

LOAN AGREEMENT

Entered into between

ABSA BANK LIMITED

(Registration Number: 1986/004794/06)

(Hereinafter referred to as "Absa")

and

OVERSTRAND MUNICIPALITY

(Hereinafter referred to as "Borrower")

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1. **PARTIES**

The parties to this loan agreement are:

1.1 **ABSA BANK LIMITED; and**

1.2 **OVERSTRAND MUNICIPALITY**

2. **DEFINITIONS AND INTERPRETATION**

2.1 The headings to the clauses of this Agreement are for reference purposes only and shall in no way govern or affect the interpretation of nor modify nor amplify the terms of this Agreement nor any clause hereof.

2.2 Unless the context dictates otherwise, the words and expressions set forth below shall bear the following meanings and cognate expressions shall bear corresponding meanings:

2.2.1 “**Absa**” means Absa Bank Limited (Registration No. 1986/004794/06), a company with limited liability duly incorporated in accordance with the laws of the Republic of South Africa;

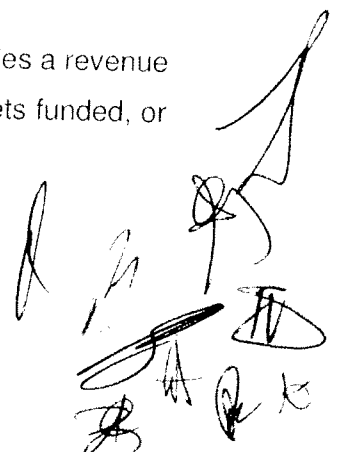
2.2.2 “**Act**” means the Local Government: Municipal Finance Management Act No. 56 of 2003;

2.2.3 “**Agreement**” means this loan agreement together with all annexures and schedules hereto;

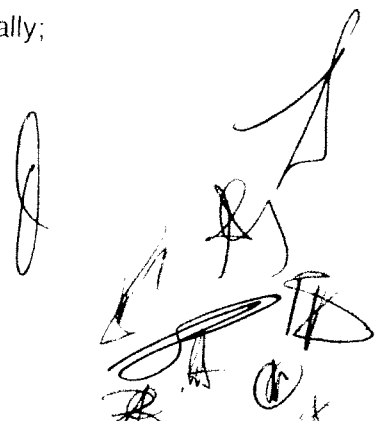
2.2.4 “**Applicable Laws**” means all applicable laws, ordinances, writs, regulations, judgments and orders of any competent court, central bank or governmental agency or authority in any relevant jurisdiction;

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- 2.2.5 “**Borrower**” means Overstrand Municipality being a municipality duly established in terms of the Local Government: Municipal Structures Act 117 of 1998 as amended;
- 2.2.6 “**Business Day**” means any day, other than a Saturday, Sunday and/or any official South African public holiday;
- 2.2.7 “**Capital Sum**” means R70,000,000.00 (Seventy Million Rand);
- 2.2.8 “**Change in Law**” means any implementation, introduction, abolition, withdrawal or variation of any Applicable Laws, published practice, concession, official directive, ruling request, notice, announcement (including, but not limited to, any budget speech), guideline by any government entity (whether or not having the force of law) or any change in interpretation, or the introduction or making of any new or further interpretation, or any new or different competent authority or compliance with any new or different request or direction (in each case, whether or not having the force of law) from any government entity;
- 2.2.9 “**Dispose**” means any sale, transfer, cession, assignment, lease, alienation, donation, renunciation, surrender, waiver, relinquishment, exchange or any other disposal;
- 2.2.10 “**Drawdown**” means withdrawal by the Borrower of the Capital Sum in the manner set out in this agreement;
- 2.2.11 “**Effective Date**” means the date of signature of this Agreement by the party signing it last in time;
- 2.2.12 “**Event of Default**” means an event specified as such in **clause 12**;
- 2.2.13 “**Income Generating Asset**” means any asset that provides a revenue stream to the Borrower and, particularly, includes the assets funded, or to be funded by the Capital Sum;

