



**DBSA**

Development Bank  
of Southern Africa


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**AGREEMENT**

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I, hereby, certify that the attached copy of the Loan Agreement and Annexures thereto, all pages whereof have been initialed by myself for identification purposes, is a true copy of the original thereof.

22 June 2005  
DATE

  
LESLIE MALESI PUPUMA  
Commissioner of Oaths /for Republic of S.A.  
Ex Officio: Attorney R.S.A.  
C/o Development Bank of Southern Africa  
P.O. Box 1234 Halfway House. 1685  
Headway Hill, Midrand

  
COMMISSIONER OF OATHS  
CERTIFIED A TRUE COPY  
OF THE ORIGINAL

**LOAN AGREEMENT**

in respect of \*

**ILEMBE DISTRICT (DC29) INFRASTRUCTURE DEVELOPMENT PROGRAMME**

Made and entered into by and between

**ILEMBE DISTRICT MUNICIPALITY**

and

**THE DEVELOPMENT BANK OF SOUTHERN AFRICA LIMITED**

Handwritten signatures of two individuals, likely representing the parties to the agreement.

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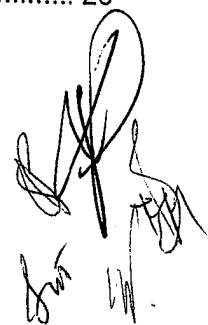
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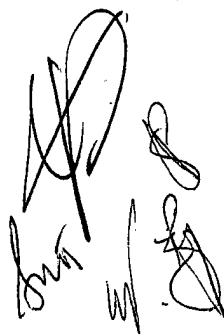
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**S U M M A R Y**

	<b>TOTAL LOAN AMOUNT</b>	:	<b>R78 743 500-00</b>
1.	LOAN AMOUNT 1	:	R77 267 500-00
2.	LOAN PERIOD	:	20 years.
3.	INTEREST RATE	:	
3.1	FIXED INTEREST RATE	:	indicative rate being R186 + 132 basis points (final rate to be fixed at the date of signing of the loan agreement).
3.2	FLOATING INTEREST RATE	:	6 Months JIBAR-SAFEX, plus 116 (one hundred and sixteen) basis points.
3.3	INTEREST RATE TO BE FIXED AT DATE OF CONVERSION	:	The rate shall be R186 + 132 basis points.
4.	GRACE PERIOD FOR CAPITAL REPAYMENT	:	1 year.
5.	CAPITAL REPAYMENT	:	38 equal six-monthly instalments, commencing on the last day of the 3rd Half-year after the Half-year during which the first disbursement was advanced to the Borrower

1. LOAN AMOUNT 2 : R1 476 000-00.
2. LOAN PERIOD : 5 years.
3. INTEREST RATE
  - 3.1 FIXED INTEREST RATE : indicative rate being R153 + 133 basis points (final rate to be fixed at the date of signing of the loan agreement).
  - 3.2 FLOATING INTEREST RATE : 6 Months JIBAR-SAFEX, plus 104 (one hundred and four) basis points.
  - 3.3 INTEREST RATE TO BE FIXED AT DATE OF CONVERSION : The rate shall be R153 + 133 basis points.
4. GRACE PERIOD FOR CAPITAL REPAYMENT : Nil.
5. CAPITAL REPAYMENT : 10 equal six-monthly instalments, commencing on the last day of the 1st Half-year after the Half-year during which the first disbursement was advanced to the Borrower
6. PROJECT FILE NO. : KZN 100507.



## 1. INTERPRETATIONS

1.1 In this Agreement, unless the contrary appears from the context, the following words have the meanings as stated:-

- 1.1.1 "Borrower" Ilembe District Municipality;
- 1.1.2 "the DBSA" 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 "Business Day" means any day other than a Saturday, Sunday and a Public Holiday;
- 1.1.4 "Parties" the Borrower and the DBSA;
- 1.1.5 "Project" Ilembe District (DC29) Infrastructure Development Programme as described in more detail in Annexure A attached hereto;
- 1.1.6 "Loan" the financing granted to the Borrower in terms of clause 2;
- 1.1.7 "Interest Payment Date" the last Business Day of each Interest Period;
- 1.1.8 "Interest Period" each period of 6 (six) months commencing on 1 April or 1 October of each calendar year. The first Interest Period shall begin to run from the date of the first disbursement to 31 March or 30 September, whichever immediately follows disbursement. Each Interest Period thereafter shall begin to run from the date of expiry of the preceding Interest Period, even if the first day of this Interest Period is not a Business Day. Notwithstanding the foregoing, any period less than six months running from the date of a disbursement to the date of 31 March or 30

September immediately following this disbursement shall be deemed an Interest Period;

