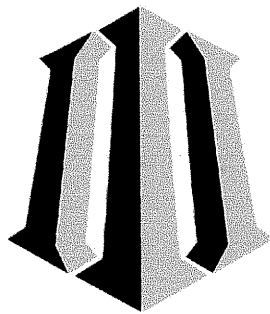


# **LOAN AGREEMENT**

**Made and entered into by and between:**



# **I N C A**

**INFRASTRUCTURE FINANCE CORPORATION LIMITED.**

**(Reg. No 1996/01482/06)**

**(hereinafter referred to as "the Lender")**

**and**

**GEORGE LOCAL MUNICIPALITY**

**(hereinafter referred to as "the Borrower")**

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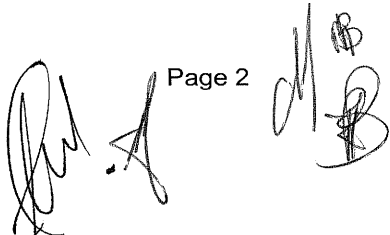
**IT IS AGREED AS FOLLOWS:**

**1. INTERPRETATION**

In this Agreement, unless the context otherwise indicates –

- 1.1 the singular shall include the plural and *vice versa*;
- 1.2 words indicating one gender shall import and include the other gender;
- 1.3 the headings to this Agreement are used for the sake of convenience and shall not govern the interpretation hereof;
- 1.4 “Business Day” – means any day which is not a Saturday, Sunday or official public holiday recognised as such under the Public Holidays Act, No 36 of 1994;
- 1.5 “Loan” – means the loan specified in clause 2;
- 1.6 “Prime Rate” – means the interest rate (per cent, per annum, compounded monthly) from time-to-time published by FirstRand Bank Limited (herein referred to as FirstRand) as being its prime overdraft rate, as certified by any manager of FirstRand whose appointment and designation need not be proved;
- 1.7 “Draw down Date(s)” – means the date(s) on which capital amounts are drawn down by the Borrower as stipulated in Annexure A.
- 1.8 “Maturity Date” – means the date of the final payment in terms of this agreement.
- 1.9 “Nominated bank account” – means the bank account nominated by the Lender as the account to which the Borrower may make payments for the credit of the Lender. Unless otherwise instructed in writing by the Lender, the nominated bank account is 5061 002 7704 held in the name of the Lender at First National Bank, Corporate Branch (branch code 25 50 05), Johannesburg.

Page 2

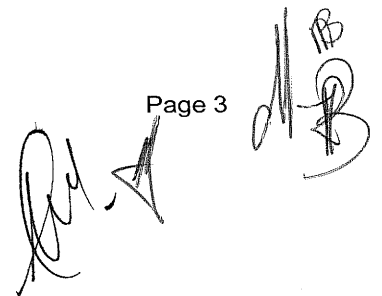


## 2. THE LOAN

- 2.1 Upon and subject to the terms and conditions set out hereinafter, the Lender will provide or procure for the Borrower who hereby borrows from the Lender the amount(s), and on the drawdown date(s), stipulated in Annexure A.
- 2.2 Subject to the provisions of clauses 5 and 6.1, the Borrower shall be entitled to draw down the Loan after execution of this Agreement in the amounts and on the drawdown date(s) stipulated in Annexure A.

## 3. INTEREST

- 3.1 The Loan shall bear interest at a rate of 10.07 per cent per annum (compounded semi-annually - NACS).
- 3.2 Interest shall be calculated on the balance of the amount of the Loan, plus any interest thereon outstanding or already capitalized from time-to-time.
- 3.3 Interest on the Loan shall be paid to the Lender (as stipulated in Annexure A) six monthly in arrears on the last day of the month, the first of such payments to be made on 31 December 2006, and thereafter on the last day of each and every successive six monthly period, provided that if any such day of the month is not a Business Day, then such payment shall be made on the preceding Business Day.
- 3.4 If at any time or times during the currency of this Agreement –
- 3.4.1 any new law, ruling or regulation is promulgated, given or adopted;
  - 3.4.2 there are any changes to any present or future law, ruling or regulation;
  - 3.4.3 there are any changes in the interpretation or administration of any law, ruling or regulation by any relevant monetary or fiscal authority;
  - 3.4.4 there is any compliance by the Lender with any directive or request, whether or not having the force of law, from any monetary or fiscal authorities, which would or does –