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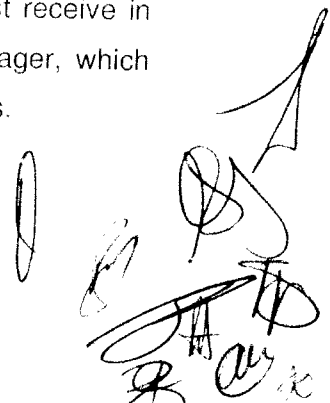
- 2.2.14 “**Interest Period**” means a 6 monthly period for the duration of the agreement, being 15 years;
- 2.2.15 “**Interest Rate**” means a variable interest rate based on the 6 Months JIBAR Rate prevailing from time to time plus the Absa cost of funding plus a credit margin of 1.00% (nacs), calculated, capitalised and payable 6 monthly. The variable interest rate may be converted into a fixed interest rate on any of the capital and interest redemption dates, to a 6 monthly payable fixed interest rate to be agreed upon in terms of fixed interest rate period, base rate, Absa cost of funding and a credit margin of 1.00% on a nacs bases, at the time of conversion;
- 2.2.16 “**Material Adverse Effect**” means an event, circumstance or matter or combination of events, circumstances or matters, which has or will have a material adverse impact on:
- 2.2.16.1 the ability of the Borrower to comply with its obligations in terms of this Agreement; and/or
 - 2.2.16.2 the business, operations, property, condition (financial or otherwise) or prospects of the Borrower taken as a whole and includes any substantial restructuring, or Disposal of material assets; and/or
 - 2.2.16.3 the validity and/or enforceability of this Agreement and/or the rights and/or remedies of Absa in terms of this Agreement;
- 2.2.17 “**month**” means a calendar month and “**monthly**” shall be construed accordingly;
- 2.2.18 “**nacs**” means nominal annual compounded semi-annually;

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- 2.3 Unless the context dictates otherwise, an expression which denotes any gender includes both the others; and to a natural person includes a juristic person and to the singular includes the plural, and vice versa in each case.
- 2.4 The annexures to this Agreement form an integral part hereof and words and expressions defined in this Agreement shall bear, unless the context otherwise requires, the same meaning in such annexures.
- 2.5 When any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which case the last day shall be the next succeeding Business Day.

3. **SUSPENSIVE CONDITIONS**

- 3.1 This Agreement is subject to fulfilment of the following suspensive conditions:
- 3.1.1 receipt by Absa of a certified copy of a municipal council resolution of the Borrower, signed by the Mayor:
- 3.1.1.1 approving the terms of this Agreement, which Agreement must be signed by the Municipal Manager with specific mention of the Capital Sum;
- 3.1.1.2 confirming authority of any specified person or persons to sign and/or despatch all documents and notices to be signed and/or despatched by the Borrower in terms of this Agreement in the event such authorised persons are not the Municipal Manager;
- 3.1.2 In the event other specified persons as mentioned above in 3.1.1.2 are authorised to act on behalf of the Municipality, Absa must receive in writing the delegation of powers from the Municipal Manager, which must include specimen signatures of the authorised persons.



- 3.1.3 Receipt by Absa of a written disclosure by the Borrower signed by the Municipal Manager, indicating whether the purpose of this Term Loan is for -
- 3.1.3.1 capital expenditure on property, plant or equipment as contemplated in section 46 (1)(a) of the Act; or
 - 3.1.3.2 re-financing existing long-term debt as contemplated in section 46 (1)(b) of the Act.
- 3.1.4 receipt by Absa of certified copies of –
- 3.1.4.1 the Borrower's audited financial statements for its financial years ended 2005/2006/2007, together with an indication whether the audit deadline referred to in section 126 (1) and section 126 (2) of the Act has been met;
 - 3.1.4.2 the Borrower's approved annual budget;
 - 3.1.4.3 the Borrower's integrated development plan; and
 - 3.1.4.4 the Borrower's repayment schedules pertaining to its existing short-term and long-term debt.
- 3.1.5 receipt by Absa of written confirmation by the Borrower, signed by the Municipal Manager, that it has complied with the requirements of section 46 (3) of the Act relating to the publishing of an information statement;
- 3.1.6 receipt by Absa of written confirmation by the Borrower, signed by the Municipal Manager, that this Term Loan is not to be paid from revenues linked to a particular municipal service;