- 1.1.9 "Project Agent" a person nominated in writing by the Borrower to act on its behalf in respect of the Project;
- 1.1.10 "On-lending" the transfer, by the Borrower, of any amount(s) to any third parties, from the proceeds of the Loan, excluding payments for the procurements of goods and services;
- 1.1.11 "Half-year" from the first day of April to the 30th day of September and/or from the first day of October to the 31st day of March during the next calendar year;
- 1.1.12 "Reset Date" the first Business Day of April and October of each calendar year or such other dates as may be agreed to in writing by the Parties;
- 1.1.13 "Reset Period" a period of 6 (six) months commencing from each Reset Date;
- 1.1.14 "Floating Rate Loan" the amount of Loan disbursed and outstanding from time to time in respect of which the Floating Interest Rate as determined in clause 3.2 shall apply;
- 1.1.15 "Fixed Rate Loan" the amount of Loan disbursed and outstanding from time to time in respect of which the Fixed Interest Rate as determined in clause 3.1 shall apply;
- 1.1.16 "Conversion Option" the option in terms of which the Borrower may convert from a Floating Rate Loan to a Fixed Rate Loan and not vice versa;
- 1.1.17 "this Agreement" means this Agreement together with any Annexures thereto;

- 1.1.18 "DBSA Base Rate" shall mean the DBSA fixed interest rate for Fixed Rate Loans ruling at the time of exercising of a Conversion Option;
- 1.1.19 "Reference Banks" means four major Banks in the Johannesburg Interbank market selected by the DBSA;
- 1.1.20 "R186" means the twenty years Government Bond.
- 1.1.21 "R153" means the five years Government Bond.
- 1.1.22 "ZAR-JIBAR-SAFEX" In relation to each Interest Period for Floating Rate Loan, shall mean the mid-market yield rate (rounded upwards, if necessary, to the nearest one thousandth of a percentage point) for deposits in South African Rand for a six month period which appears on the Reuters Screen SAFEX Page as of 11:00 am, Johannesburg time, two Business Days prior to the commencement of the relevant Interest Period;
- 1.1.23 "ZAR-JIBAR- Reference Banks Rate" In relation to each Interest Period for Floating Rate Loan, shall mean the yield rate determined on the basis of the mid-market deposit rate for South African Rand for a six month period quoted by the Reference Banks at or about 11:00 am, Johannesburg time, two Business Days prior to the commencement of the relevant Interest Period;
- 1.1.24 "Operating Cost Margin" shall mean a margin for operating expenses as shall reasonably be determined by the DBSA from time to time;
- 1.1.25 "Funding Cost Margin" shall mean a margin representing an average cost of borrowing to the DBSA as shall reasonably be determined by the DBSA from time to time.

- 1.2 Headings to the clauses of this Agreement, the table of contents and summary are for reference purposes only and are not intended to affect the interpretation thereof.
- 1.3 Any reference to the singular shall include the plural and vice versa.
- 1.4 Any reference to a natural person shall include an artificial or corporate person and vice versa.
- 1.5 Any reference to one gender shall include the other.
- 1.6 Any reference to ZAR-JIBAR and/or ZAR-JIBAR-Reference Banks Rate shall include any other substitute rate, calculated in the same manner as either of these two rates whether such substitute rate appears on the Reuters screen safety page or on some other screen page.
- 1.7 This Agreement shall bind the Borrower and its successors-in-title and/or its successors in-law.

## 2. THE LOAN

### 2.1 The Loan shall be:-

2.1.1 a total amount not exceeding, in aggregate, R78 743 500-00 (seventy eight million, seven hundred and forty three thousand, five hundred Rand); and

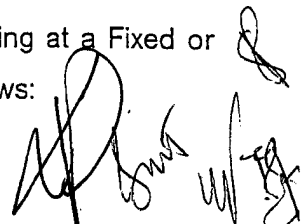
2.1.2 utilised exclusively for the Project and the Borrower, hereby, undertakes that it shall comply with all provisions of this Agreement.

2.2 The Loan proceeds shall be paid by the DBSA to, and on the order of, the Borrower in such disbursements and in accordance with all provisions contained in this Agreement.

2.3 No On-Lending shall be effected unless provided for in this Agreement.

## 3. INTEREST

The Loan shall bear interest on the amount from time to time outstanding at a Fixed or Floating Rate, as the case may be at the election of the Borrower as follows:



### 3.1 FIXED INTEREST RATE

- 3.1.1 Loan 1 shall bear interest on the amount from time to time outstanding at an indicative rate being R186 + 132 basis points (final rate to be fixed at the date of signing of the agreement).
- 3.1.2 Loan 2 shall bear interest on the amount from time to time outstanding at an indicative rate being R153 + 133 basis points (final rate to be fixed at the date of signing of the agreement).
- 3.1.3 Interest on the amount from time to time outstanding shall be compounded six-monthly and shall be due and payable on the last day of each Half-year. If payment of interest falls on a day other than a Business Day, such interest shall be payable on the next succeeding Business Day.

### 3.2 FLOATING INTEREST RATE

#### LOAN 1

- 3.2.1 The rate of interest applicable to the Floating Rate Loan disbursed and outstanding from time to time (expressed as a percentage rate per annum) shall be a six-month ZAR-JIBAR-SAFEX plus 116 (one hundred and sixteen) basis points. If, for any reason, it shall become impossible to determine ZAR-JIBAR-SAFEX or ZAR-JIBAR-SAFEX rates shall become unavailable by reason either of market dysfunction or any other reason unforeseen by the Parties, then the rate of interest applicable to the Floating Rate Loan shall be the ZAR-JIBAR-Reference Banks Rate plus 116 (one hundred and sixteen) basis points.

