do all such further things as may be necessary or requisite to give effect to the steps taken by the Cessionary in pursuance of its rights and powers hereunder. Without derogating from the generality of the foregoing, it is recorded that the powers given to the Cessionary, hereunder, shall include the power to make payments, and to act in the manner contemplated, hereunder.
- 3.7 Insofar as it might be necessary, the Cedent, hereby, confirms the terms and conditions of the Loan Agreement, and related documentation, all of which relevant terms and conditions shall be read as if incorporated in the body of this Agreement.
- 3.8 Notwithstanding anything to the contrary herein contained, this Agreement shall, ipso facto, lapse and be of no further force or effect, upon the discharge, by the Cedent, of its total indebtedness to the Cessionary, pursuant to the Loan Agreement.
- 3.9 The standard terms and conditions of this Agreement are contained in Annexure B, hereto, and shall be read as if incorporated in the body of this Agreement.
- 3.10 The Cessionary, hereby, accepts the cession from the Cedent.


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SIGNED at Calvinia on the 6th day of February 2009.

AS WITNESSES:

1. 

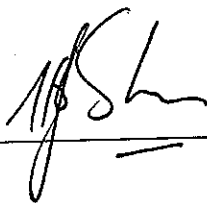
2. 

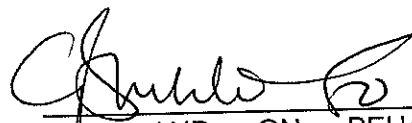

FOR AND ON BEHALF OF THE CEDENT,
DULY AUTHORISED THERETO.

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

AS WITNESSES:

1. 

2. 


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



THE CEDED SUBJECT MATTER

The Cedent's income stream, covering the instalments outstanding plus interest and collection charges outstanding at any time during the term of the Loan.

CS *AM* *AD* *CP* *PS*



STANDARD TERMS AND CONDITIONS**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.

CERTIFICATE OF INDEBTEDNESS

The Cedent further agrees that the amount of the Cedent's indebtedness to the Cessionary (including interest, costs and the rate of interest) shall be determined and proved by a certificate signed by any Director, Manager or Secretary of the Cessionary. It shall not be necessary to prove the appointment of the person signing any such certificate, and such certificate shall be binding on the Cedent and shall be prima facie proof of the amount of the indebtedness of the Cedent and shall be valid as a liquid document against the Cedent in any competent Court for the purpose of obtaining provisional sentence or summary judgment against the Cedent thereon.

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.

DOMICILIA AND NOTICES

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.

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

CS

AB

AB




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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.

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

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.

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.

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.

DISPOSAL OF ASSETS

The Cedent, hereby, undertakes that it shall not dispose of any of the Ceded Subject Matter 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.

OB [Signature] [Signature] [Signature]



STAMP DUTY

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

OB

[Handwritten signatures]



- Ceded Subject Matter

Confirmation from the Borrower regarding the Income Stream.

[Handwritten signatures and initials]
A signature at the top, followed by initials 'AB', 'CP', and 'AS'. A large 'B' is written below 'AB'.