- (a) subject the Lender to any taxes, duties or other charges in respect of this Agreement or change the basis of taxation of the Lender in respect of payments of principal or interest/fees payable to the Lender (except for changes in the rate of taxation on the overall net income of the Lender); or
- (b) impose, modify or deem applicable any reserve, special deposit or similar requirement against assets or deposits with or for the account of, or credit extended by the Lender; or
- (c) impose on the Lender any other obligation or condition affecting the Loan or its commitment in terms of this Agreement;

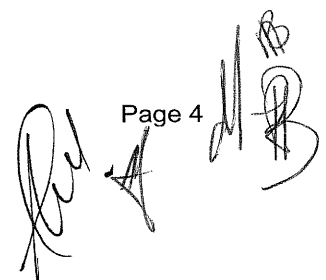
and the result of any of the above is to increase the cost to the Lender of making this advance or maintaining this Agreement or to reduce any amount or amounts received or receivable or loanable by the Lender hereunder by a sum which the Lender deems material, then the Borrower shall pay to the Lender on demand and while such circumstances continue, such fee as the Lender may impose or such additional amount or amounts which will compensate the Lender for such additional cost or reduced receipts.

3.5 The Lender shall give the Borrower 30 (thirty) days notice of all amounts payable in terms of clause 3.4, and a certificate signed by any Director of the Lender (whose appointment it shall not be necessary to prove) as to such additional amount(s) shall be *prima facie* proof for all purposes in the absence of manifest error.

#### 4. **REPAYMENT**

- 4.1 The capital amount of the loan shall be repaid to the Lender as stipulated in Annexure A.
- 4.2 All payments to be made pursuant to this Agreement must be made by means of transfer to the Lender's nominated bank account, for credit on the date on which such payment is due, with proof of such payment provided to the Lender.

Page 4

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## 5. CONDITIONS PRECEDENT

Notwithstanding anything to the contrary in this Agreement, the Borrower shall not be entitled to draw down the Loan unless and until the Borrower has fulfilled the following conditions precedent:

- 5.1 The Borrower shall provide the Lender with a copy of the resolution authorising this Loan in accordance with the requirements of the Municipal Finance Management Act, No 56 of 2003, and / or the Public Finance Management Act, No 1 of 1999, if applicable, as well as authorising the accounting officer or official(s) to sign the documents, also in accordance with the requirements of the Municipal Finance Management Act, No 56 of 2003, and / or the Public Finance Management Act, No 1 of 1999, if applicable, on behalf of the Borrower.
- 5.2 The Borrower and the Lender shall each provide the other with a signed copy of this Agreement and its Annexure(s).

Provided that in the event of the above conditions precedent not having been fulfilled by the 30<sup>th</sup> day of June 2006 or any other date, which may be agreed upon between the parties in writing, then the Lender may terminate this Agreement and any amount paid by the Lender to the Borrower will immediately become due and payable.

## 6. CONDITIONS

- 6.1 Unless the Lender notifies the Borrower that the Borrower has not fulfilled the conditions precedent, the Borrower is obliged to draw down the Loan on the draw down date(s).
- 6.2 Subject to the Borrower having fulfilled the conditions precedent, the Lender is obliged to disburse the amounts to the Borrower on the draw down dates.
- 6.3 The Borrower will during the currency of this Agreement not incur additional long-term debt or borrowings without the prior written consent of the Lender, which consent will not be unreasonably withheld. The basis for such consent being withheld or granted will be the adherence by the Borrower to the covenants stipulated in section 7 hereafter.

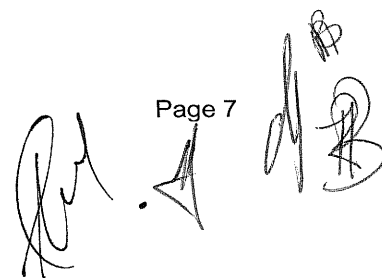
**7. COVENANTS**

- 7.1 The Debt Service to Income Ratio of the Borrower, (where Debt Service is defined as the sum of External Interest Paid per the cash flow statement of the Borrower plus External Debt Repayment (net of transfers to and from redemption funds) in any one year per the cash flow statement of the Borrower and where Income is defined as the Total Income per the Income Statement of the Borrower) shall not exceed 15% (fifteen per centum).
- 7.2 The total capital amount of long-term loans due by the Borrower in any one year, to all financial institutions and investors in debt of the Borrower, inclusive of the short-term portion of long-term debt, if any, shall not exceed 50% of the annual operational revenue of the Borrower.