#### LOAN 2

- 3.2.2 The rate of interest applicable to the Floating Rate Loan disbursed and outstanding from time to time (expressed as a percentage rate per annum) shall be a six-month ZAR-JIBAR-SAFEX plus 104 (one hundred and four) basis points. If, for any reason, it shall become impossible to determine ZAR-JIBAR-SAFEX or ZAR-JIBAR-SAFEX rates shall become unavailable by reason either of market dysfunction or any other reason unforeseen by the Parties, then the rate of interest applicable to the Floating Rate Loan shall be the ZAR-JIBAR-Reference Banks Rate plus 104 (one hundred and four) basis points

- 3.2.3 The DBSA shall request the principal Johannesburg office of each of the Reference Banks to provide a quotation of its rates. If at least 2 (two) quotations are provided, the rate will be the arithmetic mean (rounded upwards, if necessary, to the nearest thousandth of a percentage point) of the quotations.
- 3.2.4 The interest rate for each Interest Period shall be compounded six-monthly based on the actual number of days elapsed and a 365-day year (irrespective of whether it is a leap year) and shall be payable in arrears on each Interest Payment Date.
- 3.2.5 Interest on the amount from time to time outstanding shall be compounded six-monthly and shall be due and payable on the last day of each Half-year. If payment of interest falls on a day other than a Business Day, such interest shall be payable on the next Business Day. Payment shall commence on the last day of the Half-year during which the first disbursement was advanced to the Borrower.

### 3.3 CONVERSION FROM FLOATING RATE TO FIXED RATE

The Borrower may, on any Reset Date convert all of the Floating Rate Loan into a Fixed Rate Loan provided that the Borrower shall give DBSA no less than 30 (thirty) Business Days notice of its intention to do so. Upon the exercising of the Conversion Option by the Borrower as contemplated herein, the amount outstanding from the date on which the Borrower shall exercise the Conversion Option shall bear a fixed interest rate based on R186 + 132 basis points in respect of Loan 1 and R153 + 133 basis points in respect of Loan 2. The Borrower shall be notified in writing of the DBSA Base Rate applicable at the time. Interest rate shall for the purpose of this sub-clause, be calculated on the same basis as indicated in sub-clauses 3.1.1 and 3.1.2 above.

## 4. REPAYMENT OF LOANS AND PAYMENT OF INTEREST

- 4.1 Loan 1 shall be repaid in 38 (thirty eight) equal six-monthly instalments, commencing on the last day of the 3rd (third) Half-year following the Half-year during which the first disbursement was made to the Borrower from the proceeds of the Loan; and thereafter at the end of each succeeding Half-year until the Loan together with interest thereon shall be fully repaid; provided that subject to the provisions of clause 7, the Borrower may, with 30 (thirty) days written notice to the DBSA, make repayments in excess of the abovementioned or repay the full amount outstanding, provided further that the Borrower

shall not be entitled to make any repayments prior to the date on which the first instalment shall fall due in terms of this Agreement; provided further that this shall not jeopardise the proper completion of the Project.

- 4.2 An instalment shall be a fixed amount, determined as at the outset of the 3rd (third) Half-year following the Half-year during which the first disbursement was made to the Borrower from the proceeds of the Loan; calculated as being sufficient to amortise the outstanding amount, plus interest at the rate set out in clause 3.1 above, in 38 (thirty eight) equal six-monthly payments. Should, at the outset of the said 1st (first) Half-year, part of the Loan still not be drawn by the Borrower, the amount of instalments shall be adjusted as and when drawings take place, in order to achieve amortisation over the original period of the Loan.

## LOAN 2

- 4.3 Loan 2 shall be repaid in 10 (ten) equal six-monthly instalments, commencing on the last day of the 1st (first) Half-year following the Half-year during which the first disbursement was made to the Borrower from the proceeds of the Loan; and thereafter at the end of each succeeding Half-year until the Loan together with interest thereon shall be fully repaid; provided that subject to the provisions of clause 7, the Borrower may, with 30 (thirty) days written notice to the DBSA, make repayments in excess of the abovementioned or repay the full amount outstanding, provided further that the Borrower shall not be entitled to make any repayments prior to the date on which the first instalment shall fall due in terms of this Agreement; provided further that this shall not jeopardise the proper completion of the Project.
- 4.4 An instalment shall be a fixed amount, determined as at the outset of the 1st (first) Half-year following the Half-year during which the first disbursement was made to the Borrower from the proceeds of the Loan; calculated as being sufficient to amortise the outstanding amount, plus interest at the rate set out in clause 3.1 above, in 10 (ten) equal six-monthly payments. Should, at the outset of the said 1st (first) Half-year, part of the Loan still not be drawn by the Borrower, the amount of instalments shall be adjusted as and when drawings take place, in order to achieve amortisation over the original period of the Loan.

## 5. COMMITMENT FEE

- 5.1 The DBSA shall be entitled, in respect of the Fixed Rate Loan, to charge a commitment fee of 0,5% (nought comma five per centum) per annum on all the undisbursed portion of the Loan as follows:

5.1.1 in case where the Borrower has elected a fixed interest rate option, the DBSA shall be entitled to charge such a commitment fee effective 3 (three) months from the date of conclusion of this Agreement;

5.1.2 in case where the Borrower has exercised the Conversion Option, the DBSA shall be entitled to charge such a commitment fee effective 3 (three) months from the date of the exercise of the Conversion Option by the Borrower.