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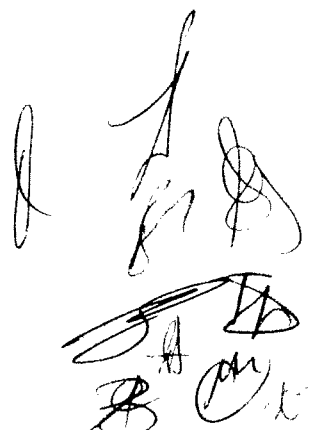
3.2 Absa shall be entitled to waive the suspensive conditions by written notice to the Borrower.

4. **THE LOAN**

4.1 Absa hereby lends to the Borrower, which hereby borrows, the Capital sum for a maximum period of 15 years.

4.2 Absa shall advance the amount mentioned in clause 4.1 to the Borrower by permitting drawdown by the Borrower of the Capital Sum in accordance with a draw down schedule to be provided by the Borrower to Absa, which draw down schedule must be acceptable to Absa. The draw down schedule must indicate when the draw downs are anticipated and the amounts involved. The Borrower may amend the draw down schedule, subject to one month written notice to Absa and provided that the amendments are acceptable to Absa.

4.3 The payment term as well as the instalments amounts will be according to the repayment schedule, attached hereto as **Annexure A**. In the event of a variable interest rate, Absa will provide the Borrower with an Initial Repayment Schedule calculated at the variable interest rate at the Effective Date, in order to calculate the regular capital redemptions over the loan period. Absa will provide the Borrower with a manually prepared statement prior to each payment date showing the interest calculations based on the set capital redemptions and the total amount then due and payable by the Borrower. In the event of an interest rate conversion from variable option to a fixed option, Absa will provide a new repayment schedule for the remaining term of the loan.

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5. **INTEREST**

- 5.1 Interest shall be payable by the Borrower at the Interest Rate calculated on the Capital Sum, and payable 6 monthly on the last day of each Interest Period.
- 5.2 The Capital Sum owing by the Borrower to Absa shall bear interest as per clause 2.2.15 above.
- 5.3 Any amount due by the Borrower in terms of this Agreement that is not paid on due date, shall bear default interest at the Prime Rate plus 2% from the due date to date of payment.

6. **PAYMENTS**

- 6.1 All payments due by the Borrower in terms of this Agreement will be made by the Borrower to Absa before or on the relevant due date, in the currency of the Republic of South Africa, free of exchange or other deductions in a manner as may be agreed upon by the Parties from time to time in writing.
- 6.2 Where any payment to be made by the Borrower in terms of this Agreement is due on a date which is not a Business Day, then such payment shall become due and payable on the first Business Day following such date.
- 6.3 The Borrower may not raise any claim, counter-claim, dispute or arbitration proceedings as a reason for deferring payment and the Borrower may not withhold any payment or set-off any claim or counterclaim which it may wish to raise against any amount payable to Absa.