**8. EVENTS OF DEFAULT**

- 8.1 If any of the following events, each of which shall be severable and distinct from the others of them, shall occur, namely –
- 8.1.1 the Borrower commits a breach of any of the terms and conditions of this Agreement or any of the terms and conditions of any securities which may have been given in respect of this Agreement and such breach is not remedied within a period of 30 (thirty) days after receipt of written notice of such breach; or
- 8.1.2 the Borrower enters into any compromise, composition or arrangement with any of its creditors or attempts to do so; or
- 8.1.3 the Borrower defaults in the due payment or due performance on any amount payable or obligation to be performed under any agreement which amount or which obligation the Lender considers to be material; or
- 8.1.4 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; or

- 8.1.5 the Borrower shall default in the due payment of any amount falling due for payment under any suretyship or other guarantee to which it is a party; or
- 8.1.6 the Borrower suffers any default judgement against it to remain unsatisfied for 30 (thirty) days, or is refused a rescission of any default judgement; or
- 8.1.7 if such judgment is appealable, the Borrower fails to appeal against such judgment within the prescribed time limits or fails to diligently prosecute such appeal thereafter or ultimately fails in such appeal; or
- 8.1.8 if such judgment is reviewable, the Borrower fails to initiate proceedings for the review thereof within the prescribed time limits or fails to diligently prosecute such proceedings thereafter or ultimately fails in such proceedings; or
- 8.1.9 the Borrower stops payment of any liquid document made payable to the Lender; or
- 8.1.10 the Borrower permits any of its assets to be attached under a warrant of execution which is not set aside within a period of 30 (thirty) days after service thereof upon the Borrower; or
- 8.1.11 the Borrower is dis-established as a municipality, or incorporates into its jurisdiction other municipalities, or its powers are materially affected as a result of Provincial or National legislation that is aimed at changing the present status of local government and by implication directly or indirectly the powers of the Borrower; or
- 8.1.12 the Borrower fails to pay any indebtedness on the due date for payment and fails to remedy same within the remedy period applicable thereto (if any) or should any party be entitled to claim repayment of any indebtedness of the Borrower prior to the scheduled date for the repayment thereof; or
- 8.1.13 the Borrower is deemed to be in breach or default of, or commit or permit a material breach of any of the terms, warranties, undertakings, representations, commitments or conditions of this agreement (other than a term relating to payment of an amount referred to above) and fail to remedy such breach within fourteen days after receipt of notice from the Lender of such breach, or commit any breach mentioned in this after

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- having previously committed any such breach on more than one occasion and the lender has given notice in terms of this in respect of each such occasion; or
- 8.1.14 the Borrower has any application or other proceedings brought against or in respect of it in terms of which it is sought to be provisionally or finally wound-up, liquidated, dissolved, dis-established or placed under judicial management or have any equivalent application or proceedings brought against it in terms of any equivalent applicable legislation; or
- 8.1.15 the Borrower alienates or encumbers any of its assets other than in the ordinary course of its business; or
- 8.1.16 the Borrower makes any materially incorrect or untrue statement or representation to the Lender in connection with this agreement or its financial affairs or in any relevant particulars thereof; or
- 8.1.17 the Borrower does anything which may reasonably prejudice the Lender's rights in terms of this agreement; or
- 8.1.18 the Borrower incurs any indebtedness to any third party other than in the ordinary course of business; or
- 8.1.19 save as contemplated in this agreement, the Borrower issues, or becomes bound by, any guarantee, suretyship, indemnity or similar intercession other than in the ordinary course of its business; or
- 8.1.20 the Lender, in its reasonable discretion, determines that a material adverse change in the conditions surrounding the Borrower has occurred; or
- 8.1.21 any amendments be made to or proposed to be made to any applicable laws which may or does affect the authority, ability, business and/or operations of the Borrower which could adversely affect the ability of the Borrower to comply with its obligations under this agreement; or
- 8.1.22 the Borrower requests the intervention of the Municipal Financial Recovery Service, as per Chapter 13 of the Municipal Finance Management Act, No 56 of 2003; or



8.1.23 the covenants contained in clause 7 are breached;

Then, without prejudice to any other rights which might thereupon be available to the Lender, the full amount owing in terms of this Agreement together with all interest then accrued but unpaid and other charges and unwinding costs, together with any amounts due or claimable by the Lender from the Borrower in terms of any other loan or agreement, whether initially entered into directly between the Borrower and the Lender, or whether acquired by the Lender from any third party in terms of any financial transaction, shall forthwith become immediately due and payable by the Borrower, following the Lender's written notification to the Borrower that an event of default has occurred and claiming the amounts due to the Lender in terms of this Agreement or in terms of any other loan or agreement as contemplated in this clause.