5.2 Payment of the commitment fee shall be made on the same terms and conditions as the other amounts due in terms of this Agreement.

## 6. LATE PAYMENT

6.1 The Borrower shall be liable to the DBSA for the payment of penalty interest on all amounts payable, yet unpaid, in terms of this Agreement should the Borrower:-

6.1.1 fail to pay on the due date any amount owing or which may become owing to the DBSA in terms of this Agreement; or

6.1.2 with the DBSA's written consent defer the payment of any amount so owing.

6.2 Penalty interest shall be calculated with regard to the actual period during which the amount payable remained unpaid at a rate equal to 2% (two per centum) above the agreed interest rate specified herein.

## 7. EARLY REPAYMENT

The Borrower shall, at any time upon giving the DBSA at least 30 (thirty) days prior written notice, be entitled to prepay the full and/or portion of the outstanding Loan amount, subject to the payment of a prepayment penalty fee by the Borrower for each year of the remaining Loan Period, on the full and/or portion of the outstanding Loan amount being prepaid, at the time of prepayment and such prepayment penalty fee shall be determinable as follows:

## 7.1. PREPAYMENT PENALTY FOR FLOATING RATES

“ **Breakage Costs**” in respect of any payment of the prepaid principal amount Interest Payment Date relative to that prepaid principal amount:

7.1.1 The net present value of the amount (if any) by which:

7.1.1.1 the interest (excluding the Margin) which the DBSA would have received for the period from the date of receipt of such prepaid principal amount to that Interest Payment Date;

exceeds

7.1.1.2 the amount which the DBSA would be able to obtain by placing an amount equal to the prepaid principal amount received by it on deposit with a leading bank in the relevant Interbank market for a period starting on the day of receipt and ending on that Interest Payment Date; and

7.1.2 the amount of all actual costs, expenses and disbursements incurred by the DBSA in closing out, settling or unwinding any hedging transactions, deposits, or funding transactions which may have been entered into by the DBSA or reacquiring any negotiable instruments that have been issued by the DBSA, in respect of the funding of any part or all of the DBSA Loan.

## 7.2. PREPAYMENT PENALTY FOR FIXED RATES

7.2.1 The Borrower shall, subject to thirty (30) days written notice to the DBSA, be entitled to prepay any portion or the entire principal amount of the DBSA Loan on any Interest Payment Date. However, the Borrower shall be liable to pay a prepayment penalty fee on the principal amount being prepaid otherwise than on the Interest Payment Date relative to that prepaid principal amount. The prepayment penalty fee (“ **Prepayment Penalty Fee** ”) shall be determined or calculated as follows:

7.2.1.1 where the Loan interest rate is less than or equal to the reinvestment rate defined herein below; the Borrower shall be liable to pay Unwinding Costs on the amount prepaid;

7.2.1.2 where the interest rate of the Loan is greater than the reinvestment rate, as defined hereinafter the Borrower shall pay to the DBSA a fee equal to the difference calculated on a present value basis to the DBSA's prejudice, between the interest which the prepaid principal amount would have produced had there been no prepayment and the interest which would be produced by a reinvestment of the same amount having the same repayment schedule as the prepaid principal amount of the DBSA Loan including any Unwinding Costs.

7.2.2 The reinvestment rate shall be the rate at which the DBSA can invest the funds in the relevant Interbank Market, for the period equal to the remaining Loan Period as determined at the relevant Interest Payment Date of such prepaid principal amount.

7.2.3 The discount rate used shall be equal to the discount rate forecast by the Bond Exchange Zero Curve sheet Swaps PF published daily by BESA. The date used for the present value calculation shall be that of the prepayment.

**"Unwinding Costs"** any and all actual costs, expenses and disbursements incurred by the DBSA in taking out a new hedge position, closing out, settling or unwinding any hedge transaction deposits or funding transactions that may have been entered into by the DBSA or reacquiring any negotiable instruments that have been issued in respect of funding any part or all of the DBSA Loan.

## 8. PAYMENT(S)

8.1 All payments to or by the Parties under this Agreement shall be effected in South African Rand.

8.2 All payments under this Agreement to the Borrower shall be effected to the credit of such banking account(s) of the Borrower as the Borrower may from time to time direct, in writing.

8.3 The Borrower shall furnish the DBSA with all the necessary information regarding its officials who are authorised to apply for drawdowns on the Borrower's behalf.

8.4 All payments under this Agreement to the DBSA shall be effected to the credit of such banking account(s) of the DBSA as the DBSA may from time to time direct, in writing.

- 8.5 Payments to the DBSA in terms of this Agreement shall be effected without deduction and free from any taxes, charges, fees or other costs whatsoever.
- 8.6 Whenever any payment falls due on a Saturday, Sunday or Public Holiday under the laws to which either of the Parties are subject, such payment shall be made on the next succeeding Business Day.