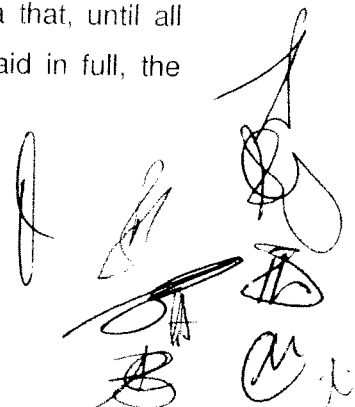
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7. **PREMATURE CAPITAL PAYMENT**

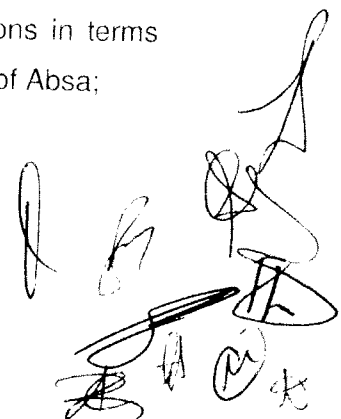
- 7.1 The Borrower may repay the outstanding Capital Sum prematurely subject to 6 (six) months written notice of its intention to do so to Absa, provided that such premature repayment or repayments shall coincide with the agreed upon capital and interest redemption sequence as provided for in this Agreement.
- 7.2 The Borrower may not give notice of early repayment to Absa until at least 90 (ninety) days, calculated from the Effective date, have elapsed. The latter notice shall state the date on which the Borrower intends to repay the Capital Sum and, notwithstanding anything to the contrary contained herein, the date thus stated shall be deemed to be the date on which the Capital Sum is due and payable.
- 7.3 Upon early repayment of the Capital Sum for any reason whatsoever, the Borrower shall pay the Capital Sum to Absa, together with all the accrued interest thereon from the date of the last Interest Period to the date on which the Capital Sum shall be deemed to be due and payable in accordance with clause 7.2
- 7.4 The Borrower shall be liable for any and/or all unwinding costs in respect of any fixed rate Swap agreement entered into by Absa. In the event such a Swap agreement is cancelled, and depending on the interest rate levels at that time of cancellation, Absa may have to be credited or debited with funds due to such cancellation and *vice versa* in respect of the Borrower's position in terms hereof.

8. **UNDERTAKINGS**

- 8.1 As at the Effective Date, the date of Drawdown and (if applicable) the date of advance of the Term Loan, the Borrower undertakes to Absa that, until all amounts payable in terms of this Agreement have been repaid in full, the Borrower shall:

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- 8.1.1 not encumber its cash flows, income or Income Generating Assets in favour of, nor utilize the same to pay any of, its current or subsequent creditors in respect of such cash flows, income or Income Generating Assets in which Absa may have an interest and/or right;
- 8.1.2 it shall send its audited annual financial statements to Absa as soon as they are available, but in any event not later than 30 (thirty) days from the date of consideration by the Borrower's council, which consideration shall take place after finalisation thereof by the Auditor-General;
- 8.1.3 not give subsequent creditors preferential creditor status;
- 8.1.4 not ring-fence or cede any income stream on which it relies upon to fulfil its repayment obligations in terms of this Agreement, without Absa's prior written approval;
- 8.1.5 furnish Absa with such financial information and relevant credit information as may be required by Absa from time to time on 30 (thirty) days' notice from Absa;
- 8.1.6 furnish Absa with management accounts and a cash flow report, on a six monthly basis, reflecting actual income and expenditure compared to the annual budget of the Borrower as approved. Upon receipt of the accounts from the Borrower, Absa shall be entitled to peruse the account and to determine any negative variances in respect of which it may require the Borrower to provide explanations. The Borrower shall also provide Absa with a detailed outline of corrective action which is to be taken by the Borrower;
- 8.1.7 not cede any of its rights or delegate any of its obligations in terms hereof to another person without the prior written approval of Absa;

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8.1.8 immediately notify Absa of any statutory change to the functions, powers, duties, rights or obligations of the Borrower which may materially affect the Borrower's ability to meet its obligations under this Agreement, whereupon Absa shall be entitled to review the terms of this Agreement and, if in the reasonable opinion of Absa it is a necessary step, shall be entitled to cancel this Agreement; provided, however, that Absa shall only exercise its right to cancel this Agreement in terms hereof after:

8.1.8.1 Absa has given the Borrower written notice of its opinions to that effect; and

8.1.8.2 The Borrower has failed to satisfy Absa within 10 (ten) days after its receipt of said notice that it shall have the ability to continue to meet its financial obligations under this Agreement.