8.2 If any of the events specified in clause 8.1 become applicable in respect of any person, other than the Borrower, who provides the Lender or whose security have been ceded to the Lender, if any, with any form of security in respect of this Agreement (and for such purpose, a reference to "Borrower" in clause 8.1 shall be read and construed as a reference to such person), then, upon the occurrence of such event, an event of default shall be deemed to have taken place for the purposes of this Agreement, thereby entitling the Lender to avail itself of the remedies specified in clause 8.1.

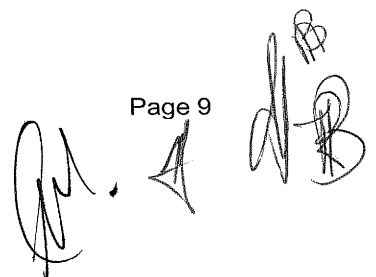
## 9. REPRESENTATIONS AND WARRANTIES

9.1 The Borrower represents and warrants that –

9.1.1 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;

9.1.2 there is no material litigation or similar proceedings, to the knowledge of the Borrower, presently pending or threatened, which would have a material adverse effect on the business or assets of the Borrower;

9.1.3 the Borrower is not in default in respect of any of its obligations in respect of money advanced and no event specified in clauses 7 and 8 has occurred and is continuing;

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- 9.1.4 all information supplied or to be supplied to the Lender by the Borrower concerning the Borrower's business as contained in the Borrower's balance sheets, trading and profit and loss accounts or income statement, cash flow statements and other financial statements or accounts, is true and correct in all material respects and will in future be true and correct in all material respects and in compliance with Generally Accepted Municipal Accounting Policies, to the extent applicable;
- 9.1.5 that this Agreement will not result in the Borrower exceeding its borrowing powers or budgeted loan requirements as approved by the Council of the Borrower for the financial year to which it applies;
- 9.1.6 that the Borrower will at all times comply with all the requirements of section 21A of the Municipal Systems Act, No 32 of 2000, which requirements are set out in section 46 of the Municipal Finance Management Act, No 56 of 2003;
- 9.1.7 that the Borrower will comply with the requirements relevant to this Agreement, of the Municipal Finance Management Act, No 56 of 2003;
- 9.1.8 that with regard to the projects being funded by the proceeds of the loan and generally with regard to its operations, that there will be compliance with all environmental legislation (which includes but is not limited to the provisions of the Environmental Conservation Act, No. 73 of 1989, any legislation passed pursuant to or envisaged in Section 24 of the Constitution of the Republic of South Africa, any provincial ordinances and the common law), and hereby indemnifies all of the Lender's servants and directors, in respect of any and all claims, penalties, fines or forfeitures, of whatever nature, arising from a breach of the aforesaid warranty and undertaking;
- 9.1.9 that or as long as any amount in respect of the Borrower's commitment to the Lender remains outstanding, the Borrower shall not create or permit to subsist any mortgage, pledge, lien or other encumbrance of whatsoever nature on any of its assets or revenues, the nature of which is that it would deteriorate the solvency and or liquidity of the Borrower to the detriment of the Lender, without the prior written agreement of the Lender, the latter which shall not be unreasonably withheld;

9.1.10 that for the duration of the Agreement on at least an annual basis provide the Lender free access to all information in order to enable the Lender to do a credit review and the Borrower shall fully co-operate with the Lender in this process;

9.1.11 that despite any financial or other emergencies that may arise in the operations of the Borrower, that interest due to the Lender in terms of this Agreement will continue to accrue;

9.1.12 that the Borrower will acknowledge and consent to any cession or sale of the Lender's rights in terms of this agreement to a third party, as well as to any splitting of claims occasioned thereby.

## **10. EARLY REDEMPTION**

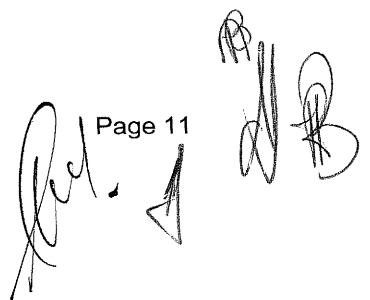
10.1 The Borrower may at any time by written notice to the Lender request the Lender to agree to early redemption of the Loan on a date ("the Prepayment Date") specified in such notice.