## 9. CANCELLATION/TERMINATION OF DRAWDOWNS

- 9.1 The Borrower may, by giving 30 (thirty) days written notice to the DBSA, cancel any undrawn portion of the Loan provided that such cancellation shall not jeopardise the proper completion of the Project; it being understood that upon the giving of such notice the instalments referred to in clause 4.1 supra shall be reduced pro rata.
- 9.2 If the DBSA reasonably concludes, after consultation with the Borrower, that any portion(s) of the Loan will not be required to finance the Project, the DBSA may by notice to the Borrower terminate the right of the Borrower to make drawdowns in respect of such undrawn portion; it being understood that upon giving of such notice the instalments referred to in clause 4.1 supra shall be reduced pro rata.
- 9.3 If the DBSA has not received a final application for a drawdown under the Loan from the Borrower at the end of the 1st (first) Half-year following the Half-year during which the first disbursement was made to the Borrower from the proceeds of the Loan, the DBSA may terminate further disbursements to the Borrower on 30 (thirty) days written notice to the Borrower unless the DBSA, after consideration of the reasons for the delay, has determined a later date for the purposes of this sub-clause. The DBSA shall only consider an extension on receipt of a written request from the Borrower and shall notify the Borrower of its decision.

## 10. EVENTS OF DEFAULT

- 10.1 The DBSA shall be entitled, after giving the Borrower 30 (thirty) days written notice to rectify any breach by the Borrower in terms of this Agreement and upon the Borrower's failure to remedy such breach, to suspend drawdowns from the Loan or to terminate this Agreement and to claim from the Borrower immediate payment of all the outstanding amounts should the Borrower commit any breach of this Agreement, provided that the DBSA may, at its entire discretion, dispense with the giving of the 30 (thirty) days notice.

10.2 Without derogating from the generality of the foregoing, the DBSA shall be entitled to exercise its rights in terms of clause 10.1 above, upon the happening of any of the following events:-

10.2.1 the Borrower failing to repay the capital amount and to pay interest in terms hereof, and failing to remedy such breach within the notice period referred to in 10.1 above requiring it to do so;

10.2.2 any attachment being made or any execution being levied against the Borrower;

10.2.3 any failure to repay any of the DBSA's loans or breach of any agreement entered into between the Borrower and the DBSA and/or with any other lender/creditor;

10.2.4 any fact or circumstance shall have occurred which in the opinion of the DBSA may affect the ability or willingness of the Borrower to comply with all or any of its obligations under this Agreement;

10.2.5 the Borrower proposing any rescheduling, reorganisation or rearrangement of the whole or part of its indebtedness with the DBSA or any of its creditors;

10.2.6 the Borrower's business operations or any significant part thereof, being interrupted for a continuous period of at least 3 (three) months;

10.2.7 any approval, licence, authorisation or other requirement necessary to enable the Borrower to comply with any of its obligations in terms of this Agreement is modified, revoked or withdrawn whilst this Agreement is still in force;

10.2.8 any order is made or resolution passed or other action taken for the dissolution or termination of the existence of the Borrower;

10.2.9 any representation, warranty or statement made in, or in connection with, this Agreement or any opinion delivered by or on behalf of the Borrower under this Agreement is found to be incorrect.

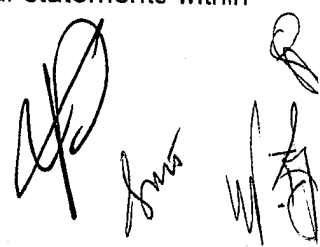
10.3 The exercise of the rights by the DBSA in terms hereof shall be without prejudice and/or in addition to any other rights which the DBSA may then have against the Borrower in law, including the right to demand specific performance by the Borrower of its obligations in terms of this Agreement.

**11. SUSPENSIVE CONDITIONS**

- 11.1 No disbursements on the Kwadukuza buildings will take place until the buildings comply with national safety and fire regulations.
- 11.2 No disbursement will take place on the Umhlali and Ballito buildings until the buildings plans are approved and the buildings have been appraised according to the normal DBSA appraisal guidelines and it is confirmed that the buildings adhere to the norms and criteria as contained in annexure IV

**12. FURTHER TERMS AND CONDITIONS**

- 12.1 The Borrower will submit written confirmation to the DBSA to the effect that the Provincial Government is fully informed of and supports the programme;
- 12.2 The Borrower undertakes to obtain the DBSA's written agreement before taking up any additional loan, which would increase its debt servicing ratio to more than 20%, using the previous year's total revenue as the base of reference;
- 12.3 The Borrower undertakes to comply with acceptable environmental management principles as contained in the National Environmental Management Act, No. 107 of 1998 and to ensure that an agreed upon system is in place, which adheres to environmental requirements throughout the lifetime of the projects, and to ensure compliance with all environmental legal requirements;
- 12.4 The Borrower will obtain from the relevant government authorities any authorisation(s) and/or permit(s)/licences which are or may be required in terms of the relevant environmental and/or water legislation prior to the implementation of the project and it shall comply or ensure compliance with same. The Borrower agrees to furnish the DBSA with copies of any such authorisation(s) and/or licence(s) as received. (especially the record of decision for the Sumdumbili Water Works);
- 12.5 The Borrower undertakes that no construction activities will include the use of asbestos materials;
- 12.6 The Borrower undertakes to provide the DBSA with its audited financial statements within 6 (six) months from the end of its financial year;

Handwritten signatures and initials in black ink, located at the bottom right of the page. There are three distinct signatures or sets of initials, including one that appears to be 'J. Smith'.