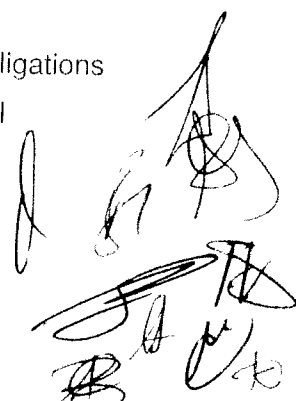
8.1.9 In the event that it disposes of the whole or a major portion of its assets to a third party, the Borrower shall ensure that such third party maintains those assets in a satisfactory working condition; and

8.1.10 Implement reasonable measures to ensure that, while this agreement is in force, it honours its obligations in other existing loan agreements with third parties;

8.1.11 Provide written notification to Absa as soon as possible after becoming aware of:

8.1.11.1 any event which is likely to affect the ability of the Borrower to meet its repayment or security obligations in respect of its debt;

8.1.11.2 any failure by the Borrower to meet its repayment obligations on the due date other than non-payment for technical



reasons which is remedied within 72 hours;

8.1.11.3 any failure by the Borrower to meet –

8.1.11.3.1 any of its obligations pertaining to security provided by the Borrower; or

8.1.11.3.2 any other obligation constituting a default as defined for purposes of a debt transaction;

8.1.11.4 any new debt incurred by the Borrower;

8.1.11.5 the provision of any additional security by the Borrower to an existing creditor; or

8.1.11.6 any mandatory intervention by the provincial executive in terms of Chapter 13 of the Act.

8.2 In the event of the Borrower requiring the written consent or approval of Absa before it can pursue a certain course of action, Absa undertakes:

8.2.1 that it shall not unreasonably withhold such consent or approval; and

8.2.2 that it shall provide the Borrower with its written response within 30 (thirty) days from the date on which it received such request;

8.3 The Borrower shall maintain its capital charges ratio (hereinafter referred to as "financing costs") within the norm prescribed by National Treasury of not more than 15% (fifteen percent) of operating expenditure. In the event of new accounting standards being adopted, the financing costs shall not exceed 8% of operating expenditure.

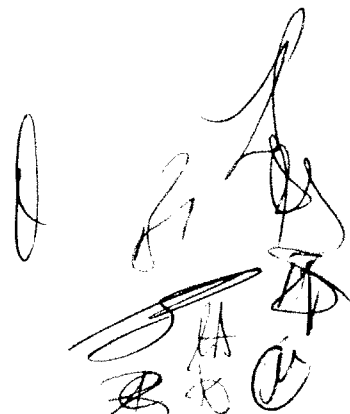
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- 8.4 The Borrower's debtors' collection rate shall not decrease to below 85% (ninety percent) of the amounts outstanding for less than 60 (sixty) days (that is, currently thirty days and sixty days).
- 8.5 The ratio of the Borrower's consumer debtors to operating income may not exceed 15% (fifteen percent) year on year.
- 8.6 The ratio of the Borrowers total borrowings to total revenue to be maintained below 50%.
- 8.7 It is hereby agreed that cross default shall apply to all debt.

9. **WARRANTIES**

The Borrower warrants and represents to Absa that –

- 9.1 the Borrower has full power and authority to enter into and perform the obligations under this Term Loan and that all necessary corporate and/or other actions to authorise the execution of this agreement and utilisation of the Term Loan have been taken;
- 9.2 the provisions hereof are not in conflict with and will not constitute a breach of the provisions of any other agreement or undertaking, or provision of law binding upon the Borrower;
- 9.3 all of the information supplied by the Borrower to Absa in connection with the granting of the Term Loan is true, complete and accurate in all material respects and the Borrower is not aware of any material facts or circumstances that have not been disclosed to Absa and which, if disclosed, might adversely have affected the decision to provide the Term Loan;

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9.4 the Borrower is not in default in respect of any of its material obligations concerning borrowed money and no event of default specified below has occurred or is continuing.