10.2 In the event that the Lender agrees to the Prepayment Date the Borrower and the Lender shall first negotiate and agree to the compensation, which the Lender shall be entitled to for such early repayment. Such compensation shall fully compensate the Lender for the costs, expenses, liabilities or losses incurred or suffered in connection with, or following the modification, breaking, or unwinding, or funding from other sources, or any arrangement which the Lender may have made for investing any repayments of the Loan and for hedging the Loan during the period from draw down date to maturity date.

## **11. PENALTY INTEREST**

Should the Borrower fail to pay on due date any amount falling due or payable to the Lender under or arising from this Agreement then, without prejudice to such other rights that may accrue to the Lender consequent upon such failure, such overdue amounts shall bear additional finance charges at whatever rate is the greater from time-to-time of 2% (two percent) above the Prime Rate or of 17% (seventeen percent) per annum compounded monthly from the due date to the date of payment to the Lender.

Page 11

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## 12. CERTIFICATE OF INDEBTEDNESS

A certificate signed by any director of the Lender (whose appointment shall not be necessary to prove) as to any indebtedness of the Borrower hereunder, or as to any other fact, shall be *prima facie* evidence of the Borrower's indebtedness to the Lender or of such other fact for the purpose of any application or action, judgement or order or for any other purpose whatsoever.

## 13. DOMICILIA

13.1 The parties respectively choose their *domicilia citandi et executandi* for all notices and processes to be given or served in pursuance hereof at the following addresses:

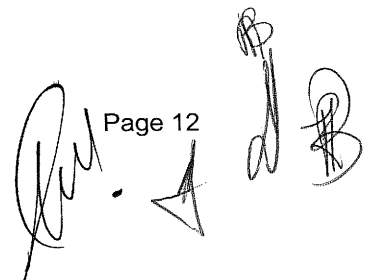
THE LENDER: Building 3 Pinewood Office Park  
33 Riley Road  
Woodmead Ext.3  
Sandton  
Telefax: 011 202 2232  
Attention: Chief Executive Officer

THE BORROWER: Municipal Building  
York Street  
George  
6530  
Telefax: 044 873 3776  
Attention: Municipal Manager

13.2 Any notice or communication required or permitted to be given in terms of this Agreement will be valid and effective only if given in writing and delivered by hand or by post or telefax.

13.3 Either party may by written notice to the other party change its chosen *domicilium* to another physical address or change its fax number, provided that the change will become effective on the 7<sup>th</sup> day after the receipt of the notice by the addressee and provided such other physical address is a South African address.

13.4 Any notice to a party contained in a correctly addressed envelope and –

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13.4.1 sent by prepaid registered post to its chosen address; or

13.4.2 delivered by hand to a responsible person during ordinary business hours at its chosen *domicilia*;

will be deemed to have been received, in the case of clause 13.4.1, on the seventh business day after posting (unless the contrary is proved) and, in the case of clause 13.4.2, on the day of delivery.

Any notice by telefax to a party at its telefax number will be deemed, unless the contrary is proved, to have been received within 2 hours of transmission, provided that, if the deemed time of receipt is not during normal business hours then it is deemed to have been received one hour after the commencement of normal business hours on the next Business Day.

#### **14. ENTIRE AGREEMENT**

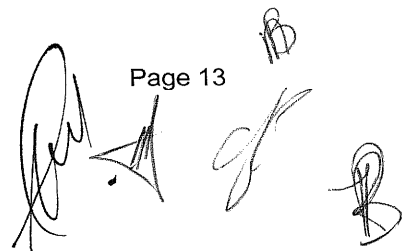
This Agreement together with Annexure A hereto constitute the entire agreement between the parties and any amendment, addition or alteration to the provisions hereof shall only be deemed to be of force and effect if such amendment, addition or alteration is reduced to writing and signed by the parties.

#### **15. COSTS AND EXPENSES**

15.1 All stamp duties payable in respect of this Agreement or in respect of any guarantees or securities given in respect hereof and all costs and expenses incurred by the Lender in connection with the preparation of this Agreement and any securities relating thereto shall be for the account of the Borrower and shall be payable on demand.

15.2 All legal costs as between attorney and his own client, charges and disbursements and fees of a like nature incurred by the Lender in successfully enforcing or defending any of the provisions of this Agreement, or any claim there under, shall be for the account of the Borrower and be payable on demand.