- 12.7 The Borrower undertakes to put measures in place not to incur an annual deficit before transfers from reserves. If any annual deficit is incurred and the situation is not resolved to the DBSA's satisfaction, the DBSA reserves the right to take security from the Borrower to mitigate the risk; and
- 12.8 The Borrower will inform the DBSA on progress with the corporatisation of the water services.

### 13. ARBITRATION

- 13.1 Any dispute arising out of or relating to this Agreement concerning the interpretation of the terms and conditions of this Agreement or of compliance by any Party with the terms/conditions of this Agreement which is not resolved amicably through consultations or negotiations shall, subject to the other provisions of this Agreement, be settled by arbitration in terms of the Arbitration Act No. 42 of 1965, as amended from time to time; provided that a claim by the DBSA for the repayment of any monies due under this Agreement shall not be regarded as a dispute for the purpose of this clause and neither Party shall therefore be obliged to refer such a claim to arbitration.
- 13.2 In case of arbitration a tribunal shall be composed of one arbitrator who shall be appointed by the Parties by agreement or failing such agreement, by the chairperson of the Association of Arbitrators, who shall, in appointing such arbitrator, have regard to the qualifications and experience of the appointee in relation to the nature of the dispute over which he/she has to adjudicate. In case the arbitrator resigns or becomes unable to act, a successor shall be appointed in the same manner as herein prescribed for the appointment of the original arbitrator and the successor shall have all the powers and duties of his/her predecessor.
- 13.3 The arbitration shall be held at the place and in accordance with whatever procedures the arbitrator considers appropriate. In particular, the arbitrator, may, if he/she deems appropriate, conduct the arbitration in an informal and summary manner and without requiring pleadings or discovery of documents and without observing the rules of evidence. The proceedings shall be confidential and neither the Parties nor the arbitrator shall disclose to third parties any information regarding the proceedings, the award, or settlement terms unless the parties otherwise agree in writing.



- 13.4 After the institution of arbitration proceedings the tribunal may proceed with the arbitration notwithstanding any failure, neglect or refusal of either Party to comply with the provisions hereof or to take part or to continue to take part in the arbitration proceedings. The arbitrator shall within 30 (thirty) days of the termination of the proceedings render a final and binding written award including interest and costs, and furnish the Parties with written reasons for his/her judgment.
- 13.5 The provisions of this clause may be invoked by any Party by delivering to the other Party a demand, in writing, that an arbitrator be appointed to adjudicate in respect of a specified dispute.

#### 14. GENERAL

##### 14.1 PROJECT NOTICE BOARDS

The Borrower shall, at its own cost, ensure that, immediately upon commencement of construction/building operations, contemplated by this Agreement, if it is decided to erect a Project notice board, the said board shall clearly advertise the fact that such construction/building operations, have been financed or co-financed, as the case may be, by the DBSA.

##### 14.2 DOMICILIUM

14.2.1 The Parties choose domicilium citandi et executandi ("domicilium") for all purposes arising from or pursuant to this Agreement, as follows:-

(i) In case of the DBSA:-

Physical address: Development Bank of Southern Africa Limited  
Headway Hill  
MIDRAND  
SOUTH AFRICA; or

Postal address: P O Box 1234  
HALFWAY HOUSE  
1685; or

Telefax number: (011) 313 3086

## (ii) In case of the Borrower

Physical address: Ilembe District Municipality  
59/61 Mahatma Gandhi Street  
KwaDukuza  
4450; or

Postal address: P O Box 2916  
KwaDukuza †  
4450; or

Telefax number: (032) 551 1989

14.2.2 Each of the Parties shall be entitled from time to time, by written notice to the other, to vary its domicilium to any other address which is not a Post Office or Poste Restante.

14.2.3 All notices made by either Party to the other ("the addressee") which:-

- (i) is delivered by hand during the normal business hours of the addressee at the addressee's domicilium for the time being shall be presumed to have been received by the addressee at the time of delivery;
- (ii) is posted by prepaid registered post to the addressee at the addressee's domicilium for the time being shall be presumed to have been received by the addressee on the seventh day after the date of posting; Provided that the Parties agree that all other forms of correspondence and/or requests may be done through fax and/or electronic mail (e-mail).

### 14.3 WHOLE AGREEMENT

This Agreement (including the Annexures) constitutes the entire Agreement between the Parties and no representations, warranties, undertakings or promises of whatever nature which may have been made by any of the Parties, their agents or employees, other than those herein contained, shall be binding or enforceable against them.

### 14.4 NON-VARIATION

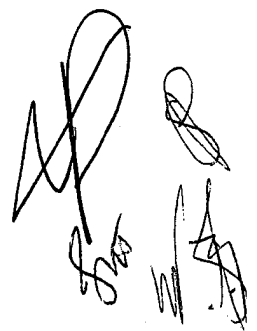
No variation, amendment or addition to this Agreement shall be valid unless the same has been reduced to writing and signed by or on behalf of the Parties.

**14.5 NON-ENFORCEMENT/INDULGENCE**

The non-enforcement of any provision of this Agreement or any indulgence which either Party may grant to the other Party shall be without prejudice to the rights of such first-mentioned Party to insist upon strict compliance by such other Party with all the provisions of this Agreement or to enforce its right in respect of which such indulgence was granted.