10. **CHANGE OF CIRCUMSTANCES**

If as a result of any amendments in or promulgation of any legislation, regulation, policy, rule, instruction, practice note or the like or the application or interpretation of any of the aforesaid by any body of authority –

Absa's after tax return in terms of any facility is reduced, Absa is entitled to increase the interest rate, commission, fee or the like applicable in terms of the Term Loan, to such an extent as may be sufficient to maintain Absa's after tax return as if such amendment has not taken place. A certificate signed by any of Absa's managers wherein such amendment, promulgation and increased interest rate, commission, fee or the like are set out, is sufficient proof of the correctness thereof.

11. **CERTIFICATE**

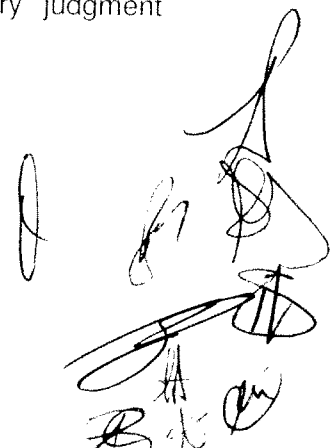
A certificate by any Director and/or General Manager of Absa (whose appointment as such need not be proved) showing the amount due and owing by the Borrower to Absa at any given time as a result of:

11.1 termination in terms of any relevant clause of this Agreement;

11.2 any increase or decrease in interest payable in terms of clause 10; and

11.3 any Event of Default in terms of clause 12;

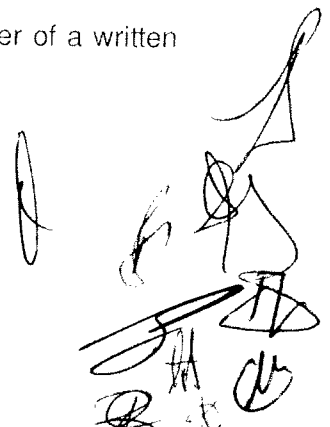
shall be *prima facie* proof of the facts stated therein for the purposes of all legal proceedings including provisional sentence or summary judgment against the Borrower.

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12. **EVENTS OF DEFAULT**

An Event of Default shall occur if any one of the following events, each of which shall be severable and distinct from the others occurs:

- 12.1 the Borrower fails to pay any amount due in terms of this Agreement on the due date thereof;
- 12.2 the Borrower breaches any undertaking given in terms of this Agreement or renders any representation or warranty made in terms of this Agreement untrue and/or incorrect; or
- 12.3 the Borrower is unable, or ceases for any reason whatsoever, to conduct its ordinary line of business in the ordinary or regular manner; or
- 12.4 any event or series of events occurs which, in the reasonable opinion of Absa, may have a Material Adverse Effect; or
- 12.5 any judgment of any court or arbitration order is granted against the Borrower in respect of any debt, and the Borrower fails within 14 (fourteen) days after the date of such judgment or order either to satisfy same or to take steps, and thereafter actively pursue such steps, to appeal or set aside such judgment and in the event of such steps being unsuccessful, the Borrower fails to make immediate payment thereof; or
- 12.6 any property of the Borrower being attached in execution for any debt; or
- 12.7 the Borrower having made any materially incorrect or untrue statement or representation in connection with this Agreement or its financial affairs or any particulars thereof and such statement or representation has not been remedied within 14 (fourteen) days after delivery to the Borrower of a written notice requiring such remedy; or

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12.8 the Borrower committing any act or allowing any omission which might prejudice Absa's rights under this Agreement; or

12.9 the Borrower defaulting on any of its obligations with other financial institutions or creditors;

12.10 the Borrower defaulting on any other clause of this Agreement;

Then, and in any such event, Absa shall be entitled, without prejudice to any other rights which it may have in law, to claim immediate repayment of the Capital Sum, together with the accrued interest thereon then owing by the Borrower to Absa, including unwinding costs as referred to in clause 7 and calculated in accordance with the relevant clauses of this Agreement, notwithstanding that the due date for payment of such amount has not yet arrived.