Page 13



## **16. JURISDICTION**

- 16.1 The Borrower hereby consents and submits to the jurisdiction of the Magistrate's Court having jurisdiction in the area where the Borrower has its offices, in respect of all proceedings connected with this Agreement, notwithstanding that the amount claimed or the value of the matter in dispute exceeds such jurisdiction; provided that the Lender shall not be obliged to institute action in the Magistrate's Court.
- 16.2 Notwithstanding the provisions of clause 16.1 the Lender shall be entitled to institute any proceedings against the Borrower in connection with this Agreement in the High Court of South Africa and the Borrower hereby consents and submits to the jurisdiction of that court and agrees that any costs awarded against the Borrower be awarded or paid in accordance with clause 15.2 hereof on the High Court tariff.

## **17. INDULGENCE**

No relaxation or indulgence granted by the Lender to the Borrower from time-to-time shall be deemed to be a waiver of the Lender's rights in terms hereof, nor shall any such relaxation or indulgence be deemed to be a novation or waiver of the terms and conditions of this Agreement.

## **18. APPLICABLE LAW**

This Agreement shall in all respects be governed by and construed in accordance with the law of the Republic of South Africa, and all disputes, actions and other matters in connection therewith be determined in accordance with such law.

**19. EXECUTION**

This Agreement is executed for and on behalf of –

19.1 The Lender by Adriaan Johannes van Zyl in his capacity as Chief Executive Officer and Njokone Reginald Boqo in his capacity as Executive Director: Finance.

19.2 The Borrower by L.H. Fourie, in his capacity as the Director: Financial Services of the Borrower, he being duly authorised hereto under and by virtue of a resolution passed by the Council of the Borrower on the .....21.....day of ...JUNE.....2006.....

THUS DONE AND SIGNED AT SANDTON

on this the ...23..... day of June 2006

In the presence of the undersigned witness:

**AS WITNESS:**

.....  
*Boqo*  
.....

for and on behalf of:

**THE LENDER**

.....  
*Adriaan Johannes van Zyl*  
.....  
*Njokone Reginald Boqo*  
.....

THUS DONE AND SIGNED AT GEORGE

on this the....26.....day of June 2006

In the presence of the undersigned witness:

**AS WITNESS:**

.....  
*L.H. Fourie*  
.....

for and on behalf of:

**THE BORROWER**

.....  
*L.H. Fourie*  
.....

ANNEXURE A to the LOAN AGREEMENT dated.....entered into by and between  
**INFRASTRUCTURE FINANCE CORPORATION LIMITED and**  
**GEORGE LOCAL MUNICIPALITY**

Date	Days	Interest	Capital	Repayment	Balance
30-Jun-06					18,000,000.00
31-Dec-06	184	913,749.04	535,633.89	1,449,382.93	17,464,366.11
30-Jun-07	181	872,103.46	577,279.47	1,449,382.93	16,887,086.64
31-Dec-07	184	857,253.29	592,129.64	1,449,382.93	16,294,957.00
30-Jun-08	182	818,203.27	631,179.65	1,449,382.93	15,663,777.35
31-Dec-08	184	795,153.42	654,229.51	1,449,382.93	15,009,547.84
30-Jun-09	181	749,519.25	699,863.68	1,449,382.93	14,309,684.16
31-Dec-09	184	726,414.45	722,968.47	1,449,382.93	13,586,715.68
30-Jun-10	181	678,468.47	770,914.46	1,449,382.93	12,815,801.22
31-Dec-10	184	650,579.23	798,803.70	1,449,382.93	12,016,997.52
30-Jun-11	181	600,082.76	849,300.17	1,449,382.93	11,167,697.35
31-Dec-11	184	566,915.15	882,467.78	1,449,382.93	10,285,229.58
30-Jun-12	182	516,442.51	932,940.42	1,449,382.93	9,352,289.16
31-Dec-12	184	474,758.07	974,624.86	1,449,382.93	8,377,664.30
30-Jun-13	181	418,348.42	1,031,034.51	1,449,382.93	7,346,629.80
31-Dec-13	184	372,943.11	1,076,439.82	1,449,382.93	6,270,189.97
30-Jun-14	181	313,109.24	1,136,273.69	1,449,382.93	5,133,916.28
31-Dec-14	184	260,617.28	1,188,765.65	1,449,382.93	3,945,150.64
30-Jun-15	181	197,005.69	1,252,377.24	1,449,382.93	2,692,773.40
31-Dec-15	184	136,695.51	1,312,687.42	1,449,382.93	1,380,085.98
30-Jun-16	182	69,296.95	1,380,085.98	1,449,382.93	0.00

Page 16  