**14.6 TERMS AND CONDITIONS OF DISBURSEMENT**

Disbursement in respect of the amount financed by DBSA is to be effected as set out in the Application and Source of Funds Statement (Annexure B), read together with the Project Description (Annexure A), to the maximum amount of R78 743 500-00.



THUS DONE AND SIGNED AT MISRANS ON THE 15 DAY OF JUNE 2005.

AS WITNESSES:

1. [Signature]

2. [Signature]

[Signature]

FOR AND ON BEHALF OF THE BORROWER, DULY AUTHORISED THERETO IN TERMS OF ANNEXURE D ATTACHED HERETO

THUS DONE AND SIGNED AT MISRANS ON THE 15 DAY OF JUNE 2005.

AS WITNESSES:

1. [Signature]

2. [Signature]

[Signature]

FOR AND ON BEHALF OF THE DBSA, DULY AUTHORISED THERETO IN TERMS OF ANNEXURE E ATTACHED HERETO

[Signature]  
[Signature]  
[Signature]

**PROJECT DESCRIPTION****1. PROJECT GOAL**

The project goal is to ensure that the municipality provides reliable municipal services to its inhabitants.

**2. PROJECT OBJECTIVE**

The project objective is to enable the municipality to fulfil its newly acquired function of water provision by upgrading the water and sanitation infrastructure of the district for the domestic and the commercial users. It also aims at providing sufficient office accommodation to the employees of the district municipality.

**3. PROJECT DESCRIPTION**

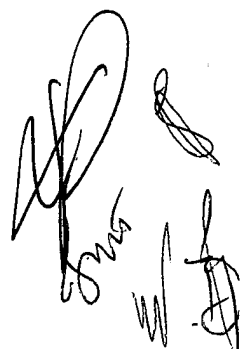
The project comprises three elements, namely the upgrading of the Isithebe Estate Water Supply including a portion of domestic water upgrading (Sundumbili area). Secondly, it includes a portion of domestic water supply and sanitation upgrading in the four municipalities Ndwedwe, Maphumulo, KwaDukuza and eNdongakusuka. Thirdly, it entails the purchase and refurbishment of buildings to house the staff of Ilembe Municipality. (DBSA contribution: R 78 million loan)

The project outputs are as follows:

The construction of 3 reservoirs and associated reticulation for Sundumbili (including Isithebe Estate industrial water requirements) at a cost of R30 million.

Upgrading of water and sanitation projects in the municipal areas where funding was not available prior to Ilembe taking over the water provision function at a cost of R 28,7million.

The purchase and refurbishment of a number of buildings at a cost of R 20 million.



**ILEMBE INFRASTRUCTURE -  
PROJECT LIST**

<b><u>Description</u></b>	<b><u>Costs</u></b>	<b>DBSA FINANCE</b>	<b>20 year loan</b>	<b>5 year loan</b>
Sundumbili water purific. works upgrade	R57,000,000	R30,000,000	R30,000,000	
Water Projects	R17,417,500	R17,417,500	R17,417,500	
Vehicles	R1,476,000	R1,476,000		R1,476,000
Sanitation Projects	R9,850,000	R9,850,000	R9,850,000	
Offices - Stanger	R10,000,000	R10,000,000	R10,000,000	
Offices-Umhlali & Ballito	R10,000,000	R10,000,000	R10,000,000	
<b>TOTAL</b>	<b>R105,743,500</b>	<b>R78,743,500</b>	<b>R77,267,500</b>	<b>R 1 476 000</b>

## SOURCE AND APPLICATION OF FUNDS STATEMENT

ILEMBE INFRASTRUCTURE -  
PROJECT LIST

<u>DESCRIPTION</u>	<u>COSTS</u>	<u>DBSA FINANCE</u>	<u>20 YEAR LOAN</u>	<u>5 YEAR LOAN</u>
Sundumbili water purification works upgrade	R57,000,000	R30,000,000	R30,000,000	
Water Projects (Excluding Vehicles)	R17,417,500	R17,417,500	R17,417,500	
Water Projects (Vehicles)	R1,476,000	R1,476,000		R1,476,000
Sanitation Projects	R9,850,000	R9,850,000	R9,850,000	
New buildings and offices - Stanger	R10,000,000	R10,000,000	R10,000,000	
Purchase of Umhlali Building and Extension to offices-Ballito	R10,000,000	R10,000,000	R10,000,000	
<b>TOTAL</b>	<b>R105,743,500</b>	<b>R78,743,500</b>	<b>R77,267,500</b>	<b>R 1,476,000</b>