13. **DOMICILIUM AND NOTICES**

13.1 The Parties choose the following addresses as their respective addresses in respect of all correspondence between the Parties regarding this Agreement, domicile for the service of summons and execution:

13.1.1 Absa Bank Limited

Tijgerpark IV
Willie van Schoor Drive
Bellville
7530
Telephone No:
Facsimile No:

13.1.2 The Borrower

Magnolia Street
Hermanus
7200
Telephone No:



Facsimile No:

- 13.2 Either Party may change its domicile by written notice to the other Party with effect from the date of receipt or deemed receipt by the latter of such notice. A domicile may not be a post box number or a *poste restante*, but will always be a physical address.
- 13.3 Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing.
- 13.4 Any notice, demand or other communication in terms hereof properly addressed by either Party to the other Party at the latter's domicile for the time being and sent by prepaid registered post shall be deemed to be received by the latter on the 5th (fifth) day following the date of posting thereof. This provision shall not be construed as precluding the utilisation of other means and methods, including telefax, for the transmission or delivery of notices acceptances, demands and other communications, and shall, where applicable, be deemed to have been received on the day of delivery or telefax transmission, as the case may be.
- 13.5 Notwithstanding anything to the contrary herein contained 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 domicile.
- 13.6 Notwithstanding the termination of this Agreement, the chosen domicile, as set out in this clause, will remain of full force and effect for the purpose of enforcing any rights that a Party may have.

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14. **MISCELLANEOUS**

14.1 **No waiver**

No waiver by a Party of any breach, failure or default in performance by the other Party, and no failure, refusal or neglect by a Party to exercise any right hereunder or to insist upon strict compliance with or performance of the other Party's obligations under this Agreement, shall constitute a waiver of the provisions of this Agreement and a Party may at any time require strict compliance with the provisions of this Agreement.

14.2 **Variation**

No amendment, consensual cancellation or other modification of this Agreement, including this clause, shall be valid or binding on a Party unless reduced to writing and signed on behalf of all Parties hereto.

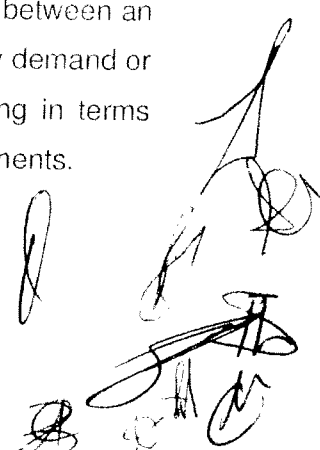
14.3 **Governing law and Jurisdiction**

14.3.1 This Agreement shall be governed in all respects by and shall be interpreted in accordance with the laws of the Republic of South Africa.

14.3.2 The Parties hereby consent and submit to the jurisdiction of any High Court of South Africa in respect of all proceedings connected with this Agreement, notwithstanding the value of the claim or the matter in dispute.

14.4 **Costs**

The Borrower shall be liable for and pay all costs, on the scale as between an attorney and his own client, arising out of or in connection with any demand or legal proceedings by Absa for the recovery of any amount owing in terms hereof, including tracing fees, collection commission and disbursements.

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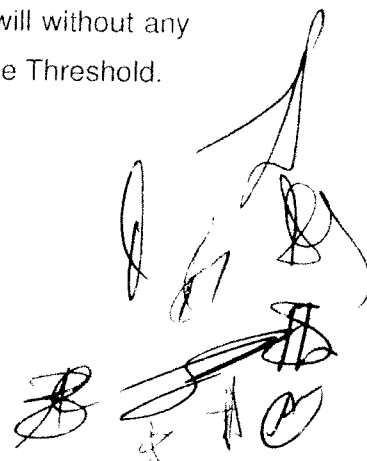
15. **SANCTIONS**

Absa discloses to the Borrower that being part of a global financial institution it complies and will in future comply with international and local anti-money laundering, counter terrorist financing, financial sanctions and prohibited business activity laws, regulations, policies and requirements. Therefore, Absa may initially screen, verify and process all new client and related information and thereafter monitor all information, instructions and transactions by and on behalf of the Borrower in relation to all transactions and to the business relationship on a continuous basis. This may result in the prohibition, limitation, delay in the execution of instructions or transactions and even in the declining or terminating any transaction or the business relationship with the Borrower. To the extent permitted, Absa shall advise the Borrower of any action it intends to take in terms hereof. The Borrower acknowledges and confirms that neither Absa nor its affiliates, employees, officers, or directors, shall be liable for any direct, indirect or consequential loss, damage, costs or expenses whatsoever that may be suffered or incurred by the Borrower as a result of, arising from or relating to any such prohibition, limitation, delay, decline or termination due to the implementation of this clause.

16. **FINANCIAL ADVISORY**

Absa hereby notifies the Borrower that in terms of the regulations applicable to the Financial Advisory and Intermediary Services Act (Act No 37 of 2002) ("**FAIS**") if the Borrower's net asset value is greater than R20 000 000 (twenty million rand) or such new amount as may be determined by the Registrar of Financial Services from time to time (the "**Threshold**") then Absa will not have to comply with the provisions of FAIS in so far as the Borrower is concerned.

In the event that the Borrower's net asset value falls below the Threshold (after the time of signing this Term Loan) then the Borrower undertakes that it will without any delay notify Absa, in writing, that its net asset value has fallen below the Threshold.

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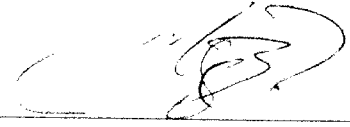
SIGNED at Bellville on this 20 day of October 2009.

AS WITNESSES:

1. ANGELO BIGGS 

Full Names

Identity No: 750613 5099 082



For and on behalf of Absa Bank duly
Authorised thereto

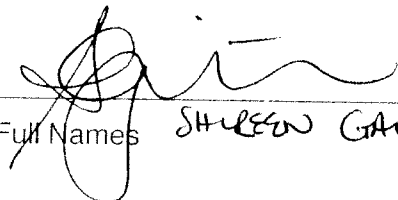
2. 

Full Names

Identity No: 680829 0132 083

SIGNED at Bellville on this 20 day of October 2009.

AS WITNESSES:

1. 

Full Names

SHUREEN GALANT.

Identity No: 7305270132083



For and on behalf of Absa Bank duly
Authorised thereto

2. 

Full Names

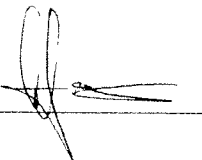
ELIZABETH PRETORIUS

Identity No: 5309070132083


SIGNED at HERMANNUS on this 29th day of SEPTEMBER 2009.

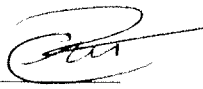
[SIGNED BY MUNICIPAL MANAGER FOR AND ON BEHALF OF BORROWER]

AS WITNESSES:

1. ANIN MOORE 
Full Names

Identity No: 880617092088



For and on behalf of Municipality duly
Authorised thereto

2. CLINT LE ROUX 
Full Names


Identity No: 8103175194087


SIGNED at HERMANNUS on this 8th day of OCTOBER 2009.

AS WITNESSES:

1. CLINT LE ROUX 
Full Names

Identity No: 8103175194087


For and on behalf of Municipality duly
Authorised thereto

2. ANIN MOORE 
Full Names

Identity No: 880617092088