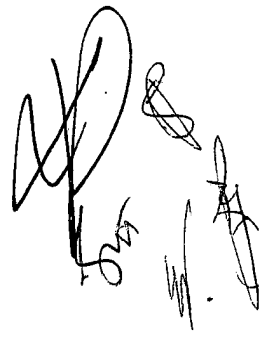
## PROJECT CO-OPERATION

1. To ensure that the purposes of the Loan are accomplished the Parties shall:-
  - 1.1 periodically and at the request of either Party:-
    - 1.1.1 exchange views with regard to the progress of the Project, the benefits derived therefrom and the performance of their respective obligations under this Agreement as well as other matters relating to the purposes of the Loan; and
    - 1.1.2 furnish each other with all such information as may be reasonably requested with regard to the progress of the Project, the benefits derived therefrom and the general status of the Loan;
  - 1.2 promptly inform each other of any fact which interferes with, or threatens to interfere with, the progress of the Project, the accomplishment of the purposes of the Loan, any related matter, and in particular the performance by either Party of its obligations under this Agreement;
  - 1.3 confirm that they have determined the technical, financial and organisational requirements in respect of planning, management and control of the Project in order to ensure the efficient and effective execution and maintenance of the Project and related matters; and
  - 1.4 jointly determine the criteria to be taken into consideration when awarding contracts for items and services to be financed by the Loan.
2. The Borrower shall:-
  - 2.1 grant representatives of the DBSA the opportunities reasonably necessary to visit any relevant area for purposes related to the Loan;
  - 2.2 in addition to the amount made available in terms of this Agreement, be responsible for the provision of all other funds necessary for the successful execution of the Project as set out in Annexure B, including funds to be supplied by third parties as reflected in that Annexure;
  - 2.3 be responsible for the management and maintenance of work carried out within the context of the Project;

- 2.4 with regard to the procurement of goods and services for the Project, in consultation with the DBSA, invite participation in tender or quotation procedures on open bid basis from natural persons and bodies corporate respectively;
- 2.4.1 tender documents or invitations for quotations shall be drawn up in consultation with the DBSA's Project team and ratified by the DBSA;
- 2.5 ensure that contractors to whom contracts are awarded are insured and remain insured in terms of contractors-all-risk-insurance policies acceptable to the DBSA;
- 2.6 insure and keep insured at the replacement value thereof, such of its interests in the Project against such risks as may be agreed upon by the Parties;
- 2.7 maintain or cause to be maintained records adequate to identify the operations carried out by means of the Loan and furnish the DBSA with all such information (e.g. progress reports) concerning the implementation of the Project;
- 2.8 apply the Loan in accordance with Annexure B;
- 2.9 require each contractor to whom a contract is awarded to furnish a performance guarantee acceptable to the DBSA, in terms whereof the completion of such contract is guaranteed; and
- 2.10 preserve all documents and accounting records pertaining to the Project up to the expiry of a period of 3 (three) years after completion of the Project, and shall allow the DBSA at the DBSA's cost at any reasonable time to have such documents and records audited by a person or persons nominated by the DBSA.
3. Where the Parties agree that the further appointment of consultants or the revision of the brief of appointed consultants is necessary the following criteria shall be utilised:-
- promotion and/or support for the SMME sector;
  - past experience with similar Projects;
  - knowledge of local conditions;
  - abilities and qualifications;
  - membership of professional institutions.



AUTHORISATION  
BORROWER

Handwritten signatures and initials in the bottom right corner, including a large signature and several smaller initials.

## AUTHORISATION

## DEVELOPMENT BANK OF SOUTHERN AFRICA LIMITED

## MANDLA SIZWE GANTSHO

in his capacity as Chief Executive of the Development Bank of Southern Africa, in terms of authority delegated to the incumbent of this post by the Board of Directors of the Development Bank of Southern Africa on 19 September 1985, determined on 1 December 2004 that:

## MANDLA SIZWE GANTSHO

in his capacity as Chief Executive

OR

## ZANELE JOYCE MATLALA

in her capacity as Chief Financial Officer

OR

## JACOB HENRY DE VILLIERS BOTHA

OR

## DISEBO CONSIGLIO MOEPHULI

OR

## LEWIS MAXWELL MUSASIKE

OR

## SNOWY JOYCE KHOZA

OR

## MAGARE LUTHER MASHABA

in their capacity as Executive Managers

OR

## JEANETTE SIBONGILE NHLAPO

In her capacity as Chief Operating Officer, DBSA: Development Fund

OR

## PULE LESAILANE MOKHOBO

in his capacity as Manager: Legal Services

OR

## CHRISTINA JOANNA GOLINO

OR

## BANE MOEKETSI MALEKE

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OR

**PUMLA MANNYA**

OR

**MAKGOTLA DANIEL PETER MOKUENA**

OR

**FRENCEL FRANKTON GILLION**

OR

**JANINE THORNE**

OR

**REMBULUWANI BETHUEL NETSHISWINZHE**

OR

**LOYISO PITYANA**

OR

**JAMES MFANVELI TWANA NDLOVU**

OR

**TSHOKOLO PETRUS NCHOCHO**

OR

**SOLOMON ASAMOAH**

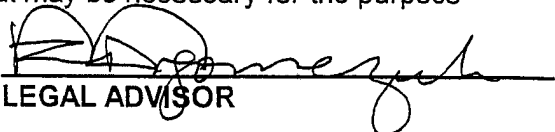
in their capacity as Managers: Business Units (DSP Related)

be authorised for and on behalf of the Development Bank of Southern Africa to enter into agreements in terms whereof money is:-

1. lent, or
2. granted for the purpose of technical assistance,

and to perform all acts and sign all documents that may be necessary for the purpose

22 JUNE 2005  
DATE

  
LEGAL ADVISOR

